NORTH DAKOTA ADMINISTRATIVE CODE

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Prepared by the Legislative Council staff
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TITLE 7

AGRICULTURE COMMISSIONER

APRIL 2026

CHAPTER 7-03.2-02
LICENSE TO HAUL, SAMPLE, AND TEST

Section
7-03.2-02-01 New Licenses
7-03.2-02-02 Relicensing
7-03.2-02-03 Training [Repealed]

7-03.2-02-03. Training.

Repealed effective April 1, 2026.

~~All licensed samplers and milk haulers must attend a training session at least once every two years. Training must be provided by the commissioner.~~

~~**History:** Effective October 1, 2009; amended effective July 1, 2024.~~
~~**General Authority:** NDCC 4.1-25-50~~
~~**Law Implemented:** NDCC 4.1-25-22, 4.1-25-35~~

CHAPTER 7-03.2-04

7-03.2-04-02. Special requirements for licensing dairy farms.

1. ~~**Grade A milk farm.**~~ To be licensed as a grade A milk farm, the farm must satisfy the following:

   a. The farm must score a ninety or above during the initial inspection, without any equipment cleaning, major drug labeling, major drug storage, or milk cooling violations.

   b. The water supply must meet the requirements of the North Dakota board of water well contractors and state department of health, or the water supply must be approved for municipal or rural water use by the state department of health.

   c. ~~Wells must be at least ten feet [3.01 meters] from hydrants unless the hydrant is frost-free style and with an approved atmospheric vacuum breaker or the hose connection threads are cut off.~~

   ~~d.~~ The farm bulk tank must be empty at the time of licensing.

   ~~e. The hoseport must be installed in an exterior milkhouse wall.~~

   ~~f. Neither light fixtures nor vents may be placed over bulk tanks.~~

   ~~g. Light must be provided to properly inspect the interior of bulk tanks.~~

   ~~h. Livestock or fowl may not have access to truck approach (driveway) or loading area.~~

   ~~i. Hot water heater capacity must be adequate to properly clean equipment.~~

   ~~j. There must be adequate backflow preventors upstream from tube, plate coolers and heat exchangers to protect the milkhouse and water supply. Backflow preventors are also required downstream of tubeplate coolers, and heat exchangers unless there is a physical break downstream. The physical break must be at least two times the diameter of the discharge line.~~

   ~~k.~~d. Properly mounted and installed 36A or N36 vacuum relief valves or a properly installed low pressure cut off switch downstream from a shut off valve, are required on power washers and booster pumps.

   ~~l.~~e. All equipment must meet applicable 3A standards and practices.

2. ~~**Manufacturing grade milk farm.**~~ Manufacturing grade milk farms must meet all rules of the United States department of agriculture.

History: Effective October 1, 2009; amended effective July 1, 2019; April 1, 2026.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-28, 4.1-25-50

CHAPTER 7-03.2-07

7-03.2-07-02. Enforcement procedures.

1. Whenever three of the last five consecutive bacteria, temperature, or coliform counts exceed the standards of the pasteurized milk ordinance or United States department of agriculture regulations, the commissioner will suspend ~~the license of the plant processing~~ the product in question until an acceptable sample is received.

2. Whenever any phosphatase test is positive, the commissioner shall conduct an investigation to determine the cause and the product in question may not be offered for sale until the cause is determined and eliminated.

3. Whenever any drug or pesticide test results in a level exceeding the limits established by the food and drug administration or environmental protection agency, the product in question must be removed from the market and the commissioner shall conduct an investigation to determine the cause. The milk product in question may not be offered for sale until the cause is determined and eliminated.

4. Cheeses processed or sold in North Dakota must meet definitions and standards found in title 21, Code of Federal Regulations, Part 133.

History: Effective October 1, 2009; amended effective July 1, 2024; April 1, 2026.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-29, 4.1-25-30, 4.1-25-52

CHAPTER 7-03.2-14
TRANSPORTATION OF PROCESSED AND MANUFACTURED PRODUCTS

Section
7-03.2-14-01 License [Repealed]
7-03.2-14-02 Vehicle Requirements
7-03.2-14-03 Outdated Products

7-03.2-14-01. License.

Repealed effective April 1, 2026.

~~All persons who transport processed and manufactured dairy products from the processing plant for retail sale or sale directly to the consumer must be licensed by the commissioner.~~

~~**History:** Effective October 1, 2009.~~
~~**General Authority:** NDCC 4.1-25-50~~
~~**Law Implemented:** NDCC 4.1-25-02~~

7-03.2-14-03. Outdated products.

Dairy products that have exceeded their code date for retail sale may not be transported from the processing plant ~~if~~to be offered for sale.

History: Effective October 1, 2009; amended effective April 1, 2026.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-50

CHAPTER 7-03.2-18

7-03.2-18-02. Origin of grade A products.

A distributor may distribute grade A milk and milk products produced out of state, provided ~~that~~ they are produced by a facility approved and listed as an interstate milk shipper by the interstate milk shippers association.

History: Effective October 1, 2009; amended effective April 1, 2026.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-02, 4.1-25-50

ARTICLE 7-07
POULTRY DIVISION

[Repealed effective April 1, 2026]

~~Chapter~~
~~7-07-01 Poultry Business Bonds~~

CHAPTER 7-11-01

7-11-01-02. Licenses - Application for licenses.

Application for licenses must be made on forms provided by the commissioner of agriculture.

~~1. **Egg dealer's license.**~~ Every person who wants access to commercial egg markets, engaged in the business of producing eggs shall first apply to and obtain from the department of agriculture an egg dealer's license. Licenses must be issued by the department upon receipt of proper application after inspection and approval of premises and equipment by an egg inspector pursuant to the rules of this article.

~~2. **Candler license.**~~

Egg dealer licenses are not transferable. New egg dealers must possess a license. License fees are ten dollars annually and must be renewed by June first of each year.

History: Effective January 1, 1993; amended effective July 1, 2019; July 1, 2024; April 1, 2026.
General Authority: NDCC 4.1-19-06
Law Implemented: NDCC 4.1-19-06

7-11-01-06. Egg cleaning.

Eggs must be washed ~~either~~ manually or with the aid of automatic cleaning equipment. ~~The entire shell of all eggs may not be submerged.~~ After washing the egg, it must be treated with a sanitizing solution and allowed to dry before packing. Clean potable water must be used in the egg-cleaning and sanitizing process. ~~When~~If manually washing eggs, a wash vat ~~can~~may be used with the detergent. Eggs should not be allowed to soak in water. The strength of the sanitizing spray must be no less than fifty parts per million nor more than two hundred parts per million of available chlorine or its equivalent. Other sanitizers formulated in compliance with 21 Code of Federal Regulations, section 178.1010 are acceptable for use in sanitizing shell eggs provided the sanitizers are registered with the federal environmental protection agency and labeled for use on shell eggs.

History: Effective January 1, 1993; amended effective July 1, 2019; July 1, 2024; April 1, 2026.
General Authority: NDCC 4.1-19-06
Law Implemented: NDCC 4.1-19-06

7-11-01-07. General requirements.

1. Farms selling eggs to retailers or other business establishments ~~will~~ need an annual water sample, if supplied by well water. Well water test results must be tested by the egg dealer and the results submitted to the commissioner of agriculture.

2. ~~Inspections of farm shell~~New egg ~~producers~~dealers must be ~~annually unless the~~inspected prior to issuing the initial license. The commissioner ~~of agriculture determines~~may determine if more inspections are necessary.

3. Failure to comply with farm shell rules may result in revocation of a permit.

4. Farm shell egg producers have the right to appeal or request a hearing to reinstate an egg producer permit. The appeal process must be started within fifteen business days after permit suspension.

5. ~~Farm shell egg producers and custom processors, custom hatcheries, and any other persons not directly buying or selling live poultry are exempt from North Dakota Century Code section 4.1-19-04.~~

~~6.~~ Training for egg candling and grading ~~will be~~is provided by the department of agriculture.

~~7.~~6. Buildings housing egg grading and packing equipment must meet the following requirements:

a. Be of sound construction to prevent the entrance or harborage of vermin.

b. Be kept clean during grading and packing operations.

c. Be kept sanitary to prevent contamination of eggs during handling.

~~8.~~7. North Dakota shell egg production guidelines must be the same as the standards that govern the United States department of agriculture shell egg program.

~~9.~~8. The North Dakota department of agriculture may inspect out-of-state eggs at the retail level to assure compliance with North Dakota shell egg regulations.

History: Effective January 1, 1993; amended effective July 1, 2024; April 1, 2026.
General Authority: NDCC 4.1-19-06
Law Implemented: NDCC 4.1-19-06

CHAPTER 7-12-03

7-12-03-02. Incorporation by reference.

The provisions of 40 CFR part 68 as they existed on ~~June 30, 2011~~January 17, 2025, are incorporated by reference into this chapter, with the following exceptions:

1. Where the term "stationary source" appears in 40 CFR part 68, for the purposes of this chapter only reference the term "agricultural anhydrous ammonia facility" as defined in section 7-12-03-03.

2. Not adopted by reference ~~in~~is 40 CFR section 68.120.

3. Not adopted by reference are 40 CFR section 68.210, and 40 CFR section 68.215.

History: Effective April 1, 2013; amended effective April 1, 2026.
General Authority: NDCC 4.1-37-01
Law Implemented: NDCC 4.1-37-01

CHAPTER 7-15-02

7-15-02-01. Accepted micronutrient minimum concentrations.

Micronutrients ~~when~~ mentioned in any form or manner ~~shall~~must be registered and guaranteed. Guarantees ~~shall~~must be made on the elemental basis; however, the source of the micronutrient must be specified. For example, a micronutrient that is a mixture of EDTA and citric acid bound micronutrient must specify the percentage of total micronutrient in each form. ~~An iron EDDHA micronutrient must specify the percentage of total iron in ortho-ortho-EDDHA and ortho-para-EDDHA.~~ Except guarantees for those water soluble nutrients labeled for ready-to-use foliar fertilizers, read-to-use specialty liquid fertilizers, hydroponic or continuous liquid feed programs and guarantees for potting, garden, and lawn soils, the minimum percentages which ~~will be~~are accepted for registration are as follows:

Element	Minimum Conce., %
Calcium (Ca)	1.0000
Magnesium (Mg)	0.5000
Sulfur (S)	1.0000
Boron (B)	0.0200
Chlorine (Cl)	0.1000
Cobalt (Co)	0.0005
Copper (Cu)	0.0500
Iron (Fe)	0.1000
Manganese (Mn)	0.0500
Molybdenum (Mo)	0.0005
Nickel (Ni)	0.0010
Sodium (Na)	0.1000
Zinc (Zn)	0.0500

History: Effective October 1, 2014; amended effective April 1, 2026.
General Authority: NDCC 4.1-40-11
Law Implemented: NDCC 4.1-40

CHAPTER 7-19-01

7-19-01-01. Definitions.

For purposes of this chapter:

1. "Applicant" means a person that has filed on or after March 31, 2024, or is planning to file, an application for a proposed site, corridor, or route, pursuant to North Dakota Century Code chapter 49-22.

2. "Electric energy conversion facility" means the term as it is defined by North Dakota Century Code section 49-22-03.

3. "Electric transmission facility" means the term as it is defined by North Dakota Century Code section 49-22-03.

4. "Mitigation" means avoiding or minimizing adverse environmental impact or performing an action or activity to offset or otherwise compensate for adverse environmental impact by:

   a. Planning and executing a mitigation plan; or

   b. Payment to the agriculture commissioner for deposit into the environmental impact mitigation fund for expenditure in accordance with North Dakota Century Code section 4.1-01-21.1.

5. "Mitigation plan" means a plan of mitigation measures including creating or restoring similar habitat or offsetting or otherwise compensating for habitat adversely affected by the construction facility or electric operation of an electric energy conversion or transmission facility.

6. "Offset" means to counterbalance residual adverse environmental impact ~~to achieve a net neutral or beneficial outcome~~, generally conducted after reasonable efforts have been undertaken to avoid and minimize impact or if avoidance or minimization of impact is not feasible.

7. "Similar habitat" means a physical environment that has the same or about the same corresponding resources, vegetation, and biotic factors serving multiple species that are exhibited in the physical environment within the vicinity of or generally surrounding the construction or operation of an electric energy conversion facility or electric transmission facility. These separate physical environments comprising similar habitat may resemble or somewhat differ from each other in general appearance, features, or other terrain characteristics.

History: Effective July 1, 2024; amended effective April 1, 2026.
General Authority: NDCC 4.1-01-21.1(4)
Law Implemented: NDCC 4.1-01-21.1(4), 49-22-03

7-19-01-02. Implementation and administration.

1. The agriculture commissioner is responsible for the implementation and administration of an environmental impact mitigation program and the environmental impact mitigation fund.

2. The environmental impact mitigation fund is a continuing appropriation contained within the state treasury. This fund consists of all moneys deposited in the fund by legislative appropriation or under North Dakota Century Code section 49-22-09.2 and all interest or investment earnings upon moneys in the fund.

History: Effective July 1, 2024; amended effective April 1, 2026.

General Authority: NDCC 4.1-01-21.1(4)
Law Implemented: NDCC 4.1-01-21.1, 49-22-09.2

7-19-01-03. Mitigation plan and payment.

1. Before an application is filed to construct or operate an electric energy conversion facility or electric transmission facility, or very early in ~~that~~the application process, an applicant may notify and coordinate with the agriculture commissioner about identified adverse environmental impacts from the construction or operation of the facility. A notification may:

   a. Propose to the agriculture commissioner a mitigation plan to create or restore similar habitat or to offset or otherwise compensate for identified adverse environmental impacts; or

   b. Request the agriculture commissioner to develop a mitigation plan, including a cost estimate, to create or restore similar habitat or to offset or otherwise compensate for identified adverse environmental impacts.

2. Prior to the public service commission issuing the applicant a permit or certificate, the agriculture commissioner shall notify the public service commission, for its consideration, of the mitigation plan and mitigation efforts or of any payment to the agriculture commissioner for deposit into the environmental impact mitigation fund for expenditure in accordance with North Dakota Century Code section 4.1-01-21.1.

3. As part of the permit or certificate process of a wind electric energy conversion facility, the applicant may not make an offset payment to any person, other than the agriculture commissioner, to create or restore similar habitat or to offset or otherwise compensate for the adverse environmental impact resulting from the construction or operation of ~~an electric energy conversion or transmission~~the facility.

History: Effective July 1, 2024; amended effective April 1, 2026.
General Authority: NDCC 4.1-01-21.1(4)
Law Implemented: NDCC 4.1-01-21.1, 49-22-09.2

TITLE 20

STATE BOARD OF DENTAL EXAMINERS

APRIL 2026

CHAPTER 20-01-01

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

1. **History and functions.** In 1895, a five-member board of dental examiners was created to examine dentists as to their qualifications and to license and register qualified dentists. In 1981, the board was authorized to regulate dental hygienists, and its membership expanded to six members. In 1991, board membership was expanded to seven members. In 2005, the board was authorized to regulate dental assistants. In 2023, board membership was expanded to nine members.

2. **Board membership.** The board consists of nine members appointed by the governor. Six members must be licensed dentists~~,~~; one member must be a licensed hygienist~~,~~; one member must be a registered dental assistant~~,~~; and one member must be an independent consumer member.

3. **Board members.** Members of the board are elected by the board to fill the individual positions of president, president-elect, and secretary-treasurer. The position of executive director has been created to assist ~~the secretary-treasurer~~in the administration of board operations.

4. **Per diem.** Each member of the board shall receive as compensation for each day actually engaged in the duties of the office per diem in the amount of two hundred dollars, and expense reimbursement as set forth by the office of management and budget.

5. **Inquiries.** Inquiries regarding the board may be addressed to the executive director of the board:

   Executive Director
   North Dakota State Board of Dental Examiners
   Box 7246
   Bismarck, ND 58507-7246
   www.nddentalboard.org
   701-258-8600

History: Amended effective October 1, 1988; November 1, 1988; July 1, 1993; May 1, 1996; June 1, 2002; July 1, 2004; April 1, 2006; January 1, 2011; July 1, 2022; October 1, 2024; April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-03, 43-28-05

CHAPTER 20-01-02

20-01-02-01. Definitions.

Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "Advertising" means any public communication, made in any form or manner, about a licensee's professional service or qualifications, for the purpose of soliciting business.

2. "Aldrete score" means a measurement of recovery after anesthesia that includes gauging consciousness, activity, respiration, and blood pressure.

Aldrete Scoring Guidelines				
Activity	Respiration	Circulation	Consciousness	Oxygenation
2 Able to move four extremities voluntarily on command and/or returned to preprocedure level	2 Patient can cough and deep breathe on command and/or respirations unlabored, oxygen saturation at preprocedure level	2 Blood pressure and heart rate +/- 20 percent of presedation level and/or asymptomatic alteration	2 Fully awake (able to answer questions) or at preprocedure level	2 Able to maintain oxygen saturation greater than 92 percent or at preprocedure level Pink or normal skin color
1 Able to move two extremities voluntarily on command and/or moves weakly, unable to stand	1 Dyspnea or limited breathing or requires oxygen greater than baseline level to maintain adequate saturation	1 Blood pressure and heart rate +/- 20 to 50 percent of pre-anesthetic level or mildly symptomatic alteration that requires fluid bolus intervention or dopamine at less than ten micrograms per kilogram per minute for heart failure patients	1 Arousable on calling (arousable only to calling)	1 Needs oxygen to maintain adequate oxygenation Pale, dusky, blotchy, jaundiced, or other
0 Unable to move	0 Apneic or requires airway support	0 Blood pressure and heart rate greater than 50 percent =/- presedation levels and/or requires pharmacological intervention, or dopamine at greater than ten micrograms per kilogram per minute for heart failure patients	0 Unresponsive	0 Oxygen saturation less than 90 percent adult, less than 92 percent peds even with oxygen support. Cyanotic
Target 2	Target 2	Target 1-2	Target 1-2	Target 2
A score of less than 8, re-evaluate q 15 minutes, greater than 8 discharge to recovery, or greater than or equal to discharge home				

3. "Analgesia" means the diminution or elimination of pain.

4. "Anesthesia" means the art and science of managing anxiety, pain, and awareness. It includes analgesia, local anesthesia, minimal sedation, moderate sedation, deep sedation, and general anesthesia.

5. "Basic full upper and lower denture" means replacement of all natural dentition with artificial teeth. This replacement includes satisfactory tissue adaptation, satisfactory function, and satisfactory aesthetics. Materials used in these replacements must be nonirritating in character and meet all the standards set by the national institute of health and the bureau of standards and testing agencies of the American dental association for materials to be used in or in contact with the human body.

6. "Board certified" means the dentist has been certified in a specialty area in which there is a certifying body approved by an agency recognized by the United States department of education and is a diplomate of a nationally recognized certifying board that meets the criteria as provided by section 20-02-01-01.

7. "Board eligible" means the dentist has successfully completed a duly accredited training program or in the case of a dentist in practice at the time of the adoption of these rules has experience equivalent to such a training program in an area of dental practice in which there is a certifying body approved by an agency recognized by the United States department of education and is a diplomate of a nationally recognized certifying board that meets the criteria as provided by section 20-02-01-01.

8. "Bona fide specialties" means those specialties meeting the qualification as set forth in section 20-02-01-01.

9. "Capnography" means a process to determine the presence and percent of carbon dioxide in a patient's breath through the use of a carbon dioxide monitor, the noninvasive measurement of the partial pressure of carbon dioxide in exhaled breath expressed as carbon dioxide concentration over time and is graphically represented. Carbon dioxide measured at the airway can be displayed as a function of time (carbon dioxide concentration over time) or exhaled tidal volume (carbon dioxide concentration over volume).

10. "Cardiopulmonary resuscitation course" means the American heart association's health care provider course, the American red cross professional rescuer course, or an equivalent course.

11. "Certified dental assistant" means ~~a dental assistant~~an individual who meets the education or experience prerequisites, or both, established by the dental assisting national board and passes the dental assisting national board's certified dental assistant examination, is currently cardiopulmonary resuscitation-certified, and continues to maintain the credential by meeting the dental assisting national board requirements. A certified dental assistant must be registered by the board ~~as a qualified dental assistant or registered dental assistant to provide any expanded duties~~prior to carrying out duties other than those listed in subsection 1 of section 20-03-01-01.

12. "Clinical continuing education" means information related to the assessment, diagnosis, or treatment of patients and may include the management and administration of a clinical dental practice.

13. "Code of ethics" means the November 2020 version of the American dental association's principles of ethics and code of professional conduct.

~~13.~~14. "Complete evaluation" means an examination, review of medical and dental history, the formulation of a diagnosis, and the establishment of a written treatment plan, documented in a written record to be maintained in the dentist's office or other treatment facility or institution.

~~14.~~15. "Contiguous supervision" means that the dentist whose patient is being treated ~~and~~ has personally authorized the procedures to be performed. The supervising dentist is continuously onsite and physically present in the treatment facility while the procedures are performed by ~~the qualified~~a trained dental sedation staff member or dental anesthesia assistant, and the dentist is capable of responding immediately in the event of an emergency. The term does not require a supervising dentist to be physically present in the operatory.

~~15. "Clinical continuing education" means information that relates to the assessment, diagnosis, or treatment of patients.~~

16. "Coronal polishing" is the mechanical polishing of clinical crowns using a rubber cup or brush only and not to include any instrumentation. Coronal polishing may only include air polishing to the extent specifically set forth in section 20-03-01-01.

17. "Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

18. ~~"Dental anesthesia assistant" means an individual who possesses the expertise to provide supportive anesthesia care in a safe and effective manner. The anesthesia assistant is educated in the perioperative and emergent care management of patients undergoing dental office sedation and anesthesia.~~

~~19.~~ "Direct supervision" means the dentist is physically present in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the procedures and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant, and before dismissal of the patient, evaluates the performance of the dental hygienist or dental assistant.

~~20.~~19. "Direct visual supervision" means the dentist is physically present to issue a verbal command and under direct line of sight.

~~21.~~20. "Evaluation" means the act or process by a dentist of assessing and determining the patient's oral health status, the progress of ~~dental therapy~~the treatment, or the performance of the dental hygienist or dental assistant.

~~22.~~21. "General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to maintain ventilatory function is often impaired. Patients often require assistance in maintaining patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

~~23.~~22. "General supervision" means the dentist has authorized the procedures and they are carried out in accordance with the dentist's diagnosis, if necessary, and treatment plan. The dentist is not required to be in the treatment facility. A new patient who has not been examined by the authorizing dentist may be seen by a dental hygienist authorized to provide duties under general supervision. Limitations are contained in North Dakota Century Code section 43-20-03.

~~24.~~23. "Host dentist" is a dentist ~~authorized by permit who may provide~~that provides treatment to a patient who is under moderate sedation, deep sedation, or general anesthesia that is administered either by a qualified dentist who holds a sedation permit issued by the board or by an independently practicing qualified anesthesia health care provider ~~administration of moderate, or deep sedation, or general anesthesia~~, such as an anesthesiologist or certified

registered nurse anesthetist. The host dentist is subject to site evaluations for the level of sedation provided as per subsection 5 or 6 of section 20-02-01-05, including completing an approved initial site evaluation before treating patients under sedation.

~~25.~~24. "Inactive status" means the licensee shall not engage in the practice of dentistry or dental hygiene in the state of North Dakota. The license that is placed on inactive status remains on that status until such time as the license is reinstated.

~~26.~~25. "Incremental dosing" means administration of multiple doses of a single drug until a desired effect is reached, but not to exceed the maximum recommended dose at the recommended interval.

~~27.~~26. "Indirect supervision" means that a dentist is in the dental office or treatment facility, has personally diagnosed the condition to be treated, authorizes the procedures, and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant.

~~28.~~27. "Local ~~anesthesia~~anesthetic" means the elimination or diminution of sensations in one part of the body by regional injection of drugs without causing the loss of consciousness.

~~29.~~28. "Maximum recommended dose" means the maximum recommended dose of a drug as printed in the United States food and drug administration's approved labeling for unmonitored home use.

~~30.~~29. "Minimal sedation" means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and physical coordination may be impaired, airway reflexes and ventilatory and cardiovascular are unaffected. Minimal sedation may be achieved by the administration of a single drug administered in a single or divided dose not to exceed the maximum recommended dose for unmonitored home use during a single appointment. A permit is not required for minimal sedation.

~~31.~~30. "Moderate sedation" means a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. Administration of sedative drugs exceeding the maximum recommended dose for unmonitored home use during a single appointment or use of more than one enteral drug administered, with or without concomitant use of nitrous oxide is considered moderate sedation.

~~32.~~31. "Nitrous oxide inhalation analgesia" means a technique in which the inhalation of nitrous oxide enables treatment to be carried out and in which purposeful verbal contact with the patient can be maintained or the patient responds appropriately to light tactile stimulation throughout the administration of nitrous oxide inhalation analgesia, and the drugs and techniques used have a margin of safety wide enough to render unintended loss of consciousness extremely unlikely.

~~33.~~32. "Oral assessment" means the evaluation of data pertaining to the patient's condition to help identify dental problems leading to a professional treatment plan. The final diagnosis of disease or treatment plan is the sole responsibility of the supervising or collaborative dentist.

~~34.~~33. "Oral hygiene treatment planning" is a component of a comprehensive treatment plan developed by the hygienist or dentist to provide the hygienist a framework for addressing the preventative, educational, and clinical treatment needs of the patient.

~~35.~~34. "Parenteral moderate sedation" means the intravenous, intramuscular, intranasal, subcutaneous, sublingual, submucosal, transdermal, or rectal administration of

pharmacological agents with the intent to obtain a depressed level of consciousness that meets the definition of moderate sedation.

~~36.~~35. "Patient of record" means a patient who has undergone a complete dental evaluation, has had a medical and dental history completed and evaluated by a dentist, or a patient who has been examined, and has had oral conditions diagnosed and a written plan developed by the dentist or dental hygiene treatment authorized by a dentist, and the patient has compensated the dentist or dental facility for a procedure.

~~37. "Pediatric patient" means a dental patient ten years of age or younger.~~

~~38.~~36. "Primary practice site" means the office location that is to be considered the main location of the dental practice. This office location would be listed first on the biennial registration.

~~39. "Qualified dental assistant" means a dental assistant who has been employed and trained as a dental assistant and has received at least three hundred hours of on-the-job training, has successfully completed the national entry level dental assistant certification administered by the dental assisting national board or a board-approved course, and has applied to the board and paid the certificate fee and met any other requirements of section 20-03-01-05.~~

~~40. "Qualified dental staff member" means an individual trained and competent in the use of monitoring and emergency equipment, capable of assisting with procedures and emergency incidents that may occur as a result of the sedation or secondary to the unexpected medical complication, and who has received documented training acquired directly by an employer-dentist or by a planned sequence of instruction in an educational institution and holds a current basic life support registration.~~

~~41. "Registered dental assistant" means a dental assistant who is a graduate of a dental assistant program accredited by the commission on dental accreditation of the American dental association or a substantially equivalent curriculum approved by the board or has been certified by the dental assistant national board, and has applied to the board and paid the registration fee and met any other requirements of section 20-03-01-05.~~

37. "Provisional license" means a license issued between board meetings by the executive director or a board member pursuant to delegated authority as authorized by subsection 2 of North Dakota Century Code section 43-51.1-03. Provisional licenses may be conditioned, or be restricted in scope or duration.

~~42.~~38. "Remedial education" means an educational intervention prescribed by the board that is designed to restore an identified practice deficiency of a licensee. Remediation may include successful demonstration by the licensee that the learned knowledge and skills have been incorporated into the licensee's practice.

~~43.~~39. "Satellite office" means an office, building, or location used at any time by a dentist for the practice of dentistry other than the office listed on the dentist's biennial registration certificate.

~~44.~~40. "Screening" means an inspection used for the early identification of individuals at potentially high risk for a specific condition or disorder and can indicate a need for further evaluation or preliminary intervention. A screening is neither diagnostic nor a definitive indication of a specific condition and does not involve making diagnoses that lead to treatment plans.

~~45.~~41. "Self-study", for the purposes of continuing education requirements, means the licensee engages in obtaining education without direct supervision, without attendance in a classroom setting, or without a proctor during online education. A certificate of completion must be obtained as proof of education.

~~46.~~42. "Time-oriented anesthesia record" means documentation at appropriate intervals of drugs, doses, and physiologic data obtained during patient monitoring.

~~47.~~43. "Titration" means administration of incremental doses of an intravenous or inhalation drug until a desired effect is reached.

~~48.~~44. "Topical anesthesia" means the elimination or diminution of sensation, especially pain, in one part of the body by application of a drug onto the skin or mucous membrane surface application of a drug.

45. "Trained dental sedation staff member" means an individual trained and competent in placing and using monitoring and emergency equipment, identifying adverse changes in patient condition, initiating and assisting with procedures and emergency incidents that may occur as a result of sedation or secondary to an unexpected medical complication, and who has received documented training acquired directly by an employer-dentist or by a planned sequence of instruction in an educational institution and holds a current basic life support registration.

~~49.~~46. "Webinar", for the purposes of continuing education requirements, means the licensee engages in a live web-based seminar or presentation using video conferencing software. A webinar is interactive and has the ability to give, receive, and discuss information in real-time. A certificate of completion indicating "live webinar" or other evidence of attendance must be maintained as proof of continuing education.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; October 1, 2007; January 1, 2011; April 1, 2015; July 1, 2017; July 1, 2022; April 1, 2026.
General Authority: NDCC 43-20-10, 43-28-06
Law Implemented: NDCC 43-20-01.1, 43-20-03, 43-20-10, 43-20-12, 43-20-13, 43-28-06, 43-51.1-03

CHAPTER 20-02-01
GENERAL REQUIREMENTS

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20-02-01-03.1. ~~Additional requirements~~Requirements for licensure by examination.

The board may grant a license to practice dentistry to an applicant who has met the requirements of North Dakota Century Code section 43-28-10.1 and all the following requirements:

1. The applicant has passed the examination administered by the joint commission on national dental examinations or the national dental examining board of Canada within five years of application.

2. The applicant has passed, within five years of application, a clinical competency examination approved by the board. Required components shall include a periodontal component, posterior composite or amalgam restoration, a class three restorative procedure, and an endodontic component, and after April 1, 2021, a fixed prosthetic component.

3. The applicant has successfully completed a cardiopulmonary resuscitation course within two years of application.

4. The applicant has the physical health and visual acuity to enable the applicant to meet the minimum standards of professional competence.

History: Effective January 1, 2011; amended effective April 1, 2015; July 1, 2017; April 1, 2021; April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-10.1

20-02-01-03.2. ~~Additional requirements~~Requirements for licensure by credential review.

The board may grant a license to practice dentistry to an applicant who has met the requirements of North Dakota Century Code section 43-28-15 or 43-51.1-02 and all the following requirements:

1. The applicant has successfully completed a cardiopulmonary resuscitation course within two years of application.

2. The applicant has the physical health and visual acuity to enable the applicant to meet the minimum standards of professional competence.

3. The applicant has completed thirty-two hours of continuing education in accordance with section 20-02-01-06 within two years of application.

4. The applicant has completed an education program, including a certificate program, resulting in the issuance of a doctor of dental surgery or a doctor of dental medicine, or the equivalent. Determinations of equivalency are made by the board, and are based on the board's review of the application and on an independent assessment carried out by a board-approved assessment or accreditation institution. The applicant shall bear all costs associated with an equivalency assessment. After reviewing the application and assessment, the board may require the applicant to complete additional steps, including completion of additional education, passage of a national written examination, and passage of a clinical competency examination approved by the board. The examination may include a periodontal component, posterior composite or amalgam restoration, a class three restorative procedure, an endodontic component, and a fixed prosthetic component.

5. The applicant has completed a clinical examination, including a hand skills assessment.

History: Effective January 1, 2011; amended effective April 1. 2026.
General Authority: NDCC 43-28-06, 43-51.1-02
Law Implemented: NDCC 43-28-15, 43-51.1-02, 43-51.1-03

20-02-01-03.3. Additional requirements for applications.

~~Applications must be completed within six months of filing. The board may require an interview with the applicant.~~ In addition to the application requirements of sections 20-02-01-03.1 and 20-02-01-03.2 and North Dakota Century Code sections 43-28-10.1, 43-28-11, 43-28-15, ~~and~~ 43-28-17, and 43-51.1-02, the board may require an application to be completed within six months of submission of initial application materials and include:

1. Proof of identity, including any name change.

2. An official transcript evidencing the issuance of a doctor of dental surgery or a doctor of dental medicine, or its equivalent as set forth in section 20-02-01-03.2, sent by an accredited dental school directly to the board.

3. Evidence demonstrating the applicant passed the examination administered by the joint commission on national dental examinations within five years of application.

4. Evidence demonstrating the applicant passed a clinical competency examination, approved by the board, within five years of application.

5. Anything necessary for a criminal history record check pursuant to North Dakota Century Code section 43-28-11.2.

6. A certification, from the licensing board of every jurisdiction in which the applicant is licensed, that the applicant is licensed in good standing.

7. ~~Certification~~Verification that the applicant has completed a cardiopulmonary resuscitation course within two years of application.

8. Verification of physical health and visual acuity.

9. For applications for licensure by credential review, the law and rules stating the requirements for licensure, when the applicant was licensed, of the jurisdiction in which the applicant is licensed.

10. For applications for licensure by credential review and reinstatement from inactive status, proof of completion of thirty-two hours of continuing education in accordance with section 20-02-01-06 within two years of application.

11. An interview of the applicant by the board.

12. Any information required by the application forms prescribed by the board.

History: Effective January 1, 2011; amended effective April 1, 2015; October 1, 2024; April 1, 2026.
General Authority: NDCC 43-28-06, 43-51.1-02
Law Implemented: NDCC 43-28-10.1, 43-28-11, 43-28-11.2, 43-28-15, 43-28-17, 43-51.1-02, 43-51.1-03

20-02-01-04. Temporary license to practice dentistry.

The board may grant a nonrenewable temporary license to practice dentistry in the state of North Dakota for a period not to exceed one year. Between meetings of the board, the executive director of the board may review the temporary license application and grant a ~~provisional~~temporary license if all requirements are met.

1. A temporary license to practice dentistry in North Dakota may be granted to a dentist ~~when~~if the dentist:

   a. Has applied to the board as prescribed in North Dakota Century Code section 43-28-11.

   b. Has paid the nonrefundable application and license fee that may be prescribed by the board.

   c. Holds an active dental license in another jurisdiction, has been a full-time student or resident of a dental program accredited by the American dental association's commission on dental accreditation within the last six months ~~and~~, provides evidence of a diploma from a program accredited by the commission on dental accreditation of the American dental association, and meets any other requirements to receive a license to practice dentistry under ~~section~~sections 20-02-01-03.1~~,~~ and 20-02-01-03.2, or has held a North Dakota dental license within the previous five years.

   d. Has provided a statement from the licensing authority of all the states in which the dentist is licensed that the dentist's license is unencumbered~~,~~ and unrestricted~~,~~ and that the dentist's professional record is free of blemish for professional misconduct, substandard care, or violations of the state's practice act.

   e. Has certified that no disciplinary actions are pending in other states or jurisdictions.

   f. Has authorized the board to seek information concerning the dentist's professional and personal background and agrees to hold harmless those individuals who may provide such information to the board.

   g. ~~The applicant has~~Has completed thirty-two hours of continuing education in accordance with section 20-02-01-06.

h. ~~The board shall require~~Submits to a criminal background check if the ~~licensee~~dentist anticipates practicing for a period greater than ten days.

2. The board may apply such restrictions as it deems appropriate to limit the scope of the practice of dentistry under the authority of the temporary license.

3. The board may restrict the licensee to engage in dental practice, as may be limited above, only at certain and specifically defined practice locations.

4. The board may require the North Dakota jurisprudence examination.

History: Effective February 1, 1992; amended effective October 1, 2007; January 1, 2011; April 1, 2015; July 1, 2017; April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06

20-02-01-04.2. Volunteer license to practice dentistry.

~~A patient who is seen by a dentist who holds a volunteer license to practice dentistry shall not be considered a patient of record of the volunteer dentist. The dentist is not obligated to treat the patient outside of the volunteer practice setting. Between meetings of the board, the executive director of the board may review the volunteer license application and grant a provisional license if all the requirements are met. A volunteer license to practice dentistry in North Dakota, renewable annually by application to the board, may be granted when the following conditions are met:~~

~~1. The applicant was formerly licensed and actively practicing in the state of North Dakota or another jurisdiction for at least three of the five years immediately preceding application, where the requirements are at least substantially equivalent to those of this state; or~~

~~a. The applicant is the resident of a board-approved specialty program; or~~

~~b. The board determines that the applicant is qualified and satisfies the criteria specified under North Dakota Century Code section 43-28-10.1.~~

~~2. The applicant agrees to provide primary health services without remuneration directly or indirectly in a board-approved setting.~~

~~3. The applicant holds a current cardiopulmonary resuscitation course certification.~~

~~4. The applicant has completed continuing education requirements of the board.~~

~~5. The applicant has made application for a volunteer dental license in a manner prescribed by the board.~~

~~6. The board may collect from the applicant the nonrefundable application and license fee prescribed by the board.~~

~~7. The board may apply such restrictions as it deems appropriate to limit the scope of the practice of dentistry under the authority of the volunteer license.~~

1. The board may issue a volunteer license to practice dentistry to an applicant who was formerly licensed in North Dakota or who has an active license issued by another state where the laws are at least substantially equivalent to those of this state, if the applicant:

a. Practiced for three of the five years immediately preceding the application;

b. Is determined by the board to be sufficiently experienced and qualified to provide volunteer dental care and the dentist will be supervised in the volunteer setting by a

dentist who agrees to be responsible for ensuring the care provided by the applicant meets the minimum standards of professional competence;

c. Is a resident of a board-approved specialty program; or

d. The board determines the applicant is qualified and satisfies the criteria specified under North Dakota Century Code section 43-28-10.1.

2. Applicants shall complete and submit an application form provided by the board including:

a. Proof of a current cardiopulmonary resuscitation course certificate.

b. A nonrefundable application fee.

c. Any documentation requested by the board related to the applicant's practice or disciplinary history.

3. A volunteer license:

a. May only be used to provide primary health services without direct or indirect remuneration in a board-approved setting.

b. Must be renewed annually.

c. May be limited, conditioned, or restricted by the board as to its scope, duration, or other criteria.

History: Effective April 1, 2000; amended effective January 1, 2011; April 1, 2015; July 1, 2022; April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06, 43-28-10.2

20-02-01-04.3. Inactive status - License reinstatement.

Upon payment of the fee determined by the board, a dentist may place the dentist's license on inactive status. A dentist on inactive status is excused from ~~the payment of renewal fees, except inactive status renewal fees, and~~ continuing education requirements other than as set forth in this section. Inactive status must be renewed annually by completing the inactive status renewal application and paying the inactive status renewal fee. A dentist on inactive status may not practice in North Dakota. Only licensees in inactive status may apply for licensure reinstatement. To reinstate a license on inactive status, the dentist shall apply on the form as prescribed by the board, pay a reinstatement fee, and meet all of the following requirements:

1. The applicant has passed a clinical competency examination administered by a dental testing service, approved by the board in section 20-02-01-03.1, within five years of application or provides evidence of the clinical practice of dentistry within the previous five years. The board may waive this requirement at the board's discretion.

2. The applicant has passed ~~a~~the board-administered written examination on the laws and rules governing the practice of dentistry in this state ~~administered by the board at a meeting~~within two years of application.

3. The applicant has completed thirty-two hours of continuing education in accordance with section 20-02-01-06 within two years of application.

4. The applicant successfully has completed a cardiopulmonary resuscitation course within two years of application.

5. Grounds for denial of the application under North Dakota Century Code section 43-28-18 do not exist.

History: Effective April 1, 2006; amended effective January 1, 2011; July 1, 2017; July 1, 2022; October 1, 2024; April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-17

20-02-01-05. Anesthesia and sedation permit requirements.

The rules in this chapter are adopted to define standards for the administration of anesthesia and sedation by dentists or a dentist who collaborates with a qualified and licensed anesthesia or sedation provider. A dentist may not use any form of sedation on any patient if the intent is beyond minimal sedation unless such dentist has a permit, currently in effect, issued by the board, and renewable biennially thereafter, authorizing the use of such general anesthesia, deep sedation, or moderate sedation. With the administration of anesthesia, the qualified dentist ~~must~~shall have the training, skills, drugs, and equipment immediately available in order to rapidly identify and manage an adverse occurrence until either emergency medical assistance arrives or the patient returns to the intended level of sedation or full recovery without airway, respiratory, or cardiovascular complications.

1. ~~Administration of nitrous oxide inhalation analgesia - Requirements.~~ The following standards apply to the administration of nitrous oxide inhalation analgesia:

   a. Inhalation equipment must have a fail-safe system that is appropriately checked and calibrated. The equipment also must have either a functioning device that prohibits the delivery of less than thirty percent oxygen or an appropriately calibrated and functioning in-line oxygen analyzer with audible alarm. A scavenging system must be available if gases other than oxygen or air are used.

   b. Patient dental records must include the concentration administered and duration of administration.

   c. A dentist may not delegate monitoring of nitrous oxide inhalation analgesia once the patient has ingested an enteral drug for the purpose of minimal sedation.

   d. Before ~~authorizing~~a dentist may authorize a dental hygienist or registered dental assistant who holds a nitrous oxide administration permit to administer nitrous oxide inhalation analgesia to a patient, the dentist shall provide ~~and document training in~~ the ~~proper and~~permitholder with training on the safe operation of the office's nitrous oxide inhalation analgesia equipment. The dentist shall retain documentation of the training and provide it to the board upon request.

   e. A patient receiving nitrous oxide inhalation analgesia must be monitored continually ~~monitored~~ by ~~authorized~~ dental staff as set forth in articles 20-03 and 20-04. A dental hygienist or a registered dental assistant may terminate or reduce the amount of nitrous oxide previously administered by the authorized nitrous oxide inhalation analgesia provider.

   f. The board may issue a permit authorizing the administration of nitrous oxide inhalation to a dentist, dental hygienist, or registered dental assistant if the dentist, dental hygienist, or registered dental assistant provides:

      (1) Evidence of successful completion of a twelve-hour, board-approved course of training or course provided by a program accredited by an accrediting body recognized by the United States department of education, and has either:

         (a) Completed the course within thirteen months before application; or

(b) Completed the course more than thirteen months before application, legally administered nitrous oxide inhalation analgesia for a period of time during the three years preceding application, and provided written documentation confirming the applicant's proficiency, which may include a statement from a dentist that has employed or supervised the applicant, attesting to the current clinical proficiency of the applicant to administer nitrous oxide inhalation analgesia.

(2) Evidence of current certification in basic life support by the American heart association for the health care provider, or an equivalent program approved by the board.

2. ~~Administration of minimal sedation.~~ A dentist administering minimal sedation shall maintain basic life support certification and comply with the following standards:

a. An appropriate sedative record must be maintained and must contain the names and time of all drugs administered, including local anesthetics and nitrous oxide. The time and condition of the patient at discharge from the treatment area and facility requires documentation.

b. Medications used to produce minimal sedation are limited to a single enteral drug, administered either singly or in divided doses, by the enteral route to achieve the desired clinical effect, not to exceed the maximum food and drug administration recommended dose for unmonitored home use in a single appointment. The administration of enteral drugs exceeding the maximum recommended dose during a single appointment is considered to be moderate sedation.

c. Drugs and techniques used must carry a margin of safety wide enough to render the unintended loss of consciousness unlikely for minimal sedation, factoring in titration and the patient's age, comorbidities, weight, body mass index, and ability to metabolize drugs.

d. Combining two or more enteral drugs, excluding nitrous oxide, prescribing or administering drugs that are not recommended for unmonitored home use, or administering any parenteral drug constitutes moderate sedation and requires that the dentist must hold a moderate sedation permit.

e. Facilities and equipment must include:

(1) Suction equipment capable of aspirating gastric contents from the mouth and pharynx;

(2) Portable oxygen delivery system, including full face masks and a bag-valve-mask combination with appropriate connectors capable of delivering positive pressure, oxygen enriched ventilation to the patient;

(3) Blood pressure cuff (or sphygmomanometer) of appropriate size;

(4) Automated external defibrillator or defibrillator;

(5) Stethoscope or equivalent monitoring device; and

(6) The following available and maintained emergency drugs ~~must be available and maintained~~:

(a) Bronchodilator;

(b) Anti-hypoglycemic agent;

(c) Aspirin;

(d) Antihistaminic;

(e) Coronary artery vasodilator; and

(f) Anti-anaphylactic agent.

f. A dentist, or ~~qualified~~a trained dental sedation staff member as defined in section 20-01-02-01, responsible for patient monitoring must be continuously in the presence of the patient in the office, operatory, and recovery area before administration or, if the patient self-administered the sedative agent, immediately upon arrival and throughout recovery until the patient is discharged by the dentist.

g. A dentist shall ensure any advertisements related to the availability of antianxiety premedication, or minimal sedation clearly reflect the level of sedation provided and are not misleading.

3. ~~Administration of moderate sedation.~~ Before administering moderate sedation, a dentist licensed under North Dakota Century Code chapter 43-28 shall obtain a permit issued by the board, renewable biennially thereafter. An applicant for an initial permit shall submit a completed application and application fee on a form provided by the board and meet the following requirements:

a. An applicant for an initial moderate sedation permit shall meet the following educational requirements. This section does not apply to a dentist who has maintained a parenteral sedation permit in North Dakota and has been administering parenteral sedation in a dental office before July 1, 2022.

(1) The applicant successfully shall complete a comprehensive sixty-hour predoctoral dental school, postgraduate education or continuing education in moderate sedation ~~with a participant-faculty ratio of not more than four-to-one~~. The course must include courses in enteral and parenteral moderate sedation plus individual management of twenty live patient clinical case experiences by the intravenous route and provide certification of competence in rescuing patients from a deeper level of sedation than intended, including managing the airway, intravascular or intraosseous access, and reversal medications. The formal training program must be sponsored by or affiliated with a university, teaching hospital, or other facility approved by the board or provided by a curriculum of an accredited dental school and have a provision by course director or faculty of additional clinical experience if participant competency has not been achieved in allotted time.

(2) The course must be directed by a dentist or physician qualified by experience and training with a minimum of three years of experience, including formal postdoctoral training in anxiety and pain control. The course director must possess a current permit or license to administer moderate or deep sedation and general anesthesia in at least one state.

b. A dentist utilizing moderate sedation shall maintain current certification in basic life support, ~~and~~ advanced cardiac life support if treating adult patients or patients that are ten years of age and older, and pediatric advanced life support if treating ~~pediatric~~ patients ~~and~~that are nine years of age and younger. The dentist also shall have present a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one ~~qualified~~trained dental sedation staff member as specified in ~~subsection 40 of~~ section 20-01-02-01.

c. A permitholder may not administer or employ any agents that have a narrow margin for maintaining consciousness, including ultra-short acting barbiturates, propofol, ketamine, or similarly acting drugs, agents, or techniques, or any combination thereof that likely would render a patient deeply sedated, generally anesthetized, or otherwise not meeting the conditions of moderate sedation.

d. During moderate sedation the adequacy of ventilation must be evaluated by continual observation of qualitative clinical signs and monitoring for the presence of exhaled carbon dioxide unless precluded or invalidated by the nature of the patient, procedure, or equipment.

e. ~~Successfully completed~~An applicant successfully shall complete the moderate site evaluation required by this chapter. An initial site evaluation must be completed within sixty days of the approval of the initial permit application.

f. Administering intranasal versed or fentanyl, or both, is considered deep sedation. Rules for deep sedation and general anesthesia site evaluations apply for administration of intranasal versed or fentanyl, or both.

4. ~~Administration of deep sedation and general anesthesia.~~ Before administering deep sedation or general anesthesia, a dentist licensed under North Dakota Century Code chapter 43-28 shall obtain a permit issued by the board and renewable biennially thereafter. An applicant for an initial permit shall submit a completed application and application fee on a form provided by the board and:

a. Within the three years before submitting the permit application, shall provide evidence the applicant successfully has completed an advanced education program accredited by the commission on dental accreditation that provides training in deep sedation and general anesthesia and formal training in airway management, and completed a minimum of five months of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program approved by the board; or

b. Must be, within the three years before submitting the permit application, a diplomate of the American board of oral and maxillofacial surgeons or eligible for examination by the American board of oral and maxillofacial surgeons, a fellow of the American association of oral and maxillofacial surgeons, a fellow of the American dental society of anesthesiology, a diplomate of the national dental board of anesthesiology, or a diplomate of the American dental board of anesthesiology or eligible for examination by the American dental board of anesthesiology;

c. For an applicant who completed the requirements of subdivision a or b more than three years before submitting the permit application, shall provide on a form provided by the board a written affidavit affirming the applicant has administered general anesthesia to a minimum of twenty-five patients within the year before submitting the permit application or seventy-five patients within the last five years before submitting the permit application and the following documentation:

(1) A copy of the deep sedation and general anesthesia permit in effect in another jurisdiction or certification of military training in general anesthesia from the applicant's commanding officer; and

(2) On a form provided by the board, a written affidavit affirming the completion of thirty-two hours of continuing education pertaining to oral and maxillofacial surgery or general anesthesia taken within three years before application.

d. Successfully shall complete the general anesthesia and deep sedation site evaluation required by this chapter. An initial site evaluation must be completed within sixty days of the approval of the initial permit application.

e. For a dentist utilizing deep sedation or general anesthesia, shall maintain current certification in basic life support ~~and~~, advanced cardiac life support if treating adult patients or patients that are ten years of age and older, and pediatric advanced life support if treating ~~pediatric~~ patients that are nine years of age or younger.

f. For a dentist authorized to provide deep sedation and general anesthesia, shall utilize and have present a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least two ~~qualified~~trained dental sedation staff members as specified in ~~subsection 40 of~~ section 20-01-02-01.

5. ~~Site evaluations for moderate sedation, deep sedation, and general anesthesia.~~ A licensed and permitted dentist or host dentist utilizing moderate sedation, deep sedation, or general anesthesia is required to ~~have an~~undergo a site evaluation ~~of the~~for each location where sedation or anesthesia services are rendered ~~initially and every three years thereafter and shall maintain a properly equipped facility. A~~. Site evaluations must be conducted by a North Dakota licensed anesthesia or sedation provider ~~authorized~~approved by the board. Site evaluators shall ~~re-evaluate~~review the credentials, facilities, equipment, personnel, and procedures of a permitholder or host dentist. Site evaluations must be scheduled by the dentist and must be conducted initially and within every three years ~~following a successful initial application or renewal~~thereafter. The purpose of the evaluation is to assess the patient's anesthetic risk and assess a site's ability to provide emergency care; therefore, the site evaluation emphasizes recognition and management of emergencies and complications associated with office administration of sedation and recordkeeping. Requirements of the site evaluation are as follows:

a. The applicant is responsible for scheduling a site evaluation with a board-appointed anesthesia site evaluator. ~~The~~Permitholders and host ~~dentist~~dentists must be present during the site evaluation and submit the site evaluation form to the site evaluator no less than two weeks before the scheduled site evaluation and must include the following:

(1) Life support credentials of the dentist and any ~~qualified~~trained dental sedation staff ~~or~~member, medical staff, and anesthesia provider ~~or host dentist~~;

(2) Copy of ~~license of qualified~~licenses that may be held by any trained dental sedation staff ~~or~~member, other attending medical staff, or both;

(3) Copy of current permit to prescribe and administer controlled substances in this state issued by the United States drug enforcement administration;

(4) Copy of patient consent agreement and health history forms;

(5) Copy of a blank sedation monitoring form;

(6) Preanesthesia sedation instructions; and

(7) Post care instructions.

b. The site evaluator shall submit a completed site evaluation form and documentation to the board. The dentist's facility where anesthesia and sedation are provided must meet the requirements of this chapter and maintain the following properly operating equipment and supplies appropriate for the age and relative size of the patient during the provision of anesthesia and sedation by the permitholder or physician anesthesiologist or certified registered nurse anesthetist or other qualified sedation provider:

(1) Emergency drugs as required by the board, including:

(a) Vasopressor;

(b) Corticosteroid (only deep sedation or general anesthesia permitholders);

(c) Bronchodilator;

(d) Muscle relaxant;

(e) Intravenous medication for treatment of cardiopulmonary arrest;

(f) Narcotic antagonist;

(g) Benzodiazepine antagonist;

(h) Antihistamine;

(i) Antiarrhythmic;

(j) Anticholinergic;

(k) Coronary artery vasodilator;

(l) Antihypertensive (only deep sedation or general anesthesia permitholders);

(m) Antihypoglycemic agent;

(n) Antiemetic;

(o) Adenosine, for general anesthesia and deep sedation sites;

(p) Dantrolene, for general anesthesia and deep sedation sites, if volatile gases are used; and

(q) Anticonvulsant;

(2) Positive pressure oxygen and supplemental oxygen delivery system;

(3) Stethoscope;

(4) Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;

(5) Oropharyngeal or nasopharyngeal airways, or both;

(6) Pulse oximeter;

(7) Auxiliary lighting;

(8) Blood pressure monitor with an automated time determined capability and method for recording the data;

(9) Cardiac defibrillator or automated external defibrillator (AED);

(10) End-tidal carbon dioxide monitor;

(11) Electrocardiograph monitor;

(12) Laryngoscope multiple blades, backup batteries, and backup bulbs;

(13) Endotracheal tubes and appropriate connectors;

(14) Magill forceps;

(15) Appropriate intravenous setup, including appropriate supplies and fluids;

(16) Cricothyrotomy equipment;

(17) Thermometer; and

(18) Scale.

c. The operatory where moderate sedation, deep sedation, or general anesthesia is to be administered must:

(1) Be of adequate size and design to permit physical access of emergency equipment and personnel and to permit effective emergency management;

(2) Be equipped with a chair or table adequate for emergency treatment, including a chair or cardiopulmonary resuscitation board suitable to administer cardiopulmonary resuscitation;

(3) Be equipped with a lighting system to permit the evaluation of the patient's skin and mucosal color with a backup system to permit the completion of any operation underway at the time of a general power failure;

(4) Be equipped with suction and backup suction equipment also including suction catheters and tonsil suction; and

(5) Be equipped with an oxygen delivery system and backup system complete with full-face masks and appropriate connectors, capable of delivering oxygen to the patient under positive pressure.

d. An operatory may double as a recovery location. A recovery room must be equipped with the following:

(1) Suction and backup suction equipment;

(2) Positive pressure oxygen;

(3) Sufficient light to provide emergency treatment;

(4) Be of adequate size and design to allow emergency access and management; and

(5) Be situated to allow the patient to be observed by the dentist or a ~~qualified~~trained dental sedation staff member at all times.

e. The applicant or permitholder shall provide the site evaluator with documentation confirming that the applicant or permitholder maintains written emergency protocol and conducts staff training on all patient emergencies listed below. The written documentation must demonstrate that the applicant or permitholder conducted quarterly mock codes with staff~~, and that~~. Not every emergency listed below needs to be included in each quarterly training. Instead, each of the following clinical emergencies ~~are~~must be included in a quarterly mock code training at least once every two years:

(1) Laryngospasm;

(2) Bronchospasm;

(3) Emesis and aspiration;

(4) Airway blockage by foreign body;

(5) Angina pectoris;

(6) Myocardial infarction;

(7) Hypertension/hypotension;

(8) Hypertensive crisis;

(9) Hematoma;

(10) Extravasation;

(11) Phlebitis;

(12) Intra-arterial injection;

(13) Syncope;

(14) Hyperventilation/hypoventilation;

(15) Seizures;

(16) Allergic and toxicity reactions; and

(17) Malignant hypothermia, deep sedation and general anesthesia only.

f. ~~Failure to successfully complete the anesthesia inspection results in an automatic suspension of~~The board may suspend a dentist's anesthesia and sedation privileges upon a dentist's failure to timely and successfully undergo a board-approved anesthesia site evaluation. The applicant shall have thirty days from the date of inspection to correct documented deficiencies. Once the deficiencies are corrected by the applicant and approved by the board, the board may reinstate the sedation and anesthesia privileges.

g. Effective January 1, 2028, completion of a board-approved anesthesia simulation course within twelve months prior to or after that date and the completion of anesthesia simulation training successfully every five years thereafter as required by section 20-02-01-06.

6. ~~Other anesthesia providers.~~ Host dentists who intend to use the services of a certified registered nurse anesthetist, anesthesiologist, or another dentist authorized by permit to administer moderate sedation, deep sedation, or general anesthesia, shall notify the board before sedation services are provided and arrange a site evaluation with the board appointed anesthesia ~~professional~~site evaluator. The sedation provider is responsible for discharge assessment. The host dentist shall run a mock code quarterly with the sedation team and maintain a record of the mock code schedule and attendance. The anesthesia provider and the host dentist shall remain at the facility until the sedated patient is discharged.

7. ~~Renewal of permit and site evaluation.~~ All sedation and anesthesia permits must be renewed biennially, concurrent with the dentist's license renewal. The board of dental examiners may renew such permit biennially provided the:

a. Requirements of the permit have been met;

b. Application for renewal and renewal fee is received by the board before the date of expiration of the permit. If the renewal application and renewal fee have not been received by the expiration of the permit, late fees as determined by the board apply; and

c. ~~The anesthesia~~Anesthesia site inspection is in good standing with the board of dental examiners.

8. ~~Documentation.~~ Dentists administering sedation or anesthesia shall maintain adequate documentation.

a. For the administration of local anesthesia, minimal sedation, and analgesia, the following documentation is required:

(1) Pertinent medical history, including weight and height;

(2) Medication administered and dosage; and

(3) Vital signs include heart rate and blood pressure.

b. For administration of moderate sedation, deep sedation, or general anesthesia the following documentation is required:

(1) A current and comprehensive medical history, to include current medications;

(2) Informed consent of the patient for the administration of anesthesia;

(3) An anesthesia record, which includes documentation of the following:

(a) Height and weight of the patient to allow for the calculation of body mass index and dosage of emergency medications;

(b) American society of anesthesiologist's physical status classification;

(c) Fasting or nothing by mouth status;

(d) Dental procedure performed on the patient;

(e) Time anesthesia commenced and ended;

(f) Parenteral access site and method, if utilized;

(g) Medication administered, including oxygen, dosage, route, and time given;

(h) Vital signs before and after anesthesia is utilized, to include heart rate, blood pressure, respiratory rate, and oxygen saturation for all patients;

(i) Intravenous fluids, if utilized;

(j) Response to anesthesia, including any complications;

(k) Condition and Aldrete score of patient at discharge;

(l) Records showing continuous monitoring of blood pressure, heart rate, and respiration using electrocardiographic monitoring and pulse oximetry recorded every five minutes, if utilized;

(m) Emergency protocols followed in the instance of an adverse event; and

(n) Staff participating in the administration of anesthesia, treatment, and monitoring.

9. ~~Personnel.~~

~~a.~~ During the administration of minimal sedation, the supervising dentist and at least one ~~other individual~~trained dental sedation staff member who is experienced in patient monitoring and documentation must be present.

~~b.~~a. During the administration of moderate sedation, the anesthesia permit provider and at least one ~~other individual~~trained dental sedation staff member who is experienced in patient monitoring and documentation must be present.

~~c.~~b. During the administration of deep sedation or general anesthesia, the anesthesia permit provider and at least two other individuals meeting the following requirements must be present:

(1) One individual to assist the host dentist as necessary.

(2) One ~~qualified~~trained dental sedation staff member as defined in section 20-01-02-01 solely responsible to assist with observation and monitoring of the patient.

~~d.~~c. During any sedation or anesthesia procedure, the anesthesia permit provider retains full accountability, but delegation to trained dental personnel may occur under:

(1) Direct, continuous, and visual supervision by the anesthesia permitholder if medication, excluding local anesthetic, is being administered to a patient in the intraoperative phase of surgery. A patient under general anesthesia, deep sedation, and moderate sedation is in the intraoperative phase of surgery from the first administration of anesthetic medication until:

(a) End of the surgical procedure;

(b) No additional anesthetic medication will be administered;

(c) Peak effect of the anesthesia medication has been reached; or

(d) The patient has regained consciousness with a full return of protective reflexes, including the ability to respond purposely to physical and verbal commands; or

(2) Direct supervision by the dentist and anesthesia permitholder if a patient is being monitored in the postoperative phase of surgery.

~~e.~~d. ~~All~~The dentist, anesthesia provider, and all individuals assisting the anesthesia permitholder during sedation or anesthesia shall maintain current basic life support~~,~~. The dentist and the anesthesia provider shall maintain advanced cardiovascular life support~~,~~ ~~or~~ if treating patients that are ten years of age and older and pediatric advanced life support ~~and shall~~if treating patients that are nine years of age and younger. The dentist, anesthesia provider, and all individuals assisting the anesthesia provider during sedation or anesthesia must be appropriately trained in emergency procedures through updates or drills that must be held at least quarterly and documented.

10. ~~Standards for patient monitoring.~~

~~a.~~ For the administration of local anesthesia and analgesia, patient monitoring must include the general state of the patient.

~~b.~~a. For the administration of minimal sedation, patient monitoring must include the following:

(1) Pre- and post-procedure heart rate and respiratory rate;

(2) Pre- and post-procedure blood pressure; and

(3) Level of anesthesia or sedation.

~~c.~~b. For the administration of moderate sedation, patient monitoring must include the following:

(1) Continuous heart rate, respiratory rate, and oxygen saturation;

(2) Intermittent blood pressure every five minutes or more frequently;

(3) Continuous electrocardiograph, if clinically indicated by patient history, medical condition, or age;

(4) End-tidal carbon dioxide monitoring (capnography); and

(5) Level of anesthesia or sedation.

~~d.~~c. For the administration of deep sedation or general anesthesia, patient monitoring must include the following:

(1) Continuous heart rate, respiratory rate, and oxygen saturation;

(2) Continuous ventilatory status (spontaneous, assisted, controlled) for the administration of general anesthesia to a patient with an advanced airway in place (e.g. endotracheal tube or laryngeal mask airway);

(3) Intermittent blood pressure every five minutes or more frequently;

(4) Continuous electrocardiograph;

(5) Continuous temperature for the administration of volatile anesthesia gases or medications which are known triggers of malignant hyperthermia, otherwise the ability to measure temperature should be readily available;

(6) End-tidal carbon dioxide monitoring; and

(7) Level of anesthesia or sedation.

~~e.~~d. Monitoring equipment must be checked and calibrated in accordance with the manufacturer's recommendations and documented on an annual basis.

11. ~~Patient evaluation required.~~ The decision to administer controlled drugs for dental treatment must be based on a documented evaluation of the health history and current medical condition of the patient in accordance with the class I through V risk category classifications of the American society of anesthesiologists. The findings of the evaluation, the American society of anesthesiologists risk assessment class assigned, and any special considerations must be recorded in the patient's record.

12. ~~Informed written consent.~~ Before administration of any level of sedation or general anesthesia, the dentist shall discuss the nature and objectives of the planned level of sedation or general anesthesia along with the risks, benefits, and alternatives and shall obtain informed, written consent from the patient or other responsible party for the administration and for the treatment to be provided. The written consent must be maintained in the patient record.

13. ~~Pediatric patients. Sedating medication may not be prescribed for or administered to a patient eight years of age or younger before the patient's arrival at the dentist office or treatment facility~~Only dentists holding a moderate sedation permit or deep sedation or general anesthesia permit may prescribe anxiolytic medication for out-of-office distribution to minors. Prior to doing so, the permitholder shall evaluate the patient and shall consult with the patient and the parent or legal guardian to determine whether the parent or guardian can safely administer the medication to the minor outside the office. The permitholder also shall provide the parent or guardian with relevant instructions on protocols for the out-of-office administration of the medication and for the patient's arrival at the office.

14. ~~Emergency management.~~ The licensed dentist authorized by permit to administer sedation or anesthesia and staff with patient care duties must be trained in emergency preparedness. Written protocols must include training requirements and procedures specific to the permitholder's equipment and drugs for responding to emergency situations involving sedation or anesthesia, including information specific to respiratory emergencies. The permitholder shall document this review of office training or mock codes. Protocols must include the American heart association's basic life support or cardiopulmonary resuscitation and advanced cardiac life support, or pediatric advanced life support for any practitioner administering moderate sedation, deep sedation, or general anesthesia.

    a. If a patient enters a deeper level of sedation than the dentist is qualified and prepared to provide, the dentist shall stop the dental procedure until the patient returns to and is stable at the intended level of sedation.

    b. Quarterly mock codes to simulate office medical emergencies must be documented and available during a site evaluation.

    c. ~~Authorization of duties.~~ A dentist who authorizes the administration of general anesthesia, deep sedation, or moderate sedation in the dentist's dental office is responsible for assuring that:

        (1) The equipment for administration and monitoring is readily available and in good working order before performing dental treatment with anesthesia or sedation. The equipment either must be maintained by the dentist in the dentist's office or provided by the anesthesia or sedation provider;

        (2) The person administering the anesthesia or sedation is appropriately licensed;

        (3) The individual authorized to monitor the patient is qualified;

        (4) A physical evaluation and medical history is taken before administration of general anesthesia or sedation. A dentist holding a permit shall maintain records of the physical evaluation, medical history, and general anesthesia or sedation procedures; and

        (5) ~~Administration~~If administration of sedation is done by another qualified provider ~~requires~~, the operating dentist ~~to maintain~~maintains advanced cardiac life support if the patient is ~~nine~~ten years of age or older and pediatric advanced life support if the patient is ~~eight~~nine years ~~old~~of age or younger.

    d. ~~Reporting.~~ All licensed dentists in the practice of dentistry in this state shall submit a report within a period of seven days to the board office of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during, or as a result of, minimal sedation, nitrous oxide inhalation analgesia, moderate sedation, deep sedation, or general anesthesia.

        (1) The report must include responses to at least the following:

(a) Description of dental procedure;

(b) Description of preoperative physical condition of patient;

(c) List of drugs and dosage administered;

(d) Description, in detail, of techniques utilized in administering the drugs utilized;

(e) Description of adverse occurrence:

[1] Description, in detail, of symptoms of any complications, to include onset and type of symptoms in patient.

[2] Treatment instituted on the patient.

[3] Response of the patient to the treatment.

(f) Description of the patient's condition on termination of any procedures undertaken; and

(g) The unique reporting identification issued by the dental anesthesia incident reporting system, indicating a report has been submitted to the national database.

(2) ~~Violations.~~ A violation of any provision of this article constitutes unprofessional conduct and is grounds for the revocation or suspension of the dentist's permit, license, or both, or the dentist may be reprimanded or placed on probation.

15. ~~Controlled pharmaceuticals.~~

~~a.~~ A dentist shall secure and maintain controlled pharmaceuticals in accordance with the state and federal guidelines.

~~b.~~ Used controlled pharmaceuticals or medications must be discarded immediately with documentation of disposal in conformance with drug enforcement administration guidelines.

History: Effective October 1, 1993; amended effective May 1, 1996; June 1, 2002; July 1, 2004; April 1, 2006; October 1, 2007; January 1, 2011; April 1, 2015; July 1, 2017; July 1, 2022; October 1, 2024~~;~~ April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-01, 43-28-06, 43-28-15, 43-28-18.1

20-02-01-06. Continuing dental education for dentists.

Each dentist shall maintain documentation of attendance or participation in continuing clinical dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.

2. The continuing dental education hours accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.

3. The minimum number of hours required within a two-year cycle for dentists is thirty-two. Of these hours, a dentist may earn no more than sixteen hours from self-study. Self-study is an educational process designed to permit a participant to learn a given subject without

involvement of a proctor or without the opportunity to interact in real-time with the proctor. A qualified professional may act as a proctor who oversees a clinical continuing education course which may be used for classroom style continuing education credits. Cardiopulmonary resuscitation courses must provide hands-on training. All other continuing education requirements may be satisfied from online education that allows for real-time interaction between attendees and the proctor. The continuing education must include:

a. At least two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.

b. At least two hours of infection control. This requirement may be met by attending a federal occupational safety and health course for dental providers.

c. A cardiopulmonary resuscitation course.

d. For sedation and anesthesia permitholders:

(1) At least six hours related to sedation or anesthesia; and

(2) At least two hours related to anesthesia emergencies ~~that are~~ based on actual adverse anesthesia events or actual closed insurance claims. Content offered by insurance providers or licensees of the board, including content offered by dentists who hold sedation permits issued by the board, may be approved by the board.

e. No more than two hours related to practice management or administrative aspects of dentistry.

4. Mere registration at a dental convention without specific attendance at continuing education presentations is not creditable toward the continuing dental education requirement. Certificates awarded for continuing education must indicate the name of the continuing education provider, date, and number of hours of continuing education. Certificates obtained from webinar courses must indicate the course was a live webinar. ~~For continuing education courses utilizing a proctor, the certificate of attendance must be signed by the proctor.~~

5. All dentists ~~must~~shall hold a current cardiopulmonary resuscitation certificate. General anesthesia, deep sedation, and moderate sedation providers shall maintain current advanced cardiac life support or pediatric advanced life support certification as determined by the age of the patients treated. A dentist who utilizes minimal sedation shall maintain basic life support certification.

6. Effective January 1, 2028, all dentists who administer general anesthesia, deep sedation, ~~and~~or moderate sedation shall complete successfully ~~complete~~ an approved anesthesia simulation training course within one year prior to or after this date and complete anesthesia simulation training successfully every five years thereafter. Proof of completion of this requirement must be submitted to the anesthesia ~~inspector~~site evaluator as required in subsection 5 of section 20-02-01-05.

7. The board may audit the continuing education credits of a dentist. Each licensee shall maintain certificates or records of continuing education activities from the previous renewal cycle. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at, or participation in the continuing education activities. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the license.

8. A dentist who maintains a license on inactive status is not subject to continuing education requirements.

History: Effective October 1, 1993; amended effective May 1, 1996; August 1, 1998; June 1, 2002; April 1, 2006; October 1, 2007; January 1, 2011; April 1, 2015; July 1, 2017; July 1, 2022; October 1, 2024; April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06, 43-28-16.2, 43-51.1-03

20-02-01-08. Discontinuance of the practice of dentistry - ~~Retirement - Discontinuance of treatment~~Termination of a dentist-patient relationship.

~~These rules are adopted for the purpose of avoiding practice abandonment. A licensed dentist shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Upon request of the patient or patient's legal guardian, the dentist shall furnish the dental records or copies of the records, including dental radiographs or copies of the radiographs. The dentist may charge a nominal fee for duplication of records as provided by North Dakota Century Code section 23-12-14, but may not refuse to transfer records for nonpayment of any fees.~~

1. ~~A licensee, upon retirement, or upon discontinuation of the practice of dentistry, or upon moving from a community, shall notify all active patients in writing and by publication once a week for three consecutive weeks in a newspaper of general circulation in the community that the licensee intends to discontinue the practice of dentistry. The licensee shall make reasonable arrangements with active patients for the transfer of patient records, or copies thereof, to the succeeding licensee. In the event of a transfer of patient records to another licensee assuming the practice, written notice must be furnished to all patients as hereinbefore specified. For the purpose of this section, "active patient" is defined as a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the two-year period prior to the discontinuation of the practice of dentistry by the licensee. In the event of a nontransfer of records, a licensee shall have the ongoing obligation of at least two years to afford the licensee's prior patients access to those records not previously provided to the patient.~~Dentists who are either discontinuing the practice of dentistry or who are discontinuing practicing within a particular community shall provide written notice to their active patients explaining the extent of the discontinuation. For the purpose of this section, "active patient" is defined as a individual whom the licensee has examined, treated, cared for, or otherwise consulted with during the two-year period prior to the discontinuation.

   a. In the event no other dentist is assuming the practice, the discontinuing dentist shall provide notice to all active patients in writing and also provide advance notice by publication once a week for three consecutive weeks in a newspaper of general circulation in the community where the dentist intends to discontinue the practice of dentistry. The discontinuing dentist shall make reasonable arrangements with active patients for the transfer of patient records to other dentists as requested by each patient. In the event no request for the transfer of records is made by a patient or the records are not provided directly to the patient, a discontinuing dentist shall have the ongoing obligation of maintaining the patients records for at least two years in order to afford the active patients access to the records.

   b. In the event another dentist is assuming the discontinuing dentist's practice, the discontinuing dentist or the assuming dentist shall provide written notice to all active patients explaining the discontinuance of practice, identifying the dentist who is assuming the practice, and explaining the extent to which active patient records are being transferred to the assuming dentist. In the event of a nontransfer of records for any active patient, a discontinuing dentist shall have the ongoing obligation of at least two years to afford the discontinuing dentist's prior active patients access to those records not previously provided to the patient.

2. In the event of termination of a dentist-patient relationship by a ~~licensee~~dentist, notice of the termination must be provided to the patient. A dentist-patient relationship exists if a dentist has provided treatment to a patient on at least one occasion within the preceding year. The dentist who is the owner or custodian of the patient's dental records shall mail notice of the termination of the dentist's relationship to the patient, which ~~shall~~must provide the following:

   a. The date that the termination becomes effective, and the date on which the dentist and patient relationship may resume, if applicable;

   b. A location at which the patient may receive emergency dental care for at least thirty days following the termination of the dentist and patient relationship;

   c. A statement of further dental treatment required, if any; and

   d. ~~The~~A statement providing the dentist shall respond to a written request to examine or copy a patient's record within ten working days after receipt. A dentist shall comply with North Dakota Century Code section 23-12-14 for all patient record requests.

3. If a ~~licensee~~dentist dies or becomes unable to practice dentistry due to disability, for the purpose of selling or otherwise disposing of the deceased or disabled ~~licensee's~~dentist's dental practice, a person who is not licensed to practice dentistry but who is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist may contract with a dentist to manage the dental practice for a period not to exceed ~~twenty-four months~~two years.

4. If a dentist agrees to provide dental care without remuneration to underserved patients in the absence of a public health setting, the patient may not be considered a patient of record of the dentist providing the donated dental service.

5. If a ~~licensee~~dentist retires from a group practice and continuity of patient dental care ~~will~~is not ~~be~~ interrupted, the dentist is exempt from notifying active patients in writing. The ~~licensee~~dentist shall, however, notify patients by publication once a week for three consecutive weeks in a newspaper of general circulation in the community ~~that~~in which the ~~licensee~~dentist intends to discontinue the practice of dentistry.

History: Effective April 1, 2006; amended effective April 1, 2015; July 1, 2022; April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06, 43-28-18

20-02-01-09. Patient records.

~~Dental records must be legible and include a chronology of the patient's progress throughout the course of all treatment and postoperative visits. All entries in the patient record must be dated, initialed, and handwritten in ink or computer printed. Digital radiographs must be transferred by compact or optical disc, electronic communication, or printing on high quality photographic paper. All transferred film or digital radiographs must reveal images of diagnostic quality using proper exposure settings and processing procedures. For purposes of this section:~~

1. ~~"Patient" means an individual who has received dental care services from a provider for treatment of a dental condition.~~

2. ~~"Dental record" or "patient's chart" means the detailed history of the physical examination, diagnosis, treatment, patient-related communications, and management of a patient documented in chronological order. The dental record must contain the following components:~~A dentist shall maintain a patient's dental records in a manner consistent with the protection of the welfare of the patient.

2. Dentists shall release patient dental records within a reasonable time of request. Failure to do so may result in violations of North Dakota Century Code chapter 43-28 and section 23-12-14.

3. A dentist who fails to release dental records within ten days of receipt of the request shall provide a written statement to the patient or authorized requestor detailing the cause of delay and an estimation of when records will be produced. Failure to provide the written statement may result in violations of subsection 23 of North Dakota Century Code section 43-28-18.

4. The dentist may charge a nominal fee for duplication of records as provided by North Dakota Century Code section 23-12-14, but may not refuse to transfer records for nonpayment of any fees.

5. Dental records must be legible and include a chronology of the patient's progress throughout the course of all treatment and postoperative visits. All entries in the patient record must be dated, initialed, and handwritten in ink or computer printed. Digital radiographs must be transferred by compact or optical disc, electronic communication, or printing on high quality photographic paper. All transferred film or digital radiographs must reveal images of diagnostic quality using proper exposure settings and processing procedures.

6. "Billing information" as set forth in North Dakota Century Code section 43-28-18 means records providing complete and accurate explanations of all dollar amounts assessed to the patient, the date the amount was assessed to the patient, and the date the assessed service was provided to the patient.

7. "Dental record" or "patient's chart" means the detailed history of the physical examination, diagnosis, treatment, patient-related communications, and management of a patient documented in chronological order. The dental records include any document, charting, study models, doctor's notations, billing information, insurance document, or combination of documents that pertains to a patient's medical history, diagnosis, prognosis, or medical condition, which is generated and maintained in the process of the patient's dental health care treatment, and any other materials as set forth in subsection 23 of North Dakota Century Code section 43-28-18, and the following components:

   a. Personal ~~date~~data to include name, address, date of birth, name of patient's parent or guardian, name and telephone number of a person to contact in case of an emergency, and patient's insurance information.

   b. Patient's reason for visit or chief complaint.

   c. Dental and physical health history.

   d. Clinical examination must include record of existing oral health status, radiographs used, and any other diagnostic aids used.

   e. Diagnosis.

   f. Dated treatment plan except for routine dental care, such as preventive services.

   g. Informed consent, which must include notation of treatment options discussed with the patient, including prognosis of the treatment plan, benefits and risks of each treatment, and documentation of the treatment the patient has chosen.

   h. Corrections of records, which must be legible, unless electronic and written in ink, and contain no erasures or use of "white-outs". If incorrect information is placed in the record, it must be crossed out with one single line and initialed by the dental health care worker.

i. Progress notes, which must include a chronology of the patient's progress throughout the course of all treatment and postoperative visits of treatment provided; medications used and materials placed; the treatment provider by name or initials; name of collaborating dentist; administration information of nitrous oxide inhalation or any medication dispensed before, during, or after discharge, and patient status at discharge.

j.8. Each patient shall have access to health provider information as it pertains to their treating doctor or potential doctors. Any entity utilizing telehealth shall provide upon request of a patient the name of the dentist, telephone number, practice address, and state license number of any dentist who was involved with the provision of services to a patient before or during the rendering of dental services.

9. "Patient", for the purposes of this section, means an individual who has received dental care services from a provider for treatment of a dental condition.

3.10. "Retention of records" means a dentist shall retain a patient's dental record for a minimum of six years after the patient's last examination, prescription, or treatment. Records for minors shallmust be retained for a minimum of either one year after the patient reaches the age of eighteen or six years after the patient's last examination, prescription, or treatment, whichever is longer. Proper safeguards shallmust be maintained to ensure safety of records from destructive elements. The requirements of this rule apply to electronic records as well as to records kept by any other means or maintained by a permissible ownership entity as identified by North Dakota Century Code section 43-28-25.

History: Effective April 1, 2006; amended effective January 1, 2011; July 1, 2022; April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06, 43-28-18

20-02-01-11. ~~Permit for the use of dermal fillers and botulinum toxin for dental use~~Dermal fillers permits and botulinum toxin permits.

The rules in this chapter are adopted to define standards for the administration of dermal fillers and botulinum toxin by a dentist if the use is limited to the practice of dentistry as defined in subsection 7 of North Dakota Century Code section 43-28-01. Notwithstanding a dentist who specializes in oral and maxillofacial surgery, the board may issue a dermal fillers permit or a botulinum toxin permit to a dentist who applies on forms prescribed by the board and pays the initial fee or biennial renewal fee as required by subsection 1 of section 20-05-01-01 to administer botulinum toxin or dermal fillers for the purpose of functional, therapeutic, and aesthetic dental treatment purposes under the following conditions if the dentist provides evidence demonstrating one of the following:

1. The applicant has completed a course and received satisfactory training in a residency or other educational program accredited by the commission on dental accreditation of the American dental association;

2. The applicant successfully has completed a board-approved continuing education course of instruction within the previous three months of application which includes neurophysiology, including facial tissues, parasympathetic, sympathetic, and peripheral nervous systems relative to the peri-oral tissue, and facial architecture, and:

   a. Patient assessment and consultation for botox andor dermal fillers;

   b. Indications and contraindications for techniques;

   c. Proper preparation and delivery techniques for desired outcomes;

   d. Enhancing and finishing esthetic dentistry cases with dermal fillers;

e. Botulinum neurotoxin treatment of temporomandibular joint syndrome and bruxism;

f. Knowledge of adverse reactions and management and treatment of possible complications;

g. Patient evaluation for best esthetic and therapeutic outcomes;

h. Integrating botulinum neurotoxin ~~and~~or dermal filler therapy into dental therapeutic and esthetic treatment plans; and

i. Live patient hands-on training, including diagnosis, treatment planning, and proper dosing and delivery of botox ~~and~~or dermal fillers; or

3. The applicant successfully has completed a continuing education course of instruction substantially equivalent to the requirements of this state and provides evidence from another state or jurisdiction where the applicant legally is or was authorized to administer dermal fillers ~~and~~or botulinum toxin.

History: Effective April 1, 2015; amended effective July 1, 2017; July 1, 2022; October 1, 2024; April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-01, 43-28-06

20-02-01-14. Supervision of dental externships.

The board may approve a dentist to supervise student externships as set forth in subsection 2 of North Dakota Century Code section 43-28-02 provided the dentist meets all of the following requirements:

1. Has been licensed to practice dentistry for no less than three years.

2. Possesses a current license issued by the board.

3. Has actively practiced for at least three years recently preceding the application.

4. Maintains active practice and licensure in this state throughout all externships.

5. Provides documentation that the externship is conducted through a program accredited by the commission on dental accreditation, or a program approved by the board.

6. Has not demonstrated grounds for denial of the applicant under North Dakota Century Code section 43-28-18.

7. Provides documentation evidencing the agreement or relationship between the supervising dentist and the accredited program. The documentation must provide details sufficient to allow the board to confirm public and patient safety is maintained, including the scope of the student's practice, the level of supervision to be provided by the dentist, and other relevant documentation as may be requested by the board.

History: Effective April 1, 2026.
General Authority: NDCC 43-28-01(7), 43-28-02, 43-28-06
Law Implemented: NDCC 19-03.5-09, 43-28-06(1)

20-02-01-15. Ownership of dental office practice or business.

1. Pursuant to subsection 3 of North Dakota Century Code section 43-28-25, it is a class A misdemeanor for any person except a dentist to own more than forty-nine percent of an office practice or business at which the practice of dentistry is performed. On or before June thirtieth

of each year, any person having any ownership interest in such an office practice or business, other than a dentist, an entity wholly owned by a dentist, or an entity exempt from the ownership restrictions of subsection 3 of North Dakota Century Code section 43-28-25, shall submit under penalty of perjury, annual statements setting forth a complete accounting of the valuations and the percentage of ownership of all:

a. Real property or leasehold interests at which the office practice or business is located.

b. Clinical and nonclinical equipment, hardware, software, and all other materials, regardless of where located, used by the office practice or business.

c. Any other information sought by the board.

2. To the extent a dentist submits a professional corporation annual report as required by the North Dakota office of the secretary of state, the dentist timely shall submit a copy of the report to the board.

History: Effective April 1, 2026.
General Authority: NDCC 43-28-01(7), 43-28-02, 43-28-06
Law Implemented: NDCC 19-03.5-09, 43-28-06(1), 43-28-25

CHAPTER 20-03-01
DUTIES

Section
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20-03-01-01. Duties.

Duties are delegated to dental assistants under prescribed levels of supervision as follows:

1. A dental assistant who is not registered with the board and who is employed by a dentist may:

   a. Perform the following duties under direct supervision:

      (1) Take and record pulse, blood pressure, and temperature.

      (2) Take and record preliminary dental and medical history for the interpretation by the dentist.

      (3) Apply topical medications and drugs to oral tissues, including topical anesthetic, topical fluoride, fluoride varnish, and desensitizing agents, but not including caustic agents.

      (4) Receive removable dental prosthesis for cleaning or repair.

      (5) Take impressions for study casts, bleaching trays, or orthodontic retainers.

      (6) Hold impression trays in the mouth (e.g., reversible hydrocolloids, rubber base).

      (7) Retract patient's cheek, tongue, or other tissue parts during a dental procedure.

      (8) Remove such debris as is normally created in the course of treatment during or after dental procedures by vacuum devices, compressed air, mouthwashes, and water.

      (9) Isolate the operative field, not to include rubber dams.

      (10) Hold a curing light for any dental procedure. Curing lights may not include a laser capable of cutting, burning, or damaging hard or soft tissue or for electrosurgery for tissue retraction.

      (11) Produce on a patient of record, a final scan by digital capture for review and inspection by the authorizing dentist for a prescriptive fixed or removable appliance.

      (12) Monitor ~~of~~ a patient who has been induced into nitrous oxide analgesia if the dentist has provided sufficient training to the dental assistant completed after January 1, 2024. The dentist shall maintain documentation of the training for the duration of the delegation and shall provide documentation of the training to the board upon request.

b. ~~Perform the following duties~~Provide oral hygiene instructions and education under general supervision:

~~(1) Provide oral hygiene instructions and education.~~

~~(2) Remove periodontal dressings.~~

2. An unregistered dental assistant enrolled in a board-approved qualified dental assistant program and working under the direct supervision of a dentist may perform the duties of a qualified dental assistant.

3. A qualified dental assistant-limited radiology registrant may perform the duties listed in subsection 1, and may take dental radiographs under the general supervision of a dentist.

4. A qualified dental assistant may:

a. Perform the following duties under the direct supervision of a dentist:

(1) Duties set forth in ~~subsection~~subsections 1 and 2.

(2) Acid etch enamel surfaces as directed by the dentist.

(3) Dry root canal with paper points.

(4) Apply resin infiltration.

(5) Orally transmit a prescription that has been authorized by the supervising dentist.

(6) Remove band and bracket adhesives with a slow-speed handpiece.

(7) Place and remove matrix bands and wedges.

b. Perform the following duties under the indirect supervision of a dentist:

(1) Polish coronal surfaces of teeth with a rubber cup or brush after the dentist provides the dental assistant with sufficient training. The dentist shall maintain documentation of the training completion for the duration of the delegation and provide it to the board upon request.

(2) Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.

c. Perform the following duties under the general supervision of a dentist:

(1) Produce on a patient of record, a final scan by digital capture for review and inspection by the authorizing dentist for a prescriptive fixed or removable appliance.

(2) Take and record pulse, blood pressure, and temperature.

(3) Take and record preliminary dental and medical history for the interpretation by the dentist.

(4) Apply topical medications and drugs to oral tissues, including topical anesthetic and anticariogenic agents, and desensitizing agents.

(5) Place and remove arch wires or appliances that have been activated by the dentist.

(6) Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative care.

(7) Remove sutures.

(8) Place, tie, and remove ligature wires and elastic ties, and select and place orthodontic separators.

(9) Preselect and prefit orthodontic bands.

(10) Repack dry socket medication and packing for palliative care.

(11) Take dental radiographs.

~~c. Perform the following duties under the indirect supervision of a dentist:~~

~~(1) Polish coronal surfaces of teeth with a rubber cup or brush after the dentist provides the dental assistant with sufficient training. The dentist shall maintain documentation of the training completion for the duration of the delegation and provide it to the board upon request.~~

~~(2) Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.~~

~~3. A qualified dental assistant-limited radiology registrant may perform the duties listed in subsection 1, and may take dental radiographs under the general supervision of a dentist.~~

~~4.~~5. A registered dental assistant may perform the duties set forth in ~~subsection~~subsections 2 and 3, and the following duties, under the direct supervision of a dentist:

a. Acid etch enamel surfaces prior to direct bonding of orthodontic brackets or composite restorations.

b. Take face bow transfers.

c. Adjust permanent crowns outside of the mouth.

d. Administer emergency medications to a patient in order to assist the dentist in an emergency.

e. Hold impression trays in the mouth (e.g., reversible hydrocolloids, rubber base).

~~5.~~6. A registered dental assistant may perform the following duties ~~on a patient of record~~ under the indirect supervision of a dentist:

a. Place and remove rubber dams.

b. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.

c. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments or a slow-speed handpiece.

d. ~~Place and remove periodontal dressings.~~

~~e.~~ Monitor a patient who has been inducted by a dentist into nitrous oxide inhalation analgesia.

~~f.~~e. Apply bleaching solution, activate light source, and monitor and remove bleaching materials.

~~g.~~f. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.

~~6.~~7. A registered dental assistant may perform the following duties under the general supervision of a dentist:

a. Take and record pulse, blood pressure, and temperature.

b. Take and record preliminary dental and medical history for the interpretation by the dentist.

c. Apply topical medications and drugs to oral tissues, including topical anesthetic, topical fluoride, fluoride varnish, silver diamine fluoride, hemostatic agents, and desensitizing agents.

d. Receive removable dental prosthesis for cleaning or repair.

e. Take impressions or occlusal bite registrations for study casts.

f. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, or onlay or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.

g. Remove sutures.

h. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.

i. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.

j. Provide oral hygiene education and instruction.

k. Provide an oral assessment for interpretation by the dentist.

l. ~~Repack dry socket medication and packing for palliative treatment.~~

~~m.~~ Apply pit and fissure sealants, including acid etch, if the registered dental assistant has provided documentation of a board-approved sealant course or training that includes hand skills, and has received an endorsement from the board. Adjust sealants with slow-speed handpiece.

~~n.~~m. Polish the coronal surfaces of the teeth with a rubber cup or brush or by use of air polishing.

~~o.~~n. Polish and smooth existing restorations with a slow-speed handpiece.

~~p.~~o. Take dental radiographs.

~~q.~~p. Take final impressions for fixed or removable ~~orthodontic~~ appliances~~, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs~~. Impressions must be reviewed and approved by the dentist before being used for fabrication.

~~r.~~q. Preselect and prefit orthodontic bands.

~~s.~~r. Perform nonsurgical clinical and laboratory diagnosis tests, including pulp testing, for interpretation by the dentist.

~~t.~~s. Place and remove arch wires or appliances that have been activated by a dentist.

~~u.~~t. Provide screenings as defined by subsection 44 of section 20-01-02-01.

~~v.~~u. Adjust ~~a temporary denture~~dentures or ~~partial for dentitions actively under treatment for which permanent dentures or partial dentures are being fabricated~~partials that have previously been fitted by the dentist.

v. Place and remove dry socket medications and packing.

w. Hold a curing light for any dental procedure. Curing lights may not include a laser capable of cutting, burning, or damaging hard or soft tissue or for electrosurgery for tissue retraction.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; January 1, 2011; April 1, 2015; July 1, 2017; July 1, 2022; October 1, 2024; April 1, 2026.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

20-03-01-01.1. Expanded duties ~~of dental assistants~~.

A registered dental assistant shall apply for a permit to perform the following duties:

1. A ~~registered dental assistant authorized by permit and~~restorative care permitholder under the direct supervision of a dentist may perform the following restorative functions:

   a. Place, contour, carve, ~~and~~ adjust, and finish direct restorative dental materials including amalgam, glass ionomer, alloy, or composite restorations ~~with~~. All margins must be entirely within the enamel. Permitholders may use hand instruments or a slow-speed or high-speed handpiece;

   b. Adapt and cement stainless steel crowns; and

   c. Place~~, contour, and adjust composite restorations where the margins are entirely within the enamel with hand instruments or a slow-speed handpiece~~ a temporary sedative filling.

   The restorative functions only may be performed after the patient has given informed consent for the placement of the restoration by a restorative care permitholder.

   Before the patient is released, the final restorations must be checked and documented by the supervising dentist.

2. A dental anesthesia assistant authorized by a class I permit and under the contiguous supervision of a dentist authorized by permit to provide moderate sedation, deep sedation, or general anesthesia may:

   a. Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation or general anesthesia;

   b. Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open;

   c. Prepare and monitor anesthesia equipment ~~and perform patient monitoring; and~~;

d. Perform patient monitoring including vital signs, adverse events, and patient positioning; and

e. Assist with emergency treatment and protocols, including the use of suction, automated defibrillators, and crash cart equipment.

3. A dental anesthesia assistant authorized by a class II permit and under the direct visual supervision of a dentist authorized by permit to provide moderate sedation, deep sedation, or general anesthesia may carry out all duties of a class I permitholder and:

a. Draw up ~~and~~, label, prepare, and waste medications;

b. Follow instructions to deliver medication into an intravenous line upon verbal command of the supervising dentist;

c. Adjust the rate of intravenous fluids infusion beyond a keep-open rate upon verbal command of the supervising dentist; and

d. Adjust an electronic device to provide medications, such as an infusion pump upon verbal command of the supervising dentist.

4. A registered dental assistant or registered dental hygienist authorized by permit and under the indirect supervision of a dentist may administer nitrous oxide analgesia to a patient who has not taken sedative medications before treatment in accordance with subsection 2 of section ~~20-03-01-05~~20-02-01-05.

History: Effective April 1, 2015; amended effective July 1, 2017; July 1, 2022; October 1, 2024; April 1, 2026.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

20-03-01-01.2. Requirements of permit for expanded duties.

The board may grant a permit to a registered dental assistant registered dental hygienist, or any other individual who meets the criteria listed below. Individuals authorized by other North Dakota licensing boards and whose scope of practice encompasses the duties of a dental anesthesia assistant are not required to obtain the respective anesthesia permit from the board to carry out the duties listed in this section.

1. A class I dental anesthesia permitholder is authorized to provide anesthesia assistance under the supervision of a host dentist or a dentist who is authorized by permit to provide moderate sedation or deep sedation or general anesthesia. The board may issue or renew a class I dental anesthesia assistant permit ~~authorizing~~to a registered dental assistant, registered dental hygienist, or any other individual ~~to provide anesthesia assistance under the supervision of a dentist authorized by permit to provide general anesthesia, deep sedation, or moderate sedation, upon successful completion of~~meeting the following:

a. The applicant submits evidence of completing hands-on training in intravenous access or phlebotomy that includes live experience in starting and maintaining intravenous lines and infection control. The evidence may be either a certificate of completion issued by a board-approved dental anesthesia assistant education and training course or an attestation by a supervising dentist who provided the training. A supervising dentist providing the training shall retain documentation of the training and provide it to the board upon request.

b. The applicant submits ~~proof of current certification status from the American association of oral and maxillofacial surgeon's dental anesthesia assistant national certification~~

~~or~~evidence of completing a board-approved ~~competency examination~~dental anesthesia assistant education and training course that includes vital sign monitoring, training on emergency oxygen administration, suction, use of advanced automated external defibrillators, and crash cart equipment.

c. The applicant holds current and valid certification for health care provider basic life support, advanced cardiac life support, or pediatric advanced life support; and

d. The applicant provides a copy of a valid North Dakota general anesthesia, deep sedation, or moderate sedation permit of the dentist ~~where~~under whose supervision the ~~registered dental assistant~~individual will be performing anesthesia assistant services.

2. A class II dental anesthesia permitholder is authorized to provide anesthesia assistance under the supervision of a host dentist or a dentist who is authorized by permit to provide moderate sedation, or deep sedation or general anesthesia. The board may issue or renew a class II dental anesthesia assistant permit ~~authorizing~~to a registered dental assistant, registered dental hygienist, or any other individual ~~to provide anesthesia assistance under the supervision of a dentist authorized by permit to provide general anesthesia, deep sedation, or moderate sedation, upon successful completion of~~meeting the following criteria:

a. The applicant submits evidence of ~~a~~completing the dental anesthesia assistant national course or an equivalent board-approved ~~dental anesthesia assistant education and training~~pharmacology course.

b. The applicant submits proof of current dental anesthesia assistant national certification~~or~~, an equivalent pharmacology certification, or proof of passage within the two years preceding application of a board-approved competency examination;

c. The applicant ~~has~~submits evidence of successfully ~~completed~~completing a board-approved hands-on training in intravenous access or phlebotomy that includes live experience starting and maintaining intravenous lines and infection control. The evidence may be a certificate of completion issued by a board-approved dental anesthesia assistant education and training course or an attestation by a supervising dentist who provided the training. A supervising dentist providing the training shall retain documentation of the training and provide it to the board upon request;

d. The applicant holds current and valid certification for health care provider basic life support, advanced cardiac life support, or pediatric advanced life support; and

e. The applicant provides a copy of a valid North Dakota general anesthesia, deep sedation, or moderate sedation permit of the dentist ~~where~~under whose supervision the ~~registered or qualified dental assistant~~individual will be performing anesthesia assistant services.

3. The board may issue or renew a restorative care permit on forms prescribed by the board authorizing a registered dental assistant or registered dental hygienist under the direct supervision of a dentist to provide restorative functions ~~he~~

~~a. T:under the following conditions~~if the applicant meets any of the following requirements:

~~(1)~~a. The applicant has completed successfully ~~completed~~ a board-approved curriculum from a program accredited by the commission on dental accreditation of the American dental association or other board-approved course ~~and successfully passed a dental testing agency examination approved by the board,~~ within the last five years. The course must include a clinical and written examination. The board may require successful completion of the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination; or

~~(2)~~b. The applicant has passed successfully ~~passed~~ a board-approved dental testing agency examination over five years from the date of application, and successfully completed the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination or other board-approved examination and provides evidence from another state or jurisdiction where the applicant legally is or was authorized to perform restorative functions and certification from the supervising dentist of successful completion of at least twenty-five restorative procedures within the immediate five years from the date of application.

~~b. A registered dental assistant may perform the placement and finishing of direct alloy or direct composite restorations, under the direct supervision of a licensed dentist, after the supervising dentist has prepared the dentition for restoration.~~

~~c. The restorative functions only may be performed after the patient has given informed consent for the placement of the restoration by a restorative functions dental assistant.~~

~~d. Before the patient is released, the final restorations must be checked and documented by the supervising dentist.~~

History: Effective July 1, 2022; amended effective October 1, 2024; April 1, 2026.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-13.2

20-03-01-02. Prohibited services.

~~A dental assistant, qualified dental assistant, or registered dental assistant may not perform~~Dental assistants are prohibited from performing the following services:

1. Diagnosis and treatment planning.
2. Surgery on hard or soft tissue.
3. Administer local anesthetics, sedation or general anesthesia drugs or titrate local anesthetics, sedation or general anesthesia drugs without a board authorized permit.
4. Any irreversible dental procedure or procedures which require the professional judgment and skill of a licensed dentist.
5. Adjust a crown which has been cemented by a dentist.
6. Activate any type of orthodontic appliance or fabricate orthodontic impressions for an individual who is not a patient of record.
7. Cement or bond orthodontic bands or brackets that have not been previously placed by a dentist.
8. Place bases or cavity liners.
9. Scaling, root planing, or gingival curettage.
10. Measure the gingival sulcus with a periodontal probe.
11. Use a high-speed handpiece inside the mouth, unless authorized to do so through a permit issued pursuant to section 20-03-01-01.1.
12. Unless ~~authorized by permit in accordance with subsection 1 of section 20-02-01-05.1~~acting as a trained dental sedation staff member or holding a dental anesthesia assistant permit, monitor a patient who has been induced to a level of moderate sedation, deep sedation, or

general anesthesia until the dentist authorized by permit to administer sedation or anesthesia determines the patient may be discharged for recovery.

History: Effective February 1, 1992; amended effective October 1, 1993; April 1, 2000; June 1, 2002; July 1, 2004; January 1, 2011; April 1, 2015; July 1, 2022; October 1, 2024; April 1, 2026.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

20-03-01-05. Registration of dental assistants.

An individual seeking registration as a dental assistant shall apply on forms prescribed by the board. The application must be notarized and include the application fee.

1. The board may grant registration as a registered dental assistant to an applicant meeting all the following requirements:

   a. The applicant meets any of the following requirements:

      (1) The applicant successfully completed a dental assisting program, accredited by the commission on dental accreditation of the American dental association or approved by the board, within one year of application.

      (2) The applicant ~~was certified by~~earned the dental assisting national ~~board~~board's certified dental assistant designation:

         a. Within one year of application; or

         b. More than one year prior to application, and within two years before application, earned sixteen hours of continuing education in accordance with section 20-03-01-06, and provides evidence the applicant was gainfully and relevantly employed in the time prior to application. Proof of gainful and relevant employment may include letters of recommendation, payroll documentation, or other materials requested by the board.

      (3) The applicant successfully completed a dental assisting program, accredited by the commission on dental accreditation of the American dental association or approved by the board, and completed, within two years before application, sixteen hours of continuing education in accordance with section 20-03-01-06.

      (4) The applicant is licensed in good standing under the laws of another jurisdiction and possesses qualifications, education, or experience substantially similar to the requirements for licensure set forth in this section. Applicants shall submit evidence of at least one year of gainful and relevant employment in the practice prior to application. Proof of gainful and relevant employment may include letters of recommendation, payroll documentation, or other materials requested by the board. Applicants shall submit evidence of earning sixteen hours of continuing education in accordance with section 20-03-01-06 and meet other criteria as may be required by the board.

      ~~(5) The applicant successfully completed the examination administered by the joint commission on national dental examinations or the dental hygiene certification board of Canada and completed within two years of application sixteen hours of continuing education in accordance with section 20-03-01-06.~~

   b. The applicant passed a written examination on the laws and rules governing the practice of dentistry in North Dakota within one year of application.

c. The applicant successfully completed a cardiopulmonary resuscitation course within two years of application.

d. Grounds for denial of the application under North Dakota Century Code section 43-20-05 do not exist.

2. The board may grant registration as a qualified dental assistant to an applicant meeting all the following requirements:

a. The applicant meets any of the following requirements:

(1) ~~The~~Within one year of application, the applicant passed the national entry level dental assistant certification administered by the dental assisting national board or another board-approved equivalent program, and completed three hundred hours of on-the-job clinical training ~~within one year of application~~.

(2) ~~The~~More than one year before application, the applicant passed the national entry level dental assistant certification administered by the dental assisting national board~~,~~ or another board-approved equivalent program, completed three hundred hours of on-the-job clinical training, and within two years of application completed~~, within two years before application,~~ sixteen hours of continuing education in accordance with section 20-03-01-06.

(3) The applicant successfully completed the national entry level dental assistant certification administered by the dental assisting national board or another board-approved equivalent course, and within two years of application successfully completed the North Dakota department of career and technical education dental assisting education program association.

(4) ~~The applicant successfully completed a board-approved equivalent course within one year of application.~~

~~(5)~~ The applicant ~~is licensed in good standing~~has been practicing under the laws of another jurisdiction in a role and under laws substantially equivalent to that of a qualified dental assistant and possesses qualifications, education, or experience substantially similar to the requirements for licensure set forth in this section. Applicants shall submit evidence of at least one year of gainful and relevant employment in the practice prior to application. Proof of gainful and relevant employment may include letters of recommendation, payroll documentation, or other materials requested by the board. Applicants shall submit evidence of earning sixteen hours of continuing education in accordance with section 20-03-01-06 and meet other criteria as may be required by the board.

b. The applicant passed a written examination on the laws and rules governing the practice of dentistry in North Dakota within one year of application.

c. The applicant successfully completed a cardiopulmonary resuscitation course within two years of application.

d. Grounds for denial of the application under North Dakota Century Code section 43-20-05 do not exist.

3. The board may grant registration as a qualified dental assistant-limited radiology registrant to an applicant meeting all the following requirements:

a. ~~Within two years of application, the applicant obtained the dental assisting national board's radiation health and safety certificate or completed a radiation health and safety course approved by the board.~~

(1) Within two years of application, obtained the dental assisting national board's radiation health and safety certificate or completed a radiation health and safety course approved by the board, or

(2) Submits documentation confirming the applicant obtained the dental assisting national board's radiation health and safety certificate or completed a radiation health and safety course approved by the board more than two years before application and submits a letter from a dentist confirming the assistant successfully has taken radiographs within five years of application.

b. Within two years of application, the applicant completed a cardiopulmonary resuscitation course.

c. ~~Grounds~~Has not demonstrated grounds for denial of the application under North Dakota Century Code section 43-20-05~~ do not exist~~.

History: Effective January 1, 2011; amended effective July 1, 2022; October 1, 2024; April 1, 2026.
General Authority: NDCC 43-20-10, 43-51.1-02
Law Implemented: NDCC 43-20-13.2, 43-51.1-02, 43-51.1-03

20-03-01-06. Continuing dental education for dental assistants.

Dental assistants shall provide evidence of attendance or participation in continuing clinical dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.

2. The continuing education hours accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.

3. The minimum number of hours required within a two-year cycle is sixteen. Of these hours, a qualified or registered dental assistant may earn no more than eight hours from self-study. Self-study is an educational process designed to permit a participant to learn a given subject without involvement of a proctor or without the opportunity to interact in real-time with the proctor. A qualified professional may act as a proctor who oversees a clinical continuing education course which may be used for classroom style continuing education credits. Cardiopulmonary resuscitation courses must provide hands-on training. All other continuing education requirements may be satisfied from webinars or classroom style learning that allows for real-time interaction between attendees and the proctor. The continuing education must include:

   a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.

   b. Two hours of infection control. This requirement may be met by attending a federal occupational and safety and health administration course for dental providers.

   c. A cardiopulmonary resuscitation course.

   d. For registered dental assistants or qualified dental assistants that hold a dental anesthesia assistant permit, at least two hours related to sedation or anesthesia.

e. For registered dental restorative assistant permitholders, two hours related to restorative dentistry.

f. No more than one hour related to practice management or administration.

4. For qualified dental assistant-limited radiology registrants, the continuing education must include:

a. At least two hours related to infection control. This requirement may be met by attending a federal occupational and safety and health administration course for dental providers.

b. A cardiopulmonary resuscitation course.

5. For individuals whose sole registration with the board is that of a dental anesthesia assistant, the continuing education must include:

a. At least two hours related to sedation or anesthesia.

b. A cardiopulmonary resuscitation course.

6. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement. Certificates awarded for continuing education must indicate the name of the continuing education provider, date, and number of hours of continuing education. Certificates obtained from webinar courses must indicate the course was a webinar. For continuing education courses utilizing a proctor, the certificate of attendance must be signed by the proctor.

7. All ~~qualified or registered~~ dental assistants ~~must~~registered with the board shall hold a current cardiopulmonary resuscitation certificate.

8. The board may audit continuing education credits of ~~a~~any dental assistant that is registered ~~dental assistant~~with the board. Proof of continuing education ~~shall~~must be maintained from the previous renewal cycle. Upon receiving notice of an audit from the board, ~~a registered dental assistant~~the audited dental assistant shall provide satisfactory documentation of attendance at, or participation in, the continuing education activities. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the registration.

History: Effective January 1, 2011; amended effective April 1, 2015; July 1, 2017; July 1, 2022; October 1, 2024; April 1, 2026.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-13.1, 43-51.1-03

CHAPTER 20-04-01
DUTIES

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20-04-01-01. Duties.

1. A dental hygienist may perform the following services under the direct supervision of a dentist:

   a. Apply resin infiltration.

   b. Hold impression trays in the mouth~~ after placement by a dentist~~ (e.g., reversible hydrocolloids, rubber base, etc.).

   c. Place and remove matrix bands or wedges.

   d. Adjust permanent crowns outside of the mouth.

   e. Acid-etch enamel surfaces ~~before~~prior to direct bonding of orthodontic brackets or composite restorations.

   f. Take face bow transfers.

   g. Administer emergency medications to a patient in order to assist the dentist.

   h. Dry root canal with paper points.

2. ~~A dental hygienist authorized by permit and under the direct supervision of a dentist may:~~

   ~~a. Place, carve, and adjust amalgam, glass ionomer restorations, or composite restorations with hand instruments or a slow-speed handpiece;~~

   ~~b. Adapt and cement stainless steel crowns; and~~

   ~~c. Place, contour, and adjust composite restorations where the margins are entirely within the enamel with hand instruments or a slow-speed handpiece.~~

~~3.~~ A dental hygienist may perform the following services under the indirect supervision of a dentist:

   a. Administer local anesthesia to an individual under the age of eighteen as authorized by section 20-04-01-03.

   b. ~~Dry root canal with paper points.~~

   ~~c.~~ Place and remove rubber dams.

~~d.~~c. Place retraction cord in the gingival sulcus of a prepared tooth before the dentist taking an impression of the tooth.

~~e.~~d. Monitor a patient who has been inducted by a dentist into nitrous oxide inhalation analgesia.

~~f.~~e. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a dentist.

~~g.~~f. Assist a dentist authorized by permit as set forth in section 20-02-01-05 as follows:

(1) Sedation procedure preparation and presedation documentation, including date of procedure, nothing by mouth status, availability of responsible adult escort, and allergies.

(2) Emergency equipment and use preparedness.

(3) Monitor a patient discharged by a dentist once the patient is in recovery.

(4) Documentation of patient responsiveness, vital signs, including heart rate, respiratory rate, blood pressure, oxygen saturation, and expired carbon dioxide.

(5) Training must be documented and may be acquired directly by an employer-dentist, by a planned sequence of instruction in an educational institution, or by in-office training.

~~h.~~g. ~~A dental hygienist~~If authorized by permit ~~may~~, administer nitrous oxide analgesia to a patient who has not taken sedative medications before treatment in accordance with section 20-02-01-05.

~~4. A dental hygienist authorized by permit and under contiguous supervision of a dentist authorized by permit to provide moderate sedation, deep sedation, or general anesthesia may:~~

~~a. Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation, or general anesthesia.~~

~~b. Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open.~~

~~c. Prepare anesthesia equipment and perform patient monitoring.~~

~~d. Assist with emergency treatment and protocols.~~

~~5. A dental hygienist authorized by permit and under direct visual supervision of a dentist authorized by permit to provide moderate sedation, deep sedation, or general anesthesia may:~~

~~a. Draw up and prepare medications;~~

~~b. Follow instructions to deliver medication into an intravenous line upon verbal command of the supervising dentist;~~

~~c. Adjust the rate of intravenous fluids infusion beyond a keep-open rate upon verbal command of the supervising dentist; and~~

~~d. Adjust an electronic device to provide medications, such as an infusion pump upon the verbal command of the supervising dentist.~~

~~6.~~ A dental hygienist may perform the following services under the general supervision of a dentist:

a. Complete prophylaxis to include removal of accumulated matter, deposits, accretions, or stains from the natural and restored surfaces of exposed teeth. The dental hygienist also may perform root planing and soft tissue curettage upon direct order of the dentist.

b. Polish and smooth existing restorations with a slow-speed handpiece.

c. Apply topical applications of medications and drugs to ~~the~~ oral tissues ~~and anticariogenic caries arresting and desensitizing solutions to the teeth~~, including topical anesthetic, topical fluoride, fluoride varnish, silver diamine fluoride, hemostatic agents, and desensitizing agents.

d. Take impressions or occlusal bite registrations for study casts on a patient of record.

e. Take and record preliminary medical and dental histories for the interpretation by the dentist.

f. Take and record pulse, blood pressure, and temperature.

g. Provide oral hygiene treatment planning after an oral assessment or dentist's diagnosis.

h. Take dental radiographs.

i. Apply therapeutic agents subgingivally for the treatment of periodontal disease.

j. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments or a slow-speed handpiece.

k. Receive removable dental prosthesis for cleaning and repair.

l. ~~Take occlusal bite registration for study casts.~~

~~m.~~ Fabricate, adjust, place, recement, or remove a temporary crown, bridge, onlay, or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.

~~n.~~m. Perform nonsurgical clinical and laboratory oral ~~diagnostic~~diagnosis tests, including pulp testing for interpretation by the dentist.

~~o.~~n. Apply pit and fissure sealants, including acid etch. Adjust sealants with slow-speed handpiece.

~~p.~~o. Place and remove ~~periodontal dressings,~~ dry socket medications, and packing.

~~q.~~p. Remove sutures.

~~r.~~q. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.

~~s.~~r. Preselect and prefit orthodontic bands.

~~t.~~s. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.

~~u.~~t. Place and remove arch wires or appliances that have been activated by a dentist.

~~v.~~u. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.

~~w.~~v. Provide an oral assessment for interpretation by the dentist.

~~x.~~w. Orally transmit a prescription that has been authorized by the supervising dentist.

~~y. Repack dry socket medication and packing for palliative treatment.~~

~~z.~~x. Screenings as defined in section 20-01-02-01.

~~aa.~~y. Apply bleaching solution, activate light source, and monitor and remove bleaching materials.

~~bb.~~z. ~~Apply interim therapeutic restorations~~Place a temporary filling using the standards and protocols established by an authorizing dentist ~~and after completion of a board-approved course~~.

~~cc.~~aa. Adjust a temporary denture or partial for dentitions actively under treatment for which permanent dentures or partial dentures are being fabricated.

~~dd.~~bb. Produce on a patient of record, a final scan by digital capture for review and inspection by the authorizing dentist for a prescriptive fixed or removable appliance.

cc. Administer local anesthesia to individuals who are eighteen years of age and older as authorized by section 20-04-01-03.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; July 1, 2004; April 1, 2006; January 1, 2011; April 1, 2015; July 1, 2017; April 1, 2021; July 1, 2022; October 1, 2024; April 1, 2026.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.2, 43-20-03, 43-20-11, 43-20-12, 43-20-12.3

20-04-01-02. Prohibited services.

A dental hygienist may not perform the following services:

1. Diagnosis and treatment planning.
2. Surgery on hard or soft tissue.
3. Administer anesthetics, except topical and local anesthetic, as permitted under ~~sections 20-04-01-01 and~~section 20-04-01-03, or titrate local anesthetics, sedation or general anesthesia drugs ~~without a board authorized permit~~as permitted under section 20-03-01-01.2.
4. Unless acting as a trained dental sedation staff member or authorized by permit in accordance with section 20-04-01-03.1, monitor a patient who has been induced to moderate sedation, deep sedation, or general anesthesia until the dentist authorized by permit to administer sedation or anesthesia determines the patient may be discharged for recovery.
5. Any irreversible dental procedure or procedures which require the professional judgment and skill of a dentist.
6. Adjust a crown which has been permanently cemented.
7. Activate any type of orthodontic appliance or fabricate impressions for an individual who is not a patient of record.
8. Cement or bond orthodontic bands or brackets that have not been previously placed by a dentist.
9. Place bases or cavity liners.

10. Use a high-speed handpiece inside the mouth, unless authorized to do so through a permit issued pursuant to section 20-03-01-01.2.

History: Effective February 1, 1992; amended effective October 1, 1993; July 1, 2004; January 1, 2011; April 1, 2015; April 1, 2021; July 1, 2022; April 1, 2026.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-03; 43-20-11, 43-20-12, 43-20-12.3

20-04-01-03. Duties of dental hygienists - Administration of local anesthesia - Authorization.

~~A dental hygienist may perform the following services under the indirect supervision of a dentist:~~

1. A licensed dental hygienist may apply for authorization to administer local anesthesia to a patient.

2. Requirements for local anesthesia authorization are as follows:

   a. A licensed dental hygienist shall submit evidence that the hygienist successfully completed a didactic and clinical course in local anesthesia within the last five years sponsored by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association resulting in the dental hygienist becoming clinically competent in the administration of local anesthesia; or

   b. A licensed dental hygienist shall submit evidence that the hygienist has been authorized to administer local anesthesia in another jurisdiction and provide verification of clinical competency during the previous five years. Verification may consist of the following:

      (1) A letter from the accredited school with the school seal affixed. Photocopies will not be accepted.

      (2) A notarized copy of the certification of the local anesthesia course .

      (3) A notarized letter from a licensed dentist stating the licensed dental hygienist has competently administered local anesthesia.

3. Once issued a permit to administer local anesthesia:

   a. A dental hygienist may:

      (1) Under general supervision administer local anesthetic to a patient who is eighteen years of age or older, and

      (2) Under indirect supervision administer local anesthetic to a patient who is under eighteen years of age.

   b. A dental hygienist may, if provided with a direct order from a dentist pertaining to a specific patient who is over the age of eighteen, administer local anesthetic to and carry out root planing and soft tissue curettage under general supervision.

History: Effective July 1, 2004; amended effective April 1, 2021; July 1, 2022; October 1, 2024; April 1, 2026.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-03, 43-20-12

20-04-01-03.1. Duties of the dental hygienist - ~~Requirements of~~Expanded function permit.

The board may issue or renew ~~a~~an expanded function permit to a dental hygienist ~~for the following:~~who meets the requirements set forth in section 20-03-01-01.2. A dental hygienist holding an expanded function permit may perform duties as set forth in section 20-03-01-01.1.

~~1. The board may issue or renew a class I dental anesthesia assistant permit authorizing a dental hygienist to provide anesthesia assistance under the supervision of a dentist authorized by permit to provide moderate sedation, deep sedation, or general anesthesia, upon successful completion of the following:~~

~~a. The applicant submits evidence of a board-approved dental anesthesia assistant education and training course.~~

~~b. The applicant submits proof of current certification status from the American association of oral and maxillofacial surgeons dental anesthesia assistant national certification, or a board-approved competency examination;~~

~~c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support; and~~

~~d. The applicant provides a copy of a valid North Dakota general anesthesia, deep sedation, or moderate sedation permit of the dentist where the registered dental hygienist will be performing anesthesia assistant services.~~

~~2. The board may issue or renew a class II dental anesthesia assistant permit authorizing a registered dental hygienist to provide anesthesia assistance under the supervision of a dentist authorized by permit to provide moderate sedation, deep sedation, or general anesthesia upon successful completion of the following:~~

~~a. The applicant submits evidence of a board-approved dental anesthesia assistant education and training course and has proof of current certification status from the American association of oral and maxillofacial surgeons dental anesthesia assistant national certification or a board-approved competency examination;~~

~~b. The applicant successfully has completed hands-on training in intravenous access or phlebotomy that includes live experience starting and maintaining intravenous lines;~~

~~c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support; and~~

~~d. The applicant provides a copy of a valid North Dakota general anesthesia, deep sedation, or moderate sedation permit of the dentist where the registered dental hygienist will be performing anesthesia assistant services.~~

~~3. The board may issue or renew a permit on forms prescribed by the board authorizing a registered dental hygienist under the direct supervision of a dentist to provide restorative functions under the following conditions:~~

~~a. The applicant meets any of the following requirements:~~

~~(1) The applicant successfully has completed a board-approved curriculum from a program accredited by the commission on dental accreditation of the American dental association or other board-approved course and successfully passed a dental testing agency restorative examination or other equivalent examinations approved by the board within the last five years. The board may require successful~~

completion of the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination; or

(2) The applicant has successfully passed a dental testing agency restorative examination or other board-approved examination over five years from the date of application and successfully completed the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination or other board-approved examination and provided evidence from another state or jurisdiction where the applicant legally is or was authorized to perform restorative functions and certification from the supervising dentist of successful completion of at least twenty-five restorative procedures within the immediate five years before the date of application.

b. A dental hygienist may perform the placement and finishing of direct alloy or direct composite restorations, under the direct supervision of a licensed dentist, after the supervising dentist has prepared the dentition for restoration.

c. The restorative functions may be performed after the patient has given informed consent for the placement of the restoration by a restorative functions dental hygienist.

d. Before the patient is released, the final restorations must be checked and documented by the supervising dentist.

History: Effective April 1, 2015; amended effective July 1, 2017; July 1, 2022; October 1, 2024; April 1, 2026.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-03, 43-20-12

20-04-01-05.1. Refresher course - Reentry.

An eligible dental hygienist may return to the practice of dental hygiene upon submitting an application fee and application on a form provided by the board, providing proof of having successfully completed a refresher course approved by the board, and meeting the following requirements:

1. Was previously licensed to practice dental hygiene in another state or jurisdiction where the licensure requirements were substantially equivalent.

2. Grounds for denial of the application under North Dakota Century Code section 43-20-05 do not exist.

3. The applicant has passed, within one year of making application, a written examination on the laws and rules governing the practice of dentistry in this state.

4. Has successfully completed a cardiopulmonary resuscitation course within the previous two years.

5. Has the physical health and visual acuity to enable the applicant to meet the minimum standards of professional competence.

6. Has practiced dental hygiene.

7. Has successfully completed a refresher course approved by the board that meets the following minimum criteria:

a. Taught at a dental hygiene school accredited by the American dental association's commission on dental accreditation;

~~b. Consists of a minimum of forty-three clock-hours, including a minimum of thirty-two clock-hours of clinical instruction;~~

~~c. Includes didactic coursework, which may be presented in a classroom or independent study setting, or both, and clinical coursework covering the following:~~

~~(1) Infection control and sterilization;~~

~~(2) Patient assessment, including the taking of health histories, an oral inspection and evaluation, and charting;~~

~~(3) Radiographic techniques;~~

~~(4) Instrumentation techniques, including periodontal procedures and instrument sharpening;~~

~~(5) Current techniques in the polishing of teeth and the application of fluoride;~~

~~(6) Patient education; and~~

~~(7) Office emergency situations.~~

~~8. A formerly licensed dental hygienist who is returning to the practice of dental hygiene may not administer local anesthesia or nitrous oxide until having completed courses of instruction in local anesthesia and nitrous oxide approved by the board.~~

~~9. Anything necessary for a criminal history record check pursuant to North Dakota Century Code section 43-28-11.2.~~

~~10. The applicant may be required to appear before the board.~~

Hygienists formerly licensed in North Dakota or in any state or jurisdiction where the licensure requirements were substantially equivalent may apply for licensure reentry as follows:

1. Grounds for denial of the application under North Dakota Century Code section 43-20-05 do not exist.

2. The applicant has passed, within one year of making application, a written examination administered by the board on the laws and rules governing the practice of dentistry in this state.

3. The applicant successfully completed a cardiopulmonary resuscitation course within the previous two years.

4. The applicant has the physical health and visual acuity to enable the applicant to meet the minimum standards of professional competence.

5. The applicant has practiced dental hygiene.

6. The applicant has:

a. Provided anything necessary for a background check, or a criminal history record check pursuant to North Dakota Century Code section 43-28-11.2.

b. If required by the board, appeared before the board.

c. If required by the board, undergone a clinical competency assessment conducted by a dental education provider approved by the board.

d. If required by the board, has successfully completed all aspects of the clinical competency assessment and a reeducation program or refresher course approved by the board that meets the following minimum requirements:

(1) Clinical instruction, clinical skills practice, and a clinical post-assessment to demonstrate clinical competency;

(2) Proof of competency in periodontal probing, calculus detection, and calculus removal;

(3) Didactic education must include education on the staging and grading of periodontal conditions;

7. A formerly licensed hygienist who is reentering the practice of dental hygiene may not administer sealants, local anesthetic, or nitrous oxide without first completing courses of instruction approved by the board and being issued a permit by the board.

History: Effective July 1, 2022; amended effective April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-20-01.3, 43-20-10

20-04-01-06. Additional requirements for applications.

Applications must be completed within twelve months of filing. The board may require an interview with the applicant. In addition to the application requirements of North Dakota Century Code sections 43-20-01.2, 43-20-01.3, and 43-20-06, the board may require an application to include:

1. Proof of identity, including any name change.
2. An official transcript sent by an accredited dental school directly to the board.
3. Evidence demonstrating the applicant passed the examination administered by the joint commission on national dental examinations within two years of application.
4. Evidence demonstrating the applicant passed a clinical competency examination, approved by the board, within two years of application.
5. A certification, from the licensing board of every jurisdiction in which the applicant is licensed, that the applicant is licensed in good standing.
6. ~~Certification~~Verification that the applicant has completed a cardiopulmonary resuscitation course within two years of application.
7. Verification of physical health and visual acuity.
8. For applications for licensure by credential review, the law and rules stating the requirements for licensure, when the applicant was licensed, of the jurisdiction in which the applicant is licensed.
9. For applications for licensure by credential review and reinstatement from inactive status, proof of completion of sixteen hours of continuing education in accordance with section 20-04-01-08 within two years of application.
10. Any information required by the application forms prescribed by the board.

History: Effective January 1, 2011; amended effective April 1, 2015; April 1, 2026.
General Authority: NDCC 43-20-10, 43-51.1-02
Law Implemented: NDCC 43-20-01.2, 43-20-01.3, 43-20-06, 43-51.1-02, 43-51.1-03

20-04-01-07. Inactive status - License reinstatement.

~~A dental hygienist may, upon~~Upon payment of the fee determined by the board, a dental hygienist may place the dental hygienist's license on inactive status. A dental hygienist on inactive status ~~shall~~must be excused from continuing education requirements other than as set forth in this section. Inactive status must be renewed annually by completing the inactive status renewal application and paying the inactive status renewal fee. A dental hygienist on inactive status shall not practice dental hygiene in North Dakota. Only licensees on inactive status may apply for licensure reinstatement. To reinstate a license that is on inactive status, the dental hygienist shall apply on a form prescribed by the board, pay a reinstatement fee, and meet all of the following requirements:

1. The applicant has passed a clinical competency examination administered by a regional dental testing service, approved by the board in section 20-04-01-04, within two years of application. The board may, within the board's discretion, waive this requirement.

2. The applicant ~~passes~~has passed a written examination on the laws and rules governing the practice of dentistry in this state administered by the board ~~at a meeting~~within two years of application.

3. The applicant has completed sixteen hours of continuing education in accordance with section 20-04-01-08 within two years of application.

4. The applicant has completed successfully ~~completed~~ a cardiopulmonary resuscitation course within two years of application.

5. Grounds for denial of the application under North Dakota Century Code section 43-20-05 do not exist.

History: Effective January 1, 2011; amended effective July 1, 2017; April 1, 2021; April 1, 2026.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-06

20-04-01-08. Continuing dental education for dental hygienists.

Each dental hygienist shall provide evidence of attendance or participation in continuing clinical dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.

2. The continuing dental education hours accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry must be accepted by the board without limit.

3. The minimum number of hours required within a two-year cycle is sixteen. Of these hours, a dental hygienist may earn no more than eight hours from self-study. Self-study is an educational process designed to permit a participant to learn a given subject without involvement of a proctor or without the opportunity to interact in real-time with the proctor. A qualified professional may act as a proctor who oversees a clinical continuing education course which may be used for classroom style continuing education credits. Cardiopulmonary resuscitation courses must provide hands-on training. All other continuing education requirements may be satisfied from webinars or classroom style learning that allows for real-time interaction between attendees and the proctor. The continuing education must include:

   a. At least two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.

b. At least two hours of infection control. This requirement may be met by attending a federal occupational and safety and health administration course for dental providers.

c. A cardiopulmonary resuscitation course.

d. For registered dental anesthesia hygienist permitholders, at least two hours related to sedation or anesthesia, not including local anesthesia.

e. For registered dental restorative hygienist permitholders, at least two hours related to restorative dentistry.

f. For a dental hygienist practicing under general supervision, two hours related to medical emergencies.

g. No more than one hour related to practice management or administration.

4. Mere registration at a dental convention without specific attendance at continuing education presentations ~~will~~is not ~~be~~ creditable toward the continuing dental education requirement. Certificates awarded for continuing education must indicate the name of the continuing education provider, date, and number of hours of continuing education. Certificates obtained from webinar courses must indicate the course was a webinar. For continuing education courses utilizing a proctor, the certificate of attendance must be signed by the proctor.

5. All dental hygienists ~~must~~shall hold a current cardiopulmonary resuscitation certificate.

6. A dental hygienist who maintains a license on inactive status is not subject to continuing education requirements.

7. The board may audit the continuing education credits of a dental hygienist. Each licensee shall maintain certificates or records of continuing education activities from the previous renewal cycle. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at, or participation in the continuing education activities listed. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the license.

History: Effective January 1, 2011; amended effective April 1, 2015; July 1, 2017; April 1, 2021; July 1, 2022; October 1, 2024; April 1, 2026.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.4, 43-51.1-03

20-04-01-09. Volunteer license.

~~Between meetings of the board, the executive director of the board may review the volunteer license application and grant a provisional license if all the requirements are met. A volunteer license to practice dental hygiene in North Dakota, renewable annually by application to the board, may be granted when the following conditions are met:~~

~~1. The applicant was formerly licensed and actively practicing in the state of North Dakota or another jurisdiction for at least three of the five years immediately preceding application, where the requirements are at least substantially equivalent to those of this state or the board determines that the applicant is qualified and satisfies the criteria specified under North Dakota Century Code section 43-20-01.2.~~

~~2. The applicant agrees to provide services without remuneration directly or indirectly in a board-approved setting.~~

~~3. The applicant holds a current cardiopulmonary resuscitation course certification.~~

~~4. The applicant has completed continuing education requirements of the board.~~

~~5. The applicant has made application for a volunteer license in a manner prescribed by the board.~~

~~6. The board may collect from the applicant the nonrefundable application and license fee prescribed by the board.~~

~~7. The board may apply such restrictions as it deems appropriate to limit the scope of the practice under the authority of the volunteer license.~~

1. The board may issue volunteer licenses to practice dental hygiene to applicants who were formerly licensed in North Dakota or who have active licenses issued by other states where the laws are at least substantially equivalent to those of this state if the applicants:

   a. Have practiced for three of the five years immediately preceding the application;

   b. Are determined by the board to be sufficiently experienced and qualified to provide volunteer dental hygiene care and will be supervised in the volunteer setting by a dentist who agrees to be responsible for ensuring the care provided by the applicant meets the minimum standards of professional competence; or

   c. Are determined by the board to be qualified and satisfy the criteria specifies under North Dakota Century Code section 43-20-01.2

2. Applicants shall complete and submit an application form provided by the board including:

   a. A current cardiopulmonary resuscitation course certificate.

   b. A nonrefundable application fee.

   c. Any documentation requested by the board related to the applicant's practice or disciplinary history.

3. A volunteer license:

   a. May only be used to provide primary health services without remuneration directly or indirectly in a board-approved setting.

   b. Must be renewed annually.

   c. May be limited, conditioned, or restricted by the board as to its scope, duration, or other criteria.

History: Effective October 1, 2024; April 1, 2026.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.2, 43-20-01.3, 43-20-01.4, 43-20-01.5

CHAPTER 20-05-01

20-05-01-01. Fees.

The board shall charge the following nonrefundable fees:

1. For dentists:

a.	License by examination application fee	~~$515.00~~$540.00
b.	License by credential review application fee	~~$1,420.00~~$1,490.00
c.	Renewal fee	~~$475.00~~$500.00
d.	Late fee	~~$475.00~~$500.00
e.	Temporary license application and license fee	~~$300.00~~$315.00
f.	Volunteer license application and license fee	~~$25.00~~$30.00
g.	Inactive status application fee	~~$40.00~~$45.00
h.	Inactive status annual renewal fee	~~$40.00~~$45.00
i.	Inactive status reinstatement fee	~~$485.00~~$540.00
j.	Dermal fillers and botulinum toxin permit	~~$225.00~~$235.00
k.	Dermal fillers and botulinum toxin permit renewal	~~$125.00~~$135.00

2. For dental hygienists:

a.	License by examination application fee	~~$240.00~~$250.00
b.	License by credential review application fee	~~$535.00~~$560.00
c.	Renewal fee	~~$185.00~~$195.00
d.	Late fee	~~$185.00~~$195.00
e.	Inactive status application fee	~~$42.00~~$45.00
f.	Volunteer license application and license fee	~~$25.00~~$30.00
g.	Inactive status annual renewal fee	~~$40.00~~$45.00
h.	Inactive status reinstatement fee	~~$220.00~~$250.00

3. For registered dental assistants:

a.	Application fee	~~$155.00~~$160.00
b.	Renewal fee	~~$120.00~~$125.00
c.	Late fee	~~$120.00~~$125.00

4. For dentist anesthesia permits:

a.	Application fee	~~$225.00~~$235.00
b.	Inspection fee	actual cost
c.	Renewal fee	~~$200.00~~$210.00

d.	Late fee	~~$225.00~~$235.00
5.	For a duplicate license, registration, or permit:	~~$50.00~~$55.00
6.	For qualified dental assistants:	
a.	Application fee	~~$155.00~~$160.00
b.	Renewal fee	~~$120.00~~$125.00
c.	Late fee	~~$120.00~~$125.00
7.	For qualified dental assistant-limited radiology registrants:	
a.	Application fee	$100.00
b.	Renewal fee	$80.00
c.	Late fee	$80.00
8.	For alternative to discipline professional health program:	
a.	Dentist fee upon initial licensure and upon renewal	$75.00
b.	Dentist one-time fee upon enactment of rule	$75.00
9.	For expanded duty permits:	
a.	Application fee	$50.00
b.	Renewal fee	$25.00
10.	For hygienist local anesthetic permit:	
a.	Application fee	$50.00
b.	Renewal fee	$25.00

History: Effective May 1, 1992; amended effective October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; January 1, 2008; January 1, 2011; April 1, 2015; April 1, 2021; October 1, 2024; April 1, 2026.
General Authority: NDCC 43-20-10, 43-28-06
Law Implemented: NDCC 43-20-01.2, 43-20-01.3, 43-20-01.4, 43-20-06, 43-20-13.1, 43-20-13.2, 43-28-06, 43-28-11, 43-28-15, 43-28-16.2, 43-28-17, 43-28-24, 43-28-27

ARTICLE 20-06
PROFESSIONAL HEALTH PROGRAM - ALTERNATIVE TO DISCIPLINE

Chapter
20-06-01 Administration

CHAPTER 20-06-01
ADMINISTRATION

Section
20-06-01-01 Definitions
20-06-01-02 Agreement
20-06-01-03 Requirements and Procedures
20-06-01-04 Evaluation
20-06-01-05 Self-Reporting and Self-Referral
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20-06-01-08 Liability

20-06-01-01. Definitions.

As used in this chapter:

1. "Administrator" means the professional health program that is designated through the agreement set forth in North Dakota Century Code section 43-28-06.

2. "Agreement" means the agreement set forth in North Dakota Century Code section 43-28-06.

3. "Impairment" means the presence of any physical, mental, or behavioral disorder or pattern of alcohol or substance use which interferes with a licensee's ability to engage safely in professional activities.

4. "Licensee" means an individual who holds a license or registration issued by the board and who is encompassed by the agreement.

5. "Participant" means an individual enrolled in the program.

6. "Treatment plan" means a plan of care, rehabilitation, monitoring and maintenance, followup, or aftercare services or combination of any of these services provided by an organization or by an individual authorized by the board or administrator to provide such services for a licensee taking part in the program.

History: Effective April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06

20-06-01-02. Agreement.

1. The board may enter an agreement with the administrator to undertake those functions and responsibilities specified in the agreement. The functions and responsibilities of the agreement may include any or all of the following:

   a. Contracting with agencies or providers of diagnostic, monitoring, or treatment services;

   b. Receiving and evaluating reports of licensees who may be experiencing potentially impairing conditions;

c. Intervening in cases in which a licensee is determined to be in need of treatment;

d. Referring licensees to appropriate services;

e. Monitoring the treatment and aftercare services provided to licensees;

f. Educating licensees and the public about the functions of the administrator and the licensee health program and their relationship to the board; and

g. Performing other activities as agreed upon by the board and the administrator.

2. The board may participate, through its licensing fees or other specified funds, in the funding of the operations of the administrator.

History: Effective April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06

20-06-01-03. Requirements and procedures.

In consultation with the board, the administrator shall develop procedures for:

1. Periodic reporting of statistical information regarding program activity.

2. Periodic disclosure and joint review of information the board deems appropriate regarding reports received, contacts of investigations made, and the disposition of each case. Except as expressly provided under this article and North Dakota Century Code section 43-28-06, the administrator may not disclose any personally identifiable information about participants other than board-ordered participants.

3. Immediate reporting to the board the identity and results of any contact or investigation concerning an impaired licensee who is believed to constitute an imminent danger to the public or to the individual.

4. Reporting a licensee to the board, in a timely fashion, the identity and results of any contact or investigation concerning a potentially impaired participant:

a. Who refuses to cooperate with the administrator;

b. Who refuses to submit to evaluation or treatment;

c Who is not in compliance with a contractual treatment plan; or

d. Whose possible impairment is not substantially alleviated through treatment and:

(1) Who the administrator determines is unable to practice professionally with reasonable skill and safety by reason of illness related to the abuse of alcohol or other substances or as a result of any physical or mental condition; or

(2) Who may pose a threat to the health or safety of any individual.

5. Reporting to the board, in a timely fashion, the identity of any licensee participant regarding whom the administrator learns of the filing of any disciplinary charges or actions or violations of North Dakota Century Code chapter 43-28.

6. Entering contractual agreements with each participant in the program which make clear the administrator and program procedures, the responsibilities of participants, and the consequences of noncompliance with the program or with contractual agreements, including the administrator's reporting obligations to the board.

7. A participant to obtain a second opinion review of recommendations by the administrator regarding assessment, monitoring, or treatment.

History: Effective April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06

20-06-01-04. Evaluation.

If the board determines a licensee currently exhibits possible impairment, the board may direct the administrator to facilitate an evaluation of the licensee to determine whether there is a current need for treatment or monitoring of the licensee to assure the licensee is able to practice safely. The administrator shall report the findings of this evaluation to the board.

History: Effective April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06

20-06-01-05. Self-reporting and self-referral.

1. A licensee may voluntarily refer or self-report to the administrator or the board for a potentially impairing condition.

2. A licensee:

   a. Who under this section voluntarily seeks the assistance of the administrator in assessing or dealing with a condition that could possibly lead to impairment will not be reported to the board solely on the basis of this self-referral. However, if a licensee who self-refers or self-reports refuses evaluation by the administrator; if the evaluation reveals evidence of a condition or impairment that could affect the licensee's ability to practice or constitutes a threat to the safety of patients or the public; or if a licensee refuses to cooperate with the treatment plan, monitoring, and followup or aftercare devised by the administrator, including any recommendation about current continuation in practice, the administrator shall report the identity and findings of the evaluation of the licensee to the board. Participation in the program does not protect a licensee from board action resulting from a report of the licensee's possible violations of North Dakota Century Code chapter 43-28.

   b. Who self-reports or self-refers to the board for a potentially impairing condition may be referred by the board to the administrator in the manner prescribed by board policies and subsequent reporting by the administrator to the board is at the discretion and in the manner prescribed by the board.

   c. Who is participating in or who has completed a contract for treatment with and has been discharged from the program by the administrator, who is in full compliance with all facets of the treatment plan or has completed treatment and is compliant with aftercare, may answer in the negative on any question on the application to the board for licensure or licensure renewal regarding current impairment by that condition or those conditions for which the licensee is currently participating in or has been discharged from the program by the administrator. However, any recurrence of the impairing condition or conditions or the existence of other potentially impairing conditions that are not currently known to the administrator must be reported on the application.

History: Effective April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06

20-06-01-06. Mandated reporting.

A report by a health professional, including a self-report or self-referral by a licensee to the administrator, must be deemed a report to the board for the purposes of mandated reporting of impairment.

History: Effective April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06

20-06-01-07. Confidentiality of records.

Records of the program may only be disclosed pursuant to North Dakota Century Code section 43-17.3-07 or 43-28-06.

History: Effective April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06

20-06-01-08. Liability.

1. Notwithstanding any other provision of law, the board, the administrator, or delegated individuals and members of any of these entities are not liable to any person for any acts, omissions, or recommendations made in good faith within the scope of responsibilities pursuant to this chapter.

2. A person that in good faith and without malice which makes a report to the administrator or the board under this section is not liable to any person for that report.

History: Effective April 1, 2026.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06

TITLE 30

GAME AND FISH DEPARTMENT

APRIL 2026

CHAPTER 30-03-06

30-03-06-05. Water prohibited.

1. Refer to the North Dakota game and fish department website for a listing of state waters infested with class I prohibited aquatic nuisance species. Fish transported and held in or on ice are allowed.

2. All water must be drained from all watercraft and recreational, commercial, and construction equipment bilges and confined spaces, livewells, and baitwells, when out of water or upon entering the state. ~~Water used for instate transportation of legal live bait and legal live baitfish in bait buckets no larger than five gallons in volume is allowed to and from waters of the state not designated as infested with class I prohibited aquatic nuisance species. Refer to the current fishing proclamation for legal live bait and legal live baitfish definitions.~~Potable water and sewage water are excluded from this restriction.

3. Bait containers used for in-state transportation of legal live bait and legal live baitfish must be no larger than five gallons [18.93 liters] in volume. Refer to the current fishing proclamation for legal live bait and legal live baitfish definitions.

4. Legal live bait and legal live baitfish may not be transported in water away from waters of the state designated as infested with class I prohibited aquatic nuisance species unless traveling to and from ice fishing, in which case any water may be used for in-state transportation of legal live bait and legal live baitfish.

5. Water may not be transported away from waters of the state designated as infested with class I prohibited aquatic nuisance species or imported from another state unless permitted by the department of water resources or otherwise authorized.

~~4.~~6. All drain plugs that may hold back water must be removed, and water draining devices must be open, on all watercraft and recreational, commercial, and construction equipment bilges and confined spaces, during any out-of-water transport of same.

History: Effective April 1, 2008; amended effective October 1, 2010; January 1, 2016; April 1, 2016; April 1, 2023; April 1, 2024; April 1, 2026.
General Authority: NDCC 20.1-17-01
Law Implemented: NDCC 20.1-17-06

30-04-03-14. Initial application for guide and outfitter license.

An initial applicant for a guide or outfitter license shall submit a completed application on a form provided by the department and the fees required under North Dakota Century Code section 20.1-03-36.1. Information requested on the form must be completed and signed by the applicant. Providing false or misleading information requested on the application may be grounds to deny the issuance of a license for the calendar year of the application. The applicant shall also provide:

1. If the applicant is applying for a hunting guide or hunting outfitter license, proof the applicant is currently certified in adult cardiopulmonary resuscitation or its equivalent and in standard or first aid or its equivalent. A photocopy of certification ~~will be~~is sufficient proof of training.

2. If the applicant is applying for a hunting outfitter license, proof that the applicant has held a hunting guide license in North Dakota or any other state for two years. Such proof ~~shall~~must be in the form of information generated by the state of licensure.

3. A signed certification on a form provided by the department that the applicant has not been convicted of a state or federal criminal game or fish violation in the last three years from the date of the application or whose license to hunt or fish is under suspension or revocation in North Dakota or any other state.

4. A statement in an application for a hunting outfitter or guide license listing the dates the applicant has legally hunted ~~in North Dakota~~ for three years before the date of the application. The department may require the applicant to explain how three years of practical field experience gained by hunting have directly contributed to the applicant's experience and competency as a guide and how the three years have influenced the applicant's capability to perform essential duties associated with guiding and outfitting as defined in North Dakota Century Code section 20.1-01-02. The director reserves the right to request additional information to supplement the applicant's submission.

5. Proof of insurance ~~shall be~~ in the form of a certificate of liability insurance from the insuring entity certifying that the applicant and the applicant's business operation are covered by general liability insurance against loss or expense due to accident or injury from outfitting services, at a minimum of one hundred thousand dollars per individual and three hundred thousand dollars per accident.

6. ~~An~~If the applicant is applying for a hunting outfitter license ~~must include~~, a listing of all land to be used by the outfitter to provide services. Acreage reports ~~shall~~must include the name of the landowner and lessor, the number of acres of land, and the location of the land by county.

7. ~~An~~If the applicant is applying for a hunting guide license ~~must include~~, a written notice from an employing or contracting licensed outfitter that the applicant will be retained to provide guiding services during the term of the applicant's license period. A licensed hunting guide may provide services to more than one hunting outfitter, but shall provide written notice from each outfitter to the department.

History: Effective April 1, 2006; amended effective April 1, 2026.
General Authority: NDCC 20.1-02-04(2), 20.1-03-38(1)
Law Implemented: NDCC 20.1-03-37

30-04-03-17. Hunting guide and hunting outfitter examination.

Any written examination required ~~will~~must be administered from at least one regional department office ~~or electronically~~ on the assigned time and date. The department may administer an electronic examination at any time. Once an applicant has passed the ~~written~~ examination, the applicant must

become licensed by the end of the following calendar year. To pass the ~~written test~~examination, a score of eighty percent must be achieved. A person who fails to obtain the license by the end of the following calendar year or fails to maintain a hunting guide or hunting outfitter license for two calendar years or more after obtaining a license, in addition to the annual eligibility requirements, ~~must~~shall retake the ~~written~~ examination before being issued another hunting guide or hunting outfitter license. A hunting guide or hunting outfitter, whose license has been revoked, ~~in addition to~~shall meet the annual eligibility requirements~~, must successfully~~ and shall retake successfully the ~~written~~ examination before being issued a new license under this section.

History: Effective April 1, 2006; amended effective April 1, 2023; April 1, 2026.
General Authority: NDCC 20.1-02-04(2), 20.1-03-38(1)
Law Implemented: NDCC 20.1-03-38

CHAPTER 30-05-01

30-05-01-02. Boat safety equipment.

The following equipment is required as indicated, and must be usable and in serviceable condition.

1. **Personal flotation devices - Penalty.**

   ~~a.~~ All motorboats less than sixteen feet [4.8 meters] in length and all nonpowered ~~boats~~vessels must have one United States coast guard-approved device labeled as type I, II, or III, or seventy or more Newtons aboard for each person. All motorboats sixteen feet [4.8 meters] or greater in length must have one United States coast guard-approved device labeled as type I, II, or III, or seventy or more Newtons aboard for each person, and, in addition, one United States coast guard-approved throwable type IV device. Any person who violates this ~~subdivision~~subsection is guilty of a noncriminal offense and shall pay a twenty-five dollar fee for each United States coast guard-approved device not aboard as required for each person with a maximum fee of two hundred fifty dollars for a shortage of ten or more.

   ~~b. All persons manipulating any water skis, surfboard, or similar device must wear a United States coast guard approved device labeled as type I, II, or III, or seventy or more Newtons. The only exception is that of a performer engaged in a professional exhibition or a person or persons engaged in an activity authorized under North Dakota Century Code section 20.1-13-11.~~

2. **Fire extinguishers.** Motorboats of less than twenty-six feet [7.8 meters] in length need no fire extinguishing equipment, unless the boat has a double bottom not sealed to the hull or not completely filled with flotation material; or unless it has closed stowage compartments in which combustible or flammable materials are stored; or unless it has closed compartments under thwarts and seats wherein portable fuel tanks may be stored; or unless it has closed living spaces; or unless it has permanently installed fuel tanks. If in any of these categories, it must have either a fixed fire extinguishing system in the machinery spaces, or at least one United States coast guard-approved 5-B or 10-B type portable extinguisher. Motorboats twenty-six [7.8 meters] to forty feet [12 meters] in length must have either two United States coast guard-approved 5-B or 10-B type portable extinguishers or one United States coast guard-approved 20-B type portable extinguisher, or a fixed fire extinguishing system in the machinery spaces and one United States coast guard-approved 5-B or 10-B type portable extinguisher. Motorboats forty feet [12 meters] or ~~over~~greater in length must have either three United States coast guard 5-B or 10-B type portable extinguishers, or one United States coast guard-approved 20-B and one 5-B or one 10-B type portable extinguisher, or a fixed fire extinguishing system in the machinery spaces along with two 5-B or two 10-B or one 20-B United States coast guard-approved portable extinguishers. Extinguishers may not be more than twelve years old according to the date of manufacture stamped on the bottle.

3. **Backfire flame arrester.** One United States coast guard-approved device is required on each carburetor of all gasoline powered engines, except outboard motors.

4. **Bells and whistles.** Boats less than twenty-six feet [7.8 meters] in length require one hand, mouth, or power operated whistle audible at least one-half mile [.8 kilometer]. Boats twenty-six feet [7.8 meters] to less than forty feet [12 meters] in length require a hand or power operated whistle audible at least one mile [1.6 kilometers], and a bell which produces a clear, bell-like tone when struck. Boats over forty feet [12 meters] in length require a power operated whistle audible at least one mile [1.6 kilometers] and a bell which produces a clear, bell-like tone when struck.

5. **Ventilation.** All motorboats with enclosed engine or fuel compartments, and using gasoline as a fuel, must have at least two ventilator ducts, fitted with cowls, or the equivalent, leading to each such compartment, to properly and efficiently ventilate the compartment.

6. **Lighting.** ~~When~~If operating between sunset and sunrise, all motorboats under twenty-six feet [6.8 meters] in length ~~shall~~must exhibit a twenty-point [225 degree] combination red and green bowlight visible for one mile [1.6 kilometers], ten points [112.5 degrees] to the left of the centerline of the boat being red, ~~the~~ ten points [112.5 degrees] to the right of the centerline being green, and a thirty-two-point [360 degree] white stern light, visible for two miles [3.2 kilometers], placed higher than the bowlight and unobstructed by occupants or portions of the vessel.

   ~~When~~If operating between sunset and sunrise, all motorboats twenty-six feet [6.8 meters] in length or over shall exhibit a twenty-point [225 degree] white bowlight visible for two miles [3.2 kilometers], a ten-point [112.5 degree] red side light, visible for one mile [1.6 kilometers], on the left side of the vessel, a ten-point [112.5 degree] green side light, visible for one mile [1.6 kilometers] on the right side (the side lights shall be visible through an arc beginning parallel to the centerline of the vessel and extending ten points [112.5 degrees] toward the stern), and a thirty-two-point [360 degree] white stern light visible for two miles [3.6 kilometers], placed higher than the bowlight and unobstructed by occupants or portions of the vessel.

   If operating between sunset and sunrise, motorboats may not exhibit any other light that impairs the visibility of the bowlight or stern light.

   All nonmotorized boats anchored or underway between sunset and sunrise ~~shall~~must have readily accessible a white light source, visible for 360 degrees, which ~~shall~~must be temporarily displayed in sufficient time to prevent a collision.

   All vessels at anchor between sunset and sunrise must display a white light visible to a boat approaching from any direction.

7. Except as provided in subdivision a of subsection 1, any person who violates this section is guilty of a noncriminal offense and shall pay a twenty-five dollar fee.

History: Amended effective December 1, 1982; April 1, 1986; May 1, 1995; April 1, 2006; October 1, 2020; April 1, 2023; April 1, 2024; April 1, 2026.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-05

TITLE 33

STATE DEPARTMENT OF HEALTH

APRIL 2026

CHAPTER 33-07-03.2

33-07-03.2-20. Activity services.

The facility shall provide an ongoing program of activity services to meet the needs and interests of each resident which promotes or maintains each resident's physical, mental, and psychosocial well-being.

1. The facility shall employ a qualified activity coordinator who is responsible for the direction and supervision of the resident activity services. A qualified activity coordinator is:

   a. An individual certified as a therapeutic recreation specialist by a recognized accrediting body;

   b. An individual who is eligible for certification as a therapeutic recreation specialist by a recognized accrediting body for the first year the individual is eligible;

   c. An individual who is activity director certified by a recognized accrediting body;

   d. An individual who is activity consultant certified by a recognized accrediting body;

   e. A qualified occupational therapist as defined in North Dakota Century Code chapter 43-40;

   f. A certified occupational therapy assistant;

   g. An individual who has the equivalent of two years of full-time experience in a social or recreational program within the last five years, one of which was in a resident activity program in a health care setting; or

   h. An individual who has completed an activity training program approved by the department as meeting the requirements in section ~~33-07-03.2-22~~33-07-03.2-21; and

      (1) Has one year of full-time experience in the past five years in an activity program in a health care setting; or

      (2) Receives monthly onsite consultation for a minimum of one year after the completion of the program from an individual meeting the qualifications described in subdivision a, d, e, f, or g.

2. The facility shall have sufficient activity staff to provide an ongoing program of meaningful, stimulating, therapeutic, and leisure time activities to meet the needs and suited to the interests of each resident.

3. The facility shall have policies and procedures for the delivery of activity services.

4. Each resident's activity plan must be developed in accordance with instructions of the licensed health care practitioner.

5. The activity plan must be coordinated with the resident's overall plan of care and altered as needed.

6. Activity notes, including observations of resident's participation in activity programs, must be recorded and retained in the resident's record.

7. Resident's request to see clergy must be honored and space must be provided for privacy during these visits.

8. The facility ~~must~~shall have adequate equipment and material to support independent and group activities.

History: Effective July 1, 1996; amended effective April 1, 2026.
General Authority: NDCC 23-01-03~~, 28-32-02~~
Law Implemented: NDCC 23-16-01~~, 28-32-02~~

33-07-03.2-21. Approved activity training program.

Only programs that the department determines ~~to~~ meet the criteria in this section and approves in writing ~~will be~~are considered to be an approved activity training program.

1. A department-approved activity training program must have a curriculum which contains, at a minimum, ~~one hundred eighty hours,~~ ninety ~~of which are theory and ninety of which are practical training~~ hours of training.

2. The primary instructor of a program shall have:

   a. A bachelor's degree or be activity consultant certified;

   b. ~~Have current~~Current activity experience as a director or as a practicing consultant; and

   c. ~~Have experience~~Experience in teaching adults.

3. Supplemental instructors shall have a minimum of one year of experience in their field.

4. The theory portion of the program ~~shall~~must include, at a minimum, the topics identified in the basic education course for activity professionals developed by the national association of activity professionals and the national certification council for activity professionals.

5. Training on nursing and nursing-related services, including transferring, positioning, toileting, and feeding, may not be included in the curriculum of an activity training program.

6. At the completion of the program, the instructor ~~must~~shall verify in writing to the department the successful completion of the program for each participant.

7. A listing of state-approved activity training programs and the date of approval ~~will~~must be maintained by the department.

8. An approved activity training program may include only those topics which were submitted to and approved by the department for inclusion. Changes which are made to the program must be approved by the department prior to implementation or the program ~~will~~is no longer ~~be~~ considered to be approved.

History: Effective July 1, 1996; amended effective April 1, 2026.

General Authority: NDCC 23-01-03~~, 28-32-02~~
Law Implemented: NDCC 23-16-01~~, 28-32-02~~

CHAPTER 33-39-01
LODGING ESTABLISHMENT SANITATION STANDARDS

Section
33-39-01-01 Definitions
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33-39-01-04 Guest ~~Room Toilet and Bathing Facilities~~Rooms
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33-39-01-06 Single-Service ~~Items~~and Single-Use Articles
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33-39-01-14 Poisonous or Toxic Materials
33-39-01-15 Pests
33-39-01-16 Exterior Premises and Grounds Maintenance
33-39-01-17 Imminent Health Hazard

33-39-01-01. Definitions.

For purposes of this chapter:

1. "Approved" means acceptable to the department based on compliance with applicable standards and public health practices.

2. "~~Communicable disease~~Clean" means ~~any disease that can be directly or indirectly transmitted from person to person~~free of visible stains, foreign material, organic material, soil, dirt, dust, sludge, grease, rubbish, garbage, slime, algae, fungi, mold, rust, mineral deposits, food debris, and other offensive, unsightly, or extraneous matter.

3. "Cleaning" means the removal of visible stains, foreign material, organic material, soil, dirt, dust, sludge, grease, rubbish, garbage, slime, algae, fungi, mold, rust, mineral deposits, food debris, and other offensive, unsightly, or extraneous matter from objects and is normally accomplished using water with detergents or enzymatic products and is required before sanitization or disinfection.

4. "Department" means the ~~state~~ department of health and human services.

5. "Equipment" means an article that is used in the operation of a food establishment such as a freezer, microwave, hood, ice maker, mixer, oven, reach-in refrigerator, sink, slicer, stove, table, temperature measuring device for ambient air, coffee machine, or warewashing machine.

6. "Extensively remodeled" means significant physical changes to all or part of an establishment, including upgrades or replacement of major systems, such as the electrical, plumbing, heating, or ventilation systems, demolition of interior or exterior areas, or installation or removal of walls. Extensively remodeled does not include routine replacements of equipment, furnishings, or fixtures that do not require new plumbing or electrical work.

7. "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

8. "Furnishings" means all articles or objects used in the establishment such as draperies, beds, mattresses, appliances, furniture, lamps, floor coverings, and decorative items.

9. "Good repair" means free of corrosion, breaks, leaks, cracks, chips, pitting, excessive wear and tear, obstructions, and similar defects to constitute a good and sound condition which is fully operational for the purpose intended.

~~4.~~10. "Guest" means ~~an~~a transient guest occupant of a ~~rental unit of~~guest room in a lodging establishment.

~~5.~~11. "Guest room" means any room used or intended to be used by a transient guest for sleeping ~~purposes~~accommodations.

~~6.~~12. "~~Health~~Imminent health hazard" means a ~~chemical agent, source of filth, cause of sickness~~fire, significant flooding, sewage backup, infestation, misuse of poisonous or toxic materials, evidence of water systems or recreational water facilities contaminated with legionella bacteria, gross unsanitary occurrence or condition, or any other condition that ~~is a~~could endanger the health ~~threat to others or a threat to the public health~~and safety of guests, employees, or the general public.

13. "Infestation" means the presence of pests, including bed bugs, cockroaches, or rodents, which is indicated by observation of living or dead pests or pest carapace, eggs or egg casings, or the typical brownish or blood-colored spotting on linens, mattresses, or furniture, or the presence of pest droppings.

14. "Linen" means a cloth item used in the lodging establishment, such as a sheet, bedspread, blanket, quilt, pillowcase, mattress pad, towel, and washcloth.

~~7.~~15. "Lodging establishment" means any hotel, motel, resort, building, or structure that is ~~used to provide~~kept, used, maintained, or held out to the public as a place where sleeping accommodations ~~to the public~~are furnished to transient guests for charge. The term does not include ~~primitive~~:

a. Single structures with five or fewer guest rooms and ten or fewer total occupants;

b. A series or group of buildings or structures containing five or fewer guest rooms and ten or fewer total occupants operated as one entity under a single ownership on the same property or physical location;

c. A facility providing personal care services directly through contract services as defined in North Dakota Century Code section 23-09.3-01 or 50-32-01; or

d. Primitive lodging cabins, lodges, or ranches.

16. "Pest" means any unwanted animal, including a rodent and insect, which is a potential vector for human disease or presents a risk to public health.

17. "Plumbing fixture" means a receptacle, device, or appliance such as a toilet, sink, shower, and faucet, which is supplied with water or receives liquid or liquid-borne wastes and discharges such wastes into the drainage system to which it may be directly or indirectly connected.

18. "Primitive lodging cabins, lodges, or ranches" means a cabin, lodge, or ranch that does not have indoor plumbing and may consist of a permanent structure such as a hut or cabin with walls and a floor or a moveable structure with fabric coverings such as a dome or a yurt.

19. "Sanitizing solution" means a pesticide used to kill bacteria and other microorganisms that may be present on surfaces used to prepare, serve, transport, and store food.

20. "Single-service articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one-time, one-individual use after which they are intended for disposal.

21. "Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded, such as wax paper, butcher paper, plastic wrap, aluminum containers, jars, plastic tubs, ketchup bottles, and number ten cans, which do not meet the standards under chapter 33-33-04.1.

22. "Time and temperature control for safety food" means a food that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation.

23. "Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware, tableware, and ice buckets, which are multiuse, single-service, or single-use; gloves used in contact with food; and temperature-sensing probes of food temperature measuring devices.

24. "Warewashing" means the cleaning and sanitizing of utensils and food-contact surfaces of equipment.

History: Effective October 1, 1998; amended effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC 23-09-02

33-39-01-01.1. General requirements for lodging establishments.

A lodging establishment shall:

1. Post the current license in a location of the lodging establishment which is conspicuous to the public.

2. Ensure no room or any portion of the lodging establishment is used unless the room or portion of the lodging establishment is safe and sanitary.

3. Ensure the safe operation and maintenance of the lodging establishment including:

   a. All floors, walls, and ceilings of the general premises must be maintained clean and in good repair;

   b. Repairs, construction, renovations, and maintenance must be conducted in a manner that provides safeguards as required by applicable state and local building and fire codes for guests and the public;

   c. Handrails and guardrails must be firmly fastened and maintained clean and in good repair inside and outside the establishment;

   d. All guest rooms and other areas used by guests or the public in which lighting, either natural or artificial, is essential to efficient business operations, must be well lit; and

   e. Carpeting in toilet rooms, bathing facilities, and kitchens is prohibited.

4. Except as otherwise provided in this chapter, ensure the water supply system:

   a. Is constructed, maintained, and operated in accordance with applicable law;

   b. Provides only potable water obtained from an approved source; and

   c. Provides sufficient potable water under pressure to meet the needs of the entire lodging establishment.

5. Except as otherwise provided in this chapter, ensure the plumbing system:

   a. Is installed and maintained in accordance with all applicable state and local plumbing codes, and in the absence of local plumbing codes, all plumbing must be installed and maintained by a licensed plumber;

   b. Provides potable water under pressure at all times at each plumbing fixture designed to provide water; and

   c. Provides hot water capacity sufficient to meet the demands of the entire lodging establishment at each plumbing fixture designed to use hot water.

6. Except as otherwise provided in this chapter, ensure the sewage system disposes of all wastewater through an approved method, including one of the following:

   a. A city or public sewage system; or

   b. A private sewage disposal system that is constructed, maintained, and operated in accordance with the applicable state and local codes and regulatory requirements.

7. Ensure the electrical system is:

   a. Installed and maintained in accordance with all applicable state and local electrical codes and in the absence of local electrical codes, the electrical wiring must be installed and maintained by a licensed electrician;

   b. Adequate to maintain all premises lighting; and

   c. Monitored to prohibit the use of light bulbs that exceed the wattage rating of the corresponding light fixture and empty light sockets.

8. Ensure adequate heating and ventilation is installed and maintained in accordance with all applicable state and local requirements and according to the manufacturer's specifications, including:

   a. Bathrooms, toilet rooms, and laundry rooms must be provided with either natural ventilation or mechanical ventilation connected directly to the outside;

   b. All gas water heaters, gas furnaces, and other gas heating appliances must be provided with ventilation to the outside;

   c. Each furnace room or room containing a gas water heater or any other fuel-fired appliance must be provided with adequate air for circulation; and

   d. Mechanical clothes dryers must be vented to the outside air. If vented to the outside air, the discharge may not create a health hazard.

History: Effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC 23-09-09, 23-09-10, 23-09-16

33-39-01-02. ~~Employee~~Personnel - Employee health, cleanliness, and ~~disease control~~clothing.

~~A person,~~

1. An individual while ~~affected~~infected with any communicable disease or a carrier of such a disease, or while ~~afflicted with~~having symptoms of boils, infected wounds, or sores~~, or an acute respiratory infection, may not work in~~ must be excluded by the lodging establishment from any area of a lodging establishment in any capacity in which there is a likelihood of ~~the person contaminating equipment with pathogenic organisms or transmitting~~transmission of disease to other ~~individuals. If the owner or operator of the lodging establishment has knowledge of any employee who has contracted a communicable disease or has become a carrier of such a disease, the owner or operator shall immediately notify the department~~ employees or guests in the normal course of employment.

2. Employees shall wear clean outer clothing and maintain personal cleanliness while on duty.

3. Employees shall wash hands thoroughly before starting work and as often as necessary to remove soil and contamination after using the toilet room or any other activity that contaminates the hands. Employees shall use sinks designated for handwashing and are prohibited from using mop sinks and warewashing sinks for handwashing.

History: Effective October 1, 1998; amended effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC ~~23-09-02~~23-09-09

33-39-01-03. Ice and ice dispensing.

A lodging establishment shall meet the following requirements:

1. Ice~~, if provided to guests in a lodging establishment,~~ must be manufactured, stored, transported, and handled in a manner approved by the department.

2. Ice, if provided in a public area to guests or the general public, must be provided through an automatic self-service dispensing machine only. The automatic self-service dispensing machine must be constructed to prevent direct access to bulk ice storage compartments by guests or the general public.

3. Ice machines other than the type specified in subsection 2 which allow direct access to the bulk ice storage compartments must only be accessible to employees, and:

   a. Employees shall wash their hands prior to dispensing in accordance with chapter 33-33-04.1;

   b. Employees shall dispense ice with scoops, tongs, or other ice-dispensing utensils;

   c. Ice-dispensing utensils must be stored on a clean surface or in the ice with the dispensing handle extending out of the ice; and

   d. Scooping of ice with a cup, glass, or similar container is prohibited.

4. Processes and controls must be designed and monitored to ensure all ice and ice-dispensing equipment is clean to sight and touch and maintained in accordance with the manufacturer's specifications such that neither the product nor the product area is subject to contamination.~~Ice must be dispensed with scoops, tongs, or other ice-dispensing utensils or through automatic self-service ice-dispensing equipment.~~

5. Ice-dispensing utensils must be ~~stored on a clean surface or in the ice with the dispensing handle extending out of the ice. Scooping of ice with a cup, glass, or similar container is prohibited. Ice storage bins must be drained through an air gap. When existing ice storage bins in areas accessible to the public are replaced, automatic self-service ice-dispensing equipment must be used~~cleaned and sanitized in accordance with section 33-39-01-05 and a minimum of once every twenty-four hours or any time contamination may have occurred.

6. Ice machines used on the premises must be cleaned and sanitized in accordance with the manufacturer's specifications at the frequency recommended by the manufacturer.

History: Effective October 1, 1998; amended effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC ~~23-09-02~~23-09-09

33-39-01-04. Guest ~~room toilet and bathing facilities~~rooms.

~~Each~~

1. A lodging establishment ~~must~~shall provide toilet, ~~lavatory~~sink, ~~and~~ bathing or shower facilities~~. In lodging establishments providing toilet, lavatory, and bathing facilities shared by more than one guest room, the facilities must be provided in the ratio of one restroom for each ten guests, must be provided separately for each sex, and must be available on each floor. To determine the number of guests, a single-bed unit is designed for two people, and a double-bed unit is designed for four people.~~, and plumbing fixtures in accordance with all state and local building and plumbing codes, including:

   a. All ~~facilities~~plumbing fixtures must be provided with hot and cold running water under pressure ~~to each lavatory, shower, bathtub, and shower and bathtub combination~~ at a maximum temperature of one hundred twenty degrees Fahrenheit [48.9 degrees Celsius] at the tap.

   b. Bathing or shower facilities must have a nonslip floor surface~~, such as a manufactured nonslip bathtub or shower unit, a rubberized throw mat, or adhesive-backed nonslip strips. All toilets, lavatories~~: and

   c. Toilets, sinks, ~~and~~ bathing and shower facilities, and plumbing fixtures must be kept clean, sanitary, and in good repair when the guest room is in use and between ~~stays of different guests~~each guest.

2. A lodging establishment's guest room must have walls, floors, ceilings, doors, windows, and all furnishings constructed of materials intended for its utilized purpose, maintained in good repair, and cleaned, painted, or replaced as necessary with regard to the health and safety of each guest.

3. The use of portable electrical or open-flame cooking devices in guest rooms is prohibited.

4. A lodging establishment's guest room must be equipped with bolts or locks in accordance with North Dakota Century Code chapter 23-09-08:

   a. At least one secondary lock, such as a deadbolt lock, thumb bolt, chain lock, or similar device, must be provided in addition to the primary lock, and must be installed in accordance with the manufacturer's specifications;

   b. Each key, entry code, or key card furnished to each guest may not unlock the door to any other guest room;

c. Connecting guest rooms must have two doors in the connecting doorway. Each door must be equipped with a deadbolt lock on only the guest's side of the door; and

d. All locks must be in good repair and operational.

5. A guest room that has any visible mold-like substance may not be used until the source is remediated and cleanup is completed.

6. A lodging establishment that allows pets into any guest room conspicuously shall provide notice to guests that the establishment is "pet friendly".

History: Effective October 1, 1998; amended effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC ~~23-09-02~~23-09-08, 23-09-09

33-39-01-05. Utensil ~~washing~~and equipment warewashing.

~~Utensil washing~~

1. A lodging establishment shall meet the following requirements:

a. All utensil and equipment warewashing must be in compliance with chapter ~~33-33-04.~~33-33-04.1, except as provided under subsection 2;

b. Sanitizing solutions must comply with ~~21 CFR section 178.1010.~~chapter 33-33-04.1;

c. After warewashing, all utensils and equipment must be permitted to drain and air dry and must be handled in a manner that prevents contamination;

d. After ~~cleaning~~drying and until use, all contact surfaces of equipment and utensils must be wrapped, sealed, or stored in a manner that protects them from contamination; and

e. All utensils and equipment intended for repeat use must be made of safe, durable, and nonabsorbent material and must be kept in good repair, and no cracked or chipped utensils or equipment may not be provided for use by guests or employees.

2. A lodging establishment may provide utensils and equipment in a guest room if the following notice conspicuously is posted within the guest room:

"Notice to Guests: Utensils and equipment have been provided in this room for guest convenience. These items have been cleaned within this room using ordinary household dishwashing facilities and agents. They have not been sanitized according to federal and state standards for public food service establishments."

History: Effective October 1, 1998; amended effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC ~~23-09-02~~23-09-09

33-39-01-06. Single-service ~~items~~and single-use articles.

1. Lodging establishments which do not have facilities for ~~cleaning and sanitizing~~warewashing utensils and equipment that meet the requirements in chapter ~~33-33-04 shall~~33-33-04.1 may only use single-service or single-use articles~~.~~ and shall meet the following requirements:

a. All single-service and single-use articles must be constructed of safe, durable, and nonabsorbent materials; and

b. All single-service or single-use articles must be stored, handled, and dispensed in a sanitary manner and may be used only once.

2. The use of common drinking containers in public places is prohibited~~. Single-service articles must be made from clean, sanitary, and safe materials~~.

History: Effective October 1, 1998; amended effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC ~~23-09-02~~23-09-09

33-39-01-07. ~~Bedding~~Beds and linen.

1. Lodging establishments ~~that provide bedding and linen must furnish~~shall provide linens for each guest ~~with clean sheets and pillowcases~~and the linens must be sufficient in quantity and appropriately sized for the bed, bunk, or cot to be occupied by the guest~~. Sheets must be of sufficient width and length to cover the mattress completely~~, or each guest must be informed prior to their stay that linens are not provided.

2. Lodging establishments shall ensure:

a. All ~~bath, linen, sheets, and pillowcases~~linens used by one guest ~~must be~~are washed and mechanically dried before being furnished to another guest~~.~~;

b. All ~~bedding, including mattresses, mattress pads, quilts, blankets, pillows, sheets, and spreads, and all bath linen must be~~linens and furnishings are kept clean, in good repair, ~~and~~ stored in a sanitary manner~~.~~, and repaired or replaced as necessary;

c. Soiled linens~~, uniforms, and other garments must be~~ and furnishings are kept separate from clean linens to prevent cross-contamination~~.~~;and

d. All clean linens ~~must be~~are stored on smooth, nonabsorbent, cleanable surfaces located a minimum of six inches [152.4 millimeters] above the floor.

History: Effective October 1, 1998; amended effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC ~~23-09-02~~23-09-09

33-39-01-08. Housekeeping and laundry facilities.

1. All parts of the lodging establishment and its premises must be kept neat, clean, and free from litter and rubbish. ~~Operations or conditions may not constitute a health hazard.~~

2. Cleaning operations must be conducted by the lodging establishment in a manner that minimizes contamination of facilities. ~~Cleaning equipment, supplies, insecticides, paints, and other toxic or hazardous products may not be stored above or next to linens. All cleaners, sanitizers, and disinfectants must comply with 21 CFR section 178.1010. An ingredient label and "direction for use" label on each chemical being used must be readily available for reference or inspection. All containers used for dispensing these chemicals must be prominently and distinctively labeled for identification of contents.~~

3. A lodging establishment shall ensure guest rooms are cleaned between each guest.

4. Guests may request no housekeeping activities be completed during their stay.

5. All toilet paper and, if provided, prepackaged toiletry items, must be replenished as necessary.

6. All toilets, sinks, bathtubs, and shower facilities must be adequately cleaned and sanitized between each guest.

7. A lodging establishment shall ensure housekeeping and laundry facilities and equipment are clean and maintained in good repair.

8. Each housekeeping cart must be designed, maintained, and operated to protect clean glasses, utensils, dishware, single-service articles, food, coffee, and condiments from dirty linens and other sources of contamination, including dirty glasses and dishware, cleaning and sanitizing agents, and poisonous or toxic materials.

9. The laundry facilities and equipment must be kept clean and free from accumulated lint and dust.

10. All laundry equipment must be functional and in good repair.

11. Clean linens may not be contaminated by dirty linens or other contaminants.

History: Effective October 1, 1998; amended effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC ~~23-09-02~~23-09-09

33-39-01-09. Water recreation facilities.

All water recreation facilities, including swimming pools, spas, and water slides operated by a lodging establishment~~,~~ and used by guests or the general public~~,~~ must be ~~designed~~:

1. Designed, constructed, and maintained to protect the health and safety of its guests~~. A colorimetric test kit is required for the monitoring and adjusting of disinfectant levels and pH in swimming pools, spas, or other water recreational facilities. A daily log of disinfection levels and pH must be maintained by the owner of the facility.~~; and

2. Licensed and inspected by the applicable regulatory authority and in compliance with all state and local requirements. All records of licensure and inspection must be maintained onsite for at least one year and must be made available upon request.

History: Effective October 1, 1998; amended effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC ~~23-09-02~~23-09-09

33-39-01-10. Submission of plans.

1. Whenever a lodging establishment is constructed or extensively remodeled, properly prepared plans and specifications for such construction or remodeling must be submitted to the department for review and approval before construction or remodeling is begun. The plans and specifications must ~~indicate~~:

   a. Indicate the proposed layout, arrangement, and construction materials, paying particular attention to all fire or life safety provisions required by law; and

   b. Include additional documentation as required by the department, which may include:

      (1) Documentation of wastewater system, water system, and local planning and zoning approval from the applicable regulatory authority; and

      (2) Certifications stating all work was completed in accordance with applicable plumbing, electrical, building, and fire codes.

2. The department shall approve the plans and specifications if they meet the requirements of this chapter and North Dakota Century Code chapter 23-09.

History: Effective October 1, 1998; amended effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC ~~23-09-02~~23-09-03, 23-09-06, 23-09-07, 23-09-09, 23-09-11

33-39-01-11. Fire safety.

A lodging establishment shall ensure the requirements of all applicable state and local fire codes are met. Fire and life safety requirements of lodging establishments must include the following:

1. Fire protection systems must be provided, maintained, and inspected as required by applicable state and local building and fire codes and chapter 33-33-05. Written records of maintenance and inspection must be provided to the department as requested;

2. Operable smoke detection and alarm systems must be installed, maintained, and inspected as required by applicable state and local building and fire codes and in accordance with chapter 33-33-05;

3. Fire extinguishers must be provided on each level of the building and within seventy-five feet [22.86 meters] of any point in the building and maintained annually; and

4. Emergency exits must be kept unlocked, unobstructed, and be indicated by operable exit lighting and signs.

History: Effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC 23-09-02.1, 23-09-03, 23-09-06, 23-09-07, 23-09-09

33-39-01-12. Food establishment license requirements at lodging establishments.

1. A lodging establishment that prepares, packages, serves, or otherwise provides food to guests or the general public shall obtain an appropriate food service license in accordance with chapter 33-33-04.1 and North Dakota Century Code section 23-09-16 and shall operate in accordance with all applicable laws and rules.

2. Lodging establishments that provide only non-time and temperature control for safety food that is commercially prepared, individually portioned, prepackaged, or whole uncut fresh produce are not required to apply for a food service license.

History: Effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC 23-09-01, 23-09-16

33-39-01-13. Employee and public toilets and toilet rooms.

Employee and public toilet rooms in lodging establishments must be:

1. In the number and capacity required by all state and local building and plumbing codes;

2. Equipped with adequate toilets and sinks in accordance with all state and local building and plumbing codes;

3. Equipped with self-closing doors;

4. Maintained clean and in good repair; and

5. If used by employees, accessible at all times and equipped with handwashing signs conspicuously posted in each toilet room notifying employees to wash their hands before returning to work.

History: Effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC 23-09-09

33-39-01-14. Poisonous or toxic materials.

1. A lodging establishment shall allow on the premises poisonous or toxic materials if they are used in the operation and maintenance of the lodging establishment, including:

   a. Detergents, sanitizers, cleaning or drying agents, caustics, acids, polishes, and similar chemicals;

   b. Insecticides and rodenticides;

   c. Building maintenance materials, including paint, varnish, stain, glue, and caulking; and

   d. Landscaping materials, including herbicides, lubricants, and fuel for equipment.

2. A lodging establishment shall meet the following requirements for the storage of poisonous or toxic materials:

   a. Poisonous or toxic materials must be stored on separate shelves or in separate cabinets inaccessible to guests except for provided detergents and sanitizers for guest use, and these shelves and cabinets may be used for no other purpose; and

   b. Poisonous or toxic materials may not be stored above food, ice or ice-making equipment, linens, towels, utensils, single-service articles, furnishings, or guest toiletry items.

3. A lodging establishment shall ensure the use of poisonous or toxic materials meets the following requirements:

   a. Each bulk or original container of a poisonous or toxic material must bear a legible manufacturer's label and must be readily available for reference or inspection;

   b. All poisonous or toxic materials taken from a bulk or original container and put into another container must be clearly identified with the common name of the material and the original manufacturer's label must be maintained onsite until that product has been discarded or completely used; and

   c. Each poisonous or toxic material must be used according to the manufacturer's directions and additional safety requirements regarding the safe use of poisonous or toxic materials may be established by the applicable regulatory authority upon later discovery of the unsafe use of these materials.

History: Effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC 23-09-09

33-39-01-15. Pests.

1. Every area of the lodging establishment premises must be free of any harborage conditions that may lead to or encourage infestations of rodents, insects, or any other pests.

2. If rodents, insects, any other pests, or evidence of pests are present, the lodging establishment shall use approved pest control measures, including cleaning and maintenance or replacement of seals for outer openings, tight fitting screens, or other means necessary for their elimination.

3. A lodging establishment shall consult a professional pest control management provider or certified commercial pesticide applicator to exterminate rodents, insects, or any other pests if determined necessary by the department.

4. The use of any pesticide classified by the environmental protection agency as restricted-use must be applied by a certified commercial pesticide applicator or an individual under the direct supervision of a certified commercial pesticide applicator and in accordance with all applicable statutes and regulations.

History: Effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC 23-09-09

33-39-01-16. Exterior premises and grounds maintenance.

1. A lodging establishment shall ensure the exterior areas and surfaces, including alleys, driveways, walkways, guardrails, handrails, balconies, landings, porches, decks, stairways, ramps, and parking areas are:

   a. Maintained clean, well-drained, free of debris, and in good repair;

   b. Adequately illuminated for guest safety; and

   c. Free from safety hazards such as slippery surfaces or inappropriate storage of items in stairways, walkways, landings, and ramps.

2. A lodging establishment shall ensure garbage and refuse are:

   a. Kept in leakproof, nonabsorbent receptacles that are:

      (1) Kept covered with tight-fitting lids if filled, stored, or not in continuous use to minimize accessibility by rodents, insects, and other pests;

      (2) Of sufficient number and capacity to prevent overflow accumulation; and

      (3) Kept clean, in good repair, and replaced as necessary;

   b. Removed from the premises at a frequency that minimizes the development of objectionable odors and other conditions that attract or harbor rodents, insects, and other pests; and

   c. Disposed of in a sanitary manner in compliance with state and local requirements.

History: Effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC 23-09-09

33-39-01-17. Imminent health hazard.

A lodging establishment shall discontinue operations of the affected portions of the lodging establishment immediately upon discovery that an imminent health hazard exists. A proprietor shall notify the department by phone or email within twenty-four hours of identifying an imminent health hazard.

History: Effective April 1, 2026.
General Authority: NDCC 23-09-02
Law Implemented: NDCC 23-09-09

TITLE 33.1

DEPARTMENT OF ENVIRONMENTAL QUALITY

APRIL 2026

CHAPTER 33.1-12-01

33.1-12-01-02. Tank registration.

Tank owners and operators shall register their tanks with the fund on an annual basis~~,~~ and the registration year runs ~~August~~February first through ~~July~~January thirty-first. The department shall send a letter, electronically or by mail, to all known tank owners and operators ~~a registration letter and billing notice. The letter must explain~~explaining the function of the fund and the requirement to have all tanks owned or operated registered and all fees paid before a petroleum release incident in order to be eligible for reimbursement.

History: Effective October 1, 2022; amended effective April 1, 2026.
General Authority: NDCC 23.1-12-05, 28-32-02
Law Implemented: NDCC 23.1-12-17

33.1-12-01-03. Registration fee.

1. ~~For each aboveground or underground tank owned or operated by the tank owner or operator, the~~The owner or operator shall pay a total annual registration fee for each aboveground and underground tank. The total annual registration fee is due and payable on ~~August~~February first. The total annual registration fee consists of both the annual base registration fee and the classification system matrix fee, as described in subsection 5.

2. ~~No~~A reregistration or fee modification ~~will~~may not be made during any registration year ~~when~~if an owner or operator removes a tank or replaces an underground tank with an aboveground tank within a registration year. The renewal billing ~~will~~must reflect the tank status change.

3. For each aboveground or underground tank, the annual base registration fee is ~~one hundred forty~~one hundred fifty dollars. ~~If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual base registration fee of one hundred forty dollars will increase to one hundred fifty dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is seven million dollars or more and the annual base registration fee has been increased to one hundred fifty dollars, the annual base registration fee will be reduced to one hundred forty dollars.~~ If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds ~~nine~~ten million dollars, the annual base registration fee ~~will~~must be reduced to one hundred dollars. The annual base registration fee ~~will~~must continue at one hundred dollars until the fund balance does not exceed ~~nine~~ten million dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance

is less than ~~nine~~ten million dollars, the annual base registration fee ~~will~~must return to ~~one hundred forty~~one hundred fifty dollars.

4. For each aboveground or underground tank, the classification system matrix fee must be calculated based on the degree of hazard associated with the tank classification risk using the multiplier factors in Table 1 or Table 2.

5. The total annual fee is computed by the following equations:

   X = (Y)(a) - applies only to underground storage tanks; or

   X = (Y)(b) - applies only to aboveground storage tanks.

   Where:

   X = total annual fee applied to each tank

   Y = annual base registration fee for each tank

   a = rate multiplier assigned to the registered site with the type of underground storage tank(s) on location from Table 1

   b = rate multiplier assigned to the registered site with the type of aboveground storage tank(s) on location from Table 2

   Table 1

   ~~These~~The following rate multipliers apply to underground storage tank(s) only:

Underground Storage Tank Type at Registered Tank Location	Rate Multiplier
1 = Double wall piping and tank(s) - Underground 2009 and new installation	1.00
2 = Double wall piping and tank(s) - Underground 2008 and older installation	1.25
3 = Single wall underground tank(s) with double wall piping	1.50
4 = Double wall underground tank(s) with single wall piping	1.75
5 = Single wall underground tank(s) with single wall piping	2.00

   Table 2

   ~~These~~The following rate multipliers apply to aboveground storage tank(s) only:

Aboveground Storage Tank Type at Registered Tank Location	Rate Multiplier
1 = Aboveground tank(s) feeding aboveground piping	1.00
2 = Aboveground tank(s) feeding underground piping with *leak detection	1.50
3 = Aboveground tank(s) feeding underground piping without *leak detection	2.00

   *Note: See definition in subsection 4 ~~in~~of section 33.1-12-01-01.

6. Additional fees may apply, as specified in North Dakota Century Code section 23.1-12-17.

History: Effective October 1, 2022; amended effective April 1, 2026.
General Authority: NDCC 23.1-12-05, 28-32-02

Law Implemented: NDCC 23.1-12-17

ARTICLE 33.1-13
~~[RESERVED]~~ABOVEGROUND STORAGE TANKS

Chapter
33.1-13-01 Technical Standards and Corrective Action Requirements for Owners and Operators of Aboveground Storage Tanks

CHAPTER 33.1-13-01
TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF ABOVEGROUND STORAGE TANKS

Section
33.1-13-01-01 Definitions
33.1-13-01-02 General Requirements
33.1-13-01-03 General Release Detection Requirements for Aboveground Storage Tank Systems
33.1-13-01-04 Release Detection Requirements for Existing Aboveground Storage Tanks
33.1-13-01-05 Release Detection Requirements for Existing Aboveground Storage Tank Piping
33.1-13-01-06 Reporting Requirements
33.1-13-01-07 Recordkeeping
33.1-13-01-08 Closure Requirements
33.1-13-01-09 Site Assessment
33.1-13-01-10 Reporting of a Release or Suspected Release
33.1-13-01-11 Response
33.1-13-01-12 Release Investigation and Confirmation
33.1-13-01-13 Initial Site Characterization
33.1-13-01-14 Corrective Action Plan

33.1-13-01-01. Definitions.

For purposes of this chapter in addition to the definitions set forth in chapter 33.1-13-01 and North Dakota Century Code chapter 23.1-12, the following definitions apply:

1. "Aboveground storage tank (AST) system" means an aboveground storage tank or combination of tanks at one location, including any connected piping and containment system.

2. "Ancillary equipment" means any devices including such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of liquid fuel to and from an aboveground storage tank.

3. "Change in service" means continued use of an aboveground storage tank system to store a substance other than liquid fuel.

4. "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the aboveground storage tank system under conditions likely to be encountered.

5. "Connected piping" means all piping including valves, elbows, joints, flanges, and flexible connectors attached to a aboveground storage tank system through which liquid fuel flows. For purposes of determining how much piping is connected to any individual aboveground storage tank system, the piping that joins two aboveground storage tank systems must be allocated equally between them.

6. "Containment sump" means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the containment area. Containment sumps may be single walled or

secondarily contained underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

7. "Empty" means an aboveground storage tank system that contains no greater than one inch [2.54 centimeters] of residue, or three-tenths of one percent by weight of the total capacity of the aboveground storage tank system remains in the system.

8. "Excavation zone" means an area where excavation of liquid fuel contaminated soil has been completed.

9. "Existing aboveground storage tank system" means an aboveground storage tank system for which installation commenced on or before April 1, 2026. Installation has commenced if:

   a. A continuous onsite physical construction or installation program has commenced; or

   b. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for installation of the aboveground storage tank system.

10. "Free product" refers to liquid fuel that is present as a nonaqueous phase liquid (for example, liquid not dissolved in water).

11. "International Fire Code" refers to the national fire prevention association codes of practice NFPA 30 - Flammable and Combustible Liquids Code and NFPA 30A - Code for Motor Fuel Dispensing Facilities and Repair Garages.

12. "Interstitial monitoring" means any method of detecting a release of liquid fuel into, or verifying the integrity of, the space between the inner and outer walls of:

   a. A double-walled or double-bottomed tank; or

   b. Double-walled piping.

13. "Liquid fuel" includes petroleum, as defined in North Dakota Century Code section 23.1-12-02, and alternative fuel, diesel fuel, gasoline, heating oil, kerosene, lubricating oil, and tractor fuel as defined in North Dakota Century Code section 23.1-13-01.

14. "Local fire code" means the adopted fire code of the political subdivision where an aboveground storage tank system is located.

15. "Maintenance" means the normal operational upkeep to prevent an aboveground storage tank system and ancillary equipment from releasing liquid fuel.

16. "New aboveground storage tank system" means an aboveground storage tank system that will be used to contain an accumulation of liquid fuel and for which installation commences after April 1, 2026.

17. "Normal head pressure" means the pressure exerted by a column of liquid in a system under standard operating conditions.

18. "Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under this chapter.

19. "Operator" means any person in control of, or having responsibility for, the daily operation of an aboveground storage tank system.

20. "Overfill release" is a spill that occurs when a tank is filled beyond its capacity, resulting in a discharge of the liquid fuel to the environment.

21. "Owner" means any person who owns an aboveground storage tank system, unless that aboveground storage tank system has been permanently closed or gone through a change in service.

22. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. The term includes a consortium, a joint venture, a commercial entity, and the United States government.

23. "Petroleum tank release compensation fund" means the fund established by North Dakota Century Code chapter 23.1-12.

24. "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of steel or nonmetallic materials that routinely contain, are compatible with and convey liquid fuel from an aboveground storage tank system to a dispenser, or other end-use equipment. The term includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey liquid fuel from the aboveground storage tank system to a dispenser. The term does not include vent, vapor recovery, or fill lines.

25. "Release" means any release of a liquid fuel product to the surface, surface water, subsurface of the land, including releases from the aboveground and the underground portions of an aboveground storage tank system and aboveground or underground releases associated with overfills and transfer operations as the liquid fuel product moves to or from an aboveground storage tank system.

26. "Release detection" means determining whether a release of liquid fuel has occurred from the aboveground storage tank system into the environment or into the interstitial space between the aboveground storage tank system and its secondary barrier or secondary containment around it.

27. "Repair" means to restore to proper operating condition a tank pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment, or other underground storage tank system component that has caused a release of product from the underground storage tank system or has failed to function properly.

28. "Secondary containment" means a liquid-tight, compatible barrier or system of barriers that is designed, constructed, and maintained to prevent a release of liquid fuel from an aboveground storage tank system or connected piping from reaching the environment, and that directs any release to a location where it can be detected and managed. For tanks, secondary containment includes double-walled or double-bottomed construction or an external containment system capable of holding and retaining a release. For underground piping, secondary containment means an inner and outer barrier with an interstitial space between them that is capable of being monitored for a release and that directs a release to a containment sump or monitoring point.

29. "Site" means the current or anticipated location of an aboveground storage tank system.

30. "State fire code" means chapter 45-18-01.

31. "Temporary closure" means an aboveground storage tank system is empty and not being used to store or dispense liquid fuel products.

32. "Upgrade" means the addition or retrofit of some part of an aboveground storage tank system such as cathodic protection, lining, or spill and overfill controls to improve the ability of an aboveground storage tank system to prevent the release of liquid fuel.

History: Effective April 1, 2026.

General Authority: NDCC 23.1-04.1-02
Law Implemented: NDCC 23.1-04.1-02, 23.1-04.1-03

33.1-13-01-02. General requirements.

1. This chapter applies to all owners and operators of an aboveground storage tank system as defined in subsection 1 of North Dakota Century Code section 23.1-04.1-01.

2. Compliance with this chapter does not relieve an owner or operator of the requirements of any other state and federal laws and rules applicable to an aboveground storage tank system. All aboveground storage tanks must be in compliance with spill prevention, control, and countermeasure (SPCC) plan regulations.

3. A new or upgraded aboveground storage tank system, including tanks, piping, secondary containment, and ancillary equipment must:

   a. Be constructed, installed, maintained, and tested in accordance with state fire code or local fire code, whichever is more stringent;

   b. Be equipped with secondary containment;

   c. Be double walled, protected from corrosion, and able to continuously monitor for releases through the inner pipe wall in accordance with section 33.1-13-01-10 for piping that routinely contains liquid fuel and is in contact with an electrolyte or the ground. The interstitial space between the inner and outer pipe walls must drain to a containment sump; and

   d. Be cathodically protected if piping is metal, coated or otherwise, and is in contact with an electrode or the ground. Verification testing of the cathodic protection must be conducted every three years.

4. An owner or operator shall provide a method, or combination of methods, of release detection that:

   a. Can detect a release from any portion of the tank and the connected piping that routinely contains liquid fuel; and

   b. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.

5. If an existing aboveground storage tank system is not compliant with or was not installed in compliance with the rules of this chapter, it must be made compliant, upgraded, or closed following the requirements of section 33.1-13-01-08.

6. Compliance with subdivision d of subsection 2 of section 33.1-13-01-05 must be implemented before January 1, 2030. Under special circumstances, the department may specify compliance schedules necessary for owners and operators to come into compliance with this chapter.

7. An owner or operator shall perform and document system inspections at least every thirty days and make inspection reports available at the department's request. Regarding the inspections:

   a. Tanks and aboveground piping must be visually inspected for evidence of leakage.

   b. A secondary containment inspection must include:

(1) Checking for the presence of leaked or overfilled liquid fuel;

(2) Visual inspection of the secondary containment area's integrity and ability to contain a leak or failure; and

(3) Verifying the containment area is free of vegetation, debris, water, and obstructions.

c. All secondary containment sumps must be visually inspected for damage and for the presence of liquid fuel products.

8. An owner or operator shall cooperate fully with:

a. Inspections, monitoring, and testing conducted by the department or the department's designee; and

b. Requests by the department to submit documents, conduct testing, and conduct monitoring.

9. An owner or operator must demonstrate financial responsibility according to North Dakota Century Code chapter 23.1-12.

History: Effective April 1, 2026.
General Authority: NDCC 23.1-04.1-02
Law Implemented: NDCC 23.1-04.1-02, 23.1-04.1-03

33.1-13-01-03. General release detection requirements for aboveground storage tank systems.

An owner or operator of a new or upgraded aboveground storage tank that is secondarily contained shall provide release detection for tanks by interstitial monitoring or visual inspection as follows:

1. For double-walled or double-bottomed aboveground storage tank systems:

a. The inspection or testing method must detect a release through the inner wall in any portion of the tank that routinely contains product.

b. The interstitial space between the tank walls must be inspected and documented at least monthly or have a continuous sensor or gauge installed.

c. If using a continuous sensor or gauge, it must be tested at least annually for functionality.

2. For aboveground storage tank systems with a secondary containment barrier:

a. The inspection or testing method used must detect a release between the aboveground storage tank system and the secondary containment barrier.

b. The secondary containment barrier around and beneath the aboveground storage tank system must meet the requirements of section 33.1-13-01-02.

c. The secondary containment barrier must direct a release to a monitoring point that allows for detection.

d. The monitoring point must be inspected and documented at least monthly.

e. Precipitation must not be allowed to accumulate to render the monitoring point inoperative.

History: Effective April 1, 2026.
General Authority: NDCC 23.1-04.1-02

Law Implemented: NDCC 23.1-04.1-02, 23.1-04.1-03

33.1-13-01-04. Release detection requirements for existing aboveground storage tanks.

An owner or operator of an existing aboveground storage tank system or tank that does not meet the secondary containment requirements for new tank systems in subsection 3 of section 33.1-13-01-02, shall provide release detection for tanks in accordance with at least one of the following methods:

1. a. Statistical inventory reconciliation. Statistical inventory reconciliation must be conducted on a monthly basis by a statistical inventory reconciliation vendor to detect a release rate no greater than two-tenths gallon [.76 liter] per hour; or

   b. Inventory control. If statistical inventory reconciliation is not able to be performed by a statistical inventory reconciliation vendor due to configuration of the aboveground storage tank system, the department may approve inventory control. Liquid fuel inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least one percent of flowthrough plus one hundred thirty gallons [492.10 liters] in the following manner:

      (1) Inventory volume measurements for liquid fuel inputs, withdrawals, and the amount remaining in the tank must be recorded each operating day;

      (2) The equipment used must be capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch [3.18 millimeters];

      (3) The liquid fuel inputs must be reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery; and

      (4) Liquid fuel dispensing from an aboveground storage tank system must be metered and recorded within the local standards for meter calibration or an accuracy of six cubic inches [98.32 milliliters] for every five gallons [18.93 liters] of product withdrawn.

2. Manual tank gauging method. Only tanks of two thousand gallons [7570.82 liters] or less nominal capacity may use the manual tank gauging method as the sole method of release detection. Manual tank gauging must be performed at least every thirty days and meet the following requirements:

   a. Tank liquid level measurements must be taken at the beginning and end of a period of at least thirty-six hours during which no liquid is added to, or removed from, the tank;

   b. Level measurements must be based on an average of two consecutive stick readings at both the beginning and ending of the period;

   c. The equipment used must be capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch [3.18 millimeters]; or

   d. A suspected leak is subject to the requirements of sections 33.1-13-01-10 through 33.1-13-01-12 if the variation between beginning and ending measurements exceeds the weekly or monthly standards as outlined below:

      (1) Nominal standard tank capacity of five hundred gallons [1892.71 liters] or less.

         (a) Weekly standard (one test) - variance of ten gallons [37.85 liters].

         (b) Monthly standard (average of four tests) - variance of five gallons [18.93 liters].

(2) Nominal standard tank capacity of five hundred fifty-one to one thousand gallons [2085.76 to 3785.41 liters].

(a) Weekly Standard (one test) - variance of thirteen gallons [49.21 liters].

(b) Monthly Standard (average of four tests) - variance of seven gallons [26.50 liters].

3. Automatic tank gauging method. Equipment for automatic tank gauging must meet the following requirements:

a. The automatic product level monitor test must be able to detect a two-tenths gallon [.76 liter] per hour leak rate from any portion of the tank that routinely contains liquid fuel; and

b. Automatic tank gauging must perform a leak test at least once every thirty days with the system operating with continuous in-tank leak detection on an uninterrupted basis or within a process that allows the system to gather incremental measurements to determine the leak status of the tank.

4. Other methods. Use of any other release detection method, or combination of methods, may be approved by the department if:

a. It can detect a two-tenths gallon [.76 liter] per hour leak rate or a release of one hundred fifty gallons [567.81 liters] within a month with a probability of detection of ninety-five hundredths and a probability of false alarm of five one-hundredths;

b. Owner or operator can demonstrate to the department that the method can detect a release as effectively as any of the methods in subsection 1 or 2. In comparing methods, the department shall consider the size of release the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner or operator shall comply with any conditions imposed by the department on its use to ensure the protection of human health and the environment; or

c. Appropriate tank gauging technology is not available to meet the performance standards required to use one of the methods outlined in subsections 1, 2, and 3.

History: Effective April 1, 2026.
General Authority: NDCC 23.1-04.1-02
Law Implemented: NDCC 23.1-04.1-02, 23.1-04.1-03

33.1-13-01-05. Release detection requirements for aboveground storage tank piping.

An owner or operator shall provide the following release detection for piping:

1. Aboveground piping. An owner or operator shall:

a. Visually inspect and document leaks and seepage at least monthly; and

b. Repair any areas of the piping, including pipe joints, that show visible seepage.

2. Underground piping. Release detection for new underground piping of an aboveground storage tank system must meet the following requirements:

a. Any new piping system must be secondarily contained.

b. The interstitial space between the inner and outer pipe walls must drain to a containment sump.

c. Underground piping must be monitored for leaks through one of the following:

(1) A piping system that is pressurized using a pump or is under any other type of pressure more than normal head pressure of the aboveground storage tank, must be equipped with:

(a) An electronic line leak detector and a positive shutoff normally closed solenoid valve. A method which alerts the operator to the presence of a leak by shutting off the flow of liquid fuel through piping and triggering an audible or visual alarm. May be used only if they continuously detect leaks of three gallons [11.36 liters] per hour at ten pounds per square inch [68.95 kilopascals] line pressure within one hour; and

(b) Secondary containment monitored for releases by one of the following methods:

[1] Continuous interstitial monitoring between the inner and outer barriers of underground piping may be used if the system is designed, constructed, and installed to detect a leak from any portion of the piping that routinely contains liquid fuel. All transition, dispenser, and other sumps must be equipped with liquid sensing float sensors that trigger an audible or visual alarm and shut-off the flow of liquid fuel through all buried piping and the inner wall in any portion of the piping that routinely contains liquid fuel; or

[2] The department may approve another method of release detection if the owner and operator can demonstrate that the method, or combination of methods, can detect a two-tenths gallon [.76 liter] per hour leak rate or a release of one hundred fifty gallons [567.81 liters] within a month with a probability of detection of ninety-five percent and a probability of false alarm of five percent. In comparing methods, the department shall consider the size of release the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner or operator shall comply with any department imposed conditions imposed by the department on its use to ensure the protection of human health and the environment.

(2) A piping system with no more than normal head pressure from the aboveground storage tank system must be continuously monitored for releases by interstitial monitoring. Interstitial monitoring between the underground piping and a secondary containment barrier immediately around it may be used, if the system is designed, constructed, and installed to detect a leak from any portion of the piping that routinely contains product, and the sampling or testing method can detect a leak through the inner wall in any portion of the piping that routinely contains product. The piping system must have a positive shutoff normally closed solenoid valve installed before any buried piping. All transition, dispenser, and other sumps must be equipped with liquid sensing float sensors that trigger an audible or visual alarm and shut off the flow of liquid fuel through all buried piping.

d. Release detection for existing underground piping must monitor for leaks through at least one of the following:

(1) A piping system that is pressurized using a pump or any other type of underground piping system that is under more than normal head pressure of the aboveground storage tank system, which must meet one of the following requirements:

(a) The piping system is secondarily contained and meets the release detection requirements for new double-walled piping in subsection 2; or

(b) The piping system is single walled and meets the release detection requirements for electronic line leak detectors in subparagraph a of paragraph 1 of subdivision c, in compliance with subsection 6 of section 33.1-13-01-02 and passes a yearly line tightness test that meets the release detection requirements of subparagraph b of paragraph 1 of subdivision c. The initial line test shall be performed within one year of the effective date of this chapter. A positive shutoff normally closed solenoid valve must be installed before any buried piping.

(2) A piping system with no more than normal head pressure from the aboveground storage tank system, which must be continuously monitored for releases by interstitial monitoring. Interstitial monitoring between the underground piping and a secondary containment barrier immediately around it may be used, if the system is designed, constructed, and installed to detect a leak from any portion of the piping that routinely contains product, and the sampling or testing method can detect a leak through the inner wall in any portion of the piping that routinely contains product. The piping system must have a positive shutoff normally closed solenoid valve installed before any buried piping. All transition, dispenser, and other sumps must be equipped with liquid sensing float sensors that trigger an audible or visual alarm and shut off the flow of liquid fuel through all buried piping. Existing single-walled suction type systems must be converted to a pressurized system to comply with the requirements outlined in paragraph 1.

(3) Applicable tank methods. Any of the methods in this section may be used for release detection if it is designed to detect a release from any portion of the underground piping that routinely contains liquid fuel.

3. Annual testing. An owner or operator shall conduct an annual test of the electronic line leak detection systems and, when installed, sump alarm systems to test for proper operation, in accordance with one of the following:

a. Manufacturer's instructions;

b. A code of practice developed by a nationally recognized association or independent testing laboratory; or

c. Requirements determined by the department to be no less protective of human health and the environment than subsection 1 or 2.

4. Annual line tightness tests. All underground piping systems from the aboveground storage tank system must conduct an annual test of piping that can detect a one-tenth gallon [.38 liter] per hour leak rate at one and one-half times the operating pressure. The initial line test must be performed before October 1, 2026.

5. A normally closed solenoid valve, which must be installed at the connection between the tank and piping to eliminate continuous head pressure on the piping, by April 1, 2027, if not already installed.

History: Effective April 1, 2026.
General Authority: NDCC 23.1-04.1-02
Law Implemented: NDCC 23.1-04.1-02, 23.1-04.1-03

33.1-13-01-06. Reporting requirements.

1. An owner or operator shall submit notice of an aboveground storage tank system's existence to the department prior to bringing the aboveground storage tank system into use, using the form supplied by the department. Before submitting notice of a new aboveground storage tank system greater than five hundred gallons [1892.71 liters] capacity, an owner or operator shall submit plans to the state fire marshal for review and acceptance and pass an installation inspection by the state fire marshal, in accordance with state fire code or local fire code.

2. Within thirty days of acquisition, a person who assumes ownership of a registered aboveground storage tank system shall submit to the department a notice of the ownership change, using the form supplied by the department.

3. An owner or operator that cannot comply with any method of release detection shall notify the department within sixty days of the noncompliance.

History: Effective April 1, 2026.
General Authority: NDCC 23.1-04.1-02
Law Implemented: NDCC 23.1-04.1-02, 23.1-04.1-03

33.1-13-01-07. Recordkeeping.

1. An owner and operator, and any previous owners and operators, must maintain records demonstrating compliance with all applicable requirements of sections 33.1-13-01-02 and 33.1-13-01-05 relating to those records:

   a. All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer must be maintained for three years from the date of installation;

   b. The results of any sampling, testing, or monitoring must be maintained for at least three years;

   c. Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located onsite must be maintained for at least three years after completion. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for three years from the date of installation;

   d. Records in accordance with section 33.1-13-01-08 that can demonstrate compliance with closure requirements; and

   e. The results of the excavation zone assessment required in section 33.1-13-01-09 must be maintained for at least three years after completion of permanent closure or change in service.

2. Records shall be maintained:

   a. At the aboveground storage tank system location and immediately available for inspection by the department; or

   b. At a readily available alternative site and be provided for inspection to the department upon request.

   If records cannot be retained as described in subdivisions a and b, the records must be provided to the department.

History: Effective April 1, 2026.

General Authority: NDCC 23.1-04.1-02
Law Implemented: NDCC 23.1-04.1-02, 23.1-04.1-03

33.1-13-01-08. Closure requirements.

1. a. If an aboveground storage tank system is in temporary closure, owners and operators shall continue to comply with state fire code or local fire code as required by section 33.1-13-01-02, and if a release is suspected or confirmed, comply with sections 33.1-13-01-10 through 33.1-13-01-12. Release detection is not required if the aboveground storage tank system is empty.

   b. If an aboveground storage tank system is in temporary closure for three months or more, owners and operators must:

      (1) Leave vents open and functioning; and

      (2) Cap and secure all other lines, pumps, manways, and ancillary equipment.

   c. If an aboveground storage tank system is in temporary closure for more than twelve months and does not meet in the requirements of section 33.1-13-01-02, owners and operators must permanently close the aboveground storage tank system at the end of this twelve- month period in accordance with this section unless the department provides an extension of the twelve-month temporary closure period. Owners and operators shall complete a site assessment in accordance with section 33.1-13-01-09 before applying for an extension.

   d. Owners or operators may request in writing an extension of the twelve-month temporary closure period. The request must state the need for an extension and include a complete site assessment in accordance with section 33.1-13-01-09. Extensions may be granted at the department's discretion for a limited period of time.

2. a. At least thirty days before beginning either permanent closure or a change in service under subsection 3, owners and operators shall notify the department of their intent to permanently close or make a change in service, unless it is in response to corrective action or noncompliance with this chapter. The required assessment under section 33.1-13-01-09 must be performed after notifying the department but before completion of the permanent closure or change in service.

   b. Permanent closure of a tank must comply with state or local fire code.

   c. Any existing aboveground storage tank system that cannot apply a method of release detection that complies with the requirements of this chapter must complete the permanent closure procedures in this section and section 33.1-13-01-09.

3. Before a change in service, owners and operators shall empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with section 33.1-13-01-09.

History: Effective April 1, 2026.
General Authority: NDCC 23.1-04.1-02
Law Implemented: NDCC 23.1-04.1-02, 23.1-04.1-03

33.1-13-01-09. Site assessment.

1. Before completion of a permanent closure or a change in service, owners and operators shall measure for the presence of a release where contamination is most likely to be present at the aboveground storage tank site. In selecting sample types and locations and measurement

methods, owners and operators shall consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release.

2. If contaminated soil, contaminated ground water, or free product as a liquid or vapor is discovered under subsection 1, or by any other manner, owners and operators shall begin corrective action in accordance with sections 33.1-13-01-09 through 33.1-13-01-14.

3. If an aboveground storage tank system is permanently closed before April 1, 2026, and the department determines a release from the aboveground storage tank may pose a current or potential threat to human health and the environment, the department may require the owner or operator to assess the excavation zone and close the aboveground storage tank system in accordance with sections 33.1-13-01-08 through 33.1-13-01-14.

History: Effective April 1, 2026.
General Authority: NDCC 23.1-04.1-02
Law Implemented: NDCC 23.1-04.1-02, 23.1-04.1-03

33.1-13-01-10. Reporting of a release or suspected release.

An owner or operator shall report a release or suspected release to the department, by telephone or online spill report form, within twenty-four hours if:

1. Released liquid fuel at the aboveground storage tank site or in the surrounding area, such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water is discovered;

2. Unusual operating conditions are observed by an owner or operator, such as the erratic behavior of product dispensing equipment, the sudden loss of product from the aboveground storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective, but not leaking, and is immediately repaired or replaced;

3. Monitoring results from a release detection method required under section 33.1-13-01-04 indicate a release may have occurred, unless:

   a. The monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result; or

   b. In the case of inventory control, a second month of data does not confirm the initial result.

4. A release detection method operated in accordance with the performance standards in section 33.1-13-01-04 indicates a release may have occurred.

5. Any spill or overfill resulting in a release exceeds twenty-five gallons [94.64 liters] or any volume that causes a sheen on nearby surface water or threatens public health or safety.

History: Effective April 1, 2026.
General Authority: NDCC 23.1-04.1-02
Law Implemented: NDCC 23.1-04.1-02, 23.1-04.1-03

33.1-13-01-11. Response.

If a release from an aboveground storage tank is confirmed under section 33.1-13-01-14 or is identified in any other manner, an owner or operator shall perform the following actions:

1. Take immediate action to prevent any further release of the liquid fuel into the environment, including removing as much of the liquid fuel from the aboveground storage tank system as is necessary to prevent further release to the environment;

2. Identify and mitigate fire, explosion, and vapor hazards posed by vapors or free product that have entered into subsurface structures, such as sewers or basements, and remove any flammable products in a safe and competent manner to prevent fires or explosions.

3. Unless otherwise directed by the department, perform the following abatement measures:

   a. Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If remedies include treatment or disposal of soils, an owner or operator shall comply with applicable state and local requirements;

   b. Measure for the presence of a release where contamination is most likely to be present at the aboveground storage tank site, unless the presence and source of the release have been confirmed in accordance with the site check required by subsection 2 of section 33.1-13-01-12 or the closure site assessment in subsection 1 of section 33.1-13-01-09. In selecting sample types and locations and measurement methods, the owner or operator shall consider the nature of the stored substance, the type of backfill, depth to ground water, and other factors as appropriate for identifying the presence and source of the release; and

   c. Determine the presence of free product, and begin free product removal as soon as practicable in a manner that:

      (1) Minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site; and

      (2) Properly treats, discharges, or disposes of recovery byproducts in compliance with applicable local, state, and federal regulations;

   d. Determine the horizontal and vertical extent of contamination.

History: Effective April 1, 2026.
General Authority: NDCC 23.1-04.1-02
Law Implemented: NDCC 23.1-04.1-02, 23.1-04.1-03

33.1-13-01-12. Release investigation and confirmation.

1. Whenever required by the department, an owner or operator shall determine if an aboveground storage tank system is the source of offsite impacts, including the discovery of liquid fuel, such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters.

2. The department may require an owner or operator to use one of the following methods to investigate a release:

   a. System test. An owner or operator shall conduct tests according to the requirements for release detection or tightness testing sections 33.1-13-01-04 and 33.1-13-01-05.

      (1) The test must determine whether:

         (a) A leak exists in that portion of the tank or piping that routinely contains product; or

(b) A breach of the secondary containment has occurred.

(2) If the system test confirms a leak into the secondary containment or a release to the environment, an owner or operator shall repair, replace, upgrade, or close the aboveground storage tank system, and begin corrective action in accordance with sections 33.1-13-01-11 through 33.1-13-01-14.

(3) If the test results for the aboveground storage tank system, tank, and delivery piping do not indicate that a leak exists and environmental contamination is not the basis for suspecting a release, further investigation is not required.

(4) If the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release an owner or operator shall conduct a site check as described in subdivision b.

b. Site check. An owner or operator shall measure for the presence of a release where contamination is most likely to be present at the aboveground storage tank site. In selecting sample types and locations and measurement methods, an owner or operator shall consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release.

(1) If the test results for the excavation zone or the aboveground storage tank site indicate that a release has occurred, owners and operators must begin corrective action in accordance with sections 33.1-13-01-11 through 33.1-13-01-14.

(2) If the test results for the excavation zone or the aboveground storage tank site do not indicate that a release has occurred, further investigation is not required.

c. Any other method approved of by the department.

History: Effective April 1, 2026.
General Authority: NDCC 23.1-04.1-02
Law Implemented: NDCC 23.1-04.1-02, 23.1-04.1-03

33.1-13-01-13. Initial site characterization.

1. An owner or operator shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in sections 33.1-13-01-11 and 33.1-13-01-12. The information must include the following:

a. Data on the nature of and estimated quantity of release;

b. Data from available sources and site investigations, concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;

c. Results of the site check required under subsection 2 of section 33.1-13-01-12;

d. Results of any investigations required under this chapter;

e. The name of the persons responsible for implementing the free product removal measures;

f. The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

g. The type of free product recovery system used;

h. Whether any discharge will take place onsite or offsite during the recovery operation and where this discharge will be located;

i. The type of treatment applied to, and the effluent quality expected from, any discharge;

j. The steps that have been or are being taken to obtain necessary permits for any discharge; and

k. The intended disposition of the recovered free product.

2. Within forty-five days of release confirmation, an owner or operator shall submit the information required under this section to the department in a format required by the department.

History: Effective April 1, 2026.
General Authority: NDCC 23.1-04.1-02
Law Implemented: NDCC 23.1-04.1-02, 23.1-04.1-03

33.1-13-01-14. Corrective action plan.

1. Owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the department and shall modify the plan as necessary to meet this standard. The department may require an owner or operator to submit additional information. The plan must be submitted according to a schedule and format established by the department.

2. After the approval of the corrective action plan after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the department may consider the following factors:

a. The physical and chemical characteristics of the liquid fuel, including its toxicity, persistence, and potential for migration;

b. The hydrogeologic characteristics of the tank location and the surrounding area;

c. The proximity, quality, and current and future uses of nearby surface water and ground water;

d. The potential effects of residual contamination on nearby surface water and ground water;

e. An exposure assessment;

f. Any information assembled in compliance with sections 33.1-13-01-09 through 33.1-13-01-14; and

g. Any additional information requested by the department.

3. Upon approval of the corrective action plan or as directed by the department, owners and operators shall:

a. Implement the plan, including any modifications to the plan made by the department; and

b. Monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the department.

4. An owner or operator may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and ground water before the corrective action plan is approved if the owner or operator:

   a. Notifies the department of the intention to begin cleanup;

   b. Complies with any conditions imposed by the department, including halting cleanup or mitigating adverse consequences from cleanup activities;

   c. Incorporates the self-initiated cleanup measures in the corrective action plan; and

   d. Uses abatement of free product migration as a minimum objective for the design of the free product removal systems.

History: Effective April 1, 2026.
General Authority: NDCC 23.1-04.1-02
Law Implemented: NDCC 23.1-04.1-02, 23.1-04.1-03

CHAPTER 33.1-19-01

33.1-19-01-01. Responsibility.

It is the responsibility of any person or persons operating a water treatment, water distribution and storage, wastewater treatment, or wastewater collection and transfer facility or system to comply with this chapter pursuant to North Dakota Century Code chapter 23.1-07.

History: Effective January 1, 2019; amended effective April 1, 2026.
General Authority: NDCC 23.1-07-06~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-07-06~~; S.L. 2017, ch. 199, § 22~~

33.1-19-01-02. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Direct responsible charge" means full and active performance of onsite operation of a water or wastewater treatment facility or a water distribution and storage or wastewater collection and transfer system, where the operator is responsible for technical support of the facility or system and provides direction to other operators, is onsite or on call during shift operations, is responsible for the operation of a major segment of a facility or system, or is the sole person employed as the facility or system operator.

2. "Official census" means the census taken each decade or a special census taken by the United States bureau of the census.

3. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof and any legal successor, representative agent, or agency of the foregoing.

4. "Water treatment facility" includes the source or sources of water or the water treatment plant or both.

5. "Water distribution and storage system" means that portion of the water supply system which obtains, stores, and conveys water from the treatment facility or other supply point to the premises of the consumer.

6. "Wastewater treatment facility" means those systems using mechanical ~~or~~, nonmechanical, or both types of process units for the treatment of wastewater and for the treatment and disposal of solids removed from such wastes.

7. "Wastewater collection and transfer system" means that portion of a wastewater system in which wastewater is conveyed to a treatment facility from the premises of a contributor.

History: Effective January 1, 2019; amended effective April 1, 2026.
General Authority: NDCC 23.1-07-06~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-07-06~~; S.L. 2017, ch. 199, § 22~~

33.1-19-01-03. General.

1. The official census must be used to determine the population served by a water treatment facility, water distribution and storage system, wastewater treatment facility, or wastewater collection and transfer system if population equivalent data is not available.

2. The total number of people served on an annual average daily basis must be used to determine population served by a water treatment facility, water distribution and storage

system, wastewater treatment facility, or wastewater collection and transfer system if official census data is not available.

3. Facilities or systems with sufficiently complicated processes may be raised to a classification higher than that indicated by population equivalent or census.

4. Any facility which may have a combination of treatment processes, some of which may be in different facility classes, must be classified based on the treatment process which requires the highest numerical classification.

5. An operator who has direct responsible charge shall hold a certificate that is at least equal to the classification of the facility or system where the operator is employed.

History: Effective January 1, 2019; amended effective April 1, 2026.
General Authority: NDCC 23.1-07-06~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-07-03, 23.1-07-04, 23.1-07-06~~; S.L. 2017, ch. 199, § 22~~

33.1-19-01-04. Application for certification.

Applications for certification must be ~~filed with~~approved by the department fifteen days prior to the examination on appropriate forms. An application remains valid for a period of six months from the date of submission.

History: Effective January 1, 2019; amended effective April 1, 2026.
General Authority: NDCC 23.1-07-06~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-07-04, 23.1-07-06~~; S.L. 2017, ch. 199, § 22~~

33.1-19-01-05. Examinations.

1. ~~Written examinations~~An examination must be used in determining knowledge, ability, and judgment of the applicant. ~~Oral examinations may be used in lieu of or in conjunction with the written examinations~~Examinations may be written, oral, or electronic at the discretion of the department.

2. Examinations must be held at places and times set by the department. At least one examination session must be held annually. Additional examination sessions may be held at the discretion of the department.

3. Separate examinations ~~will~~must be prepared for each facility or system classification.

4. All examinations must be graded by personnel or a third-party examination service designated by the department.

5. An examination may be ~~rewritten~~retaken once within one year from the date on which the original examination was ~~written~~taken. A new certification application and the required fee must be submitted to the department to ~~rewrite~~retake an examination.

History: Effective January 1, 2019; amended effective April 1, 2026.
General Authority: NDCC 23.1-07-06~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-07-06~~; S.L. 2017, ch. 199, § 22~~

33.1-19-01-06. Fees for certification.

1. Fees for certification are ~~fifty~~one hundred fifty dollars per examination.

2. Fees for annual renewals are ~~twenty-five~~forty dollars per certificate.

3. The certification fee from a qualified applicant is nonrefundable and must be received by the department prior to the examination. Applicants ~~will~~must be notified of the results of the examinations. Papers and test material remain the property of the department or the department's designated examiner. Applicants may, upon request, review the results with the department or the department's designated examiner.

4. Fees received from operators whose application for certification has been rejected will be returned.

History: Effective January 1, 2019; amended effective January 1, 2022; April 1, 2026.
General Authority: NDCC 23.1-07-06
Law Implemented: NDCC 23.1-07-05, 23.1-07-06

33.1-19-01-07. Issuance of certificates.

1. Upon satisfactory compliance with the certification qualifications, fee, and examination requirements provided herein, the department ~~will~~shall issue a certificate to the applicant. The certificate ~~will~~must indicate the operator certification grade, the class of facility or system the applicant is certified to operate, the certificate number, and date of issuance.

2. To maintain certification, all certified operators ~~are required to~~shall earn continuing education credits by attending training programs, seminars, workshops, and schools established or officially recognized by the department.

   a. The number of continuing education credits that can be earned by attending officially recognized training programs, seminars, workshops, and schools must be established and regulated by the department.

   b. The number of continuing education credits to be earned within a ~~three-year~~three-year period of time is twelve.

   c. Training programs offered by other government agencies, educational institutions, and operator organizations may be used for the continuing education credit requirements at the discretion of the department.

   d. Certified operators who no longer operate facilities or systems within the boundaries of the state are exempt from the continuing education credit requirements. They may maintain valid North Dakota operator's certificates by paying the required annual renewal fees. If they return to work as an operator in the state, the continuing education credit requirements are in effect and they must earn the required number of training credits during their first year upon returning to North Dakota.

   e. A certified operator not in compliance with the continuing education credit requirements, as determined by the department, is subject to revocation or suspension of the operator's certification.

3. Certificates are valid for a maximum of one year and expire on the first day of ~~July~~January. Certificates ~~which~~that have been revoked for a cause, invalidated, or replaced by one of higher grade are not renewable, except as noted in this chapter. Annual certificate renewal cards must be issued by the department upon receipt of the renewal fee as previously set forth.

4. An operator whose certification is invalidated because of failure to renew may apply for renewal within ~~one year~~ninety days following the certificate's expiration date. The operator may be issued a certificate of the same category, grade, and classification if the request for renewal is received by the department within ~~one year~~ninety days after the expiration date of the certificate, the continuing education requirements are satisfied, and all delinquent fees are

paid. Failure to renew certification for a period of more than ~~one year~~ninety days following expiration of the certificate ~~will require~~requires requalification by reapplication, reexamination, and payment of examination fees before recertification is granted.

5. Certificates remain valid as long as the operator exercises reasonable care and judgment in the application of duties and satisfies the continuing education and annual renewal requirements as previously set forth. Certificates may be revoked as provided in North Dakota Century Code chapter 23.1-07. ~~No~~A certificate ~~will be valid~~is invalid if obtained through fraud, deceit, misrepresentation, or the submission of false or inaccurate data, information, or qualifications.

6. The department may issue certificates by reciprocity, without ~~written~~ examination, to any person holding a certificate from any other state, territory, possession of the United States of America, or any country providing ~~that~~ the requirements for certification of operators under which the operator's certificate was issued are equal to or higher than specified under this chapter for a like certificate and ~~providing further that~~ reciprocal privileges are granted to certified operators in North Dakota.

7. Certificates in an appropriate category, grade, and classification may be issued without examination to qualifying operators as provided by North Dakota Century Code chapter 23.1-07.

8. A temporary restricted operator's permit may be issued by the department upon application by the facility or system owner on behalf of the operator where circumstances may exist to warrant issuance. A temporary restricted operator's permit ~~will be~~is valid for one year from the date of issuance. ~~When~~If the operator satisfies the minimum grade level qualifications and requirements for certification, the operator shall submit an application for certification to the department and ~~write~~complete the appropriate category and class examination during the first examination session offered by the department following the date of application.

9. The department may revoke or suspend the certificate of an operator issued hereunder if ~~it is found by~~ the department ~~that~~finds the operator has practiced fraud or deception by willfully changing records or by omission, ~~or~~ knowingly giving false information to the department, ~~or~~ failed to take corrective action required by the department, ~~or~~ failed to take required samples, or failed to protect the public health or the state's water resources; or ~~when it is found that~~if the department finds reasonable care, judgment, or the application of the operator's knowledge or ability was not used in the performance of the operator's duties. A certificate may not be revoked or suspended except after a hearing before the department. ~~If a certificate is suspended or revoked as herein provided, a new application for certification may be considered by the department if, when, and after the conditions upon which suspension or revocation was based have been corrected and evidence of this fact has been satisfactorily submitted to the department. A new certificate may then be granted by the department~~If an operator whose certificate was suspended or revoked submits a new application for certification, the department may grant a new certificate to the operator if the operator corrects the violations upon which suspension or revocation was based, and evidence of this fact has been satisfactorily submitted to the department.

History: Effective January 1, 2019; amended effective April 1, 2026.
General Authority: NDCC 23.1-07-06~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-07-04, 23.1-07-06~~; S.L. 2017, ch. 199, § 22~~

33.1-19-01-08. Water treatment facility classifications.

Water treatment facilities must be classified in one of five classes. Classifications must be based on population served, design population, type of treatment, raw water quality and volume of water to be treated, and complexity of sludge handling units. Facilities may be classified ~~one level higher than~~

~~indicated solely by population~~ at the discretion of the department if the facility has special design features or complex features or characteristics unusually difficult to operate, by reason of raw water unusually difficult to treat, ~~by reason of~~ volume of water treated, or ~~by reason of~~ a combination of such conditions or circumstances.

1. **Class IA.** All water facilities using simple chemical or physical treatment processes and designed to serve a population of less than five hundred persons.

2. **Class I.** All water facilities using chemical treatment processes and designed to serve a population of five hundred to five thousand persons. This ~~will include~~includes water facilities utilizing disinfection, fluoridation, corrosion control, sequestering, or combinations of these processes or other processes that involve simple chemical addition and a minor degree of operational control.

3. **Class II.**

   a. All water facilities using chemical treatment processes and designed to serve a population of five thousand to fifteen thousand persons. This ~~will include~~includes water facilities utilizing disinfection, fluoridation, corrosion control, sequestering, or combinations of these processes or other processes that involve simple chemical addition and a moderate degree of operational control.

   b. All water plants using chemical softening processes and filtration requiring a moderate degree of operational control serving a population of less than one thousand persons.

   c. All water plants using coagulation, sedimentation, and filtration for clarification requiring a moderate degree of operational control serving a population of less than one thousand five hundred persons.

   d. All water plants using chemical oxidation of iron or manganese and filtration requiring a moderate degree of operational control serving a population of less than two thousand persons.

   e. All water plants using processes requiring a moderate degree of operational control but not listed in subdivisions b, c, and d and serving a population of less than two thousand persons.

4. **Class III.**

   a. All water facilities using chemical treatment processes and designed to serve a population of fifteen thousand persons or more. This will include water facilities utilizing disinfection, fluoridation, corrosion control, sequestering, or combinations of these processes or other processes that involve simple chemical addition and a high degree of operational control.

   b. All water plants using chemical softening processes and filtration requiring a high degree of operational control serving a population of one thousand to five thousand persons.

   c. All water plants using coagulation, sedimentation, and filtration for clarification requiring a high degree of operational control serving a population of one thousand five hundred to ten thousand persons.

   d. All water plants using chemical oxidation of iron or manganese and filtration requiring a high degree of operational control serving a population of two thousand to fifteen thousand persons.

e. All water plants using processes requiring a high degree of operational control but not listed in subdivisions b, c, and d and serving a population of two thousand to fifteen thousand persons.

5. **Class IV.**

a. All water plants using chemical softening processes and filtration requiring a high degree of operational control serving a population of five thousand or more persons.

b. All water plants using coagulation, sedimentation, and filtration for clarification requiring a high degree of operational control serving a population of ten thousand or more persons.

c. All water plants using chemical oxidation of iron or manganese and filtration requiring a high degree of operational control serving a population of fifteen thousand or more persons.

d. All water plants using processes requiring a high degree of operational control but not listed in subdivisions a, b, and c and serving a population of fifteen thousand or more persons.

History: Effective January 1, 2019; amended effective April 1, 2026.
General Authority: NDCC 23.1-07-06~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-07-03, 23.1-07-06~~; S.L. 2017, ch. 199, § 22~~

33.1-19-01-08.1. Water distribution and storage system classifications.

Water distribution and storage systems must be classified in one of five classes. Classifications must be based on population served, design population, type of distribution and storage system, and the volume of water to be handled. Systems may be classified ~~one level higher than indicated solely by population~~ at the discretion of the department by reason of the incorporation in the system of special design features or complex features or characteristics unusually difficult to operate, ~~by reason of~~ conditions of volume and flow, or ~~by reason of~~ a combination of such conditions and circumstances.

1. **Class IA.** All water distribution and storage systems serving a population of less than five hundred persons.

2. **Class I.** All water distribution and storage systems serving a population of five hundred to one thousand five hundred persons.

3. **Class II.** All water distribution and storage systems serving a population of one thousand five hundred to fifteen thousand persons.

4. **Class III.** All water distribution and storage systems serving a population of fifteen thousand to fifty thousand persons.

5. **Class IV.** All water distribution and storage systems serving a population of fifty thousand persons or more.

History: Effective January 1, 2019; amended effective April 1, 2026.
General Authority: NDCC 23.1-07-06~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-07-03, 23.1-07-06~~; S.L. 2017, ch. 199, § 22~~

33.1-19-01-09. Wastewater treatment facility classifications.

Wastewater treatment facilities must be classified in one of five classes. Classifications must be based on population served, design population, type of treatment, character and volume of wastes to be treated, and the use and nature of the water resources receiving the facility effluent. Facilities may be classified ~~one level higher than indicated solely by population~~ at the discretion of the department if

the facility has special design features or complex features or characteristics unusually difficult to operate, by reason of a waste unusually difficult to treat, ~~by reason of~~ conditions of flow, or ~~by reason of~~ the receiving water quality classification requiring an unusually high degree of facility operational control, or ~~by reason of~~ a combination of such conditions or circumstances.

1. **Class IA.** All wastewater stabilization ponds, land treatment facilities, wetlands treatment facilities, or other nonmechanical facilities requiring a minor degree of operational control serving a population equivalent of less than five hundred persons.

2. **Class I.** All wastewater stabilization ponds, land treatment facilities, wetlands treatment facilities, or other nonmechanical facilities requiring a minor degree of operational control serving a population equivalent of five hundred to less than ten thousand persons.

3. **Class II.**

   a. All mechanical facilities, mechanically aerated stabilization ponds, oxidation ditches, or other facilities requiring a moderate degree of operational control serving a population equivalent of less than ten thousand persons.

   b. All wastewater stabilization ponds, land treatment facilities, wetlands treatment facilities, or other nonmechanical facilities requiring a minor degree of operational control serving a population equivalent of ten thousand persons or more.

4. **Class III.**

   a. All mechanical facilities, mechanically aerated stabilization ponds, oxidation ditches, or other facilities requiring a moderate degree of operational and laboratory control serving a population equivalent of ten thousand persons or more.

   b. All activated sludge facilities, trickling filter facilities, rotating biological contactor facilities, separate sludge stabilization facilities, or other mechanical facilities requiring a high degree of operational and laboratory control serving a population equivalent of less than ten thousand persons.

5. **Class IV.** All activated sludge facilities, trickling filter facilities, rotating biological contactor facilities, separate sludge stabilization facilities, or other mechanical facilities requiring a high degree of operational and laboratory control serving a population equivalent of ten thousand persons or more.

History: Effective January 1, 2019; amended effective April 1, 2026.
General Authority: NDCC 23.1-07-06~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-07-03, 23.1-07-06~~; S.L. 2017, ch. 199, § 22~~

33.1-19-01-09.1. Wastewater collection and transfer system classifications.

Wastewater collection and transfer systems must be classified in one of five classes. Classifications must be based on population served, design population, type of collection and transfer system, and the character and volume of wastes to be handled. Systems may be classified ~~one level higher than indicated solely by population~~ at the discretion of the department by reason of the incorporation in the system of special design features or complex features or characteristics unusually difficult to operate, ~~by reason of~~ conditions of flow, or ~~by reason of~~ a combination of such conditions and circumstances.

1. **Class IA.** All wastewater collection and transfer systems serving a population of less than five hundred persons.

2. **Class I.** All wastewater collection and transfer systems serving a population of five hundred to one thousand five hundred persons.

3. **Class II.** All wastewater collection and transfer systems serving a population of one thousand five hundred to fifteen thousand persons.

4. **Class III.** All wastewater collection and transfer systems serving a population of fifteen thousand to fifty thousand persons.

5. **Class IV.** All wastewater collection and transfer systems serving a population of fifty thousand persons or more.

History: Effective January 1, 2019; amended effective April 1, 2026.
General Authority: NDCC 23.1-07-06~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-07-03, 23.1-07-06~~; S.L. 2017, ch. 199, § 22~~

33.1-19-01-10. Change of classification.

Classification of any treatment facility or distribution and storage or collection and transfer system may be changed at the discretion of the department by reason of changes in any condition or circumstance on which the original classification was based. The department shall provide notice of any classification change to the owner of the facility or system.

History: Effective January 1, 2019; amended effective April 1, 2026.
General Authority: NDCC 23.1-07-06~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-07-03, 23.1-07-06~~; S.L. 2017, ch. 199, § 22~~

33.1-19-01-11. Certification requirements.

1. Operator certification is mandatory for all persons in direct responsible charge of the operation or maintenance of water treatment facilities, water distribution and storage systems, wastewater treatment facilities, or wastewater collection and transfer systems as required by North Dakota Century Code section 23.1-07-07 and applicable federal laws and regulations.

2. Five grades of operators for water treatment facilities, water distribution and storage systems, wastewater treatment facilities, and wastewater collection and transfer systems are ~~hereby~~ established. To qualify for certification in a given grade, an applicant must satisfy the education and experience requirements, or their equivalents, of the grade for which the certification application is submitted.

3. All applicants must pass a certification examination ~~as developed and administered by the department~~ for the class of facility or system for which the certification application is submitted.

History: Effective January 1, 2019; amended effective April 1, 2026.
General Authority: NDCC 23.1-07-06~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-07-04, 23.1-07-06~~; S.L. 2017, ch. 199, § 22~~

33.1-19-01-12. Operator qualifications.

The following grade qualifications are intended to be as nearly compatible as possible to the corresponding facility or system classification.

1. **Grade IA.**

   a. Completion of high school or equivalent, and a minimum of six months of acceptable operation of a facility or system of class IA or higher.

   b. A combination of education qualifications and experience that will be satisfactory to the department. ~~No~~A substitute ~~may be~~is not permitted for minimum experience requirements, unless an exception is granted under section 33.1-19-01-07.

2. **Grade I.**

   a. Completion of high school or equivalent, and a minimum one year of acceptable operation of a facility or system class I or higher; or

   b. A combination of education qualifications and experience that will be satisfactory to the department. ~~No~~A substitute ~~may be~~is not permitted for minimum experience requirements, unless an exception is granted under section 33.1-19-01-07.

3. **Grade II.**

   a. A four-year college degree and a minimum one year of acceptable operation of a facility or system of class I or higher, one year of which must have been in a position of direct responsible charge;

   b. Two years post high school education and a minimum two years of acceptable operation of a facility or system of class I or higher, one year of which must have been in a position of direct responsible charge;

   c. Completion of high school or equivalent, and a minimum three years of acceptable operation of a facility or system of class I or higher, one year of which must have been in a position of direct responsible charge; or

   d. A combination of education qualifications and experience that will be satisfactory to the department. ~~No~~A substitute ~~may be~~is not permitted for the minimum experience requirement, unless an exception is granted under section 33.1-19-01-07.

4. **Grade III.**

   a. A four-year college degree and a minimum two years of acceptable operation of a facility or system of class II or higher, two years of which must have been in a position of direct responsible charge;

   b. Two years post high school education and a minimum three years of acceptable operation of a facility or system of class II or higher, two years of which must have been in a position of direct responsible charge;

   c. Completion of high school or equivalent, and a minimum four years of acceptable operation of a facility or system of class II or higher, two years of which must have been in a position of direct responsible charge; or

   d. A combination of education qualifications and experience that will be satisfactory to the department. ~~No~~A substitute ~~may be~~is not permitted for the minimum experience requirement, unless an exception is granted under section 33.1-19-01-07.

5. **Grade IV.**

   a. A four-year college degree and a minimum three years of acceptable operation of a facility or system of class III or higher, two years of which must have been in a position of direct responsible charge;

   b. Two years of post high school education and a minimum four years of acceptable operation of a facility or system of class III or higher, two years of which must be in a position of direct responsible charge;

   c. Completion of high school or equivalent and a minimum five years of acceptable operation of a facility or system of class III or higher, two years of which must have been in a position of direct responsible charge; or

d. A combination of education qualifications and experience that will be satisfactory to the department. ~~No~~A substitute ~~may be~~is not permitted for the minimum experience requirement, unless an exception is granted under section 33.1-19-01-07.

History: Effective January 1, 2019; amended effective April 1, 2026.
General Authority: NDCC 23.1-07-06~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-07-03, 23.1-07-06~~; S.L. 2017, ch. 199, § 22~~

33.1-19-01-16. Substitutions or equivalents.

In determining the qualifications of operators desiring to be certified, the following substitutions or equivalents may be used:

1. One year of acceptable operating experience may be considered equivalent to one year of high school.

2. Experience applied to the educational requirement may not also be applied to the experience requirement.

3. An acceptable high school equivalency certificate may be used to substitute for graduation from high school.

4. ~~No substitutions~~Substitutions or equivalents ~~will be~~are not allowed in lieu of the minimum acceptable experience in the operation of water treatment, water distribution and storage, wastewater treatment, and wastewater collection and transfer facilities or systems.

5. The department may waive the experience requirements in an exceptional set of circumstances.

History: Effective January 1, 2019; amended effective April 1, 2026.
General Authority: NDCC 23.1-07-06~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-07-03, 23.1-07-06~~; S.L. 2017, ch. 199, § 22~~

TITLE 43

INDUSTRIAL COMMISSION

APRIL 2026

CHAPTER 43-02-03
OIL AND GAS CONSERVATION

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43-02-03-01. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-08 except:

1. "Adjusted allowable" means the allowable production a proration unit receives after all adjustments are applied.

2. "Allocated pool" is one in which the total oil or natural gas production is restricted and allocated to various proration units therein in accordance with proration schedules.

3. "Allowable production" means that number of barrels of oil or cubic feet of natural gas authorized to be produced from the respective proration units in an allocated pool.

4. "Barrel" means forty-two United States gallons [158.99 liters] measured at sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].

5. "Barrel of oil" means forty-two United States gallons [158.99 liters] of oil after deductions for the full amount of basic sediment, water, and other impurities present, ascertained by centrifugal or other recognized and customary test.

6. "Bottom hole or subsurface pressure" means the pressure in pounds per square inch gauge under conditions existing at or near the producing horizon.

7. "Bradenhead gas well" means any well capable of producing gas through wellhead connections from a gas reservoir which has been successfully cased off from an underlying oil or gas reservoir.

8. "Casinghead gas" means any gas or vapor, or both gas and vapor, indigenous to and produced from a pool classified as an oil pool by the commission.

9. "Certified or registered mail" means any form of service by the United States postal service, federal express, Pitney Bowes, and any other commercial, nationwide delivery service that provides the mailer with a document showing the date of delivery or refusal to accept delivery.

10. "Commercial injection well" means one that only receives fluids produced from wells operated by a person other than the principal on the bond.

11. "Common purchaser for natural gas" means any person now or hereafter engaged in purchasing, from one or more producers, gas produced from gas wells within each common source of supply from which it purchases, for processing or resale.

12. "Common purchaser for oil" means every person now engaged or hereafter engaging in the business of purchasing oil in this state.

13. "Common source of supply" is synonymous with pool and is a common accumulation of oil or gas, or both, as defined by commission orders.

14. "Completion" means an oil well shall be considered completed when the first oil is produced through wellhead equipment into tanks from the ultimate producing interval after casing has been run. A gas well ~~shall be~~is considered complete when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after casing has been run. A

dry hole ~~shall be~~is considered complete when all provisions of plugging are complied with as set out in this chapter.

15. "Condensate" means the liquid hydrocarbons recovered at the surface that result from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.

16. "Cubic foot of gas" means ~~that~~the volume of gas contained in one cubic foot [28.32 liters] of space and computed at a pressure of fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter] at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius].

17. "Director" means the director of oil and gas of the industrial commission, the assistant director of oil and gas of the industrial commission, and their designated representatives.

18. "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool, which artificial means or application includes pressuring, cycling, pressure maintenance, or injection to the pool of a substance or form of energy but does not include the injection in a well of a substance or form of energy for the sole purpose of:

    a. Aiding in the lifting of fluids in the well; or

    b. Stimulation of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

19. "Exception well location" means a location which does not conform to the general spacing requirements established by the rules or orders of the commission but which has been specifically approved by the commission.

20. "Flow line" means a pipe or conduit of pipes used for the transportation, gathering, or conduct of a mineral from a wellhead to a separator, treater, dehydrator, tank battery, or surface reservoir.

21. "Gas lift" means any method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.

22. "Gas-oil ratio" means the ratio of the gas produced in cubic feet to a barrel of oil concurrently produced during any stated period.

23. "Gas-oil ratio adjustment" means the reduction in allowable of a high gas-oil ratio proration unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.

24. "Gas transportation facility" means a pipeline in operation serving one or more gas wells for the transportation of natural gas, or some other device or equipment in like operation whereby natural gas produced from gas wells connected therewith can be transported.

25. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the commission.

26. "High gas-oil ratio proration unit" means a proration unit with a producing oil well with a gas-oil ratio in excess of the limiting gas-oil ratio for the pool.

27. "Inactive pipeline" means any underground gathering pipeline system or portion thereof that has not transported fluid for more than one year.

28. "Injection or input well" means any well used for the injection of air, gas, water, or other fluids into any underground stratum.

29. "Injection pipeline" means a pipe or conduit of pipes used for the transportation of fluids, typically via an injection pump, from a storage tank or tank battery directly to an injection well.

30. "Limiting gas-oil ratio" means the gas-oil ratio assigned by the commission to a particular oil pool to limit the volumes of casinghead gas which may be produced from the various oil-producing units within that particular pool.

31. "Log or well log" means a systematic, detailed, and ~~correct~~accurate record of ~~formations encountered in the drilling of a well, including commercial electric logs, radioactive logs, dip meter logs, and other related logs~~one or more properties as a function of depth in an open or cased well bore. The term includes geophysical, petrophysical, image, or engineered or composite logs, or other well bore measurements acquired while drilling or by wireline operations recorded in paper or digital format.

32. "Multiple completion" means the completion of any well so as to permit the production from more than one common source of supply.

33. "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not ~~herein~~ defined as oil in this section.

34. "Occupied dwelling" or "permanently occupied dwelling" means a residence which is lived in by a person at least six months throughout a calendar year.

35. "Official gas-oil ratio test" means the periodic gas-oil ratio test made by order of the commission and by such method and means and in such manner as prescribed by the commission.

36. "Offset" means a well drilled on a forty-acre [16.19-hectare] tract cornering or contiguous to a forty-acre [16.19-hectare] tract having an existing oil well, or a well drilled on a one hundred sixty-acre [64.75-hectare] tract cornering or contiguous to a one hundred sixty-acre [64.75-hectare] tract having an existing gas well; provided, however, that for wells subject to a fieldwide spacing order, "offset" means any wells located on spacing units cornering or contiguous to the spacing unit or well ~~which~~that is the subject of an inquiry or a hearing.

37. "Oil well" means any well capable of producing oil or oil and casinghead gas from a common source of supply as determined by the commission.

38. "Operator" is the principal on the bond covering a well and such person shall be responsible for drilling, completion, and operation of the well, including plugging and reclamation of the well site.

39. "Overage or overproduction" means the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration schedule.

40. "Potential" means the properly determined capacity of a well to produce oil, or gas, or both, under conditions prescribed by the commission.

41. "Pressure maintenance" means the injection of gas or other fluid into a reservoir, either to increase or maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.

42. "Proration day" consists of twenty-four consecutive hours ~~which shall~~that begin at seven a.m. and end at seven a.m. on the following day.

43. "Proration month" means the calendar month ~~which shall begin~~that begins at seven a.m. on the first day of such month and end at seven a.m. on the first day of the next succeeding month.

44. "Proration schedule" means the periodic order of the commission authorizing the production, purchase, and transportation of oil or of natural gas from the various units of oil or of natural gas proration in allocated pools.

45. "Proration unit for gas" consists of ~~such~~the geographical area ~~as may be~~ prescribed by special pool rules issued by the commission.

46. "Recomplete" means the subsequent completion of a well in a different pool.

47. "Reservoir" means pool or common source of supply.

48. "Saltwater handling facility" means and includes any container and site used for the handling, storage, disposal of substances obtained, or used, in connection with oil and gas exploration, development, and production and can be a stand-alone site or an appurtenance to a well or treating plant.

49. "Shut-in pressure" means the pressure noted at the wellhead when the well is completely shut in, not to be confused with bottom hole pressure.

50. "Spacing unit" is the area in each pool which is assigned to a well for drilling, producing, and proration purposes in accordance with the commission's rules or orders.

51. "Stratigraphic test well" means any well or hole, except a seismograph shot hole, drilled for the purpose of gathering information with no intent to produce oil or gas from or inject into such well.

52. "Subsurface observation well" means a well used to observe subsurface phenomena, including the presence of carbon dioxide, pressure fluctuations, fluid levels and flow, temperature, and in situ water chemistry.

53. "Tank bottoms" means ~~that~~the accumulation of hydrocarbon material and other substances which settle naturally below crude oil in tanks and receptacles that are used in handling and storing of crude oil, and which accumulation contains basic sediment and water in an amount rendering it unsalable to an ordinary crude oil purchaser; provided, that with respect to lease production and for lease storage tanks, a tank bottom ~~shall~~must be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet thereto.

54. "Treating plant" means any plant permanently constructed or portable used for the purpose of wholly or partially reclaiming, treating, processing, or recycling tank bottoms, waste oils, drilling mud, waste from drilling operations, produced water, and other wastes related to crude oil and natural gas exploration and production. ~~This is~~The term does not ~~to be construed as to~~ include saltwater handling and disposal operations ~~which~~that typically recover skim oil and solids from their operations, treating mud or cuttings at a well site during drilling operations, treating flowback water during completion operations at a well site, or treating tank bottoms at the well site or facility where they originated.

History: Amended effective January 1, 1983; May 1, 1992; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002; January 1, 2008; April 1, 2014; October 1, 2016; April 1, 2018; April 1, 2024; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

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

1. ~~**Application of section.**~~ This section is applicable to all allocation and custody transfer metering stations measuring production from oil and gas wells within the state of North Dakota, including private, state, and federal wells. If these rules differ from federal requirements on measurement of production from federal oil and gas wells, the federal rules take precedence.

2. ~~**Definitions.**~~ As used in this section:

   a. "Allocation meter" means a meter used by the producer to determine the volume from an individual well before it is commingled with production from one or more other wells prior to the custody transfer point.

   b. "Calibration test" means the process or procedure of adjusting an instrument, such as a gas meter, so its indication or registration is in satisfactorily close agreement with a reference standard.

   c. "Custody transfer meter" means a meter used to transfer oil or gas from the producer to transporter or purchaser.

   d. "Gas gathering meter" means a meter used in the custody transfer of gas into a gathering system.

   e. "Meter factor" means a number obtained by dividing the net volume of fluid (liquid or gaseous) passed through the meter during proving by the net volume registered by the meter.

   f. "Metering proving" means the procedure required to determine the relationship between the true volume of a fluid (liquid or gaseous) measured by a meter and the volume indicated by the meter.

3. ~~**Inventory filing requirements.**~~ The owner of meter proving equipment shall file with the director an inventory of all conventional pipe provers or master-meter provers used to test the accuracy of oil meters. Inventories must be updated on an annual basis, and filed with the director on or before the first day of each year, or they may be updated as frequently as monthly, at the discretion of the operator. Inventories must include the following:

   a. Meter information:

      (1) Prover:

         (a) Type.

         (b) Serial number.

         (c) Prover volume.

         (d) Most recent water draw certificate.

      (2) Master meter:

         (a) Make and model.

         (b) Size.

         (c) Serial number.

         (d) Master meter factor.

(e) Most recent meter proving certificate.

(3) An inventory of all meters used for custody transfer and allocation of production from oil and gas wells, or both must be filed with the director upon request.

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

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

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

5. ~~**Registration of persons proving or testing meters.**~~ All persons engaged in meter proving or testing of oil and gas meters must be registered with the director. Those persons involved in oil meter testing, by flowing fluid through the meter into a test tank and then gauging the tank, are exempted from the registration process. However, such persons must notify the director prior to commencement of the test to allow a representative of the director to witness the testing process. A report of the results of such test shall be filed with the director within thirty days after the test is completed. Registration must include the following:

   a. Name and address of company.

   b. Name and address of measurement personnel.

   c. Qualifications, listing experience or specific training.

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

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

   a. Oil allocation meter factors ~~shall~~must be maintained within two percent of original meter factor. If the factor change between provings or tests is greater than two percent, meter use must be discontinued until successfully reproven after being repaired or replaced.

   b. Oil custody transfer meter factors must be maintained within one-quarter of one percent of the previous meter factor. If the factor change between provings or tests is greater than one-quarter of one percent, meter use must be discontinued until successfully reproven after being repaired or replaced.

c. Copies of all oil allocation meter test procedures ~~are to~~must be filed with and reviewed by the director to ensure measurement accuracy.

d. All gas meters must be tested with a minimum of a three-point test for static and differential pressure elements and a two-point test for temperature elements. The test reports must include an as-found and as-left test and a detailed report of changes.

e. Test reports must include the following:

(1) Company name of test contractor.

(2) Pipeline company name.

(3) Meter owner name.

(4) Producer name.

(5) Well or central tank battery (CTB) name.

(6) Well file number or CTB number.

(7) Test personnel's name.

(8) Station or meter number.

f. Unless required more often by the director, minimum frequency of meter proving or calibration tests are as follows:

(1) Oil meters used for custody transfer ~~shall~~must be proved monthly for all measured volumes which exceed two thousand barrels per month. For volumes two thousand barrels or less per month, meters ~~shall~~must be proved at each two thousand barrel interval or more frequently at the discretion of the operator.

(2) Quarterly for oil meters used for allocation of production in a diverse ownership central production facility. Semiannually for oil meters used for allocation of production in a common ownership central production facility.

(3) Semiannually for gas meters used for allocation of production in a diverse ownership central production facility. Annually for gas meters used for allocation of production in a common ownership central production facility.

(4) Semiannually for gas meters in gas gathering systems.

(5) For meters measuring more than one hundred thousand cubic feet [2831.68 cubic meters] per day on a monthly basis, orifice plates ~~shall~~must be inspected semiannually, and meter tubes ~~shall~~must be inspected at least every five years to ensure continued conformance with the American gas association meter tube specifications.

(6) For meters measuring one hundred thousand cubic feet [2831.68 cubic meters] per day or less on a monthly basis, orifice plates ~~shall~~must be inspected annually.

g. Accuracy of all equipment used to test oil or gas meters must be traceable to the standards of the national institute of standards and technology. The equipment must be certified as accurate either by the manufacturer or an independent testing facility. The certificates of accuracy for all equipment used to test gas meters must be made available upon request. The owner of a conventional pipe prover or master meter prover shall

notify the director at least ten days prior to the testing of any prover. Certification of the equipment must be updated as follows:

(1) Annually for all equipment used to test the pressure and differential pressure elements.

(2) Annually for all equipment used to determine temperature.

(3) Biennially for all conventional pipe provers.

(4) Annually for all master meters.

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

h. All meter test reports, including failed meter test reports, must be filed within thirty days of completion of proving or calibration tests unless otherwise approved, and must be submitted by email in a portable document format (.pdf) or another format approved by the director. Test reports ~~are to~~must be filed on, but not limited to, all meters used for allocation measurement of oil or gas, all meters used in custody transfer, conventional pipe provers, and master meter provers.

7. ~~**Variances.**~~ Variances from all or part of this section may be granted by the director provided the variance does not affect measurement accuracy. ~~All requests~~Requests for variances may be granted verbally by the director but must be filed by the meter owner on a facility sundry notice.

A register of variances requested and approved must be maintained by the director.

History: Effective May 1, 1994; amended effective July 1, 1996; September 1, 2000; July 1, 2002; April 1, 2018; April 1, 2020; April 1, 2022; April 1, 2024; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04, 38-08-20

43-02-03-16. Application for permit to drill and recomplete.

1. Before any person ~~shall~~may begin any well-site preparation for the drilling of any well other than surveying and staking, such person shall obtain approval from the director. An application for permit to drill must be filed with the director, together with a permit fee of one hundred dollars. Site construction, or appurtenance or road access thereto, may not commence until such application is approved and a permit to drill is issued by the director. Verbal approval may be given for site preparation by the director in extenuating circumstances to include contractual obligations, an expiring lease, or an expiring right-of-way. The application must be accompanied by the bond pursuant to section 43-02-03-15 or the applicant must have previously filed such bond with the director, otherwise the application is incomplete. An incomplete application received by the director has no standing and ~~will~~is not ~~be~~ deemed filed until it is completed.

2. The application for permit to drill ~~shall~~must be accompanied by an accurate plat certified by a registered surveyor showing the location of the proposed well with reference to true north and the nearest lines of a governmental section, the latitude and longitude of the proposed well location to the nearest tenth of a second, the ground elevation, and the proposed road access to the nearest existing public road. Information ~~to be included~~ in ~~such~~the application ~~shall be~~must include the proposed depth to which the well will be drilled~~,~~; estimated depth to the top of important markers~~,~~; estimated depth to the top of objective horizons~~,~~; the proposed mud program~~,~~; the proposed casing program, including size and weight thereof~~,~~; the depth at which each casing string is to be set~~,~~; the proposed amount of cement to be used, including the estimated top of cement; the proposed pad layout plat, including cut and fill diagrams~~,~~; and the

proposed ~~amount of cement to be used, including the estimated top of cement~~production facilities layout plat.

3. For wells permitted on new pads built after July 31, 2013, permit conditions imposed by the director may include, upon request of the owner of a permanently occupied dwelling within one thousand feet of the proposed well, requiring the location of all flares, tanks, and treaters utilized in connection with the permitted well be located at a greater distance from the occupied dwelling than the well head, if the location can be reasonably accommodated within the proposed pad location. If the facilities are proposed to be located farther from the dwelling than the well bore, the director can issue the permit without comment from the dwelling owner. The applicant shall give any such owners written notice of the proposed facilities personally or by certified mail, return receipt requested, and addressed to their last-known address listed with the county property tax department. The director must receive written comments from such owner within five business days of the owner receiving said notice. An application for permit must include an affidavit from the applicant identifying each owner's name and address, and the date written notice was given to each owner. The owner's notice must include:

~~1.~~ a. A copy of North Dakota Century Code section 38-08-05.

~~2.~~ b. The name, telephone number, and if available the electronic mail address of the applicant's local representative.

~~3.~~ c. A sketch of the area indicating the location of the owner's dwelling~~,~~; the proposed well~~,~~; and location of the proposed flare, tanks, and treaters.

~~4.~~ d. A statement indicating that any such owner objecting to the location of the flare, tanks, or treaters, ~~must~~shall notify the director within five business days of receiving the notice.

4. Prior to the commencement of recompletion operations or drilling horizontally in the existing pool, an application for permit must be approved by the director. Such application ~~shall~~must be filed to reenter a well by drilling horizontally, deepening, or plugging back to any source of supply other than the producing horizon in an existing well. Such notice ~~shall~~must include the name and file number and exact location of the well, the approximate date operations will begin, the proposed procedure, the estimated completed total depth, the anticipated hydrogen sulfide content in produced gas from the proposed source of supply, the weight and grade of all casing currently installed in the well unless waived by the director, the casing program to be followed, and the original total depth with a permit fee of fifty dollars. The director may deny any application if it is determined, in accordance with the latest version of ANSI/NACE MR0175/ISO 15156, that the casing currently installed in the well would be subject to sulfide stress cracking.

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

6. The director shall deny an application for a permit under this section if the proposal would cause, or tend to cause, waste or violate correlative rights. The director of oil and gas shall state in writing to the applicant the reason for the denial of the permit. The applicant may appeal the decision of the director to the commission.

7. A permit to drill automatically expires one year after the date it was issued, unless the well is drilling or has been drilled below surface casing. A permit to recomplete or to drill horizontally automatically expires one year after the date it was issued, unless such project has commenced. The director may extend a permit to drill and a permit to recomplete or drill horizontally for up to one year upon request.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; September 1, 2000; July 1, 2002; April 1, 2010; April 1, 2012; April 1, 2014; October 1, 2016; April 1, 2020; April 1, 2024; April 1, 2026.
General Authority: NDCC 38-08-05
Law Implemented: NDCC 38-08-05

43-02-03-18. Drilling units - Well locations.

In the absence of an order by the commission setting spacing units for a pool:

1. a. Vertical or directional oil wells projected to a depth not deeper than the Mission Canyon formation must be drilled upon a governmental quarter-quarter section or equivalent lot, located not less than five hundred feet [152.4 meters] to the boundary of such governmental quarter-quarter section or equivalent lot. No more than one well shall be drilled to the same pool on any such governmental quarter-quarter section or equivalent lot, except by order of the commission, nor shall any well be drilled on any such governmental quarter-quarter section or equivalent lot containing less than thirty-six acres [14.57 hectares] except by order of the commission.

   b. Vertical or directional oil wells projected to a depth deeper than the Mission Canyon formation must be drilled on a governmental quarter section or equivalent lots, located not less than six hundred sixty feet [201.17 meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well shall be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or equivalent lots containing less than one hundred forty-five acres [58.68 hectares] except by order of the commission.

2. a. Horizontal wells with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least five hundred feet [152.4 meters], projected to a depth not deeper than the Mission Canyon formation, must be drilled upon a drilling unit described as a governmental section or described as two adjacent governmental quarter sections within the same section or equivalent lots, located not less than five hundred feet [152.4 meters] to the outside boundary of such tract. The horizontal well proposed to be drilled must, in the director's opinion, justify the creation of such drilling unit. No more than one well may be drilled to the same pool on any such tract, except by order of the commission.

   b. Horizontal wells with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least five hundred feet [152.4 meters], projected to a depth deeper than the Mission Canyon formation, must be drilled upon a drilling unit described as a governmental section, or as adjacent governmental sections, located not less than five hundred feet [152.4 meters] to the outside boundary of such tract. The horizontal well proposed to be drilled must, in the director's opinion, justify the creation of such drilling unit. No more than one well may be drilled to the same pool on any such tract, except by order of the commission.

3. a. Gas wells projected to a depth not deeper than the Mission Canyon formation shall be drilled upon a governmental quarter section or equivalent lots, located not less than five hundred feet [152.4 meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well ~~shall~~may be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or equivalent lot containing less than one hundred forty-five acres [58.68 hectares] except by order of the commission.

b. Gas wells projected to a depth deeper than the Mission Canyon formation shall be drilled upon a governmental quarter section or equivalent lots, located not less than six hundred sixty feet [201.17 meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well ~~shall~~may be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or equivalent lot containing less than one hundred forty-five acres [58.68 hectares] except by order of the commission.

4. a. Within thirty days, or a reasonable time thereafter, following the discovery of oil or gas in a pool not then covered by an order of the commission, a spacing hearing ~~shall~~must be docketed. Following such hearing the commission shall issue an order prescribing a temporary spacing pattern for the development of the pool. This order ~~shall~~must continue in force for a period of not more than three years at the expiration of which time a hearing ~~shall~~must be held at which the commission may require the presentation of such evidence as will enable the commission to determine the proper spacing for the pool.

b. During the interim period between the discovery and the issuance of the temporary order, no permits ~~shall~~may be issued for the drilling of an offset well to the discovery well, unless approved by the director. Approval ~~shall~~must be consistent with anticipated spacing for the orderly development of the pool.

c. Any well drilled within one mile [1.61 kilometers] of an established field shall conform to the spacing requirements in that field except when it is apparent that the well will not produce from the same common source of supply. In order to assure uniform and orderly development, any well drilled within one mile [1.61 kilometers] of an established field boundary ~~shall~~must conform to the spacing and special field rules for the field, and for the purposes of spacing and pooling, the field boundary shall be extended to include the spacing unit for such well and any intervening lands. The foregoing ~~shall~~is not ~~be~~ applicable if it is apparent that the well will not produce from the same common source of supply as wells within the field.

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

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; July 1, 1996; July 1, 2002; January 1, 2006; April 1, 2010; April 1, 2012; April 1, 2026.
General Authority: NDCC 38-08-04~~, 38-08-07~~
Law Implemented: NDCC 38-08-04, 38-08-07

43-02-03-19. Site construction.

1. In the construction of a well site, saltwater handling facility, treating plant, access road, and all associated facilities, the topsoil ~~shall~~must be removed, stockpiled, and stabilized or otherwise reserved for use when the area is reclaimed. "Topsoil" means the suitable plant growth material on the surface; however, in no event ~~shall~~is this ~~be~~ deemed to be more than the top twelve inches [30.48 centimeters] of soil or deeper than the depth of cultivation, whichever is greater. Soil stabilization materials, liners, fabrics, and other materials to be used onsite, on access roads or associated facilities, must be reported on a well or facility sundry notice ~~(form 4)~~ to the director within thirty days after application. The reclamation plan for such materials ~~shall~~must also be included.

~~When~~

2. If necessary to prevent pollution of the land surface and freshwaters, the director may require the site to be sloped and diked.

3. Sites ~~shall~~may not be located in, or hazardously near, bodies of water, nor ~~shall~~may they block natural drainages. Sites and associated facilities ~~shall~~must be designed and built to be stable, divert surface drainage from entering the site, and prevent erosion. Sites exhibiting geotechnical instability causing or likely to cause movement sufficient to negatively impact existing or future infrastructure must be reported to the director immediately.

4. Sites or appropriate parts thereof ~~shall~~must be fenced if required by the director.

5. Within six months after the completion of a well or construction of a saltwater handling facility or treating plant, the portion of the site not used for operations ~~shall~~must be reclaimed, unless waived by the director. Operators shall file a well or facility sundry notice ~~(form 4)~~ detailing the work that was performed and a current site diagram, which identifies the stockpiled topsoil location and its volume. ~~Sites shall be stabilized to prevent erosion.~~

History: Amended effective March 1, 1982; January 1, 1983; May 1, 1992; July 1, 2002; January 1, 2008; April 1, 2010; April 1, 2012; April 1, 2014; October 1, 2016; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-21. Casing, tubing, and cementing requirements.

1. All wells drilled ~~shall~~must be constructed with strings of casing which must be properly cemented at sufficient depths to adequately protect and isolate all formations containing water, oil, or gas or any combination of these; protect the pipe through salt sections encountered; and isolate the uppermost sand of the Dakota group. Cementing must be by the pump and plug method while the drilling rig is on the well or other methods approved by the director.

2. Drilling of the surface hole must be with freshwater-based drilling mud or other method approved by the director which ~~will protect~~protects all freshwater-bearing strata. This includes water used during the cementing of surface casing for displacement. The surface casing must consist of new or reconditioned pipe that has been previously tested to one thousand pounds per square inch [6900 kilopascals]. The surface casing must be set and cemented at a point not less than fifty feet [15.24 meters] below the base of the Fox Hills formation. Sufficient cement must be used on surface casing to fill the annular space behind the casing to the bottom of the cellar, if any, or to the surface of the ground. If the annulus space is not adequately filled with cement, the director must be notified immediately. The operator shall diligently perform remedial work after obtaining approval from the director. All strings of surface casing must stand cemented under pressure for at least twelve hours before drilling the plug. The term "under pressure" as used herein must be complied with if one float valve is used or if pressure is otherwise held. ~~Cementing must be by the pump and plug method while the drilling rig is on the well or other methods approved by the director.~~ An appropriate accurate gauge must be maintained on the surface casing of any well, not properly plugged and abandoned, to detect any buildup of pressure caused by the migration of fluids. Surface casing pressure must be monitored and maintained to keep the hydrostatic pressure at the surface casing shoe below the pressure the formation integrity test was performed at.

3. Surface casing strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least three hundred fifty pounds per square inch [2415 kilopascals] within seventy-two hours. All compressive strengths on surface casing cement must be calculated at a temperature of eighty degrees Fahrenheit [26.67 degrees Celsius].

4. Production or intermediate casing strings must consist of new or reconditioned pipe that has been previously tested to two thousand pounds per square inch [13800 kilopascals]. Such strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least five hundred pounds per square inch [3450 kilopascals] within seventy-two hours, although in any horizontal well performing a single stage cement job from a measured depth of greater than thirteen thousand feet [3962.4 meters], the filler cement utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within forty-eight hours and at least five hundred pounds per square inch [3450 kilopascals] within ninety-six hours. All compressive strengths on production or intermediate casing cement must be calculated at a temperature found in the Mowry formation using a gradient of 1.2 degrees Fahrenheit per one hundred feet [30.48 meters] of depth plus eighty degrees Fahrenheit [26.67 degrees Celsius]. At a formation temperature at or in excess of two hundred thirty degrees Fahrenheit [110 degrees Celsius], cement blends must include additives to address compressive strength regression.

5. Each surface casing string must be tested by application of pump pressure of at least one thousand pounds per square inch [6900 kilopascals] and each other casing string shall be tested by application of pump pressure of at least one thousand five hundred pounds per square inch [10350 kilopascals] immediately after cementing, while the cement is in a liquid state, or the casing string must be pressure tested after all cement has reached five hundred pounds per square inch [3450 kilopascals] compressive strength. If, at the end of thirty minutes, this pressure has dropped more than ten percent, the casing must be repaired after receiving approval from the director. Thereafter, the casing again must be tested in the same manner. Further work may not proceed until a satisfactory test has been obtained. The casing in a horizontal well may be tested by use of a mechanical tool set near the casing shoe after the horizontal section has been drilled.

6. All flowing wells must be equipped with tubing. A tubing packer must also be utilized unless a waiver from the director is obtained after demonstrating the casing will not be subjected to excessive pressure or corrosion. The packer must be set as near the producing interval as practicable, but in all cases must be above the perforations.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; January 1, 1997; September 1, 2000; July 1, 2002; May 1, 2004; January 1, 2006; April 1, 2010; April 1, 2012; April 1, 2020; April 1, 2022; April 1, 2024; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-22. Defective casing or cementing.

1. In any well that appears to have defective casing or cementing, the operator shall ~~conduct a mechanical integrity test, unless deemed unnecessary by the director, and~~ report the ~~test and~~ defect to the director ~~on a~~verbally and file a well sundry notice ~~(form 4)~~if required by the director. To properly evaluate the condition of the well, the operator shall diligently conduct tests or run logs as approved or required by the director. Prior to attempting remedial work ~~on any casing~~to correct any defect, the operator ~~must~~shall obtain approval from the director ~~and proceed with diligence to conduct tests, as approved or required by the director, to properly evaluate the condition of the well bore and correct the defect~~. The director is authorized to require subsequent pressure tests and logs to verify casing integrity if its competence is questionable. The director may allow the well ~~bore~~ condition to remain if correlative rights can be protected without endangering potable waters. The well ~~shall~~must be properly plugged if requested by the director.

2. After any attempted or completed remedial work, a report on the operation must be filed on a well sundry notice with the director pursuant to section 43-02-03-31.

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

History: Amended effective January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002; May 1, 2004; January 1, 2008; April 1, 2018; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-27.1. Hydraulic fracture stimulation.

1. Prior to performing any hydraulic fracture stimulation, including refracs, through a frac string run inside the casing string:

   a. Remedial work must be performed on all casing strings deemed defective pursuant to section 43-02-03-22 prior to performance at the discretion of the director.

   b. The frac string must be either stung into a liner with the hanger/packer located in cemented casing or run with a packer set at a minimum depth of one hundred feet [30.48 meters] below the top of cement or a minimum depth of one hundred feet [30.48 meters] below the top of the Inyan Kara formation, whichever is deeper.

   c. The casing-frac string annulus must be pressurized and monitored during frac operations. If there is a suspected frac string or casing failure, the operator of the well shall verbally notify the director as soon as practicable.

   d. An adequately sized, function tested pressure relief valve must be utilized on the treating lines from the pumps to the wellhead, with suitable check valves to limit the volume of flowback fluid should the relief valve open. The relief valve must be set to limit line pressure to no more than eighty-five percent of the internal yield pressure of the frac string.

   e. An adequately sized, function tested pressure relief valve and an adequately sized diversion line must be utilized to divert flow from the casing to a pit or containment vessel in case of frac string failure. The relief valve must be set to limit annular pressure to no more than eighty-five percent of the lowest internal yield pressure of the casing string or no greater than the pressure test on the intermediate casing, less one hundred pounds per square inch gauge, whichever is less.

   f. The surface casing must be fully open and connected to a diversion line rigged to a pit or containment vessel.

   g. An adequately sized, function tested remote operated frac valve must be utilized at a location on the christmas tree that provides isolation of the well bore from the treating line and must be remotely operated from the edge of the location or other safe distance.

   h. ~~Notify the~~The director must be notified within twenty-four hours after the commencement of hydraulic fracture stimulation operations, in an electronic format approved by the director, identifying the subject well and verifying a frac string was run in the well.

   i. Within sixty days after the hydraulic fracture stimulation is performed, the owner, operator, or service company shall post on the fracfocus chemical disclosure registry all elements made viewable by the fracfocus website.

2. Prior to performing any hydraulic fracture stimulation, including refracs, through a casing string:

   a. Remedial work must be performed on all casing strings deemed defective pursuant to section 43-02-03-22 prior to performance at the discretion of the director.

   b. The maximum treating pressure may not be greater than eighty-five percent of the American petroleum institute rating of the affected casing string.

   c. Casing evaluation tools to verify adequate wall thickness of any affected casing string must be run from the wellhead to a depth as close as practicable to one hundred feet [30.48 meters] above the completion formation and a visual inspection with photographs ~~shall~~must be made of the top joint of the casing and the wellhead flange. The visual inspection and photograph requirement may be waived by the director for good cause.

      If the casing evaluation tool or visual inspection indicates wall thickness is below the American petroleum institute minimum or a lighter weight of casing than the well design called for, calculations must be made to determine the reduced pressure rating. If the reduced pressure rating is less than the anticipated treating pressure, a frac string must be run inside the casing.

   d. Cement evaluation tools to verify adequate cementing of each casing string shall be run from the wellhead to a depth as close as practicable to one hundred feet [30.48 meters] above the completion formation.

      (1) If the cement evaluation tool indicates defective casing or cementing, a frac string must be run inside the casing.

      (2) If the cement evaluation tool indicates the casing string cemented in the well fails to satisfy section 43-02-03-21, a frac string must be run inside the casing.

   e. Each affected casing string and the wellhead must be pressure tested for at least thirty minutes with less than five percent loss to a pressure equal to or in excess of the maximum frac design pressure.

   f. If the pressure rating of the wellhead does not exceed the maximum frac design pressure, a wellhead and blowout preventer protection system must be utilized during the frac.

   g. An adequately sized, function tested pressure relief valve must be utilized on the treating lines from the pumps to the wellhead, with suitable check valves to limit the volume of flowback fluid should be the relief valve open. The relief valve must be set to limit line pressure to no greater than the test pressure of the casing, less one hundred pounds per square inch [689.48 kilopascals].

   h. The surface casing value must be fully open and connected to a diversion line rigged to a pit or containment vessel.

   i. An adequately sized, function tested remote operated frac valve must be utilized between the treating line and the wellhead.

   j. If there is a suspected casing failure, the operator of the well shall verbally notify the director as soon as practicable.

   k. Notify the director within twenty-four hours after the commencement of hydraulic fracture stimulation operations, in an electronic format approved by the director, identifying the subject well and verifying all logs and pressure tests have been performed as required.

l. Within sixty days after the hydraulic fracture stimulation is performed, the owner, operator, or service company shall post on the fracfocus chemical disclosure registry all elements made viewable by the fracfocus website.

3. If during the stimulation, an unexpected pressure loss or other unexpected event occurs suggesting loss of containment, or the pressure in the casing-surface casing annulus exceeds three hundred fifty pounds per square inch [2413 kilopascals] gauge, the owner or operator ~~shall~~ verbally shall notify the director as soon as practicable but no later than twenty-four hours following the incident.

History: Effective April 1, 2012; amended effective April 1, 2014; April 1, 2020; April 1, 2022; April 1, 2024; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-28. Safety regulation.

1. During drilling operations all oil wells must be cleaned into a pit or tank, not less than forty feet [12.19 meters] from the derrick floor and one hundred fifty feet [45.72 meters] from any fire hazard.

2. All flowing oil wells must be produced through an approved oil and gas separator or emulsion treater of ample capacity and in good working order. No boiler, electric generator, flare, or treater may be placed nearer than one hundred fifty feet [45.72 meters] to any producing well or oil tank that is not an oil processing vessel as defined in American Society of Mechanical Engineers (ASME) section VIII. Placement as close as one hundred twenty-five feet [38.10 meters] may be allowed if a spark or flame arrestor is utilized on the equipment. Placement of an oil processing vessel as defined in ASME section VIII as close as fifty feet [15.24 meters] may be allowed if approved by the director. The required distances above must be measured horizontally from closest vessel edge to closest edge of the boiler, generator, flare, or treater or closest vessel edge to flame arrestor or burner air inlet edge. Any rubbish or debris that might constitute a fire hazard must be removed to a distance of at least one hundred fifty feet [45.72 meters] from the vicinity of wells and tanks. All waste must be burned or disposed of in such manner as to avoid creating a fire hazard. All vegetation must be removed to a safe distance from any production or injection equipment to eliminate a fire hazard.

3. The director may require remote operated or automatic shutdown equipment to be installed on, or shut in for no more than forty days, any well that is likely to cause a serious threat of wildfire, pollution, or injury to the public health ~~or~~and safety.

4. Surface casing may not be plumbed into the production flow line to relieve pressure without approval from the director.

5. ~~No~~A well ~~shall~~may not be drilled nor production or injection equipment installed ~~nor~~and a saltwater handling facility or treating plant may not be constructed less than five hundred feet [152.40 meters] from an occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission.

6. Subsurface pressure must be controlled during all drilling, completion, and well-servicing operations with appropriate fluid weight and pressure control equipment. The operator conducting any well hydraulic fracture stimulation shall give prior written notice, up to thirty-one days and not less than twenty-one days, to any operator of a well completed in the same or adjacent pool, if publicly available information indicates or if the operator is made aware, if the completion intervals are within two thousand six hundred and forty feet [804.67 meters] of one another. Notice must include twenty-four-hour emergency contact information, planned start and end dates, and contact information for scheduling updates.

History: Amended effective January 1, 1983; May 1, 1990; September 1, 2000; January 1, 2006; January 1, 2008; April 1, 2012; April 1, 2014; October 1, 2016; April 1, 2020; April 1, 2024; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04, 38-08-04.4

43-02-03-29. Well and lease equipment and gas gathering pipelines.

1. Wellhead and lease equipment with a working pressure at least equivalent to the calculated or known pressure to which the equipment may be subjected ~~shall~~must be installed and maintained. Equipment on producing wells ~~shall~~must be installed to facilitate gas-oil ratio tests, and static bottom hole or other pressure tests. Valves ~~shall~~must be installed and maintained in good working order to permit pressure readings to be obtained on both casing and tubing.

2. All newly constructed underground gas gathering pipelines must be devoid of leaks and constructed of materials resistant to external corrosion and to the effects of transported fluids. All such pipelines installed in a trench must be installed in a manner that minimizes interference with agriculture, road and utility construction, the introduction of secondary stresses, the possibility of damage to the pipe, and tracer wire shall be buried with any nonconductive pipes installed. When a trench for an underground gas gathering pipeline is backfilled, it must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material.

~~1.~~ a. The operator of any underground gas gathering pipeline placed into service on August 1, 2011, to June 30, 2013, shall file with the director, by January 1, 2015, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of the pipeline centerline. Any shape files that have been created for any underground gas gathering pipeline placed into service prior to August 1, 2011, must also be filed with the director. The operator of any underground gas gathering pipeline placed into service after June 30, 2013, shall file with the director, within one hundred eighty days of placing into service, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of all compressor sites, buried drip tanks, and the pipeline centerline. An affidavit of completion ~~shall~~must accompany each layer containing the following information:

   ~~a.~~ (1) A statement that the pipeline was constructed and installed in compliance with section 43-02-03-29.

   ~~b.~~ (2) The outside diameter, minimum wall thickness, composition, internal yield pressure, and maximum temperature rating of the pipeline, or any other specifications deemed necessary by the director.

   ~~c.~~ (3) The anticipated operating pressure of the pipeline.

   ~~d.~~ (4) The type of fluid that will be transported in the pipeline and direction of flow.

   ~~e.~~ (5) Pressure to which the pipeline was tested prior to placing into service.

   ~~f.~~ (6) The minimum pipeline depth of burial.

   ~~g.~~ (7) In-service date.

   ~~h.~~ (8) Leak detection and monitoring methods that will be utilized after in-service date.

   ~~i.~~ (9) Pipeline name.

~~j.~~ (10) Accuracy of the geographical information system layer.

~~2.~~ b. ~~When~~If an underground gas gathering pipeline or any part of such pipeline is abandoned, the operator shall leave such pipeline in a safe condition by conducting the following:

~~a.~~ (1) Disconnect and physically isolate the pipeline from any operating facility or other pipeline.

~~b.~~ (2) Cut off the pipeline or the part of the pipeline to be abandoned below surface at pipeline level.

~~c.~~ (3) Purge the pipeline with fresh water, air, or inert gas in a manner that effectively removes all fluid.

~~d.~~ (4) Remove cathodic protection from the pipeline.

~~e.~~ (5) Permanently plug or cap all open ends by mechanical means or welded means.

3. Within one hundred eighty days of completing the abandonment of an underground gas gathering pipeline the operator of the pipeline shall file with the director a geographical information system layer utilization North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of the pipeline centerline and an affidavit of completion containing the following information:

   a. A statement that the pipeline was abandoned in compliance with section 43-02-03-29.

   b. The type of fluid used to purge the pipeline.

4. Aboveground pipeline markers must be placed and maintained over each buried underground gas gathering pipeline or portion thereof at the discretion of the director when necessary to protect public health and safety. The markers must contain at least the following on a background of sharply contrasting color: the word "Warning", "Caution", or "Danger" followed by the fluid transported pipeline, the name of the operator, and current emergency phone number.

The requirement to submit a geographical information system layer ~~is~~may not ~~to~~ be construed to be required on buried piping utilized to connect flares, tanks, treaters, or other equipment located entirely within the boundary of a well site or production facility.

History: Amended effective January 1, 1983; January 1, 2006; April 1, 2014; October 1, 2016; April 1, 2022; April 1, 2024; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04, 38-08-26

43-02-03-31. Well log, completion, and workover reports.

1. After the plugging of a well, a well plugging ~~record (form 7)~~report must be filed with the director. After the completion of a well, recompletion of a well in a different pool, or drilling horizontally in an existing pool, a well completion report ~~(form 6 or form provided by the director)~~ must be filed with the director. ~~In no case shall oil or gas be transported from the lease prior to the filing of a completion report unless approved by the director.~~ The operator shall cause to be run an open hole electrical, radioactivity, or other similar log, or combination of open hole logs, of the operator's choice, from which formation tops and porosity zones can be determined. The operator shall cause to be run a gamma ray log from total depth to ground level elevation of the well bore. Within six months of reaching total depth and prior to completing the well, the operator shall cause to be run a cement evaluation log from which the

presence and quality of bonding of cement can be determined in every well in which production or intermediate casing has been set. The initial cement evaluation log must be run without the addition of pressure at surface, except at depths where the cement evaluation tool may need appropriate pressure applied to function properly. The obligation to log may be waived or postponed by the director if the necessity therefor can be demonstrated to the director's satisfaction. Waiver will be contingent upon such terms and conditions as the director deems appropriate. All logs run must be available to the director at the well site prior to proceeding with plugging or completion operations. All logs run shall be submitted to the director free of charge. Logs must be submitted as one digital TIFF (tagged image file format) copy and one digital LAS (log ASCII) formatted copy, or a format approved by the director. In addition, operators shall file one copy of drill stem test reports and charts, formation water analyses, core analyses, geologic reports, and noninterpretive lithologic logs or sample descriptions if compiled by the operator.

2. All information furnished to the director on permits, except the operator name, well name, location, permit date, confidentiality period, spacing or drilling unit description, spud date, rig contractor, central tank battery number, any production runs, or volumes injected into an injection well, must be kept confidential from the date a request by the operator is received in writing until the six-month confidentiality period has ended. The six-month period commences on the date the well is completed or the date the written request is received, whichever is earlier. If the written request accompanies the application for permit to drill or is filed after permitting but prior to spudding, the six-month period commences on the date the well is spudded. The director may release such confidential completion and production data to health care professionals, emergency responders, and state, federal, or tribal environmental and public health regulators if the director deems it necessary to protect the public's health, safety, and welfare.

3. All information furnished to the director on recompletions, restimulation wells, or reentries, except the operator name, well name, location, permit date, confidentiality period, spacing or drilling unit description, spud date, rig contractor, any production runs, or volumes injected into an injection well, must be kept confidential for not more than six months if requested by the operator in writing. The six-month period ~~shall commence~~commences on the date the well is completed, recompleted, or restimulated or the date a request by the operator is received in writing, whichever is earlier. Any information furnished to the director prior to approval of the recompletion, restimulation, or reentry must remain public.

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

5. After the completion of any remedial work, or attempted remedial work such as plugging back or drilling deeper, acidizing, shooting, formation fracturing, squeezing operations, remedial cementing, setting liner, perforating, reperforating, or other similar operations not specifically covered herein, a report on the operation shall be filed on a well sundry notice ~~(form 4)~~ with the director. The report must present a detailed account of all work done and the date of such work; ~~the daily production of oil, gas, and water both prior to and after the operation;~~ the shots per foot, size, and depth of perforations; the quantity of cement, sand, crude, chemical, or other materials employed in the operation; ~~and~~ any other pertinent information or operations which affect the original status of the well and are not specifically covered herein, and any other information required by the director.

6. Upon the installation of pumping equipment on a flowing well, or change in type of pumping equipment designed to increase productivity in a well, the operator shall submit a well sundry notice ~~(form 4)~~ of such installation. The notice must include all pertinent information on the pump and the operation thereof including the date of such installation~~, and the daily production of the well prior to and after the pump has been installed~~.

7. All forms, reports, logs, and other information required by this section must be submitted within thirty days after the completion of such work, although a completion report must be filed immediately after the completion or recompletion of a well in a pool or reservoir not then covered by an order of the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; September 1, 2000; July 1, 2002; January 1, 2006; January 1, 2008; April 1, 2010; April 1, 2012; October 1, 2016; April 1, 2020; April 1, 2024; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-44. ~~Metered~~Vented, flared, and metered casinghead gas.

1. Pending arrangements for disposition for some useful purpose, all vented casinghead gas must be burned. Each flare must be equipped with an automatic ignitor or a continuous burning pilot, unless waived by the director for good reason.

2. All casinghead gas produced must be reported monthly to the director in units of one thousand cubic feet [28.32 cubic meters] computed at a pressure of fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter] at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius]. Associated gas production may not be transported from a well premises or central production facility until its volume has been determined through the use of properly calibrated measurement equipment. All measurement equipment and volume determinations must conform to American gas association standards. The operator of a well shall notify the director within thirty days on a well sundry ~~form~~notice of the connection date to a gas gathering system, the metering equipment, transporter, and purchaser of the gas. Any gas produced and used on lease for fuel purposes or flared may be estimated or measured and must be reported on a gas ~~production~~ report ~~(form 5b)~~ in accordance with section 43-02-03-52.1. Meters used to determine the use on lease or flared gas volumes must be installed and calibrated in accordance with American petroleum institute or American gas association standards or to the meter manufacturer's recommendations.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; September 1, 2000; April 1, 2024; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-45. Vented casinghead gas.

Repealed effective April 1, 2026.

~~Pending arrangements for disposition for some useful purpose, all vented casinghead gas shall be burned. Each flare shall be equipped with an automatic ignitor or a continuous burning pilot, unless waived by the director for good reason. The estimated volume of gas used and flared shall be reported to the director on a gas production report (form 5b) on or before the fifth day of the second month succeeding that in which gas is produced.~~

~~**History:** Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; September 1, 2000.~~
~~**General Authority:** NDCC 38-08-04~~
~~**Law Implemented:** NDCC 38-08-04~~

43-02-03-47. Produced water.

Monthly water production from each well must be determined through the use of properly calibrated meter measurements, tank measurements, or an alternate measurement method approved by the

director. This includes allocating water production back to individual wells on a monthly basis, provided the method of volume determination and allocation procedure results in reasonably accurate production volumes. Operators shall report monthly to the director the amount of water produced by each well on ~~form 5~~an oil report. The reports must be filed by five p.m on ~~or before~~ the first day of the second month following that in which production occurred.

History: Amended effective January 1, 1983; May 1, 1992; May 1, 1994; September 1, 2000; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-48.1. Central production facility - Commingling of production.

1. The director may approve requests to consolidate production equipment at a central location. The applicant shall provide all information requested by the director. The director may impose such terms and conditions as the director deems necessary.

2. Commingling of oil and gas production from two or more wells in a central production facility is prohibited unless approved by the director. There are two types of central production facilities in which production from two or more wells is commingled that may be approved by the director~~.~~ :

   a. A central production facility in which all production going into the facility has common ownership. For purposes of this section, production with common ownership is defined as production from wells that do not have diverse ownership.

   b. A central production facility in which production going into the facility has diverse ownership. For purposes of this section, production with diverse ownership is defined as production from wells ~~that are~~:

      (1) ~~In~~That are in different drilling or spacing units; and

      (2) Which have different mineral ownership.

3. The commingling of oil and gas production in a central production facility from two or more wells having common ownership may be approved by the director provided the production from each well can be accurately determined at reasonable intervals. Commingling of oil and gas production in a central production facility from two or more wells having diverse ownership may be approved by the director provided the production from each well is accurately metered prior to commingling. Commingling of oil and gas production in a central production facility from two or more wells having diverse ownership ~~that~~which is not metered prior to commingling may only be approved by the commission after notice and hearing.

   a. ~~Common ownership central production facility.~~ The application for permission to commingle oil, gas, or both in a central production facility with common ownership must be submitted on a facility sundry notice and ~~shall~~must include the following:

      (1) A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well and flow lines from each well that will produce into the facility.

      (2) A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps, etc., ~~should~~must be shown.

      (3) An affidavit executed by a person who has knowledge indicating that common ownership as defined above exists.

(4) The name of the manufacturer, size, and type of allocation meters to be used. Oil meters must be proved at least semiannually and gas meters must be calibrated at least annually. The results must be reported to the director within thirty days following the completion of the test.

(5) An explanation of the procedures or method to be used to determine, accurately, individual well production at periodic intervals. Such procedures or method ~~shall~~must be performed at least ~~once every three months~~quarterly.

~~(5) List of all allocation meters to be used and the meter type.~~

A copy of all tests are to be filed with the director on a central tank battery well test form within thirty days after the tests are completed.

b. ~~Diverse ownership central production facility.~~ The application for permission to commingle oil, gas, or both in a central production facility having diverse ownership must be submitted on a facility sundry notice and shall include the following:

(1) A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well, and flow lines from each well that will produce into the facility.

(2) A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps, etc., ~~should~~must be shown.

(3) The name of the manufacturer, size, and type of allocation meters to be used. ~~The~~Oil meters must be proved at least once every three months and ~~the~~gas meters must be calibrated at least semiannually. The results must be reported to the director within thirty days following the completion of the test.

(4) An explanation of the procedures or method to be used to accurately determine~~, accurately,~~ individual well production at periodic intervals. Such procedures or method ~~shall~~must be performed at least monthly.

~~(5) List of all allocation meters to be used and the meter type.~~

A copy of all tests ~~are to~~must be filed with the director on a central tank battery well test form within thirty days after the tests are completed.

4. The commingling of produced water in a central production facility from two or more wells may be approved by the director provided the produced water production can be accurately determined at reasonable intervals. The application for permission to commingle water in a central production facility must be submitted on a facility sundry notice and ~~shall~~must include the following:

a. A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well, and flow lines from each well that will produce into the facility.

b. A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps, etc., ~~should~~must be shown.

c. An affidavit executed by a person who has knowledge indicating that common ownership as defined above exists; or an indication that it is not common ownership.

d. The name of the manufacturer, size, and type of allocation meters to be used. Allocation meters must be installed and calibrated in accordance with American petroleum institute or to the meter manufacturer's recommendations.

e. An explanation of the procedures or method to be used to determine, accurately, individual well production at periodic intervals. Such procedures or method ~~shall~~must be performed quarterly for common ownership and central production facilities monthly for diverse ownership central production facilities.

~~e. List of all allocation meters to be used and the meter type.~~

5. Any changes to a previously approved central production facility must be reported on a facility sundry notice ~~(form 4)~~ and approved by the director.

6. After notice and hearing pursuant to sections 43-02-03-88.2 through 43-02-03-101, the commission may revoke the authorization to commingle production in a central production facility for failure to comply with this section or any terms, conditions, or directives imposed by the director.

History: Effective May 1, 1992; amended effective September 1, 2000; May 1, 2004; April 1, 2020, April 1, 2024; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-49. Oil production equipment, dikes, and seals.

1. Storage of oil in underground or partially buried tanks or containers is prohibited. Surface oil tanks and production equipment must be devoid of leaks and constructed of materials resistant to the effects of produced fluids or chemicals that may be contained therein. Unused tanks and production equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year.

2. Dikes must be erected around oil tanks, flowthrough process vessels, and recycle pumps at any new production facility prior to completing any well. ~~Dikes~~The dikes must be erected and maintained around oil tanks at all facilities unless a waiver is granted by the director. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes around oil tanks must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid production. Dikes around flowthrough process vessels must be of sufficient dimension to contain the total capacity of the vessel. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction.

3. Within one hundred eighty days from the date the operator is notified by the commission, a perimeter berm, at least six inches [15.24 centimeters] in height, must be constructed and maintained. The berm must be constructed of sufficiently impermeable material to provide emergency containment and to divert surface drainage away from the site around all storage facilities and production sites that include storage tanks, have a daily throughput of more than one hundred barrels of fluid per day, and include production equipment or load lines that are not contained within secondary containment dikes. The director may consider an extension of time to implement these requirements if conditions prevent timely construction, or a modification of these requirements if other factors are present that provide sufficient protection from environmental impacts. Prior to removing any perimeter berm, the operator or owner shall obtain approval by the director.

4. Numbered weather-resistant security seals ~~shall~~must be properly utilized on all oil access valves and access points to secure the tank or battery of tanks.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002; May 1, 2004; April 1, 2010; April 1, 2012; October 1, 2016; April 1, 2018; April 1, 2020; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-52. Report of oil production.

The operator of each well completed in any pool shall, by five p.m. on ~~or before~~ the first day of the second month succeeding the month in which production occurs or could occur, file with the director the amount of production made by each such well ~~upon form 5 or approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters]. The report shall be signed by both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included~~on an oil report. Wells for which reports of production are not received by ~~the close of business~~five p.m. on said first day of the month may be shut in for a period not to exceed thirty days. The director shall notify, by certified mail, the operator and authorized transporter of the shut-in period for ~~such~~the wells. Any oil produced during ~~such~~the shut-in period shall be deemed illegal oil and subject to the provisions of North Dakota Century Code section 38-08-15.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; December 1, 1997; September 1, 2000; October 1, 2016; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-52.1. Report of gas produced in association with oil.

The operator of each well completed in any pool shall, by five p.m. on ~~or before~~ the fifth day of the second month succeeding the month in which production occurs or could occur, file with the director the amount of gas produced by each such well ~~upon form 5b or approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters]. The report shall be signed by both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included~~on a gas report. Wells for which reports of production are not received by ~~the close of business~~five p.m. on said fifth day of the month may be shut in for a period not to exceed thirty days. The director shall notify~~,~~ by certified mail~~,~~ the operator and authorized transporter of the shut-in period for ~~such~~the wells. Any gas produced during ~~such~~the shut-in period must be deemed illegal gas and subject to the provisions of North Dakota Century Code section 38-08-15.

History: Effective May 1, 1992; amended effective December 1, 1997; September 1, 2000; October 1, 2016; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-53.3. Saltwater handling facility construction and operation requirements - Bond requirement.

1. ~~Bond requirement.~~ Before construction of a saltwater handling facility, saltwater handling facility site, or access road begins, the operator shall file with the director a surety bond or cash bond conditioned upon compliance with all laws, rules and regulations, and orders of the commission. The bond must be in the amount of fifty thousand dollars and must be payable to the industrial commission. The commission, after notice and hearing, may require a higher bond amount. ~~Such additional~~Additional amounts for bonds must be related to the economic value of the facility and the expected cost of decommissioning and site reclamation, as determined by the commission. The commission may refuse to accept a bond if the operator or surety company has failed in the past to comply with all laws, rules and regulations, and

orders of the commission; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

2. Saltwater handling facility sites or appropriate parts thereof must be fenced if required by the director. All fences installed within or around any facility must be constructed in a manner that promotes emergency ingress and egress.

3. All waste, recovered solids, and fluids must be stored and handled in such a manner to prevent runoff or migration offsite.

4. Surface tanks may not be underground or partially buried, must be devoid of leaks, and constructed of~~,~~ or lined with~~,~~ materials resistant to the effects of produced saltwater liquids, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition. Unused tanks and equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year.

5. Dikes must be erected and maintained around saltwater tanks at any saltwater handling facility. Dikes must be erected around saltwater tanks at any new facility prior to introducing fluids. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid throughput. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. The operations of the saltwater handling facility must be conducted in such a manner as to prevent leaks, spills, and fires. Discharged liquids or brines must be properly removed and may not be allowed to remain standing within or outside of any diked areas. All such incidents must be properly cleaned up, subject to approval by the director. All such reportable incidents must be promptly reported to the director and a detailed account of any such incident must be filed with the director in accordance with section 43-02-03-30.

6. Within one hundred eighty days from the date the operator is notified by the commission, a perimeter berm, at least six inches [15.24 centimeters] in height, must be constructed of sufficiently impermeable material to provide emergency containment around the facility and to divert surface drainage away from the site. The director may consider an extension of time to implement these requirements if conditions prevent timely construction or a modification of these requirements if other factors are present that provide sufficient protection from environmental impacts.

7. The operator shall take steps to minimize the amount of solids stored at the facility.

8. Within thirty days following construction or modification of a saltwater handling facility, a facility sundry notice ~~(form 4)~~ must be submitted detailing the work and the dates commenced and completed. The facility sundry notice must be accompanied by a schematic drawing of the saltwater handling facility site drawn to scale, detailing all facilities and equipment, including the size, location, and purpose of all tanks; the height and location of all dikes as well as a calculated containment volume; all areas underlain by a synthetic liner; any leak detection system installed; the location of all flowlines; the stockpiled topsoil location and its volume; and the road access to the nearest existing public road.

9. Immediately upon the commissioning of the saltwater handling facility, the operator shall notify the director in writing of such date.

10. The operator of a saltwater handling facility shall provide continuing surveillance and conduct such monitoring and sampling as the director may require.

11. Storage pits, waste pits, or other earthen storage areas must be prohibited unless authorized by an appropriate regulatory agency. A copy of said authorization must be filed with the director.

12. Burial of waste at any saltwater handling facility site is prohibited. All residual water and waste, fluid or solid, must be disposed of in an authorized facility.

13. If deemed necessary by the director, the operator shall cause to be analyzed any waste substance contained onsite. Such chemical analysis must be performed by a certified laboratory and must adequately determine if chemical constituents exist which would categorize the waste as hazardous by department of environmental quality standards.

14. Saltwater handling facilities must be constructed and operated so as not to endanger surface or subsurface water supplies or cause degradation to surrounding lands and must comply with section 43-02-03-28 concerning fire hazards and proximity to occupied dwellings.

15. All proposed changes to any saltwater handling facility are subject to prior approval by the director.

16. Any salable crude oil recovered from a saltwater handling facility must be reported on a ~~form 5 SWD~~skim oil report.

17. The operator shall comply with all laws, rules and regulations, and orders of the commission. All rules in this chapter governing oil well sites also apply to any saltwater handling facility site.

18. The operator immediately shall ~~immediately~~ cease operations if so ordered by the director for the failure to comply with the statutes of North Dakota, commission rules or orders, or directives of the director.

History: Effective October 1, 2016; amended effective April 1, 2018; April 1, 2020; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-59. Production from gas wells to be measured and reported.

Gas production may not be transported from gas well premises until its volume has been determined through the use of properly calibrated measurement equipment. All measurement equipment and volume determinations must conform to American gas association standards and corrected to a pressure of fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter] at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius]. Gas ~~production reports (form 5b) shall be filed with the director on or before the fifth day of the second month succeeding that in which production occurs~~produced, used on lease, or flared ~~shall~~must be reported pursuant to sections 43-02-03-44 and 43-02-03-52.1.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; July 1, 1996; September 1, 2000; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-80. Reports of purchasers and transporters of crude oil.

~~On or before~~

1. By five p.m. on the first day of the second month succeeding ~~that~~the month in which oil is removed, purchasers and transporters, including truckers, shall file with the director the appropriate monthly reporting forms. The purchaser shall file on ~~form 10~~the oil purchasers monthly report and the transporter on ~~form 10a~~the oil transporters monthly report the amount

of all crude oil removed and purchased by them from each well, central production facility, treating plant, or saltwater handling facility during the reported month. The transporter shall report the disposition of such crude oil on ~~form 10b~~an oil transporters and storers monthly report (form 10b). All meter and tank measurements, and volume determinations of crude oil removed and purchased from a well or central production facility must conform to American petroleum institute standards and corrected to a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].

2. Prior to removing any oil, purchasers and transporters shall obtain an approved copy of a producer's authorization to purchase and transport oil ~~(form 8)~~ from either the producer or the director.

3. The operator of any oil rail facility shall report the amount of oil received and shipped out of such facility on form 10rr.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; September 1, 2000; April 1, 2014; October 1, 2016; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-80.1. Gas purchaser report.

By five p.m. on the fifth day of the second month succeeding the month in which gas is purchased from a well or central production facility, gas purchasers shall file with the director a gas purchasers report (form 12a) of all gas purchased from each well or central production facility during the reported month. All volumes of gas must be reported in units of one thousand cubic feet [28.32 cubic meters] computed at a pressure of fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter] at a base temperature of sixty degree Fahrenheit [15.56 degrees Celsius]. All measurement equipment and volume determinations must conform to American petroleum institute or American gas association standards, or with the meter manufacturer's recommendations.

History: April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-81. Authorization to transport oil from a well, treating plant, central production facility, or saltwater handling facility.

~~Before any crude~~

1. Crude oil ~~is~~may not be transported from a well, treating plant, central production facility, or saltwater handling facility, ~~the operator shall file with the director, and obtain~~prior to the director's approval~~, an~~ of the authorization to purchase and transport oil ~~(form 8)~~form unless verbally approved by the director.

2. After notice and hearing pursuant to sections 43-02-03-88.2 through 43-02-03-101, the commission may revoke the authorization to purchase and transport oil for failure to comply with any rule, regulation, directive of the director, or order of the commission.

3. Oil transported before the authorization is obtained or if such authorization has been revoked ~~shall be~~is considered illegal oil.

~~The director may revoke the authorization to purchase and transport oil for failure to comply with any rule, regulation, or order of the commission.~~

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; September 1, 2000; April 1, 2014; October 1, 2016; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-83. Gas processing plant reports.

Each operator of a gas processing plant, cycling plant, or any other plant at which natural gas ~~processing, gasoline, butane, propane, condensate, kerosene, oil, or other products are extracted from gas shall furnish~~is received and processed shall report to the director ~~a report containing~~ the amount of natural gas received ~~from each lease or well~~, disposition of the natural gas, and the plant production that includes condensate, ethane, propane, butane, natural gasoline, kerosene, oil, sulfur, or other products on ~~form 12a~~a gas plant report (form 12) by five p.m. on the fifth day of the second month following the month in which gas is processed.

Crude oil recovered ~~shall~~must be reported to the director, on ~~form 5~~an oil report by five p.m. on ~~or before the close of business on~~ the first day of the second month succeeding ~~that~~the month in which oil is removed. Other operations ~~shall~~must be reported to the director, on form 12 ~~and 12a~~, by five p.m. on ~~or before~~ the fifth day of the second month following ~~that~~the month in which gas is processed.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; April 1, 2026.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-88.1. Special procedures for increased density wells, pooling, flaring exemption, underground injection, commingling, converting mineral wells to freshwater wells, ~~and~~ central tank battery or central production facilities, and unopposed recovery of a risk penalty applications.

1. Applications to amend field rules to allow additional wells on existing spacing units, for pooling under North Dakota Century Code section 38-08-08, for a flaring exemption under North Dakota Century Code section 38-08-06.4 and section 43-02-03-60.2, for underground injection under chapter 43-02-05, for commingling in one well bore the fluids from two or more pools under section 43-02-03-42, for converting a mineral well to a freshwater well under section 43-02-03-35, ~~and~~ for establishing central tank batteries or central production facilities under section 43-02-03-48.1, and for recovery of a risk penalty for which there is no known opposition under section 43-02-03-16.3 must be signed by the applicant or the applicant's representative. The application must contain or refer to attachments that contain all the information required by law as well as the information the applicant wants the commission to consider in deciding whether to grant the application. The application must designate an employee or representative of the applicant to whom the commission can direct inquiries regarding the application.

2. The commission shall give the county auditor notice at least fifteen days prior to the hearing of any application in which a request for a disposal under chapter 43-02-05 is received.

3. The applications referred to in subsection 1 will be advertised and scheduled for hearing as are all other applications received by the commission. The applicant, however, unless required by the director, need not appear at the hearing scheduled to consider the application, although additional evidence may be submitted prior to the hearing. Any interested party may appear at the hearing to oppose or comment on the application. Any interested party may also submit written comments on or objections to the application prior to the hearing date. Such submissions must be received no later than five p.m. on the last business day prior to the hearing date and may be part of the record in the case if allowed by the hearing examiner.

4. The director is authorized, on behalf of the commission, to grant or deny the applications referred to in subsection 1.

5. In any proceeding under this section, the applicant, at the hearing, may supplement the record by offering testimony and exhibits in support of the application.

6. In the event the applicant is not required by the director to appear at the hearing and an interested party does appear to oppose the application or submits a written objection to the application, the hearing examiner shall continue the hearing to a later date, keep the record open for the submission of additional evidence, or take any other action necessary to ensure ~~that~~ the applicant, who does not appear at the hearing as the result of subsection 3, is accorded due process.

History: Effective May 1, 1992; amended effective May 1, 1994; May 1, 2004; April 1, 2012; April 1, 2014; April 1, 2018; April 1, 2022; April 1, 2026.
General Authority: NDCC 38-08-04, 38-08-11
Law Implemented: NDCC 38-08-04, 38-08-08

43-02-03-88.2. Hearing participants by ~~telephone~~remote communication or other reliable electronic means.

In any hearing, the commission may, at its ~~option~~discretion, allow ~~telephonic communication~~remote communication or communication by other reliable electronic means of witnesses and interested parties. The procedure ~~shall be~~is as follows:

1. ~~Telephonic communication~~Notice of an applicant's witness ~~will only~~appearing by remote communication or communication by other reliable electronic means must be ~~considered if a written request is made~~submitted in writing at least two business days prior to the hearing date.

2. ~~Telephonic communication~~Notice of an interested party ~~will only~~appearing by remote communication or communication by other reliable electronic means must be ~~considered if said party~~submitted in writing to notifies the applicant and the commission ~~in writing~~ at least three business days prior to the hearing date. ~~Such~~The notice ~~shall~~must include the subject hearing, the name and telephone number of the interested party, and the name and telephone number of the interested party's attorney or representative that will be present at the hearing.

3. ~~In the event an objection to any party's telephonic communication is received, the~~The hearing examiner may disallow ~~such communication by telephone~~remote communication or communication by other reliable electronic means and may schedule or reschedule for an in-person hearing. ~~The commission will notify all parties whether or not the request to participate by telephone is granted or denied.~~

4. All parties participating by ~~telephone~~remote communication or communication by other reliable electronic means shall have an attorney or representative present at the hearing who ~~shall be~~is responsible for ~~actually calling said party once the case is called for hearing, for~~ providing the commission at the time of the hearing with any documentary evidence requested to be included in the record, and for any other matters necessary for the party to participate by ~~telephone~~remote communication or communication by other reliable electronic means. This requirement may be waived at the discretion of the hearing examiner for good cause.

5. All parties participating by ~~telephone~~remote communication or communication by other reliable electronic means shall file an affidavit verifying the identity of such party. The record of such ~~telephonic communication shall~~remote communication or communication by other reliable electronic means is not ~~be~~ considered evidence in the case unless said affidavit is received by the ~~examiner~~commission prior to an order being issued by the commission. The commission

shall provide a form affidavit. The commission ~~has the discretion to~~may refuse to consider all or any part of the information received from any party participating by ~~telephone~~remote communication or communication by other reliable electronic means.

6. For all hearings allowing ~~communication by telephone~~remote communication or communication by other reliable electronic means, the commission shall provide a hearing room equipped with ~~a speaker telephone~~remote communication equipment.

~~7. The cost of telephonic communication shall be paid by the party requesting its use.~~

History: Effective July 1, 2002; amended effective May 1, 2004; April 1, 2026.
General Authority: NDCC 38-08-11
Law Implemented: NDCC 28-32-11

TITLE 48.1

STATE BOARD OF ANIMAL HEALTH

APRIL 2026

ARTICLE 48.1-01
GENERAL ADMINISTRATION

Chapter
48.1-01-01 Definitions
48.1-01-02 Agents of the Board
48.1-01-03 Penalties [Repealed]
48.1-01-04 Waivers and Exemptions
48.1-01-05 Quarantines
48.1-01-06 Virulent Products
48.1-01-07 Rendering Plants - Collection of Dead Animals [Repealed]

CHAPTER 48.1-01-07
RENDERING PLANTS - COLLECTION OF DEAD ANIMALS

[Repealed effective April 1, 2026]

~~Section~~

~~48.1-01-07-01 Rendering Plants - Collection of Dead Animals~~

CHAPTER 48.1-05-01

48.1-05-01-01. Importation requirements - Certificate of veterinary inspection - Identification - Exemptions.

1. Cattle imported into the state must be accompanied by an official certificate of veterinary inspection except:

   a. Cattle originating directly from a producer's premises, not diverted en route, and consigned to an auction market approved by the board;

   b. Cattle consigned to a state or federally inspected slaughtering establishment;

   c. Cattle granted an exception by the board, if in the determination of the state veterinarian the animals are free of contagious or infectious diseases;

   d. Cattle leaving the state for exhibition or competition with a valid certificate of veterinary inspection may return to the state with the same certificate of veterinary inspection if the animal has not been out of the state for more than thirty days; and

   e. Other cattle as otherwise provided for by these rules.

2. Certificates of veterinary inspection for cattle must include an importation permit number issued by the state veterinarian before entering the state. Cattle imported on an approved electronic certificate of veterinary inspection platform, not originating in an area classified as infected with contagious disease by the board or state veterinarian, may be exempt from the requirement for an importation permit number.

3. The state veterinarian may deny a request for an importation permit number if the state veterinarian has information that cattle:

   a. Have not met the disease testing, vaccination, or identification requirements set forth in North Dakota Century Code title 36 or this title, or as otherwise required by the state veterinarian;

   b. Has not met any pre-entry quarantine conditions imposed by law;

   c. Has been exposed to, may have been exposed to, is infected with, or may be infected with any contagious or infectious disease;

   d. Is or may originate from an area or premises under quarantine or other form of official or regulatory action relating to contagious or infectious disease; or

   e. May be a threat to the health and well-being of the human or animal population of the state, or both.

4. Cattle entering the state must be officially identified by a method approved by the state veterinarian. Feeder heifers, feeder steers, and spayed heifers are exempt from identification rules, unless they are dairy source or exhibition or rodeo animals.

5. Cattle from foreign countries must be permanently officially identified with a method prescribed by the state veterinarian and an electronic identification compatible with the federal animal identification plan.

6. The state veterinarian may require additional disease testing, treatment, vaccination, or identification if the state veterinarian has reason to believe that other health risks are present.

7. Cattle infected, or recently exposed to any contagious or infectious disease, may not be imported.

~~8. Calves, under four months of age, not accompanying dams, may not be resold within sixty days of importation. Purchasers shall take possession of imported calves at the premises of the seller.~~

History: Effective July 1, 2016; amended effective July 1, 2024; April 1, 2026.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48.1-05-01-02. Importation disease testing and vaccination requirements.

1. Brucellosis.

   a. Test-eligible cattle, as determined by the board, must have a negative brucellosis test within thirty days prior to entry into North Dakota and must comply with uniform methods and rules in control of brucellosis as published by USDA-APHIS-VS.

   b. A valid test for brucellosis must be a blood test conducted by a state or federal laboratory or by a veterinarian approved in the state of origin.

2. Scabies.

a. Cattle originating from states where, in the determination of the board, scabies treatment is necessary must be treated with a method approved by the board:

(1) Two dippings, ten to fourteen days apart.

(2) In lieu of dipping, cattle may be treated with an approved avermectin administered by a licensed accredited veterinarian.

b. Scabies affected or exposed cattle must be quarantined and treated with an approved avermectin.

3. Trichomonas foetus.

a. Bulls over twenty-four months of age and all nonvirgin bulls over twelve months of age must have three consecutive, weekly, negative Trichomoniasis foetus culture tests or one negative PCR test prior to importation.

(1) Regulatory testing must be performed in a laboratory approved by the state veterinarian.

(2) No breeding is to occur between the time of the tests and the time a bull is sold, loaned, or leased.

b. A certificate of veterinary inspection for bulls covered under this rule must bear one of the following statements:

"Trichomonas foetus has not been diagnosed in the herd of origin."

or

"The bull(s) represented on this Certificate of Veterinary Inspection have three consecutive negative Trichomonas foetus culture tests that were at least a week apart or one negative PCR test within sixty days prior to entry and there has been no female contact since the first qualifying test."

c. No nonvirgin and nonpregnant female cattle may be imported for breeding or grazing purposes into the state.

d. The following may be exempt from Trichomonas foetus testing or importation restriction:

(1) Virgin bulls aged twenty-four months of age or less. A signed statement from the owner or manager stating that bulls have had no potential breeding contact with females must be listed on certificate of veterinary inspection.

(2) Bulls imported into the state for immediate slaughter only or those consigned directly to a licensed slaughter establishment or to a licensed livestock market and then directly to a licensed slaughter establishment.

(3) Bulls imported into the state and held in confinement, including exhibition and/or rodeo purposes, based upon a risk assessment by the state veterinarian.

(4) Bulls imported as part of a state veterinarian-approved seasonal grazing operation without change of ownership, based upon a risk assessment by the state veterinarian.

(5) Nonvirgin and nonpregnant female cattle to be used in confined dairy operations, based upon a risk assessment by the state veterinarian.

(6) Nonvirgin and nonpregnant female cattle, each accompanied by its own offspring and prior to rebreeding.

(7) Cattle used in embryo transplant or semen collection operations, based upon a risk assessment by the state veterinarian.

(8) Exposed feeder heifers and cows fed in dry lot for slaughter only.

4. Tuberculosis.

a. ~~Dairy breed cattle sixty days of age or older, other than steers and spayed heifers, must be negative to an official test for tuberculosis within thirty days prior to entering the state.~~Cattle sixty days of age or older, other than steers and spayed heifers, must have a negative tuberculosis test within sixty days prior to entry into North Dakota unless they originate from a "free" state established with the uniform methods and rules in control of tuberculosis as published by USDA-APHIS-VS.

b. United States-born cattle used for rodeo or timed events must have a negative bovine tuberculosis test within the last twelve months prior to importation into the state.

c. Cattle of Mexican origin, M-branded or MX-branded, entering the state, must be accompanied with proof of two negative bovine tuberculosis tests by USDA-accredited veterinarians with the last test within sixty days prior to importation into the state.

(1) Cattle of Mexican origin need a negative whole herds tuberculosis test on the birth herd of origin.

(2) Cattle of Mexican origin require 484 electronic identification tags, or another United States department of agriculture-approved electronic method that clearly indicates they are Mexican origin, for identification.

d. Cattle entering the state that originate from any modified accredited state, or any other area where in the determination of the board tuberculosis may exist, must be accompanied by documentation that each animal was tested for tuberculosis within thirty days prior to entry into the state, and that the results of the test were negative for tuberculosis. The following may be exempt from the tuberculosis test requirement, but must still be officially identified:

(1) Steers;

(2) Spayed females;

(3) Cattle originating from a tuberculosis accredited-free herd;

(4) Cattle originating from a closed herd which have been whole-herd tested negative for tuberculosis within twelve months prior to importation; and

(5) Nursing calves accompanying negative-tested dams.

History: Effective July 1, 2016; amended effective July 1, 2024; April 1, 2026.
General Authority: NDCC 36-01-08, 36-01-12
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-01, 36-14-04.1

CHAPTER 48.1-07-01
DEFINITIONS - GENERAL REQUIREMENTS

Section
48.1-07-01-01 Definitions
48.1-07-01-02 Farmed Elk Premises Description
48.1-07-01-03 Holding and Handling Facilities
48.1-07-01-04 Quarantine Facility
48.1-07-01-05 Fencing Requirements
48.1-07-01-06 Welfare of Animals
48.1-07-01-07 Identification
48.1-07-01-08 Farmed Elk Reporting
48.1-07-01-09 Bill of Sale and Transportation
48.1-07-01-10 Release or Abandonment
48.1-07-01-11 Escaped Farmed Elk
48.1-07-01-12 Inspection by Board Personnel
48.1-07-01-13 Slaughter Facilities

48.1-07-01-13. Slaughter facilities.

1. Slaughter facilities that purchase and slaughter farmed elk shall obtain approval from the board before acquiring animals classified as farmed elk.

2. Slaughter facilities must be inspected under state or federal meat inspection.

3. The slaughter facility must be adequate to contain farmed elk.

4. A slaughter facility may not acquire or possess farmed elk until the board has inspected the containment and handling equipment at the facility and has issued an approval of the containment and handling equipment at the facility.

5. Chronic wasting disease testing is not required of animals belonging to slaughter facilities which pass antemortem inspection.

History: Effective April 1, 2026.
General Authority: NDCC 36-25-07
Law Implemented: NDCC 36-25-07

CHAPTER 48.1-09-01
DEFINITIONS - GENERAL REQUIREMENTS

Section
48.1-09-01-01 Definitions
48.1-09-01-02 Categories of Nontraditional Livestock
48.1-09-01-03 License Requirements for Nontraditional Livestock Category 2 and Category 3 Species
48.1-09-01-04 Holding and Handling Facilities
48.1-09-01-05 Quarantine Facility
48.1-09-01-06 Fencing Requirements
48.1-09-01-07 Identification
48.1-09-01-08 Escaped Nontraditional Livestock
48.1-09-01-09 Zoos
48.1-09-01-10 Slaughter Facilities

48.1-09-01-02. Categories of nontraditional livestock.

1. Nontraditional livestock category 1 species:

   a. Category 1 species of nontraditional livestock are ~~those~~ species generally considered domestic, or other species that are not inherently dangerous, that do not pose a health risk to humans, domestic animals, or wild animals, and do not pose a hazard to the environment, as determined by the board.

   b. Category 1 species of nontraditional livestock includes turkeys, geese, and ducks morphologically distinguishable from wild turkeys, geese, ducks, pigeons, rabbits, ratites, chinchilla, Guinea fowl, ranch foxes, ranch mink, peafowl, all pheasants, quail, chukar, hedgehog, degus, and other species as ordered by the board.

   c. Category 1 species of nontraditional livestock do not require a nontraditional livestock license, but owners must otherwise comply with the rules in this title.

2. Nontraditional livestock category 2 species:

   a. Category 2 species of nontraditional livestock are certain protected species or those species that may pose health risks to humans or animals or may be environmentally hazardous, as determined by the board.

   b. Category 2 species of nontraditional livestock includes the following species and their hybrids, all nondomestic ungulates, including all deer (cervidae) and pronghorn, zebras, nondomestic cats not listed in category 3, waterfowl, shorebirds, upland game birds not listed in category 1, crows, wolverines, otters, bats, martens, fishers, kit or swift foxes, badgers, coyotes, mink, red and gray foxes, muskrats, beavers, weasels, opossums, prairie dogs, and other ground squirrels, other species as ordered by the board and the following varieties of sheep: black Hawaiian, Corsican, painted desert, multi-horned hair, New Mexico dall, Texas dall, and desert sand.

3. Nontraditional livestock category 3 species:

   a. Category 3 species of nontraditional livestock are ~~those~~ species that pose special concerns, including species which are inherently dangerous or environmentally hazardous.

   b. Category 3 species of nontraditional livestock includes the following species and their hybrids:

(1) All wild species of the family suidae, except swine considered domestic in the state by the board.

(2) Big cats, including mountain lion, jaguar, leopard, lion, tiger, and cheetah.

(3) Bears.

(4) Wolves.

(5) Venomous reptiles and nonvenomous injurious reptiles.

(6) Primates.

(7) Nondomestic sheep and nondomestic goats not listed in nontraditional livestock category 2.

(8) Other species as ordered by the board.

4. ~~Exempt animals.~~ Unless the state veterinarian determines it is necessary based on disease incidence information or human health or safety concerns, the following are exempt from the importation permit and certificate of veterinary inspection requirement:

a. Arachnids.

b. ~~Amphibians.~~

~~c.~~ Invertebrates.

~~d. Nonvenomous noninjurious reptiles.~~

~~e.~~c. Tropical freshwater and saltwater fish.

~~f.~~d. Gerbils.

~~g.~~e. Guinea pigs.

~~h.~~f. Hamsters.

~~i.~~g. Mice.

~~j.~~h. Rats.

~~k.~~i. Sugar gliders.

~~l.~~j. Ova, semen, eggs or embryos of nontraditional livestock.

5. ~~Prohibited animals.~~ The board may prohibit, by policy or rule, ownership or possession of any animal deemed to be a significant threat to human or animal health in the state.

a. Skunks and raccoons may not be imported into the state for any purpose.

(1) If the state veterinarian determines that a skunk or raccoon is being kept in captivity in violation of North Dakota Century Code section 36-01-08.4, the state veterinarian may serve upon the owner or keeper of such skunk or raccoon a notice of intent to confiscate the animal.

(2) The owner or keeper of the animal may request a hearing within ten days of receipt of the notice. Such a hearing, if requested, must be conducted by an administrative law judge, who shall make a recommended decision to the board.

(3) If the owner or keeper of the animal does not request a hearing within the prescribed time period, the state veterinarian may confiscate and place the animal at a licensed zoo, if feasible, or have it humanely destroyed.

(4) The state veterinarian may obtain the assistance of agents and employees of other state agencies or local law enforcement officials in carrying out this chapter and North Dakota Century Code section 36-01-08.4.

6. Nontraditional livestock not otherwise referred to in this section or Century Code must be reviewed by the board for determination of importation requirements and licensure requirements prior to importation.

7. Reclassification of any species is contingent upon scientific information indicating the risks posed by these species to native wildlife populations and domestic animals and must be reviewed by the board.

History: Effective July 1, 2016; amended effective July 1, 2024; April 1, 2026.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-08.4, 36-01-12

48.1-09-01-10. Slaughter facilities.

1. Slaughter facilities that purchase and slaughter nondomestic ungulates shall obtain a license from the board before acquiring animals classified as category 2 nontraditional livestock.

2. Slaughter facilities must be inspected under state or federal meat inspection.

3. The slaughter facility must be adequate to contain category 2 nontraditional livestock.

4. A slaughter facility may not acquire or possess category 2 nontraditional livestock until the board has inspected the containment and handling equipment at the facility and has issued an approval of the containment and handling equipment at the facility.

5. Chronic wasting disease testing is not required of animals belonging to slaughter facilities which pass antemortem inspection.

History: Effective April 1, 2026.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

CHAPTER 48.1-09-02
IMPORTATION REQUIREMENTS

Section
48.1-09-02-01 Importation Requirements
48.1-09-02-01 Importation Requirements - Waiver

48.1-09-02-02. Importation requirements - Waiver.

The requirement for a certificate of veterinary inspection requirement for raptors may be waived if imported for less than 30 days for hunting purposes, provided the falconer is in compliance with all wildlife regulations.

History: Effective April 1, 2026.
General Authority: NDCC 36-01-07
Law Implemented: NDCC 36-01-07

CHAPTER 48.1-09-06

48.1-09-06-01. Housing, handling, health, and importation requirements.

1. Suidae including wild species of the family suidae (hogs and pigs), except swine considered domestic in the state by the board.

    a. Importation requirements for wild species of the family suidae (hogs and pigs), except swine considered domestic in the state by the board.

        (1) Certificate of veterinary inspection and importation permit number from the board.

        (2) Negative pseudorabies serologic test approved by the state veterinarian within thirty days prior to entry into the state.

        (3) Negative brucellosis test within thirty days of importation.

    b. Housing requirements (perimeter fence aboveground) for a confinement or holding area:

        (1) Perimeter fence at least six feet [1.83 meters] tall must be present.

        (2) Twelve-gauge or stronger mesh is required and must be no greater than three inches by four inches [7.62 centimeters by 10.16 centimeters].

        (3) Four-inch [10.16-centimeter] diameter treated posts or two-inch [5.08-centimeter] steel pipes must be no more than eight feet [2.44 meters] apart. Posts must be set three feet [.91 meter] deep.

        (4) Fence must be attached on the inside.

        (5) Two electric wires must be six inches [15.24 centimeters] inside the fence.

            (a) The first wire must be six to eight inches [15.24 to 20.32 centimeters] above the ground.

            (b) The second wire must be eight to twelve inches [20.32 to 30.48 centimeters] above the first wire.

            (c) Generator backup is required.

            (d) Snow that could affect the integrity of the fence must be removed before animals are allowed into the enclosure.

            (e) Electric fence must be maintained in working order and be kept clear of foliage and debris.

        (6) If a wooden structure is used, posts must be no more than eight feet [2.44 meters] apart with a gap no more than four inches [10.16 centimeters] between planks, except if young pigs are present, the fencing gaps must be no more than two inches [5.08 centimeters].

        (7) In the confinement area, an underground fence must be constructed with concrete or imperviable surface comparable to concrete that meets the following requirements:

            (a) Same strength as perimeter fence.

            (b) Buried two feet [.61 meter] below ground.

(c) Three feet [.91 meter] angled forty-five degrees toward interior of enclosure.

(d) Four to six inches [10.16 to 15.24 centimeters] aboveground overlapped and attached to aboveground fence to monitor and ensure proper connection.

c. Gates in confinement area must meet the following requirements:

(1) A gate at least six feet [1.83 meters] tall must be present.

(2) Any gaps must be less than four inches [10.16 centimeters] between the gate and ground, except if young pigs are present, the fencing gaps must be no more than two inches [5.08 centimeters].

(3) An electric wire must span across the gate. The electric fence must be constructed of twelve-gauge wire and consist of a minimum of a two-joules charge.

(4) An underground fence must span the gate opening and must anchor the gating to the ground with a two-inch [5.08 centimeter] steel pipe or equivalent.

2. Large felids and felid hybrids, including mountain lions, jaguars, leopards, lions, tigers, and cheetahs:

a. Large felids that are in the presence of persons other than the owner, handler, or immediate family must be under the direct control and supervision of the owner or handler at all times.

b. Importation for large felids requires a certificate of veterinary inspection and importation permit number from the board.

c. Housing requirements for large felids:

(1) Maintained in enclosures utilizing thick laminated safety glass, bars, or sturdy wire or in large outdoor exhibits employing barriers to separate animals and the public.

(2) A cage for a single animal must measure at least twenty feet [6.10 meters] wide by fifteen feet [4.57 meters] deep.

(3) Cages must be fifty percent larger per additional animal.

(4) Enclosures must have smaller shift facilities to permit safe cleaning, cage repair, or other separations. Shift cages must measure at least eight feet by eight feet [2.44 meters by 2.44 meters].

(5) Enclosures must be made of steel chain link fencing of at least twelve-gauge strength, or material of adequate strength as approved by the state veterinarian, fastened to a cement floor. If a dirt floor is used, an underfencing must extend at least forty-two inches [106.68 centimeters] into the pen. The underfencing must be covered with adequate layers of dirt, gravel, or other substrate and any holes checked and refilled on a regular basis.

(6) A guard rail or natural barrier must be in place which is at least three feet [.91 meter] in height, providing a minimum of a four-foot [1.22-meter] distance between the enclosure and people in areas where people, other than the owner or handler, have access to the enclosure.

(7) A perimeter fence at least eight feet high [2.44 meters] and at least four feet [1.22 meters] from the primary enclosure must be in place to keep animals and

persons out of the enclosure and to act as a secondary security measure should an animal escape.

d. Additional housing requirements for very large pantherids (lions and tigers):

(1) Outdoor cages must have vertical walls at least sixteen feet [4.88 meters] high, or thirteen feet [3.96 meters] high with a minimum three-foot [.91-meter] overhang, or be provided with tops at least ten feet [3.05 meters] high.

(2) Raised shelves or ledges for sleeping and resting and large logs for claw sharpening.

e. Additional housing requirements for cheetahs. Cages must have vertical walls at least eight feet [2.44 meters] high.

f. Additional housing requirements for other large felids (leopards, jaguars, and mountain lions (pumas or cougars)):

(1) Elevated ledges or perches for sleeping and resting.

(2) Wood logs or other such materials for claw sharpening.

(3) Enclosures housing leopards and jaguars, whether indoors or outdoors must have secure tops.

(4) An outdoor cage housing mountain lions must be at least eight feet [2.44 meters] high with an additional overhang of fencing angling into the pen at least three feet [.91 meter] or six feet [1.83 meters] high with a ceiling.

3. Bears.

a. Bears, which are in the presence of persons other than the owner, handler, or immediate family, must be under the direct control and supervision of the owner or handler at all times.

b. Importation requirements for all bears are a certificate of veterinary inspection and importation permit number from the board.

c. Housing requirements for bears:

(1) Outdoor enclosures employing barriers, thick laminated safety glass, or bars. When used, dry moats must be at least twelve feet [3.66 meters] wide and twelve feet [3.66 meters] deep.

(2) A dry resting and social area, pool, and den.

(3) The use of electric wires or other means to discourage fence climbing.

(4) In addition to the primary enclosure:

(a) Den space for a single bear must measure at least six feet [1.83 meters] in width and depth and be at least five feet [1.52 meters] in height.

(b) Visual barriers, such as logs or boulders, added to enclosures housing more than one animal.

(c) Adequate shade provided to simultaneously accommodate all individuals housed within the enclosure.

(d) Smaller shift facilities to permit safe cleaning, cage repair, or other separations. Shift cages must be at least eight feet by eight feet [2.44 meters by 2.44 meters].

(5) Fences for all species must be fastened to a cement floor, or if a dirt floor is used, underfencing with a strength equal to the primary fencing must extend at least forty-two inches [106.68 centimeters] into the pen.

(6) The underfencing must be covered with a minimum of two feet [.61 meter] of dirt, gravel, or other substrate and any holes checked and refilled on a regular basis.

d. Additional housing requirements for polar bears, brown bears, and grizzly bears:

(1) If vertical walls are used as a primary barrier, they must be at least twelve feet [3.66 meters] high.

(2) Adjoining facilities to permit safe cleaning and additional separation.

(3) The dry resting and social area for one or two adult bears must measure at least four hundred square feet [37.16 square meters] with an additional forty square feet [3.72 square meters] provided for each additional bear.

(4) Fencing must be a minimum of four-gauge steel chain link or equivalent.

e. Additional housing requirements for American black bears, Asiatic black bears, sloth bears, spectacled bears, and sun bears:

(1) Three hundred square feet [27.87 square meters] of dry resting and social area must be provided for one or two animals and be increased by fifty percent for each additional animal.

(2) Fencing must be minimum of nine-gauge steel chain link or equivalent.

(3) Fencing height must be a minimum of ten feet [3.05 meters] with a top or twelve feet [3.66 meters] with an additional three-foot [.91-meter] overhang.

4. Wolves and wolf hybrids.

a. Any wolf that is in the presence of persons other than the owner, handler, or immediate family must be under the direct control and supervision of the owner or handler at all times.

b. Importation requirements for wolves:

(1) A certificate of veterinary inspection and importation permit number from the board.

(2) A statement on the certificate of veterinary inspection that the animal has not been exposed to rabies.

(3) The animal cannot be imported from an area that is quarantined for rabies, unless approved by the state veterinarian.

c. Outdoor housing or holding facility requirements for wolves:

(1) Minimum floor space per animal must be two hundred square feet [18.58 square meters] and floor space must be increased by one hundred square feet [9.29 square meters] for each additional animal. The enclosure must be at least eight feet

[2.44 meters] high with an additional overhang of fencing angling into the pen or six feet [1.83 meters] high with a ceiling.

(2) The enclosure must be made of steel chain link fencing of at least twelve-gauge strength, or fencing of adequate strength as approved by the state veterinarian, fastened to a cement floor. If a dirt floor is used, underfencing must extend at least forty-two [106.68 centimeters] inches into the pen. The underfencing must be covered with adequate layers of dirt, gravel, or other substrate and any holes checked and refilled on a regular basis.

(3) Gates must have locks to prevent unauthorized entry of individuals.

(4) Shade and shelter from elements and inclement weather must be provided.

(5) A perimeter fence meeting the requirements of title 9, Code of Federal Regulations, sections 3.75, 3.77, and 3.78, must be required if the animal is kept within the city limits or other populated areas as determined by the state veterinarian.

5. Venomous reptiles and nonvenomous injurious reptiles.

a. A license to possess a venomous reptile may only be issued if the applicant seeking the nontraditional livestock license demonstrates an educational purpose for and the ability to appropriately house, feed, care for, handle, and, if necessary, dispose of the reptile. An educational purpose includes research and displays at schools, institutions of higher education, wildlife preserves, zoos, and other bona fide educational displays approved by the state veterinarian.

b. A license to possess a nonvenomous injurious reptile may only be issued if the applicant seeking the nontraditional livestock license demonstrates the ability to appropriately house, feed, care for, handle, and, if necessary, dispose of the reptile.

c. The permittee shall provide documentation to the state veterinarian of the permittee's experience with these types of animals and the permittee's ability to safely maintain and control the animals.

d. Importation for venomous reptiles or nonvenomous injurious reptiles requires a certificate of veterinary inspection and importation permit from the board.

e. Premises where venomous reptiles are kept on display to the public must be posted with a notice clearly and conspicuously posted to provide the location of the nearest, most readily available source of appropriate antivenin and a written plan of action in the event of a venomous reptile bite.

(1) This plan of action must receive the written approval of a local medical facility, and a copy of the plan of action and the approval of the medical facility must be provided to the board.

(2) The person possessing the venomous reptile shall arrange for appropriate antivenin to be readily available through a local hospital, the name, address, and telephone number of which must be affixed to the enclosure.

f. Written animal escape emergency procedures must be clearly and conspicuously posted in the building housing venomous reptiles or nonvenomous injurious reptiles and must be supplied to the board at the time the permit application is initially submitted.

g. Written notice of the presence on the premises of venomous or nonvenomous injurious reptiles must be provided to the local police, firefighters, and emergency medical

personnel, including an identification of the animals possessed and the location of the animals within the premises.

h. If a venomous or nonvenomous injurious reptile is transported or removed from its primary enclosure for feeding or in order to clean the enclosure, the reptile must be kept in a fully enclosed container with a secure and locked lid which has air holes or other means of ventilation.

i. Snake hooks must be present for caring for venomous snakes.

j. The permittee shall telephonically notify the board of any reptile bite on humans or escapes of any reptiles within twenty-four hours and provide a written report of the incident to the board within seven days.

k. Housing requirements for venomous reptiles:

(1) An enclosure or container containing venomous reptiles must be clearly labeled as "Venomous" and be labeled with the common and scientific name of the species as well as the number of animals contained inside.

(2) Venomous reptiles in captivity must be kept in a cage or in a safety glass enclosure sufficiently strong, and in the case of a cage, of small enough mesh to prevent the animal's escape and with double walls sufficient to prevent penetration of fangs to the outside. All enclosures and access to them must be locked.

l. Housing requirements for nonvenomous injurious reptiles:

(1) An enclosure or container containing nonvenomous injurious reptiles must be clearly labeled with safety concerns and be labeled with the common and scientific name of the species as well as the number of animals contained inside.

(2) Nonvenomous injurious reptiles in captivity must be kept in a cage or in a safety glass enclosure sufficiently strong, and in the case of a cage, of small enough mesh to prevent the animal's escape. All enclosures and access to them must be locked.

6. Primates:

a. Any primate that is in the presence of persons other than the owner, handler, or immediate family must be under the direct control and supervision of the owner or handler at all times. If taken out of the home enclosure, animals must be in a cage that meets license requirements with a barrier.

b. Importation for primates requires a certificate of veterinary inspection and an importation permit number issued by the board containing the following:

(1) Negative tuberculosis test within thirty days of importation into the state, with mammalian tuberculin used in testing.

(2) Negative hepatitis A test.

(3) Fecal sample tested negative for parasites, shigella, and salmonella.

(4) Statement that a primate has not shown signs of or been exposed to infectious disease in the last one hundred eighty days.

c. Requirements for maintaining a primate after importation:

(1) Negative tuberculosis test prior to renewal of license.

(2) Negative tuberculosis test within thirty days of change of ownership.

d. General housing requirements for primates:

(1) Primate housing must comply with title 9, Code of Federal Regulations, section 3.75.

(2) Primates must have a dedicated primary enclosure area, such as a room or cage-type enclosure, separate from other living areas of human occupants.

e. Space requirements for primates:

(1) Indoor primate enclosures must be at least two square feet [.19 square meter] per pound [.45 kilogram] of adult body weight per animal. This figure must be increased by fifty percent for each additional animal. The height of the primate primary enclosure area must be at least four times taller than the animal's body length.

(2) Primates kept outdoors must have a dedicated enclosure with a perimeter fence. The enclosure must include a roof, shelter from the elements, fence, and a lock on the enclosure. The dimensions of the outdoor enclosure must be at least as large as required for the indoor enclosure.

f. Additional licensure requirements;

(1) A USDA exhibitor's license is required for nonhuman primate ownership.

(2) Ownership of nonhuman primates requires compliance with Animal Welfare Act and Animal Welfare Regulations, part 3, subpart D 3.75 specifications for the humane handling, care, treatment, and transportation of nonhuman primates.

7. Nondomestic sheep and hybrids and nondomestic goats:

a. Import requirements for category 3 nondomestic sheep and nondomestic goats in addition to those listed in section 48.1-09-02-01:

(1) A certificate of veterinary inspection and importation permit number from the board.

(2) Official identification approved by the state veterinarian.

(3) Negative tuberculosis test within thirty days.

(4) Animals must be free of any signs of scrapie as determined by an accredited veterinarian. The certificate of veterinary inspection must contain a written statement, signed by the consignor, stating that:

"To the best of my knowledge, the sheep listed on this certificate originate from a flock that has not been diagnosed as a scrapie-infected, source, or exposed flock in the past sixty months."

(5) Special permission must be obtained from the board to possess nondomestic sheep and hybrids and nondomestic goats and hybrids south and west of the Missouri River.

b. Fencing requirements for category 3 nondomestic sheep and nondomestic goats:

(1) Fencing must be at least eight feet [2.44 meters] high and made of twelve-gauge or heavier woven wire, or other material of similar strength.

(2) The bottom of the fence must be at or below ground level.

(3) Gates in the perimeter fence must be locked and there must not be more than six inches [15.24 centimeters] below or between gates.

(4) A handling and holding facility, adequate to handle nondomestic sheep or goats, or both, must be in place.

History: Effective July 1, 2016; amended effective July 1, 2024; April 1, 2026.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-01-31

CHAPTER 48.1-12-01

48.1-12-01-03. Importation disease testing requirements.

1. ~~Brucellosis.~~ Breeding swine over six months of age must have had a negative brucellosis test within thirty days prior to entry into the state unless they are imported from a validated herd or a validated state.

2. ~~Pseudorabies.~~ Imported swine must test negative for pseudorabies within thirty days prior to entry into the state or comply with one of the following:

   a. Be from a stage V or stage IV state or area, as designated by the USDA-APHIS-VS;

   b. Be from a qualified pseudorabies negative herd; or

   c. Be from a feeder swine pseudorabies monitored herd as designated by USDA-APHIS-VS.

~~3. Transmissible gastroenteritis. The accredited veterinarian must declare in a statement on the certificate of veterinary inspection, "The premises the swine are originating from has not had any signs or a diagnosis of transmissible gastroenteritis in the last sixty days."~~

~~4. Porcine epidemic diarrhea virus. The accredited veterinarian must declare in a statement on the certificate of veterinary inspection, "The premises the swine are originating from has not had any signs or a diagnosis of porcine epidemic diarrhea virus in the last sixty days."~~

History: Effective July 1, 2016: amended effective July 1, 2024; April 1, 2026.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

TITLE 60

PESTICIDE CONTROL BOARD

APRIL 2026

CHAPTER 60-03-01

60-03-01-02. Definitions.

As used in this chapter, the following words ~~shall~~ have the meaning given to them below, unless otherwise made inappropriate by use and context. Words not defined in this section ~~shall~~ have the meaning given to them in North Dakota Century Code chapter 4.1-33.

1. "Agricultural plants" means any plants grown or maintained for commercial or research purposes.

2. "Board" means the North Dakota pesticide control board created pursuant to North Dakota Century Code section 4.1-33-02.

3. "Bulk pesticide" means any volume of pesticide that is intended to be repackaged, can be accurately measured, and can be transported or held in an individual container.

4. "Bulk pesticide facility" means any place used to handle or store bulk pesticides.

5. "Certification" means recognition by the board or its designee that a person is competent and thus authorized as a:

   a. Certified private applicator to use a restricted use pesticide or supervise the use of restricted use herbicides or general pesticides in noncommercial settings.

   b. Certified commercial applicator to use a restricted use pesticide or supervise the use of a general use pesticide in commercial settings.

   c. Certified public applicator to use a restricted use pesticide or supervise the use of a general use pesticide in settings that do not require maintaining proof of financial responsibility.

   d. Certified dealer to distribute restricted use pesticides.

6. "Commissioner" means the North Dakota agriculture commissioner.

7. "Compensation" means monetary payment for a specific service.

8. "Competent" means qualified to perform functions associated with pesticide applications, the degree of competency required being directly related to the nature of the activity and the associated responsibility, including receiving proper training to know and understand the pesticide label, the product name and application rate, proper application techniques,

recordkeeping requirements, worker protection standards, and emergency response and being able to identify workplace hazards.

9. "Custom blend" means any diluted mixture of pesticide prepared by a dealer to the specifications of the end-user and not held in inventory.

10. "End-use labeling" means the written, printed, or graphic matter on, attached to, or accompanying the pesticide or device or any of its containers or wrappers.

11. "End-user" means the person who applies the pesticide.

12. "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act of 1947, as codified and amended at 7 U.S.C. 136-136y.

13. "Fumigant pesticide" means a chemical compound whose pesticidal action occurs in a gaseous state.

14. "General use pesticide" means any pesticide formulation which is not classified for restricted use.

15. "Handling" means the mixing, loading, application, repackaging, storage, transportation, distribution, sale, purchase, or disposal of pesticides.

16. "Mixture" means any pesticide combined with fertilizer, seed, or other substance.

17. "Mobile container" means a container used to transport pesticides.

18. "Operational area" means:

    a. An area within a permanent containment area where pesticides are transferred, loaded, unloaded, mixed, repackaged, or refilled; or

    b. An area where pesticides are rinsed from a container.

19. "Permanent containment area" means:

    a. An aboveground pad or dike constructed of impervious material, such as sealed concrete, stainless steel, or other material as approved by the registrant, unless the commissioner approves or requires material other than that approved by the registrant; or

    b. An area that has a berm or curb or is otherwise designed to contain discharges that may occur while handling pesticides or pesticide-containing materials.

20. "Pesticide-containing material" means:

    a. Any container of a pesticide product that has not been triple-rinsed or the equivalent of triple-rinsed;

    b. Any rinsate that is derived from a pesticide container, pesticide application equipment, or equipment washing;

    c. Any material that is used to collect or contain excess or spilled pesticide or rinsate;

    d. Any mixture of pesticide and diluent such as wash water, rinse water, or rainwater; or

    e. Material that is generated as a result of contact with or utilization of a pesticide in an application, containment, recovery, reuse, or treatment system. The term does not include personal protective equipment that contains pesticide residue.

21. "Pesticide-producing establishment" means any site where a pesticide is manufactured, packaged, repackaged, prepared, processed, labeled, relabeled, or held for distribution.

22. "Registrant" means the person holding the pesticide product registration under North Dakota Century Code chapter 4.1-34.

23. "Repackaging" means the transfer of a pesticide in an unaltered state from a container into a designated or dedicated refillable container for the purpose of distribution.

24. "Spill kit" means a portable kit or other equipment that is designed to recover, minimize, contain, or absorb discharges of pesticides. A spill kit must include the following:

    a. Enough absorbent material, or any combination of absorbent pads, pillows, or tubes sufficient to absorb five gallons [18.93 liters] of liquid;

    b. One or more impervious containers with a combined minimum capacity of ten gallons [37.85 liters]; and

    c. Adequate tools to collect and place pesticide-contaminated material in containers.

25. "Under the direct supervision" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and who is available if and when needed, even though the certified applicator is not physically present at the time and place the pesticide is applied. The certified applicator must be able to physically arrive at the location of a supervised applicator within thirty minutes.

26. "Use of a pesticide" means mixing, filling application equipment, applying, storing, distributing, and disposing of a pesticide.

27. "Use of a pesticide in a manner inconsistent with its labeling" means using any pesticide in a manner that is not permitted by the labeling, except that the term does not apply to any of the following:

    a. Applying a pesticide at any dosage, concentration, or frequency that is less than that specified on the label, unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency.

    b. Applying a pesticide against any target pest that is not specified on the labeling if the application is to the crop, animal, or site that is specified on the label.

    c. Employing any method of application that is not prohibited by the labeling unless the label specifically states that the product may be applied only by the methods specified on the labeling.

    d. Mixing a pesticide or pesticides with a fertilizer when the labeling does not prohibit such mixture.

    e. Any use of a pesticide that is in compliance with section 5, 18, or 24 of the Federal Insecticide, Fungicide, and Rodenticide Act of 1947 [Pub. L. 104-170; Stat. 7 U.S.C. 136 et seq.].

History: Amended effective April 15, 1985; October 1, 1990; July 1, 1992; March 1, 2003; July 1, 2004; January 1, 2013; April 1, 2026.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-03

60-03-01-05. Classes of commercial applicator, public applicator, and dealer certifications.

A commercial applicator, public applicator, or dealer certificate may be issued to ~~individuals~~an individual who ~~pass~~passes a core certification examination and who ~~have~~has obtained certification in one or more of the following classes:

~~1. **Agricultural pest control (plant and animal).** This class authorizes the use of pesticides intended for agricultural crop land, grasslands, animals, animal facilities, and noncrop lands, including natural areas, fallow, nonproducing agricultural lands, and mines.~~

~~2. **Seed treatment.** This class authorizes the use of pesticides intended for agricultural crop seeds, other seeds, and vegetative seed stocks.~~

~~3. **Commodity and structural fumigation.** This class authorizes the use of fumigant pesticides intended for raw agricultural commodities, processed foods, nonfood commodities, transport vessels, commodity processing facilities, and commodity storage structures.~~

~~4. **Ornamental and turf pest control.** This class authorizes the use of pesticides intended for producing and maintaining ornamental trees, shrubs, flowers, and turf.~~

~~5. **Greenhouse.** This class authorizes the use of pesticides intended for greenhouses.~~

~~6. **Right of way.** This class authorizes the use of pesticides in parking lots and rights of way for roads, powerlines, telecommunication lines, pipelines, and railways, and in other similar areas.~~

~~7. **Public health pest control.** This class authorizes the use of pesticides by government employees, applicators working under government contract, or other persons for public health purposes.~~

~~8. **Research and demonstration pest control.** This class authorizes the use of pesticides by individuals for the purpose of education or research. These would include county agents, state, federal, and commercial employees, plus other persons conducting research or demonstrating the proper application of restricted use pesticides.~~

~~9. **Home, industrial, and institutional pest control.** This class authorizes the use of pesticides in or around food-handling establishments, human dwellings, public or private institutions, warehouses, grain elevators, and any other structures.~~

~~10. **Wood preservatives.** This class authorizes the use of pesticides intended to preserve lumber products.~~

~~11. **Vertebrate.** This class authorizes the use of pesticides intended to control vertebrate pests, such as rodents, certain predators, and bats not in or around structures.~~

~~12. **Sewer root control.** This class authorizes the use of pesticides intended to control tree or other plant roots infesting sewer systems.~~

1. Agricultural pest control - Crop. The class authorizes the use of pesticides in production of agricultural commodities, including grains, vegetables, small fruits, tree fruits, peanuts, tree nuts, tobacco, cotton, feed and forage crops including grasslands, and noncrop agricultural lands.

2. Agricultural pest control - Livestock. The class authorizes the use of pesticides on animals or to places on or in which animals are confined. Certification in the class alone is not sufficient to authorize the purchase or use of sodium cyanide or sodium fluoroacetate products for predator control.

3. Forest pest control. The class authorizes the use of pesticides in forests, forest nurseries, and forest seed production.

4. Ornamental and turf pest control. The class authorizes the use of pesticides to control pests in the maintenance and production of ornamental plants and turf.

5. Seed treatment. The class authorizes the use of pesticides on seeds in seed treatment facilities.

6. Aquatic pest control. The class authorizes the use of pesticides purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in subsection 9.

7. Right-of-way pest control. The class authorizes the use of pesticides in the maintenance of roadsides, powerlines, pipelines, and railway rights-of-way, and similar areas.

8. Industrial, institutional, and structural pest control. The class authorizes the use of pesticides in, on, or around the following:

   a. Food handling establishments, packing houses, and food-processing facilities;

   b. Human dwellings;

   c. Institutions, such as schools, hospitals, and prisons; and

   d. Industrial establishments, including manufacturing facilities, warehouses, grain elevators, and any other structures and adjacent areas, public or private, for the protection of stored, processed, or manufactured products.

9. Public health pest control. The class authorizes the use of pesticides by state, tribal, federal or other governmental employees and contractors in government-sponsored public health programs for the management and control of pests having medical and public health importance.

10. Demonstration and research. The class authorizes the use of pesticides by individuals who demonstrate to the public the proper use and techniques of application of such demonstration and to persons conducting field research with pesticides. The individuals include:

    a. Extension specialists and county agents;

    b. Commercial representatives demonstrating pesticide products;

    c. Individuals demonstrating application or pest control methods used in public or private programs; and

    d. State, federal, commercial, and other persons conducting field research on or involving pesticides.

11. Soil fumigation. The class authorizes the use of pesticides to fumigate soil.

12. Nonsoil fumigation. The class authorizes the use of pesticides to fumigate anything other than soil.

13. Aerial pest control. The class authorizes the use of pesticides applied by fixed or rotary wing aircraft.

14. Wood preservatives. The class authorizes the use of pesticides intended to preserve lumber products. Holders of the class shall demonstrate practical knowledge of the types of wood that

require chemical protection against pests and other factors of decay. They must demonstrate a practical knowledge of wood preservatives being used for preserving and protecting wood. posts, treated wood products, and various lumber products. They also must demonstrate knowledge of the hazards associated with handling, treating, storage, and transport of treated wood products. They must demonstrate a knowledge of the concept and methods for sealing treated wood to minimize exposure.

15. Vertebrate. The class authorizes the use of pesticides intended to control vertebrate pests, such as rodents, certain predators, and bats not in or around structures. The class does not authorize the use of sodium cyanide and sodium fluoroacetates for predator control. Holders of this class shall demonstrate practical knowledge of pest vertebrate life cycles, habitat, and damage symptoms, including primarily rodent and predator problem vertebrate animals. The applicator shall demonstrate a practical knowledge of pesticide formulations and application techniques that avoid contamination of the habitat of nontarget animals, and avoid exposure to people and animals. Since pest vertebrate control usually involves outdoor applications, applicators must also demonstrate practical knowledge of the environmental conditions particularly related to this activity. Applicators shall demonstrate comprehension of all laws and regulations applicable to the pesticides use on vertebrate animals, including the United States fish and wildlife service requirements for protecting endangered species.

16. Sewer root control. The class authorizes the use of pesticides intended to control tree or other plant roots infesting sewer systems. Holders of the class shall exhibit knowledge of root problems in sewers, root growth biology, pesticides used to control roots in sewers, safe handling procedures, transporting pesticides, storing pesticides, equipment types, calibration procedures, pesticide mixing, safety procedures, personal protective equipment, and application concerns such as the effect on wastewater treatment plants.

17. Greenhouse. The class authorizes the use of pesticides intended for greenhouses. Holders of this class shall demonstrate practical knowledge of pests, pesticide problems, application of a pesticides in confined areas associated with the management of a greenhouse, and distribution to the public of any treated plant materials. Because of frequent visitation by humans, applicators in this category shall demonstrate safe and practical knowledge of application methods which minimizes or prevents hazards to customers and employees.

History: Amended effective February 1, 1982; October 1, 1990; November 1,1991; March 1, 1996; August 1, 2000; March 1, 2003; January 1, 2013; April 1, 2026.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-03, 4.1-33-06, 4.1-33-07, 4.1-33-11, 4.1-33-12

60-03-01-05.1. Commercial applicator, public applicator, and dealer certifications.

1. A commercial applicator, public applicator, or dealer certificate ~~shall~~may be issued only to persons who:

   a. Are eighteen years of age or older;

   b. Complete an application on forms and in the manner required by the board or its designee;

   c. Demonstrate competence in the use of pesticides as described in the core competencies contained in title 40, Code of Federal Regulations found in section 171.103 as they existed on January 4, 2017; and

   d. Pay the costs of training and education and any other fees.

2. Commercial applicator, public applicator, and dealer certificates shall expire on April first following the third anniversary of the year of certification or recertification. A person holding

these certificates may be recertified by attending a board-approved ~~seminar~~training or by passing a board-approved examination, or both if required by the board, at least every third year. All board-approved examinations and trainings must comply with title 40, Code of Federal Regulations found in section 171.107 as they existed on January 4, 2017.

3. A person holding a commercial applicator, public applicator, or dealer certificate who is unable to complete recertification requirements due to active duty military service may apply for an extension of the person's certification status for a time period not to extend beyond April first of the year following the person's return from active duty. The application must be in writing and accompanied by a certified copy of military orders or other trustworthy proof showing the date on which active duty military service began and ended. The board has discretion whether to grant the application.

4. A person holding an ~~aerial core commercial or aerial core public applicator~~aerial pest control certificate shall attend a professional aerial applicators' support system (PAASS) program or other board-approved program at least once every three years. Proof of attendance at a PAASS program or other board-approved program must be received by the North Dakota state university extension service before recertification is issued.

5. Any person who fails an examination may retake it after three or more days.

6. All commercial and public applicators must be certified, under section 60-03-01-05, in the class that applies to how they use pesticides.

7. All dealers must be certified, under section 60-03-01-05, in the class that applies to the pesticides they distribute.

8. If a pesticide is labeled for more than one target pest, a dealer only needs to be certified in one of the applicable classes.

9. The board designates the North Dakota state university extension service to provide training, administer testing, and issue certifications under this section.

History: Effective March 1, 2003; amended effective July 1, 2004; January 1, 2013; April 1, 2026.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-06, 4.1-33-07, 4.1-33-08, 4.1-33-11

60-03-01-05.2. Private applicator certification.

1. A private applicator certification shall be issued only to persons who:

   a. Are eighteen years of age or older;

   b. Complete an application on forms and in the manner required by the board or its designee;

   c. Demonstrate competence in the use of pesticides as described in the core competencies contained in title 40, Code of Federal Regulations found in section 171.105 as they existed on January 4, 2017; and

   d. Pay the costs of training and education and any other fees.

2. The board designates the North Dakota state university extension service to provide training, administer testing, and issue certifications under this section. An individual seeking certification as a private applicator may demonstrate competence by:

   a. Attending a board-approved educational seminar, signing of a certificate of attendance, and passing a written examination administered by the board or its designee;

b. Completing a course of self-instruction and passing a written examination administered by the board or its designee; or

c. Passing the dealer, public applicator, or commercial applicator certification examination and submitting the passing grade to the board or its designee.

3. Certified private applicators purchasing, storing, or applying restricted use fumigant pesticides intended for use on agricultural commodities and in grain storage structures ~~must~~shall pass a board-approved commodity and structural fumigation examination. The fee for the private fumigation certification ~~will be~~is set by the North Dakota state university extension service.

4. Certified private applicators purchasing, storing, or applying restricted use fumigant pesticides for burrowing pest control ~~must~~shall pass a board-approved vertebrate examination. The fee for the private vertebrate certification will be set by the North Dakota state university extension service.

5. Certified private applicators purchasing, storing, or applying restricted use soil fumigants shall complete the soil fumigation class requirements for commercial applicators and public applicators. The fee for the certification is set by the North Dakota state university extension service.

6. Certified private applicators applying restricted use pesticides applied by fixed or rotary wing aircraft shall complete the aerial pest control class requirements for commercial applicators and public applicators. The fee for the certification is set by the North Dakota state university extension service.

7. A certified private applicator must be recertified by attending a board-approved seminar or by passing a board-approved examination, or both if required by the board, at least every third year. All board approved examinations and trainings must comply with title 40, Code of Federal Regulations found in section 171.107 as they existed on January 4, 2017.

~~6.~~8. A person holding a private applicator certificate who is unable to complete recertification requirements due to active duty military service may apply for an extension of the person's certification status for a time period not to extend beyond April first of the year following the person's return from active duty. The application must be in writing and accompanied by a certified copy of military orders or other trustworthy proof showing the date on which active duty military service began and ended. The board has discretion whether to grant the application.

~~7.~~9. Any person who fails an examination may retake such examination after three or more days. No more than three examinations may be given before requiring attendance at another initial training course.

~~8.~~10. The board designates the North Dakota state university extension service to provide training, administer testing, and issue certifications under this section.

History: Effective March 1, 2003; amended effective July 1, 2004; January 1, 2013; April 1, 2026.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-06, 4.1-33-12

60-03-01-07. Recordkeeping - Commercial, public, and private applicators and dealers.

1. ~~**Dealers.**~~ Every pesticide dealer shall keep separate, accurate, and complete records of all of the dealer's purchases and sales of restricted use pesticides and all pesticides used under section 18 (emergency exemption) and section 24-c (special local needs) of FIFRA. Dealers shall positively identify all purchasers of restricted use pesticides using any trustworthy proof of identification. If a restricted use pesticide is to be delivered to a person other than the

certified applicator making the purchase, the dealer must have a completed and signed authorization to receive restricted use pesticides form on file for the purchaser for the current year. The records must include the following ~~for each pesticide purchased or sold~~:

a. ~~Purchases.~~ For each pesticide purchased:

(1) Dealer's name and address.

(2) Pesticide trade name and environmental protection agency registration number, if available.

(3) Quantity of pesticide.

(4) Date pesticide was shipped or received.

(5) Name of the person from whom the pesticide was received.

b. ~~Sales.~~ For each pesticide sold:

(1) Dealer's name and address and identification of the person making the sale.

(2) Name, address, certification number, and signature of the certified applicator making the purchase.

(3) Date of sale.

(4) Trade name and environmental protection agency registration number, if available.

(5) Quantity of pesticide.

(6) Accurate inventory by product.

(7) Certification class and expiration date of the certification.

(8) Intended application site or intended crop for all pesticides used under section 18 of FIFRA.

(9) ~~Dealers shall positively identify all~~All purchasers of restricted use pesticide products, which must be positively identified by the dealer.

(10) The state, tribe, or federal agency that issued the certification document.

2. ~~**Commercial or public applicators.**~~ Commercial and public applicators shall keep a record of all pesticide applications and of the use or disposal of all pesticide rinsate. The record must be made within twenty-four hours of the pesticide application or the use or disposal of the pesticide rinsate. A copy of the record must be provided to the applicator's client as soon as possible, not to exceed thirty days, unless the applicator has on file a signed letter from the client waiving the right to receive a copy. The record must include for each application:

a. Name and address of the person for whom the pesticide was applied.

b. Legal description of the land, specific crops, commodities, and total acreage [hectarage] or other common identifying unit of measure, grain bin identification, railcar number, or other description of where the pesticide was applied.

c. Pest or pests controlled.

d. Start and completion time of the pesticide application (month, day, year, and hour).

e. Person who supplied the pesticide that was applied, if other than the person making the application or that person's employer.

f. Specific trade name and environmental protection agency registration number of the pesticide that was applied.

g. Direction and estimated velocity of the wind and the estimated temperature of the outdoor air at the time the pesticide was applied. This requirement shall not apply to seed treatment applications or if bait is used to attract the pest or pests or if the application is made indoors.

h. Amount of pesticide used, including:

(1) Pounds [kilograms] or gallons [liters] per acre [.40 hectare] of formulated product.

(2) Pounds [kilograms] or gallons [liters] of tank mix applied per acre [.40 hectare].

i. Specific crops, commodities, and total acreage [hectarage] or other common identifying unit of measure to which the pesticide was applied.

j. Description of equipment used in application.

k. Signature and number of applicator, if any.

l. Right-of-way applicators must record weather conditions and geographic location in two-hour increments.

3. ~~**Private applicators.**~~ Private applicators shall keep a record of all restricted use pesticide applications. The record must be made within twenty-four hours of the pesticide application or the use or disposal of the pesticide rinsate. The record must include for each application:

a. Legal description of the land, grain bin identification, or other description of where the pesticide was applied.

b. State and completion time of the pesticide application (month, day, year, and hour).

c. Specific trade name and environmental protection agency registration number of the restricted use pesticide that was applied.

d. ~~Amount~~Total amount of pesticide used, including:

(1) Pounds [kilograms] or gallons [liters] per acre [.40 hectare] of formulated product.

(2) Pounds [kilograms] or gallons [liters] of tank mix applied per acre [.40 hectare].

e. Specific crops, commodities, and total acreage [hectarage] or other common identifying unit of measure to which the pesticide was applied.

f. Signature and certification number of applicator, if any.

History: Amended effective October 1, 1990; May 1, 1994; March 1, 1996; March 1, 2003; July 1, 2004; January 1, 2013; April 1, 2026.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-03, 4.1-33-14

TITLE 67

PUBLIC INSTRUCTION, SUPERINTENDENT OF

APRIL 2026

CHAPTER 67-10-03

67-10-03-04. Loan issuance.

Upon approval of the superintendent, the Bank of North Dakota shall issue a loan from the school construction assistance revolving loan fund.

1. The maximum loan is ~~fifteen~~ten million dollars if the project is less than seventy-five million dollars. The maximum loan is ~~thirty~~twenty million dollars if the project is seventy-five million dollars or more.

2. If the school district's unobligated general fund balance on the preceding June thirtieth exceeds limitations set in North Dakota Century Code section 15.1-27-35.3, the maximum loan may not exceed eighty percent of the project cost up to a maximum loan of ~~twelve~~eight million dollars if the project is less than seventy-five million dollars. If the project exceeds seventy-five million dollars the maximum loan may not exceed eighty percent of the project cost up to a maximum loan of ~~twenty-four~~sixteen million dollars.

3. The term of the loan is twenty years, or less at the request of the board.

4. The interest rate may not exceed two percent per year.

History: Effective January 1, 2018; amended effective July 1, 2024; amended effective April 1, 2026.
General Authority: NDCC 15.1-27-35.3, 15.1-36-01, 15.1-36-08, 28-32-02
Law Implemented: NDCC 15.1-36-08

CHAPTER 67-12-01

67-12-01-03. Additional standards.

1. ~~Whenever~~If the body and chassis standards identified in the ~~2015~~2025 revised edition of the national minimum standards for schoolbus construction, as developed by the ~~sixteenth~~seventeenth national conference on school transportation, ~~May 17-20, 2015~~May 4-7, 2025, exceed or are in addition to the federal motor vehicle safety standards for schoolbuses, ~~those~~the national minimum standards for schoolbus construction apply and are hereby adopted by reference.

2. All schoolbuses purchased after September 1, 2006, may not include interior overhead racks unless the rack:

   a. Meets head requirements of FMVSS no. 222 effective on July 1, 2002, when applicable;

   b. Has a maximum rated capacity displayed for each compartment;

   c. Is completely enclosed and equipped with latching doors which must be sufficient to withstand a force of five times the maximum rated capacity of the compartment;

   d. Has all corners and edges rounded with a minimum radius of one inch [25.4 millimeters] or padded equivalent to door header padding;

   e. Is attached to the bus sufficiently to withstand a force equal to twenty times the maximum rated capacity of the compartment; and

   f. Has no protrusions greater than one-fourth of one inch [6.35 millimeters].

History: Effective May 1, 1999; amended effective July 1, 2003; July 1, 2006; April 1, 2021; April 1, 2026.
General Authority: NDCC 28-32-02, 39-21-27, 39-21-27.1
Law Implemented: NDCC 39-21-27, 39-21-27.1

CHAPTER 67-13-01
SCHOOL DISTRICT COOPERATIVE AGREEMENTS

Section
67-13-01-01 Purpose
67-13-01-02 Approval
67-13-01-03 Withdrawal
67-13-01-04 School Districts
67-13-01-05 Cooperative Program
67-13-01-06 Agreements
67-13-01-07 Cost-Sharing Reimbursement [Repealed]

67-13-01-07. Cost-sharing reimbursement.

Repealed effective April 1, 2026.

~~To be eligible to be reimbursed for a cost-sharing agreement, school districts or special education units must:~~

~~1. Share a superintendent, special education administrator, or business manager;~~

~~2. Demonstrate a cost-savings by sharing central office personnel; and~~

~~3. Indicate the percentage of time the superintendent or special education administrator and business manager are assigned to each district or unit.~~

~~**History:** Effective April 1, 2022; amended effective October 1, 2023.~~
~~**General Authority:** NDCC 28-32-02~~
~~**Law Implemented:** NDCC 15.1-27-16~~

CHAPTER 67-23-01

67-23-01-01. Definitions.

As used in this article, the following definitions apply:

1. "Individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with the IDEA section 614(d) [20 U.S.C. 1414(d)].

2. "Individuals With Disabilities Education Act" or "IDEA" means the Individuals With Disabilities Education Improvement Act of 2004, Public Law 108-446 [118 Stat. 2647; 20 U.S.C. 1400-1420].

3. "Least restrictive environment" means that to the maximum extent appropriate, children with disabilities are educated with children who are not disabled and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

4. "Local education agency" means a school district, public charter school, multidistrict special education unit organized under North Dakota Century Code chapter 15.1-33, or other legally constituted public authority for administrative control or direction of, or to perform a service function for, public elementary or secondary schools.

5. "Multidisciplinary team" means a team of professionals and parents which develops an IEP for a student with disabilities.

6. "Multidistrict special education unit" means a public corporation organized under North Dakota Century Code chapter 15.1-33 for purposes of planning and delivering special education and related services.

7. "Nonsectarian" means not affiliated with or restricted to a particular religion.

8. "Organization" includes school districts, public charter schools, multidistrict local education agencies, child care centers, vocational education centers, private or public residential facilities, counties, and nonprofit agencies.

9. "Related services" means transportation and developmental, corrective, or supportive services needed to help a student with disabilities to benefit from special education.

10. "Resident district" means the school district of residence of the student as determined by law.

11. "Special education unit" means a single-district special education unit or a multidistrict special education unit.

12. "Student with disabilities" or "child with disabilities" means an individual who:

    a. Is at least three years of age but has not reached the age of twenty-one before August first of the year in which the individual turns twenty-one, and because of mental, physical, emotional, or learning characteristics requires regular or special education and related services designed to meet the individual's educational needs; and

    b. Is an individual with intellectual disability, deaf or hard of hearing, speech or language impairment, visual impairment including blindness, emotional disability, orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, deaf-blindness, or noncategorical delay.

History: Effective February 1, 2000; amended effective January 1, 2008; January 1, 2020; October 1, 2021; October 1, 2025; April 1, 2026.
General Authority: NDCC 15.1-32-09
Law Implemented: NDCC 15.1-32-01, 15.1-32-09, 15.1-40-01, 15.1-40-17; 20 USC 1400-1419

67-23-01-02. School district's comprehensive general plan requirements for education of students with disabilities.

Each school district and public charter school in the state shall have a comprehensive general plan for the education of students with disabilities between the ages of three and twenty-one who reside in that district or attend the public charter school. The plan must:

1. Be filed with the superintendent of public instruction; and
2. Describe the multidistrict special education unit organizational and services plan or the organization of services for a single-district special education unit, including:
   a. Description of the organization, including participating school districts in multidistrict special education units;
   b. Structure and organization of the board;
   c. Powers and duties of the board;
   d. Monetary policies including fiscal management and method of apportioning administrative and program costs;
   e. Procedures for withdrawing from or joining a multidistrict unit, not including single district units;
   f. Services description;
   g. Unit or district policies and procedures for implementing the provisions of state law and the Individuals With Disabilities Education Act; and
   h. Letters of agreement from participating school districts, not including single-district units.

History: Effective February 1, 2000; amended effective April 1, 2026.
General Authority: NDCC ~~15-59-04, 15-59-05, 15-59.2-01~~15.1-32-09
Law Implemented: NDCC ~~15-59-05, 15-59.2-01, 15-59.2-02, 15-59.2-05~~15.1-32-01, 15.1-32-09, 15.1-40-01, 15.1-40-17; 20 USC 1400-1419

ARTICLE 67-34
MATHEMATICS CURRICULUM

Chapter
67-34-01 Professional Development for Grades Kindergarten Through Eight Mathematics

CHAPTER 67-34-01
PROFESSIONAL DEVELOPMENT FOR GRADES KINDERGARTEN THROUGH EIGHT MATHEMATICS

Section
67-34-01-01 Definitions
67-34-01-02 Professional Development Required
67-34-01-03 Research-Based Intervention Program
67-34-01-04 Implementation
67-34-01-05 Compliance

67-34-01-01. Definitions.

1. "Characteristics of dyscalculia or mathematics deficiencies" means learning difficulties that impact a student's ability to understand, recall, and apply mathematical concepts and procedures.

2. "Competencies" means the essential skills for mathematical reasoning and problem solving, including problem solving, connections, and reasoning and proof.

3. "Differentiated instruction" means tailored instructional methods designed to meet the diverse learning needs of students by adjusting content, process, product, or learning environment.

4. "Direct and explicit instruction" means a structured, systematic approach to teaching that clearly demonstrates and explains mathematical concepts and procedures.

5. "Evidence-based instruction" means teaching methods and practices that are grounded in systematic research and proven to be effective in improving mathematical learning outcomes.

6. "Evidence-based programming" means a systematic approach to developing and implementing programs, including instructional approaches, adopted curricula, and intervention programs, that are proven effective through rigorous research and evaluation.

7. "Formative assessments" means tools used to monitor student learning progress at regular intervals, guiding instructional adjustments and targeted interventions.

8. "Foundational skills" means the basic mathematical concepts and operations necessary for higher-level math learning, including numbers and operations, algebraic reasoning, geometry and measurement, and data, probability, and statistics.

9. "High-quality instructional materials" means resources designed to effectively support student learning by aligning with state standards, incorporating evidence-based practices, and providing comprehensive support for teachers and students.

10. "High-quality supplemental materials" means instructional resources or tools that incorporate evidence-based instructional strategies to support mathematics development and are aligned to the 2023 North Dakota Mathematics Content Standards.

11. "Mastery" means the successful demonstration of knowledge in the areas of mathematics competency described in this section.

12. "Math pedagogy" means the methods and approaches teachers use to teach mathematics.

13. "Mathematics intervention program" means a research-based program aimed at providing additional support to students identified as needing help in mathematics proficiency.

14. "Teacher of mathematics" means classroom teachers, special education teachers, or interventionists who have the primary duty of teaching mathematics.

History: Effective April 1, 2026.
General Authority: NDCC 15.1-21-12.3, 28-32-02
Law Implemented: NDCC 15.1-21-12.2

67-34-01-02. Professional development required.

1. Each teacher of mathematics and principal serving students in kindergarten through grade eight in a public or nonpublic school shall attend ongoing professional development training focused on best practices in mathematics instruction, including:

   a. Explicit and differentiated instruction;

   b. Data-driven decisionmaking; and

   c. Evidence-based programming on mathematics aligned with the 2023 North Dakota Mathematics Content Standards.

2. The department may provide a list of suggested and approved training.

3. Newly hired teachers and principals serving students in kindergarten through grade eight shall begin the professional development training described in subsection 1 within one year of first-year placement.

4. Required trainings must have occurred on or later than July 1, 2023 and be approved by the superintendent.

5. For teachers and principals of students in grades four through eight beginning in 2025 and grades kindergarten through three beginning in 2027, the successful completion of mathematics training in accordance with North Dakota Century Code section 15.1-21-12.2 meets the training requirements of this section.

History: Effective April 1, 2026.
General Authority: NDCC 15.1-21-12.3, 28-32-02
Law Implemented: NDCC 15.1-21-12.2

67-34-01-03. Research-based intervention program.

1. A research-based mathematics intervention program is a program designed to provide supplemental, targeted instruction to students identified as needing additional support in mathematics proficiency.

2. Any intervention program implemented in North Dakota public or nonpublic schools must meet the following criteria:

   a. Be evidence based and research supported, with documentation demonstrating effectiveness in improving student mathematics outcomes.

   b. Be aligned with the North Dakota Mathematics Content Standards and complement tier I core mathematics instruction.

c. Include built-in progress monitoring tools or formative assessment capabilities to inform instruction and measure student growth over time.

d. Provide embedded supports for students with disabilities and multilingual learners, as applicable.

e. Offer professional development and implementation guidance for educators to support program fidelity.

f. Be adopted and approved by the local school board.

3. The department shall create and maintain a list of suggested research-based mathematics intervention programs. The list must be made available publicly on the department's website and upon request. To be considered for placement on the state-suggested list, the intervention program vender shall:

a. Contact the department or visit the department's website to retrieve the application form.

b. Complete the application form, which must:

(1) Include assurances for items listed under this section.

(2) Require a signature from someone with vendor signature authority.

(3) Require contact information to be shared with the department.

c. Submit the application form via the instructions on the form. The department then shall review the application form and inform the vendor of its status within thirty days.

4. If an intervention program vendor application is approved, the vendor must be added to the suggested intervention program list. The superintendent may remove vendors if they are not in compliance with the criteria in this chapter. The department shall track intervention program vendors to determine whether they are in compliance with this chapter.

5. The department shall provide feedback to the intervention program vendors about data-sharing agreements and the usefulness of the intervention program data. If data are found to be of little value or low quality, the superintendent may remove vendors from the list.

History: Effective April 1, 2026.
General Authority: NDCC 15.1-21-12.3, 28-32-02
Law Implemented: NDCC 15.1-21-12.2

67-34-01-04. Implementation.

1. For students in grades four through eight, beginning July 1, 2025, school districts and nonpublic schools shall:

a. Ensure their mathematics curriculum and curricular resources meet the focus areas listed in subsection 1 of North Dakota Century Code section 15.1-21-12.2;

b. Implement formative assessments at regular intervals, adjusting teaching practices accordingly and providing targeted interventions for each student who needs additional support; and

c. Implement a research-based intervention program and high-quality supplemental materials that incorporate evidence-based instructional strategies.

2. For students in kindergarten through grade three, beginning July 1, 2027, school districts and nonpublic schools shall:

   a. Ensure their mathematics curriculum and curricular resources meet the focus areas listed in subsection 1 of North Dakota Century Code section 15.1-21-12.2;

   b. Implement formative assessments at regular intervals, adjusting teaching practices accordingly and providing targeted interventions for each student who needs additional support;

   c. Implement a research-based intervention program and high-quality supplemental materials that incorporate evidence-based instructional strategies;

   d. Use a screening process for early identification of mathematics deficiencies and characteristics of dyscalculia;

   e. Inform the student's parent or legal guardian about the screening process, the student's results, and the importance of early intervention;

   f. Provide resources and guidance to the student's parent or legal guardian to support mathematics learning at home; and

   g. If the student is identified as having characteristics of mathematics deficiencies or dyscalculia, develop an education plan with accommodations.

3. A school district or special education unit shall provide a screening process as required in North Dakota Century Code section 15.1-21-12.2 for any student upon request by a parent, legal guardian, or teacher.

History: Effective April 1, 2026.
General Authority: NDCC 15.1-21-12.3, 28-32-02
Law Implemented: NDCC 15.1-21-12.2

67-34-01-05. Compliance.

1. Each school district or nonpublic school shall ensure compliance with this section in a manner determined by the superintendent.

2. The department shall collect assurances from school districts and nonpublic schools to ensure compliance with North Dakota Century Code section 15.1-21-12.2.

3. During the monitoring process, the school district or nonpublic school shall report the following information in a manner determined by the superintendent:

   a. Mathematics curriculum and intervention tools;

   b. Professional development and training offered for kindergarten through grade eight;

   c. Assessment instruments to identify mathematical competency and deficiencies; and

   d. Student outcome mathematics proficiency data collected using assessment instruments.

4. School districts and nonpublic schools shall report information required in North Dakota Century Code section 15.1-21-12.2 annually to the department on the first day of October, unless the school district or nonpublic school is exempt under subsection 5.

5. School districts and nonpublic schools that have submitted satisfactory information required under North Dakota Century Code section 15.1-21-12.2 may be awarded an exemption from

annual reporting requirements of North Dakota Century Code section 15.1-21-12.2 for a period of up to three years. Satisfactory information may include student outcome mathematics proficiency data collected using the assessment instruments to identify mathematical competency.

History: Effective April 1, 2026.
General Authority: NDCC 15.1-21-12.3, 28-32-02
Law Implemented: NDCC 15.1-21-12.2

ARTICLE 67-35
ASSESSMENT OF SCHOOL BUILDINGS

Chapter
67-35-01 Authority for Assessment of School Buildings

CHAPTER 67-35-01
AUTHORITY FOR ASSESSMENT OF SCHOOL BUILDINGS

Section
67-35-01-01 Superintendent Authority for Assessment of School Buildings

67-35-01-01. Superintendent authority for assessment of school buildings.

The superintendent of public instruction may:

1. Collect regularly conducted assessments by school districts of each building located on school grounds in the state, including the interior and exterior of the building, doors, windows, fire sprinklers , fire protection systems, components of heating, cooling, plumbing, electrical, and security systems, and accessibility features.

2. Document the inventory of buildings, including building type, original construction year, facility additions, facility addition construction year, and facility square footage as submitted by school districts every four years.

3. Develop and maintain a system for tracking the assessments of buildings, including construction, repairs, modifications, and maintenance recommended for each school.

4. Contract for professional services to implement this section, including contracting to study appropriate criteria to establish for public school facility standards.

History: Effective April 1, 2026.
General Authority: NDCC 15.1-02-25, 28-32-02
Law Implemented: NDCC 15.1-02-25

ARTICLE 67-36
PUBLIC CHARTER SCHOOLS

Chapter
67-36-01 Public Charter Schools

CHAPTER 67-36-01
PUBLIC CHARTER SCHOOLS

Section
67-36-01-01 Definitions
67-36-01-02 Purpose
67-36-01-03 Application Submission and Review Procedures
67-36-01-04 Monitoring, Reporting, and Corrective Action
67-36-01-05 Fiscal Management and Audit Reporting
67-36-01-06 Enrollment Lottery Procedures
67-36-01-07 Closure and Dissolution Procedures
67-36-01-08 State Aid Funding Related to Public Charter Schools
67-36-01-09 Special Education for Public Charter Schools

67-36-01-01. Definitions.

1. "Public charter school" means a public school operating to achieve specific educational objectives according to the charter performance agreement as authorized and overseen by the superintendent, as defined in subsection 4 of North Dakota Century Code section 15.1-40-01. Public charter schools shall adhere to the academic, financial, and reporting standards applicable to public school districts. Public charter schools may implement certain requirements, such as instructional and governance practices, through alternative models as authorized in the charter performance agreement, provided all statutory and regulatory obligations are met.

2. "State performance standards" means the course content standards in subsection 3 of North Dakota Century Code section 15.1-02-04. This is separate from the contents of the performance agreement.

History: Effective April 1, 2026.
General Authority: NDCC 15.1-40-04, 28-32-02
Law Implemented: NDCC 15.1-40

67-36-01-02. Purpose.

The purpose of this chapter is to provide a framework enabling the establishment and operation of public charter schools as part of North Dakota's public education system. This chapter is designed to ensure public charter schools operate with autonomy while remaining accountable for academic, financial, and operational performance.

History: Effective April 1, 2026.
General Authority: NDCC 15.1-40-04, 28-32-02
Law Implemented: NDCC 15.1-40

67-36-01-03. Application submission and review procedures.

1. The department shall publish annual application deadlines, required templates, and submission procedures on its website. Application materials must be made available no less

than thirty days prior to the beginning of the submission window. The submission window for charter school applications must be no less than ninety days.

2. Applications must be submitted in the department-approved format and include all required attachments.

3. The department shall conduct completeness and quality reviews using a standardized rubric approved by the superintendent.

4. The department shall hold at least one public interview with the applicant team before making a recommendation.

5. Application materials and interview results must be documented and maintained in the public record.

6. The department shall issue a written notice of approval, conditional approval, or denial stating the reasons and any required conditions that must be met prior to execution of a charter performance agreement.

History: Effective April 1, 2026.
General Authority: NDCC 15.1-40-04, 28-32-02
Law Implemented: NDCC 15.1-40

67-36-01-04. Monitoring, reporting, and corrective action.

1. The department shall conduct ongoing monitoring, during which the department may use data reports, site visits, and documentation reviews.

2. Each public charter school shall submit annual academic, fiscal, and other reports on the same forms prescribed by the department for school districts. Public charter schools in North Dakota are held to the same academic, fiscal, and accountability standards under the state's reporting of key performance indicators which are required of school districts, along with any other statutory requirements.

3. If noncompliance or performance concerns are identified, the department shall issue a written notice outlining corrective actions and required evidence of remediation. The charter school shall make corrections as soon as possible, but no later than one year after the written notice.

4. Failure to complete required corrective actions within the established period may result in revocation or nonrenewal, as described in North Dakota Century Code section 15.1-40-15.

5. The superintendent shall determine whether the public charter school has made sufficient progress toward performance expectations under the charter performance agreement.

History: Effective April 1, 2026.
General Authority: NDCC 15.1-40-04, 28-32-02
Law Implemented: NDCC 15.1-40

67-36-01-05. Fiscal management and audit reporting.

Audit reports required under North Dakota Century Code section 15.1-40-20 must be submitted to the superintendent electronically by the public charter school within thirty days of receiving a final copy of the report from the certified public accountant or public accountant.

History: Effective April 1, 2026.
General Authority: NDCC 15.1-40-04, 28-32-02
Law Implemented: NDCC 15.1-40

67-36-01-06. Enrollment lottery procedures.

Public charter schools shall develop, publish, and implement written enrollment and lottery procedures consistent with North Dakota Century Code chapter 15.1-40. Each public charter school also shall maintain written policies governing application timelines, lottery procedures, and waiting list management.

History: Effective April 1, 2026.
General Authority: NDCC 15.1-40-04, 28-32-02
Law Implemented: NDCC 15.1-40

67-36-01-07. Closure and dissolution procedures.

1. If a public charter school intends to close, the governing board of the public charter school shall submit a closure plan to the department within ten days of the decision, including:

   a. Timelines for student record transfer to the students' resident home districts and notification to families; and

   b. Asset disposition consistent with North Dakota Century Code section 15.1-40-16.

2. The department shall verify completion of the closure plan before final dissolution.

History: Effective April 1, 2026.
General Authority: NDCC 15.1-40-04, 28-32-02
Law Implemented: NDCC 15.1-40

67-36-01-08. State aid funding related to public charter schools.

1. State funding for public charter schools must be distributed in accordance with North Dakota Century Code section 15.1-27-01.

2. State funding may be withheld in whole or in part in accordance with subsection 5 of North Dakota Century Code section 15.1-02-13, subsection 5 of North Dakota Century Code section 15.1-06-06, and North Dakota Century Code section 15.1-27-02 or failure to comply with any applicable requirement of state law, rule, or the charter performance agreement until compliance is achieved and verified by the department.

3. Public charter schools shall generate weighted student units in the same manner as a public school district except for any weighting factor that uses square miles.

4. The statewide average state funding per student must be calculated using the prior year's foundation aid weighted student units and state funding.

History: Effective April 1, 2026.
General Authority: NDCC 15.1-40-04, 28-32-02
Law Implemented: NDCC 15.1-40

67-36-01-09. Special education for public charter schools.

Public charter schools shall comply with all state and federal laws, rules, and regulations related to special education.

History: Effective April 1, 2026.
General Authority: NDCC 15.1-40-04, 28-32-02
Law Implemented: NDCC 15.1-40

TITLE 75

DEPARTMENT OF HUMAN SERVICES

APRIL 2026

CHAPTER 75-02-01.2
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM

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75-02-01.2-02	Human Service Zone Demonstration Projects
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75-02-01.2-02.2	Kinship Care Assistance
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75-02-01.2-03	Request for Benefits
75-02-01.2-03.1	Upfront Eligibility
75-02-01.2-04	Applicant's or Guardian's Duty to Establish Eligibility
75-02-01.2-05	Verification
75-02-01.2-06	Selection of Primary Individual
75-02-01.2-07	Presumptive Eligibility [Repealed]
75-02-01.2-08	Notification of Program Requirements
75-02-01.2-09	Decision and Notice
75-02-01.2-10	~~Monthly Report~~Review - Must Be Complete and Timely
75-02-01.2-11	Good Cause for Failure to Submit Complete and Timely Monthly Report [Repealed]
75-02-01.2-12	Determining Claims of Good Cause
75-02-01.2-13	Residence
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75-02-01.2-16	Unemployment of the Principal Wage Earner - Pay After Performance [Repealed]
75-02-01.2-17	Death of a Parent
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75-02-01.2-20	Eligibility Throughout Month
75-02-01.2-21	Asset Considerations
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75-02-01.2-23	Exempt Assets
75-02-01.2-24	Lump Sums Received by a Member of the Household
75-02-01.2-25	Good-Faith Effort to Sell Real Property
75-02-01.2-26	Disqualifying Transfers
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75-02-01.2-28	Eligibility for Aliens Who Arrived Before August 22, 1996 [Repealed]
75-02-01.2-28.1	Eligibility for Aliens Who Arrived on or After August 22, 1996 [Repealed]
75-02-01.2-29	Ineligibility Due to Participation in Strikes
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75-02-01.2-30.1	Benefit Cap [Repealed]

75-02-01.2-31 Age of Parent - Effect on Eligibility
75-02-01.2-32 Value of Benefit
75-02-01.2-33 Assignment of Right to Support
75-02-01.2-34 Good Cause for Failure or Refusal to Cooperate in Obtaining Support or Establishing Paternity
75-02-01.2-35 Combined Requirements
75-02-01.2-35.1 Time Limit on Certain Benefits - Exceptions
75-02-01.2-36 Determining Membership in Training, Education, Employment, and Management Household [Repealed]
75-02-01.2-37 Determining Membership of the Household
75-02-01.2-38 Determining Membership of the Food Stamp Filing Unit [Repealed]
75-02-01.2-39 Determining Membership of the Low Income Home Energy Assistance Program Filing Unit [Repealed]
75-02-01.2-40 Combined Supplemental Security Income and Temporary Assistance for Needy Families Households
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75-02-01.2-56 Computing Payment for First and Second Months of Eligibility [Repealed]
75-02-01.2-57 Computing Payment for Months Following the Second Month of Eligibility [Repealed]
75-02-01.2-58 Computing Payment Where Individuals Are Added to the Household
75-02-01.2-59 Computing Payments Where Individuals Leave the Household
75-02-01.2-60 Computing Payment Where Stepparent Is Deemed
75-02-01.2-61 Computing Benefits When an Individual's Needs Are Deleted From the Cash Grant
75-02-01.2-62 Computing Payment for a Child in Boarding School
75-02-01.2-63 Budgeting in Unusual Circumstances
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75-02-01.2-68.1 Housing Allowance
75-02-01.2-69 Unrestricted Payment of Assistance - Exceptions
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75-02-01.2-72.1 Denial of Assistance for Fugitive Felons~~,~~ and Probation and Parole Violators~~, and Certain Convicted Drug Offenders~~
75-02-01.2-73 Health Tracks
75-02-01.2-74 Assessment and Case Plan [Repealed]
75-02-01.2-75 Temporary Assistance for Needy Families Social Contract [Repealed]
75-02-01.2-76 Social Contract [Repealed]

75-02-01.2-77 Annual Reassessment [Repealed]
75-02-01.2-78 Mandatory Contract Requirements [Repealed]
75-02-01.2-79 Sanctions for Noncompliance With Temporary Assistance for Needy Families Program Requirements
75-02-01.2-80 Good Cause Determination
75-02-01.2-81 Good Cause for Failure to Complete Temporary Assistance for Needy Families Social Contract [Repealed]
75-02-01.2-82 Job Opportunities and Basic Skills Program - Definitions
75-02-01.2-83 Job Opportunities and Basic Skills Program - Basic Requirements [Repealed]
75-02-01.2-84 Job Opportunities and Basic Skills Program - Satisfactory Participation
75-02-01.2-85 Job Opportunities and Basic Skills Program - Work Requirements
75-02-01.2-86 Job Opportunities and Basic Skills Program - Tribal Native Employment Works Program
75-02-01.2-87 Job Opportunities and Basic Skills Program - Exemptions From Participation
75-02-01.2-88 Job Opportunities and Basic Skills Program - Referral
75-02-01.2-89 Job Opportunities and Basic Skills Program - Orientation, Assessment, and Employability Planning [Repealed]
75-02-01.2-90 Job Opportunities and Basic Skills Program - Supportive Services and Post Temporary Assistance for Needy Families Supportive Services
75-02-01.2-91 Job Opportunities and Basic Skills Program - Educational Activities Related to Secondary Education, Basic and Remedial Education, or Education in English Proficiency [Repealed]
75-02-01.2-92 Job Opportunities and Basic Skills Program - Job Skills Training Directly Related to Employment [Repealed]
75-02-01.2-93 Job Opportunities and Basic Skills Program - Unsubsidized Employment [Repealed]
75-02-01.2-94 Job Opportunities and Basic Skills Program - Job Search and Job Readiness [Repealed]
75-02-01.2-95 Job Opportunities and Basic Skills Program - Job Development and Job Placement Activities [Repealed]
75-02-01.2-96 Job Opportunities and Basic Skills Program - Vocational Education [Repealed]
75-02-01.2-97 Job Opportunities and Basic Skills Program - Provision of Child Care Services to Another Participant Engaged in a Community Service Program [Repealed]
75-02-01.2-98 Job Opportunities and Basic Skills Program - Work Experience and Community Service Program [Repealed]
75-02-01.2-99 Job Opportunities and Basic Skills Program - Work Readiness Activities [Repealed]
75-02-01.2-100 Job Opportunities and Basic Skills Program - On-the-Job Training [Repealed]
75-02-01.2-101 Job Opportunities and Basic Skills Program - Subsidized Public or Private Sector Employment [Repealed]
75-02-01.2-102 Job Opportunities and Basic Skills Program - Failure or Refusal to Participate
75-02-01.2-103 Job Opportunities and Basic Skills Program - Good Cause for Failure or Refusal to Comply With a Referral to, or Participate in, the Job Opportunities and Basic Skills Program
75-02-01.2-104 County Administration [Repealed]

75-02-01.2-01. Definitions.

Unless otherwise stated in this section, the definitions set forth in North Dakota Century Code section 50-09-01 ~~are applicable~~apply to this chapter. Additionally, in this chapter, unless the context or subject matter requires otherwise:

1. "Applicant" means an individual who is seeking a benefit under this chapter.

2. "Asset" means any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.

3. "Assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs, but does not include nonrecurring, short-term benefits, work subsidies, supportive services provided to families who are employed, and refundable earned income tax credits.

4. ~~"Base month" means the month, immediately before the processing month, about which the income and circumstances of the household are evaluated to determine the amount of any benefits to be paid during the benefit month.~~

~~5.~~ "Benefit month" means the calendar month ~~immediately following the processing month~~for which eligibility and benefits are computed.

~~6.~~5. "Benefits" means the amount ~~of temporary assistance for needy families assistance a family receives including the temporary assistance for needy families amount, essential services, and supportive services, reduced by recoupments~~issued for a household.

~~7.~~6. "Caretaker relative" means the relative so designated by the household who:

a. Lives with an eligible dependent child;

b. Is a pregnant woman, caretaker relative to no dependent child; or

c. Lives with a dependent child, under age eighteen and receiving supplemental security income benefits, who is the last child in the home.

~~8.~~7. "Child only case" means a case in which the only eligible individual is a dependent child and the caretaker relative is ineligible as a nonlegally responsible caretaker, or as a legally responsible caretaker due to being a supplemental security income recipient, a disqualified alien, a disqualified fleeing felon, a disqualified parole violator, a disqualified probation violator, or disqualified for committing fraud.

~~9.~~8. "Child support agency" has the same meaning as defined in North Dakota Century Code section 14-09-09.10.

~~10.~~9. "Department" means the North Dakota department of health and human services.

~~11.~~10. "Dependent child" means a needy child:

a. Who lives in the home of a relative by birth, marriage, or adoption;

b. Who has been deprived of parental support or care by reason of:

(1) The continued absence of a parent from the home, other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States;

(2) The death of a parent; or

(3) The physical or mental incapacity of a parent; and

c. Who is:

(1) Under the age of eighteen; or

(2) Under the age of nineteen and a full-time student in a secondary school or a vocational or technical school that is equivalent to a secondary school, if, before the end of the calendar month in which the student attains age nineteen, the student may reasonably be expected to complete the program of such school.

~~12.~~11. "Earned income" means income currently received as wages, salaries, commissions, or profits from activities in which a household member is engaged through either employment or self-employment. There must be an appreciable amount of personal involvement and effort, on the part of the household, for income to be considered earned.

~~13. "Earned right benefit" means a benefit an individual is entitled to receive as a result of being employed, even after the employment has terminated. These benefits include veterans' compensation and pensions; old age, survivors, and disability insurance benefits; railroad retirement benefits; workforce safety and insurance wage-loss and permanent impairment benefits; and unemployment compensation.~~

~~14.~~12. "Eligible caretaker relative" means a caretaker relative who:

a. If, related to an eligible dependent child as a brother or sister, is not under sixteen years of age;

b. If deprivation of parental support or care is by reason of the incapacity or disability of a parent, is the incapacitated or disabled parent or the eligible dependent child's other parent, but not stepparent;

c. If deprivation of parental support or care is by reason of the death or continued absence of a parent, is the eligible dependent child's other parent, but not stepparent;

d. Is not a recipient of supplemental security income benefits; and

e. Is in financial need;

f. Is a pregnant woman, caretaker relative to no other dependent or legally responsible caretaker child, who or whose husband is incapacitated; or

g. Is related to a dependent child by birth, whether by whole or half-blood, by marriage, or by adoption, and who is within the fifth degree of relationship to that child.

~~15.~~13. "Family" includes:

a. An individual or group of related individuals within a household whose needs are recognized in a grant of benefits through temporary assistance for needy families;

b. The parents of any dependent child and all brothers and sisters of any dependent child, whether by whole or half-blood, marriage, or adoption, any child, parent of an eligible dependent child, or other caretaker relative who receives supplemental security income benefits;

c. An alien who does not meet citizen and alienage requirements;

d. An alien who is ineligible for temporary assistance for needy families benefits because of the application of sponsor-to-alien deeming;

e. An individual who is ineligible for temporary assistance for needy families benefits as the result of the imposition of a sanction or disqualification; and

f. An individual who is a household member who is a legal dependent or a legally responsible caretaker of a member of the household, but does not include roomers or boarders.

~~16.~~14. "Full-time student" means a student who:

a. If in a secondary school, is enrolled in classes which, if completed, will earn the student four or more units of credit;

b. If in a vocational or technical school under state operation, a college, or a university, is enrolled in classes that, if completed, will earn the student twelve or more semester hours of credit during a regular term or six or more semester hours of credit during a summer term at an educational facility operating on a semester system, or twelve or more quarter hours of credit during a regular term or six or more quarter hours of credit during a summer term at an educational facility operating on a quarter system;

c. If in a private vocational or technical school, is enrolled in classes which, according to a written statement from school officials, constitutes full-time enrollment;

d. Is enrolled in an accredited alternative high school, correspondence courses, or adult basic education, according to a written statement from school officials or who is home schooled; or

e. Is an individual participating in job corps, whether an adult or a child.

~~17.~~15. "Housing costs" means the full amount of rent or, if purchasing a home, the full amount of the mortgage, property insurance, property taxes, special assessments, repairs, and improvements of the home.

~~18.~~16. "Ineligible caretaker relative" means a caretaker relative who is not an eligible caretaker relative.

~~19.~~17. "Legally responsible" means having a legal duty for the financial support of another individual.

~~20.~~18. "Lives in the home of a relative" means a circumstance that arises when a relative assumes and continues responsibility for the day-to-day care and control of a child in a place of residence maintained by the relative (whether one or more) as the relative's own home. It includes situations in which the child or the relative requires medical treatment that requires a special living arrangement. It also includes situations in which the child is temporarily absent from the home, with a plan to return, when the child:

a. Physically resides in the home, but is under the jurisdiction of a court and is receiving probation services or protective supervision;

b. Receives education while in an educational boarding arrangement in another community if needed specialized services or facilities are unavailable in the home community or if transportation problems make school attendance near home difficult or impossible;

c. Receives services at a summer camp such as Camp Grassick, receives services at an attention deficit hyperactivity disorder summer camp, or receives extended hospital stays during the summer months;

d. Receives special education at the school for the deaf or school for the blind, whether as a day student or a boarding student, except that a boarding student's needs are limited to those maintenance items that are not provided by the school; or

e. Receives education at a boarding school in another community, provided ~~that~~ the child was not placed in that setting following removal from the child's home by court order following a determination ~~that~~ the child was abused, neglected, or deprived, except ~~that~~ the child is entitled to a clothing and personal needs allowance only if that allowance is made available for the child's use on a regular basis.

~~21.~~19. "Parent" means the child's mother or father, whether by birth or adoption, but does not mean:

a. An individual whose parental rights have been terminated with respect to that child; or

b. A stepparent.

~~22.~~20. "Part-time student" means an individual enrolled in a secondary school, vocational school, correspondence courses, technical school, college, or university, or who is home schooled, who is not a full-time student.

~~23. "Processing month" means the month, immediately after the base month, and immediately before the benefit month, in which the human service zone determines eligibility for, and the amount of, any benefit to be paid during the benefit month.~~

~~24.~~21. "Proper individual" means any individual of sufficient maturity and understanding to act responsibly on behalf of the applicant.

~~25.~~22. "Prospective budgeting" means the determination~~, made only with respect to the initial month of eligibility and the month immediately after the initial month of eligibility, based on the human service zone's best estimate of the~~ of a household's benefits based on income and circumstances ~~of the household in those months, of the amount of any grant of benefits in those two months~~for the benefit month.

~~26.~~23. "Prudent person concept" means a method or program administration that relies upon individual staff members:

a. To exercise judgment in requesting, reviewing, and weighing information provided by an applicant, recipient, or any source of verification; and

b. To be attentive, vigilant, cautious, perceptive, and governed by reason and common sense.

~~27.~~24. "Recipient" means an individual who receives cash assistance under this chapter.

~~28.~~25. "Relative by birth, marriage, or adoption" means an individual related to the dependent child by birth, whether by blood or half-blood, by marriage including a marriage that has been terminated by death or divorce, or by adoption, as father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, or first cousin.

~~29. "Retrospective budgeting" means a determination, made by the human service zone during the processing month, based on income and circumstances of the household, during the base month, of the amount of any grant of assistance in the benefit month.~~

~~30.~~26. "Sanction penalty month" means the month in which a sanctioned individual's financial needs may be removed from a household's temporary assistance for needy families grant.

~~31.~~27. "Special item of need" means an additional benefit paid to a temporary assistance for needy families household to reimburse certain expenses that are not included in the basic standard of need. These items include health insurance premiums, car seats, essential service, house allowance, and catastrophic events.

~~32.~~28. "Standard employment expense allowance" means twenty-seven percent of earned income, or one hundred eighty dollars, whichever is greater, to be first disregarded from the earned income of any child or adult relative applying for benefits under this chapter, or any other individual whose needs are taken into account in determining eligibility under this chapter, but whose earned income is not required to be wholly disregarded as the income of a child who is a full-time student or a part-time student who is not a full-time employee.

~~33.~~29. "Stepparent" means an individual married to a parent of a child after the birth or adoption of the child, but who is not also a parent of that child by either birth or adoption.

~~34.~~30. "Supplemental security income" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

~~35.~~31. "Supportive services" means services and benefits approved by the department and provided to ~~an individual receiving other temporary assistance for needy families benefits, to assist in training for employment, seeking employment or maintaining employment, and to support~~a household based on eligibility for job opportunities and basic skills program activities, transition assistance, kinship care assistance, post temporary assistance for needy families, or diversion as outlined in this chapter.

~~36.~~32. "Temporary assistance for needy families" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Social Security Act [42 U.S.C. 601 et seq.] during periods beginning July 1, 1997.

~~37.~~33. "Temporary assistance for needy families household" means an individual or group of individuals who reside together and includes at least one individual in receipt of temporary assistance for needy families.

~~38.~~34. "Unearned income" means income that is not earned income.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011; January 1, 2014; April 1, 2024; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-02.1. Diversion.

Diversion may be provided to a family experiencing a specific crisis situation or episode of need. Diversion is not assistance under title 45, Code of Federal Regulations, part 260.31, and is not a benefit for purposes of North Dakota Century Code section 50-09-06.1. Diversion may be provided to a family that meets all factors of eligibility for assistance under the temporary assistance for needy families program except as provided in this section.

1. A family may not receive diversion and a temporary assistance for needy families grant in the same month. A family may receive diversion for up to four months within a twelve-month period beginning in the month diversion is provided. A family that includes a caretaker who is not a legally responsible relative of a child member of the family may not receive diversion.

2. Diversion may be provided to defray expenses necessary to retain or obtain employment. Within the limits described by the department, additional funds may be made available to a participant who would be unable to enter into or remain in a work activity without the use of those funds. Necessary expenses incurred in retaining or obtaining employment must be verified.

3. Cooperation in obtaining support or establishing paternity for any child member of the family is permitted but not required.

4. An applicant may appeal a denial, limitation, or termination of diversion, and a recipient of diversion may appeal termination or reduction of diversion, by making a written request for a hearing within thirty days from the date of the notice of adverse action. If diversion is denied or the case is ~~close~~closed, diversion may not be provided pending completion of the fair hearing process. If diversion is reduced, benefits may be continued only based on the reduced level, pending completion of the fair hearing process.

5. A month in which diversion is received does not count toward the temporary assistance for needy families sixty-month lifetime limit provided under section 75-02-01.2-35.1.

6. ~~When~~If a diversion household is determined to have a recurrent or ongoing need, the diversion case must be closed and the household may reapply under temporary assistance for needy families to meet the recurrent or ongoing needs.

7. Diversion households are not subject to an asset limit.

8. Diversion households are subject to an annual federal poverty level determined by the federal government.

History: Effective June 1, 2005; amended effective January 1, 2009; January 1, 2011; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-02.3. Transition assistance.

Transition assistance promotes job retention by providing an extended period of cash assistance to qualified families under temporary assistance for needy families. Households with earnings from employment exceeding the allowable standard of need for their household size may remain eligible for transition assistance for up to six months. Transition assistance is assistance under title 45, Code of Federal Regulations, part 260.31, and is a benefit for purposes of North Dakota Century Code section 50-09-06.1. Transition assistance may be provided to a family that meets all factors of eligibility for assistance under the temporary assistance for needy families program except as provided in this section. For purposes of this section, "caretaker" means an individual who provides support to a minor child and who may or may not receive benefits. All provisions of this chapter apply except:

1. A family may not receive a grant for transition assistance in any month in which that family receives a grant for temporary assistance for needy families or diversion assistance.

2. ~~No one may be provided transition~~Transition assistance may not be provided in an application month. Only recipients of temporary assistance for needy families may become eligible for transition assistance.

3. Transition assistance provides a monthly job retention incentive in an amount approved by the department, transportation assistance, and special items of need as allowed under the temporary assistance for needy families program.

4. A family may not receive transition assistance for more than six consecutive months.

5. Transition assistance may not be provided to:

   a. A caretaker sanctioned due to noncompliance with work requirements;

   b. A caretaker relative, in a child-only case;

   c. A minor parent who is not the head of household or spouse of the head of household;

   d. An alien who is ineligible to receive assistance due to his or her immigration status;

   e. A caretaker in receipt of supplemental security income benefits; and

   f. A caretaker with a disqualification penalty applied for a voluntary job quit or voluntary refusal of an offer of employment or training for employment.

History: Effective January 1, 2009; amended effective January 1, 2011; April 1, 2024; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-09. Decision and notice.

1. A decision as to eligibility must be made promptly on applications, within thirty days, except in unusual circumstances.

2. A decision as to eligibility on ~~redeterminations~~review must be made within thirty days.

3. Immediately upon an eligibility determination, whether eligibility can be found, ineligibility can be found, or eligibility cannot be determined, ~~program applicants or recipients shall be notified by~~ the human service zone shall notify program applicants or recipients. Adequate notice of any decision terminating or reducing benefits must be sent at the time required by section 75-01-03-08.

4. The effective date a case is closed ~~or suspended~~ is the last calendar day of the month identified in the notice.

5. Errors made by public officials and delays caused by the actions of public officials do not create eligibility or additional benefits for an applicant or recipient who is adversely affected.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-10. ~~Monthly report~~Review - Must be complete and timely.

1. ~~When~~If the human service zone receives a completed ~~monthly report~~review, it shall process the ~~payment~~review only if all eligibility conditions are met. The human service zone shall notify the household of any changes ~~from a payment made in the month immediately past~~to the household's payments. If payment is being reduced or assistance terminated as a result of information provided in the ~~monthly report~~review, the human service zone shall send an adequate notice. The household may be reinstated to the original payment amount ~~made in the month immediately past~~ if an appeal of the decision described in the notice is made within ten days of the date of the notice.

2. A human service zone may terminate assistance if it ~~has received no~~did not receive a timely ~~monthly report~~review or has received only an incomplete ~~report~~review. The human service zone shall send an adequate notice, mailed to arrive no later than the date it would have made payment if the human service zone had received a timely and complete ~~monthly report~~review. If the household notifies the human service zone and files a complete ~~report~~review within ten days of the date of the notice, the human service zone may accept the replacement ~~report~~review and provide for payment based on the ~~report~~review only if the information indicates that the household is still eligible. If, based on the replacement ~~report~~review, the household is found ineligible or eligible for an amount less than the original payment amount ~~made in the month immediately past~~, the human service zone shall promptly notify the household of the right to a fair hearing and, if a hearing is requested within ten days from the date of the notice, the right to have payment reinstated to the original payment ~~amount made in the month immediately past~~.

3. A review period must be assigned to the household as determined by the department.

4. While a review is pending and during the review period, households are required to report to the human service zone all changes within ten days from the date the change occurs to be considered reported timely. Required changes include a change in household members, a change in custody status of a household member, pregnancy, a change in marital status, a combined change in earned and unearned monthly income of more than one hundred dollars,

the start or end of an income source, a change in assets, a change in resident or mailing address, or a change in student status.

5. If temporary assistance for needy families closes for failure to submit a review and the review is submitted in the month following the month of closure, the review may be used as an application and all application processing requirements apply. If the review form is received after the month following the month of closure due to failure to submit review, a new application is required.

History: Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005; January 1, 2011; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-12. Determining claims of good cause.

Determinations concerning claims of good cause require the use of decisionmaking principles. These principles must be applied to the individual's statements and information to determine if the requirements of good cause are met. The decisionmaking principles are:

1. The individual claiming good cause is responsible to show that good cause exists.

2. Uncorroborated statements of fact are less believable than corroborated statements. Uncorroborated statements may be accepted if they are consistent, credible, and supported by the circumstances of the case.

3. Statements by individuals with a reputation for being untruthful are less believable than similar statements by individuals without that reputation.

4. A reputation for being untruthful exists if the files maintained by the department, the human service zone, or the job opportunities and basic skills program employment contractor contain evidence of untruthful statements made by the individual, or if the individual has made untruthful statements that are a matter of public record.

5. Statements by individuals with a reputation for failures or delays in furnishing information necessary for official action are less believable than similar statements by individuals without that reputation.

6. A reputation for failures or delays in furnishing information necessary for official action exists if the files maintained by the department, the human service zone, or a job opportunities and basic skills program employment contractor contain evidence of any failure or delay, without good cause, to furnish reports, including ~~monthly reports~~review forms, necessary verifications, or a failure or delay in attending meetings or interviews intended to secure information necessary for official action.

7. A statement of fact, made by an individual with something to gain if that statement is regarded as true, is less believable than a similar statement made by an individual with little or nothing to gain.

8. An individual's explanations or reasons for claiming good cause must be judged by a prudent person concept. A prudent person is one who exercises ~~those~~ qualities of attention, knowledge, intelligence, and judgment ~~that~~, which society requires of its members for protection of their own interests and the interests of others.

9. Statements of fact made by the individual claiming good cause, or by other individuals who support or oppose the claim of good cause, are not presumed to be either truthful or

untruthful. Rather, statements of fact must be evaluated to determine if they are more likely than not or less likely than not ~~to be~~ true.

History: Effective December 9, 1996; amended effective January 1, 2003; January 1, 2009; April 1, 2024; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-20. Eligibility throughout month.

~~1.~~ In the first month ~~in which~~that eligibility is established, ~~based on any one application,~~ the benefit amount is ~~that pro rata portion of the monthly benefit amount equal~~prorated to the percentage of the month remaining ~~after the later~~as of the first day of eligibility ~~or the date of application, except:~~

~~a. In the case of a family that has entered North Dakota from a state which issues grants twice a month, the benefit amount is that pro rata portion of the monthly benefit amount equal to the percentage of the month remaining after the later of the date coverage in the other state ends or the date of application; and~~

~~b. The benefit amount may be adjusted to correct an underpayment or overpayment arising out of previous periods of eligibility.~~

~~2. In the second and subsequent months in which eligibility is established, based on any one application, if the monthly reporting requirements are met, the household continues to be eligible throughout the month if eligible for any portion of the month~~.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-22. Asset limits.

~~No~~A member of a household may not be found eligible for benefits unless the value of the household's assets, not specifically excluded under this chapter, does not exceed ~~three~~nine thousand dollars for a household consisting of one individual, ~~six~~fifteen thousand dollars for households consisting of two individuals, and an additional ~~twenty-five~~five hundred dollars for each additional individual. In all instances, including determination of equity, property must be realistically evaluated in accord with current market value. Any reasonable costs associated with liquidation of excess assets must be taken into account.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-23. Exempt assets.

The following assets are exempt from consideration in determining eligibility for temporary assistance for needy families benefits:

1. The home occupied by the household including trailer homes being used as living quarters, and the land upon which the home stands, up to twenty contiguous acres [8.09 hectares], if rural, and up to two acres [.81 hectare], if located within the established boundaries of a city;

2. Personal effects, wearing apparel, household goods, and furniture;

3. One car, van, or pickup of any equity value;

4. Indian trust or restricted lands, the proceeds from the sale thereof so long as those proceeds are impressed with the original trust, and the proceeds from the lease thereof so long as those proceeds are not commingled with other funds;

5. For twelve months from the month of receipt, any refund of federal income taxes made to a member of the household including the earned income tax credit, and any payment made to a member of the household by an employer, relating to advance payment of earned income tax credit;

6. Real property ~~that~~ the household is making a good-faith effort to sell;

7. Indian per capita funds and judgment funds awarded by ~~either~~ the Indian claims commission or the court of claims after October 19, 1973, interest and investment income accrued on such Indian per capita or judgment funds while held in trust, and purchases made using interest or investment income accrued on such funds while held in trust. The funds must be identifiable and distinguishable from other funds. Commingling of per capita funds, judgment funds, and interest and investment income earned on those funds, with other funds, results in loss of the exclusion;

8. The equity value of all assets owned by a member of the household who is a recipient of supplemental security income; ~~and~~

9. The equity value of the assets, jointly owned by a program household member and a recipient of supplemental security income;

10. Any property, equipment, or vehicle used for the purpose of producing income, including vehicles used for employment, tools or equipment required for a job or trade, or items necessary for self-employment or contracted work;

11. One bona fide funeral agreement and associated financial instrument, including interest accrued, per household member, provided the funds are designated for burial expenses, identifiable, and not commingled with other funds;

12. One burial space or plot per household member;

13. Funds held in an achieving a better life experience account established under section 529A of the Internal Revenue Code;

14. Retirement funds and pension plans, including individual retirement accounts and SEP, SIMPLE, and qualified plans, provided funds remain in the account and are not withdrawn;

15. Funds in a plan for achieving self-support account approved by the social security administration;

16. Resources used as collateral for a business loan, if the resource may not be sold due to a security agreement or lien;

17. Resources determined inaccessible, including those held in probate or under legal restrictions, such as irrevocable trusts in which the funds are not accessible to the household;

18. Funds received under federal disaster assistance programs or the Crime Victim Compensation Act, provided the funds are used as intended or subject to repayment if misused;

19. The value of livestock used to produce income, for home consumption, or maintained as household pets;

20. Cryptocurrency, which must be evaluated for availability and market value if not readily accessible or liquid. If determined inaccessible, it may be excluded as a resource; and

21. For twelve months following the month of receipt, all nonrecurring lump sum payments.

History: Effective December 9, 1996; amended effective January 1, 2003; January 1, 2014; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-24. Lump sums received by a member of the household.

1. ~~All nonrecurring lump sum payments must be considered as an asset beginning the second month following the month of receipt. For that month, the remaining lump sum amount is included with all other nonexempt assets in determining eligibility.~~

~~2.~~ Recurring unearned income lump sum payments received after an application has been filed for temporary assistance for needy families must be considered countable income and prorated over the period the payment is intended to cover. The prorated lump sum payment must continue to be counted if the case closes and reopens during the income prorate period in which the payment was received or reopens during the income prorate period immediately succeeding the income prorate period in which the case was closed.

~~3.~~2. For purposes of this section, "lump sum income or payment" includes retroactive monthly benefits provided under title II of the Social Security Act and other retroactive monthly benefits, payments in the nature of windfall, such as lottery or gambling winnings or inheritances, judgments, or settlements for injuries to person or property to the extent that the payment is not earmarked and used for the purpose for which it was paid such as burial costs, and repair or replacement of lost or damaged assets, and workers' compensation awards.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-27. Social security numbers.

Before the needs of an individual may be included in the benefit, the individual shall furnish a social security number or proof that the individual has applied for a social security number. An individual may not be initially included in or added to a household, including newborn children, until the individual's social security number or proof of application has been received. An individual who has been included in or added to a household upon providing proof that the individual has applied for a social security number shall provide a social security number within six months of receipt of the number or at the time of the next ~~redetermination~~review of eligibility following receipt of the number, whichever is earlier.

History: Effective December 9, 1996; amended effective January 1, 2003; January 1, 2011; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-34. Good cause for failure or refusal to cooperate in obtaining support or establishing paternity.

1. ~~The human service zone, for~~For good cause, ~~may waive~~ the requirement that an individual cooperate in obtaining support and establishing paternity may be waived if it ~~determines that~~is determined cooperation is against the best interests of the child. A human service zone may determine ~~that~~ required cooperation is against the best interests of the child only if:

a. The individual's cooperation in establishing paternity or securing child support is reasonably anticipated to result in:

(1) Physical harm to the child for whom support is to be sought;

(2) Emotional harm to the child for whom support is to be sought;

(3) Physical harm to the parent or caretaker relative with whom the child is living which reduces that individual's capacity to care for the child adequately; ~~or~~

(4) Emotional harm to the parent or caretaker relative with whom the child is living, of such nature or degree that it reduces that individual's capacity to care for the child adequately; ~~or~~

(5) Interference with family reunification efforts; or

(6) Disruption of child protective services objectives; or

b. At least one of the following circumstances exists, and the human service zone believes ~~that~~ because of the existence of that circumstance, in the particular case, proceeding to establish paternity or secure child support would be detrimental to the child for whom support would be sought:

(1) The child for whom support is sought was conceived as a result of incest or forcible rape;

(2) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or

(3) The individual, otherwise required to cooperate, 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.

2. Physical harm and emotional harm must be of a serious nature in order to justify a waiver.

3. A waiver 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, based in whole or in part upon the anticipation of emotional harm to the child, the parent, or the caretaker relative, the human service zone shall consider:

a. The present emotional state of the individual subject to emotional harm;

b. The emotional health history of the individual subject to emotional harm;

c. Intensity and probable duration of the emotional impairment;

d. The degree of cooperation to be required; and

e. The extent of involvement of the child in the paternity establishment or support activity to be undertaken.

4. In all cases in which the human service zone has determined that good cause exists based on a circumstance subject to change, a determination to grant a waiver must be reviewed, at a minimum, once every twelve months to determine if the circumstances which led to the waiver continue to exist.

5. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.2-12.

History: Effective December 9, 1996; amended effective January 1, 2003; January 1, 2014; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-43. Benefits less than ten dollars.

~~No~~A benefit payment may not be issued if the calculated benefit is less than ten dollars, but the household must be treated for all other purposes of this chapter~~, including the application of the retrospective budgeting cycle,~~ as a household to which the department makes a benefit payment.

History: Effective December 9, 1996; amended effective January 1, 2003; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-44. Income described.

1. All income that is actually available must be considered. Income is actually available ~~when~~if it is at the disposal of an applicant or recipient; ~~when~~if the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make the sum available for support or maintenance; or ~~when~~if the applicant or recipient has the lawful power to make the income available or to cause the income to be made available. In specific circumstances, income available to individuals other than the applicant or recipient is deemed available. This subsection does not supersede other provisions of this chapter which describe or require specific treatment of income, or which describe specific circumstances that require a particular treatment of income.

2. Income may be earned, unearned, or deemed. It may be received regularly, irregularly, or in lump sums. Income may be counted or excluded. It may be disregarded for some purposes, but not for others. Other sections of this chapter explain those treatments.

3. ~~Each household member must accept any earned rights benefits to which entitled. Each household member must provide verification as to whether the household member is qualified for earned rights benefits; and, if qualified, must make application for those benefits and secure those benefits if qualified.~~

~~4.~~ Earned income includes:

   a. Wages, salaries, commissions, bonuses, or profits received as a result of holding a job or being self-employed;

   b. Earnings from on-the-job training including the Workforce Innovation and Opportunity Act;

   c. Wages received as the result of participation in a program under the Older Americans Act;

   d. Wages received from sheltered workshop employment;

   e. Sick leave pay or loss-of-time private insurance paid for the loss of employment due to illness or injury;

   f. Compensation for jury duty;

   g. Tips;

h. Income from boarders;

i. Income from room rentals;

j. Income from participation in job corps; and

k. Income from internship or stipends.

~~5.~~4. Unearned income includes:

a. Social security, veterans benefits of any kind, private pensions, pensions provided to former employees of public entities, workers' compensation, unemployment benefits, union compensation during strikes, and military allotments;

b. Rents paid without an appreciable amount of personal involvement and effort provided as a service to the tenant, mineral lease rentals, bonus payments and royalties, dividends, and interest paid;

c. Cash contributions;

d. Cash gifts;

e. General assistance payments made to any member of the household by a human service zone or the bureau of Indian affairs; and

f. Any other form of income that is not earned income.

~~6.~~5. Deemed income includes:

a. In the case of income deemed from a stepparent, that stepparent's entire gross income less:

(1) The greater of one hundred eighty dollars or the twenty-seven percent standard employment expense allowance;

(2) An additional amount for the support of the stepparent and any other individuals living in the home whose needs are not taken into account in making the eligibility determination and who are or could be claimed by the stepparent as dependents for federal income tax purposes, but not including any sanctioned individuals or individuals who are required to be included in the household, but have failed to cooperate, equal to the standard of need amount for a family group of the same composition and size as the stepparent and those other individuals described in this paragraph;

(3) Spousal support payments, child support payments, health insurance premiums, and child or adult dependent care costs related to employment or employment and education or training actually being made to or on behalf of individuals not living in the home; and

(4) Amounts actually being paid to individuals not living in the home who are or could be claimed by the stepparent as dependents for federal income tax purposes.

b. In the case of income deemed from the sponsor of a sponsored alien, the income of the sponsor and the sponsor's spouse is calculated by allowing:

(1) The earned income disregard of the greater of one hundred eighty dollars or the twenty-seven percent standard employment expense allowance; and

(2) A disregard equal to one hundred thirty percent of the federal poverty level equal to the household size of the sponsor.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011; January 1, 2017; April 1, 2024; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-45. Excluded income.

1. The following income must be excluded in determining eligibility for assistance:

   a. All earned income of any child, except a minor parent, attending elementary or high school full time;

   b. A loan from any source that is subject to a written agreement requiring repayment by the recipient;

   c. The value of general assistance benefits provided in voucher form by any human service zone, tribe, or the bureau of Indian affairs;

   d. Assistance payments from other programs, agencies, or organizations that:

      (1) Do not serve the same purposes as the temporary assistance for needy families cash grant; or

      (2) Provide goods or services that are not included in the standard of need;

   e. Scholarships, grants, stipends, and awards for educational purposes, which are given because of need or achievement by the bureau of Indian affairs, other federal sources, state sources, civic, fraternal, and alumni organizations, or relatives, to undergraduate-level and graduate-level students;

   f. Workstudy program income earned by an undergraduate-level or graduate-level student;

   g. Family subsidy program payments made by the department;

   h. Returned deposits from rentals and from utility companies;

   i. Adoption assistance and subsidized adoption payments;

   j. Foster care payments, subsidized guardianship payments, and payments received as a retainer for services as an emergency shelter foster home; and

   k. Irregular cash gifts, which total, in any month, less than five hundred dollars per household received for a special occasion, such as Christmas, birthdays, or graduations; and

   l. Child support disbursed to the household by a child support agency.

2. For purposes of this section, "child" means an individual:

   a. Under age eighteen; or

   b. Age eighteen and a full-time student in elementary or high school, or in an equivalent level of vocational or technical training, if, before attaining age nineteen, such student may reasonably be expected to complete the high school or vocational training curriculum.

History: Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005; January 1, 2017; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-49. Income considerations.

1. All income must be considered in establishing eligibility and in determining the cash grant amount.

2. Income must be reasonably evaluated. A determination that income is deemed available is a determination that the income is actually available.

3. Income from wages, or any other source, must be considered received in the month in which it was actually received or considered to be available. Wages held at the request of an employee must be considered income in the month in which the wages would otherwise have been paid by the employer.

4. ~~A member of a household who receives regular income, other than on a monthly basis, may occasionally receive an extra check which causes the unit to become ineligible in the month of receipt. If the receipt of additional income is anticipated to result in ineligibility for only one month, the case may be suspended, rather than closed.~~

   ~~a. If the additional income is received in the month of application, the first month of prospective budgeting, the application must be denied.~~

   ~~b. If the additional income is received in the month after the month of application, the second month of prospective budgeting, the case must be prospectively suspended, and all income, except income derived from the last check received in that month, from the source of regular income, must be retrospectively budgeted.~~

   ~~c. If the additional income is received in any month except the month of application or the month after the month of application, all income must be retrospectively budgeted~~ Income must be applied prospectively.

History: Effective December 9, 1996; amended effective January 1, 2003; April 1, 2026.
General Authority: NDCC 50-09-02, 59-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-51. Disregarded income.

1. The department shall establish an employment incentive, and an employment incentive limit, to reasonably encourage household members to earn income.

2. If permitted under subsection 3, income must be disregarded, as an employment incentive, in determining the cash grant amount.

   a. The greater of one hundred eighty dollars or twenty-seven percent of the household's monthly gross earned income, except earnings of any child who is a full-time elementary or high school student, is disregarded as a standard employment expense allowance. The amount remaining is net earned income.

   b. Any net earned income that exceeds the income incentive limit is treated as countable earned income.

   c. A portion of net earned income that is equal to or less than the income incentive limit may be disregarded, under this subdivision, in determining countable earned income.

(1) If an applicant has earned income in the month of application or the month after the month of application, at least fifty percent of the net earned income may be disregarded for six months beginning the month in which the earned income is first budgeted.

(2) If a recipient has earned income, at least thirty-five percent of the net earned income may be disregarded for months seven through nine beginning the month earned income is first budgeted.

(3) If a recipient has earned income, at least twenty-five percent of the net earned income may be disregarded for months ten through twelve after the month earned income is first budgeted.

(4) If a recipient has earned income, no net earned income may be disregarded under this subdivision after the twelfth month after the month earned income is first budgeted.

(5) Individuals that have received a full twelve months of the incentive known as the time-limited percentage ~~will~~are not ~~be~~ eligible for this incentive again unless the individual has been off assistance for twelve or more months.

d. An employed household member who receives an employment incentive disregard for a period of at least six consecutive months is provided employment incentive disregards of at least fifty percent for the first six months beginning the month in which the income is first budgeted, at least thirty-five percent for months seven through nine, at least twenty-five percent for months ten through twelve, and none thereafter.

e. An employed household member who receives an employment incentive disregard for a period of less than six consecutive months is, upon reemployment, provided ~~the~~ employment incentive disregards as if the member ~~would have received if the first month of reemployment was the first month income is budgeted retrospectively~~had not received employment incentive disregards.

f. If an employed household member, who is receiving the employment incentive disregard, voluntarily terminates employment and is unable to show good cause for failure or refusal to participate, the employment incentive disregard cycle continues as if the household member was employed.

g. If any nondisregarded income remains, a health insurance premium, or paid child or spousal support, if applicable, may be disregarded.

h. If any nondisregarded income remains, child and dependent care costs that are employment-related or a combination of employment-related and education or training-related may be disregarded.

3. An income disregard is available if the eligible employed individual previously received assistance, has not received temporary assistance for needy families at least twelve months or has not completed the twelve month earned income employment incentive disregard cycle, including months in which the earned income disregard was unavailable because:

a. No payment was made because the calculated cash grant was less than ten dollars; or

b. The household voluntarily requested termination of assistance for the primary purpose of avoiding completion of the earned income employment incentive disregard cycle or any part of that cycle.

4. ~~If, in any month, additional income received from a recurring source causes the household to be suspended as ineligible for one month, the month of suspension does not count as a month for purposes of this section.~~

~~5.~~ Nonhousehold member deduction for stepparent and minor parent budgeting, if applicable, may be made.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011; January 1, 2017; April 1, 2024; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02, 50-09-29

75-02-01.2-53. Deduction for dependent care.

1. A deduction for a member of a household who is an employed caretaker relative may be made for the cost of necessary care of a child or incapacitated adult who is a member of the household, living in the home, and receiving assistance.

2. The deduction may not be made for the cost of dependent care provided by the caretaker relative's child or stepchild who is under twenty-one years of age, unless:

   a. The provider of dependent care does not live in the home occupied by the household;

   b. The provider of dependent care is at least eighteen years of age;

   c. The provider of dependent care was not claimed as a dependent on the most recent federal income tax return filed by the caretaker relative;

   d. A bona fide relationship of employer and employee exists between the caretaker relative and the provider of dependent care; and

   e. The provider of dependent care is not a member of the caretaker relative's household.

3. The deduction may not be made for the cost of dependent care provided to a child by that child's stepparent who lives in the home occupied by the household or by the child's natural or adoptive parent.

4. The deduction is for ~~the lesser of~~ the actual out-of-pocket cost of care ~~or limits established under the child care assistance program based on the age of the child~~. The deduction must be verifiable and made with the caretaker relative's own funds and is not subject to reimbursement.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-54. Unearned income considerations.

1. Unearned income must be verified and documented in the case record.

2. All unearned income must be treated as available in the month in which the income is received unless the income is disregarded. Unearned income must be applied to determine eligibility for, and the amount of, the household's monthly cash grant.

3. All nonexempt unearned income must be considered available in the month in which it is received. Unearned income is usually received at fixed intervals and at regularly scheduled dates. State or federal assistance payments such as supplemental security income or social

security received on a recurring basis must be treated as received once per month, even if mailing cycles may cause two payments to be received in one month and none received in another month.

4. Unearned income received annually or received in regular annual totals, but in irregular intervals, must be considered available, in each month, in an amount equal to one-twelfth of the annual total. The twelve-month period may be a calendar year or other twelve-month fiscal period appropriate to the nature of the payment. Sources of income appropriate for this treatment include:

   a. Nonexcluded lease payment income deposited in and disbursed through individual Indian moneys accounts maintained by individual Indians by the bureau of Indian affairs as proceeds from the lease of lands held by the federal government in trust for the Indian;

   b. Lease payments made to persons for the use of lands occupied or owned by those persons unless the lease specifically provides for monthly payments or unless the lease is for a total term of less than one year; and

   c. Mineral lease payments, however denominated, except initial leasing bonus payments.

5. Income must be applied prospectively.

History: Effective December 9, 1996; amended effective January 1, 2003; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-55. Reinstatement following suspension or case closing.

Repealed effective April 1, 2026.

~~1. If assistance is reinstated after a suspension of one month, all factors of eligibility must be considered to determine eligibility. If eligibility exists, the amount of assistance is determined based on two-month retrospective budgeting.~~

~~2. If the household is for any reason ineligible in the month following the month of a suspension, the case must be closed.~~

~~**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.~~
~~**General Authority:** NDCC 50-09-02, 50-09-25~~
~~**Law Implemented:** NDCC 50-09-02~~

75-02-01.2-56. Computing payment for first and second months of eligibility.

Repealed effective April 1, 2026.

~~If an applicant household has not received assistance in the preceding calendar month:~~

~~1. Assistance for the household must be prorated based on the date of request or the date of eligibility, whichever is later; and~~

~~2. The human service zone shall compute the amount of the cash grant for the household for the initial month of eligibility and the month following using prospective budgeting. The human service zone shall otherwise compute the amount of assistance provided to the household using retrospective budgeting.~~

~~**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.~~
~~**General Authority:** NDCC 50-09-02, 50-09-25~~
~~**Law Implemented:** NDCC 50-09-02~~

75-02-01.2-57. Computing payment for months following the second month of eligibility.

Repealed effective April 1, 2026.

~~The human service zone shall compute assistance for months following the second month of eligibility through two-month retrospective budgeting.~~

~~**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.~~
~~**General Authority:** NDCC 50-09-02, 50-09-25~~
~~**Law Implemented:** NDCC 50-09-02~~

75-02-01.2-58. Computing payment if individuals are added to the household.

1. If the individual being added to a household did not receive assistance in the previous month, assistance for the added individual is based on ~~the~~a pro rata portion ~~of the additional monthly cash grant amount~~ equal to the percentage of the month remaining after~~:~~

   ~~a. The~~ the date of birth of a newborn, provided ~~that~~ the request for the newborn is made within ten days of the date of birth and the newborn's social security number or application for social security number and verification of birth are furnished within thirty days of the request~~; and~~.

   ~~b.~~ In all other cases, the later of the date of the request or the date the individual becomes eligible.

2. If the individual being added to an existing household received a temporary assistance for needy families grant from another state in the preceding calendar month:

   a. The added individual's cash grant must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later; and

   b. The human service zone shall compute the added individual's cash grant for the initial month of eligibility and ~~the month following using prospective budgeting~~future months until the individual becomes ineligible or the next review.

3. If the individual being added to an existing household received a temporary assistance for needy families grant in North Dakota during the preceding calendar month:

   a. The added individual's benefits must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later; and

   b. The human service zone shall compute the added individual's cash grant for the initial month of eligibility and ~~the month following by continuing the budget methodology which was used in the preceding month~~future months until the individual becomes ineligible or the next review.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-59. Computing payments if individuals leave the household.

1. If an individual who was a household member leaves the household during a benefit month, the individual is included in the household during that month.

2. ~~The human service zone shall determine eligibility for the remaining members of the household, in~~Eligibility must be recalculated beginning the month following the month ~~in which~~ the ~~former household member~~individual left, ~~through retrospective budgeting~~ the household.

History: Effective December 9, 1996; amended effective January 1, 2003; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-62. Computing payment for a child in boarding school.

1. If a child leaves the residence occupied by the household to attend boarding school, the child is treated as having left on the first day of the month following the month in which the child actually left.

2. If a child returns from boarding school to the residence occupied by the household for reasons other than home visits, and the caretaker relative notifies the human service zone of the return ~~or anticipated return by the fifth day of the month~~within ten days of the actual return, the child is treated as having returned on the first day of the month of actual return~~, but is otherwise~~. If not reported timely, the child is treated as having returned on the first day of the month following the month ~~of actual return~~the change was reported.

3. Payment for any month in which a child who is a member of the household is in boarding school, or is treated as in boarding school, is, with respect to that child, limited to an allowance for clothing and personal needs.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-64. Essential services.

1. The human service zone may determine ~~that~~ a service, which the family cannot perform independently because of infirmity or illness, is essential to the well-being of the household.

2. "Essential service" includes housekeeping services and child care during a caregiver's illness or hospitalization, attendant services, and extraordinary costs of accompanying a member of the family to a distant medical or rehabilitation facility, arising out of a special need or condition of a member of the household or an ineligible caretaker who is not a parent of a child in the household and may include other expenses and services, provided:

   a. The need is unforeseen and due to no fault of the household;

   b. The department is the payer of last resort; and

   c. The household receives prior approval from the department.

3. The cost of essential services, which is a special item of need:

   a. May be provided for in the cash grant only if the cost has been established through negotiations with the provider of the services; and

   b. Must be budgeted and paid retrospectively or prospectively or by supplemental payments.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-69. Unrestricted payment of assistance - Exceptions.

1. The usual method of providing assistance under this chapter is through payments by check, direct deposit, or credit on account, immediately redeemable at par, made to the caretaker relative or legal guardian at regular intervals, with no restrictions on the use of the funds. This practice is followed because recipients of assistance do not, by virtue of their need for assistance, lose the capacity to select how or when the needs of the household must bearе met. If the caretaker relative or other members of the household manage funds in a manner that is clearly detrimental to members of the household, or if the caretaker relative is subject to sanction for nonconformance to program requirements, protective payments may be used to assist the household in financial management.

2. a. A determination that there is a detrimental mismanagement of funds may be based on:

   (1) Continued failure to plan for and make necessary expenditures during periods for which assistance is provided;

   (2) Continued failure to provide children in the household with proper food, clothing, or housing so as to threaten the chances of those children for healthy growth and development;

   (3) Persistent failure to pay the cost of rent, food, utilities, school supplies, or other essentials;

   (4) Repeated loss of housing due to nonpayment of housing costs; or

   (5) Repeated failure to pay debts that result in attachments of or levies against current income.

   b. The fact that debts are not paid on a timely basis may not be the sole basis for a determination that there is detrimental mismanagement of funds unless relevant factors, including the following, have been considered:

   (1) Whether the family has experienced an emergency or extraordinary event that reasonably required the expenditure of funds ordinarily used to meet the needs of the household;

   (2) Whether reasonable payments on necessarily incurred debt exceedsexceed the family's income; or

   (3) Whether the family has withheld payment on a debt as a part of a legitimate dispute concerning the amount of the debt or the terms or performance of a contract out of which the debt arises.

3. a. The human service zone may select, appoint, and remove a protective payee to receive and manage a household's cash grant. In making a selection, the human service zone shall consider any individual nominated by the caretaker relative.

   b. The protective payee is a fiduciary responsible for assuring that the cash grant is expended to achieve the maximum reasonable benefit for the assistance and for working cooperatively with the human service zone.

   c. The protective payee may be furnished information about the household, from the human service zone's records, sufficient to allow the protective payee's role to be carried out. The information furnished to the protective payee under this section remains confidential information subject to the provisions of North Dakota Century Code section 50-06-15.

d. The status of a household for which a protective payee has been appointed must be reviewed by the human service zone as often as necessary, but no less often than every six months, to determine if:

(1) The protective payee is performing satisfactorily;

(2) The household should be restored to unrestricted money payment status; and

(3) Some other arrangement should be sought for the care of children who are members of the household.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-71. Making payment - Correcting overpayments and underpayments.

1. A payment of a cash grant is deemed to be complete as of 12:01 a.m. on the first day of the month for which it is issued.

2. Except as provided in subsection 3, a payment check must be endorsed by the payee, or an attorney-in-fact for the payee, with a signature, written in ink, in the same form as the indicated payee.

   a. If the payee is a guardian, the endorsement must so indicate and must name the ward.

   b. If the endorsement is by an attorney-in-fact of the payee, the endorsement must so indicate and must name the attorney-in-fact.

3. If the payee dies or becomes absent before a properly issued check has been endorsed, an endorsement may be made:

   a. By the payee's spouse or surviving spouse, if that spouse has been living with the payee, and, if there is no such spouse;

   b. By a temporary payee, and, if there is no such spouse or temporary payee; or

   c. By the director of the human service zone.

4. A payment check endorsed under subsection 3 must include, immediately below the endorsement, a statement of approval dated and signed by the director of the human service zone.

5. A payment check may be issued to replace a lost, stolen, or destroyed payment check only if:

   a. An indemnity bond is executed by the payee and delivered to the department's finance office; and

   b. A stop-payment order is placed against the payment check alleged to be lost or destroyed.

6. Any overpayment, whether resulting from recipient or administrative error, or from assistance granted pending a decision on an appeal adverse to the appellant, and whenever made, is subject to recovery. Except as provided in subsection 7, an overpayment must be collected from any household that includes a member who benefited from, or who was responsible for, the overpayment, by reducing the cash grant, to that household, by an amount equal to ten percent of the standard of need.

7. If a court order, entered in a matter that considered the circumstances leading to the overpayment, requires restitution of an amount less than the amount of the overpayment, or requires periodic payments of restitution greater or less than the monthly amount determined under subsection 6, the amount of restitution and periodic payments so ordered must be used to calculate reduction, in the cash grant amount, used to recover an overpayment.

8. Unless the overpayment was the result of fraud, including fraud involving the crimes of theft and making false statements in a governmental matter, or an intentional program violation, the human service zone may suspend efforts to collect overpayments when no individual who benefited from, or was responsible for, the overpayment is a member of a household:

   a. If the amount of the overpayment is less than thirty-five dollars; or

   b. ~~When~~If recovery is ~~determined~~ not determined to be cost-effective after an effort to recover has failed, including, at a minimum, a written communication describing the amount and basis for the overpayment, and requesting repayment.

9. The ~~county agency~~human service zone shall promptly correct any underpayment for a current member of a household, or to an individual who would be a current member of a household but for the error that led to the underpayment.

10. The benefit amount may be adjusted to correct an underpayment or overpayment arising out of previous periods of eligibility.

History: Effective December 9, 1996; amended effective January 1, 2003; January 1, 2011; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-72. Intentional program violation - Disqualification penalties.

1. For purposes of this section:

   a. "Intentional program violation" means an individual's intentional action or failure to act which consists of:

      (1) Making a false or misleading statement or misrepresenting, concealing, or withholding facts;

      (2) Violating provisions of North Dakota Century Code chapter 50-09, this chapter, or any state statute relating to the acquisition or use of assistance provided under North Dakota Century Code chapter 50-09 or this chapter; ~~or~~

      (3) Being convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence of the individual to receive temporary assistance for needy families, Medicaid, supplemental nutrition assistance program benefits, or supplemental security income simultaneously from two or more states; or

      (4) Using a temporary assistance for needy families debit card in any liquor store; any casino, gambling casino, or gaming establishment, or any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state of entertainment in violation of Pub. L. 112-96, provided access to the funds is not otherwise available through an automated teller machine, financial institution, or other means within a reasonable distance of the recipient's residence; and

b. An individual intends all results reasonably foreseeable from the actions the individual takes or fails to take.

2. An individual who, on any basis, is found to have committed an intentional program violation by a state administrative disqualification proceeding or by a federal or state court ~~must be~~is subject to the penalties provided in this section. Additionally:

   a. If a court judgment includes a temporary assistance for needy families disqualification period, the human service zone shall impose the disqualification period according to the temporary assistance for needy families disqualification time frames; or

   b. If a court judgment does not include a disqualification period, the human service zone shall pursue any appropriate disqualification according to temporary assistance for needy families disqualification requirements.

3. An individual who waives the individual's right to appear at an intentional program violation hearing ~~must be~~is subject to the penalties provided in this section.

4. During any period of disqualification:

   a. The individual's needs may not be taken into account when determining the household's need and amount of assistance;

   b. All assets and income of the disqualified individual, including gross earned income, must be considered available to the household;

   c. Income disregards may be provided for the disqualified individual when determining if the remaining household members are eligible; and

   d. The overpayment is recovered through a reduction, at the rate of twenty percent of the standard of need~~, excluding special items of need~~.

5. The duration of the penalty described in this section ~~must be~~is:

   a. One year for the first offense;

   b. Two years for the second offense;

   c. Permanent for the third and any subsequent offense; and

   d. Ten years for individuals who were convicted in federal or state court of fraudulently misrepresenting residence.

6. Any period of disqualification must remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction, but in no event may the duration of the period for which the penalty was imposed be subject to review.

7. ~~In cases when~~If a disqualification penalty and other sanctions or penalties apply:

   a. The disqualification penalties in this section must be in addition to, and may not be substituted for, any other sanctions or penalties that may be imposed for the same offense; and

   b. The disqualification penalties imposed under this section affect only the individual concerned and cannot substitute for other sanctions imposed under this chapter.

8. A disqualification penalty imposed on an individual by another state may be continued in this state and may be used to determine the appropriate duration of a disqualification penalty imposed under this section.

9. A disqualification penalty period must begin no later than the first day of the second month that follows the date of notice of imposition of the penalty.

10. The department shall issue a written notice informing the individual of the period of disqualification and the amount of assistance the household may receive during the disqualification period.

11. Overpayments must be recovered from the assistance unit which was overpaid, any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or any individual members of the overpaid assistance unit whether or not currently a recipient.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011; January 1, 2014; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-72.1. Denial of assistance for fugitive felons~~,~~ and probation and parole violators~~, and certain convicted drug offenders~~.

1. An individual may not be included in the cash grant if the individual is:

   a. Fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the state of New Jersey, is a high misdemeanor under the laws of such state; or

   b. Violating a condition of probation or parole imposed under federal or state law.

2. ~~An individual may not be included in the cash grant for a period of seven years from the date of the most recent felony conviction, if the individual is convicted of a felony offense for an act which occurred after August 22, 1996, which has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)]. The disqualification does not apply to alcohol-related convictions.~~

~~3.~~ During any period of disqualification:

   a. The individual's needs may not be taken into account ~~when~~in determining the household's need and amount of assistance;

   b. All assets and income of the disqualified individual, including gross earned income, must be considered available to the household; and

   c. Income disregards may be provided for the disqualified individual when determining if the remaining household members are eligible.

History: Effective January 1, 2003; amended effective June 1, 2005; January 1, 2014; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02; 50-09-29

75-02-01.2-79. Sanctions for noncompliance with temporary assistance for needy families program requirements.

1. Temporary assistance for needy families participants who fail or refuse to comply with program requirements, without good cause, may be sanctioned. Actions or failures to comply that may result in sanctions include:

   a. Failure or refusal to participate in the job opportunities and basic skills or tribal native employment works programs;

   b. Failure or refusal to cooperate in obtaining child support or establishing paternity; and

   c. Quit a job or refused an offer of employment without good cause.

2. All sanctions are first imposed against the responsible individual and will result in removal of the individual's financial needs from the household's temporary assistance for needy families grant, for a period of one month in an ongoing case.

3. If the sanctioned individual does not cure the sanction prior to the end of the sanction penalty month, the sanction may progress to closure of the entire temporary assistance for needy families case.

   a. A sanction penalty month runs from the effective date of a sanction through the last day of that month.

   b. If a sanction, based on noncooperation with the job opportunities and basic skills program leads to closure of the entire temporary assistance for needy families case, the household ~~shall~~, at a minimum, ~~be~~is ineligible for assistance in the month following the sanction penalty month, and until the responsible individual cures the sanction.

   c. If a sanction, based on noncooperation with the child support agency leads to closure of the entire temporary assistance for needy families case, the household ~~shall be~~is ineligible for assistance in the month following the sanction penalty month.

4. Sanctions under temporary assistance for needy families follow a noncooperating individual.

5. A job opportunities and basic skills program sanction, or a tribal native employment works program sanction, is cured only ~~when~~if the responsible individual demonstrates, to the satisfaction of the human service zone, that the failure to cooperate or participate, as required, has been corrected for at least ~~ten~~five consecutive days unless the responsible individual has been off temporary assistance for needy families for twelve or more consecutive months.

6. A child support sanction may only be considered cured upon notification from the child support agency to the eligibility worker that the sanctioned individual is cooperating in obtaining child support and, if necessary, establishing paternity.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011; July 1, 2023; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-80. Good cause determination.

1. Except with respect to a sanction imposed for failure to obtain child support, or establish paternity, an individual ~~shall~~must be provided an opportunity to present the good cause reason for a failure or refusal to cooperate prior to the imposition of a sanction.

2. The eligibility worker or the individual's job opportunities and basic skills employment contractor may oversee the good cause determination process. If the individual is not cooperating with the job opportunities and basic skills program, the employment contractor is responsible to oversee the good cause determination process and ~~must~~shall inform both the individual and the eligibility worker of the outcome of the good cause determination process.

3. Within two days after the employment contractor learns of a failure or a refusal to comply, the eligibility worker or employment contractor, as appropriate, shall send written notice to the individual to offer an opportunity to show good cause. A good cause determination must state that:

   a. The individual is responsible to call or meet with the employment contractor within seven business days, from the print date of the notice, to show good cause; and

   b. A sanction ~~will~~must be imposed if the individual does not contact the employment contractor or eligibility worker, as appropriate, within the required time or does not show good cause for the individual's failure or refusal to comply.

4. If an individual fails or refuses to participate in the good cause determination process, or if it is determined that the individual did not show good cause for the initial failure or refusal to participate as required in the temporary assistance for needy families program, the eligibility worker shall notify the individual of the sanction.

5. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.2-12.

History: Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005; January 1, 2009; January 1, 2011; July 1, 2023; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-82. Job opportunities and basic skills program - Definitions.

For purposes of the job opportunities and basic skills program:

1. "Eligible individual" means an adult or minor child head of household receiving assistance or a nonrecipient parent living with a child receiving assistance.

2. "Employment contractor" means the job opportunities and basic skills program agency or staff ~~person~~member responsible for directing and monitoring a participant's planning and activities that relate to the job opportunities and basic skills program. The employment contractor is responsible for completing orientation and an assessment. After orientation and the assessment are completed, the employer contractor assists the participant in the development and execution of an employability plan and oversees the participant's involvement in the job opportunities and basic skills program.

3. "Minimum required hours" means the number of hours per week during which a participant must be engaged in approved work activity.

4. "Participant" means a member of a household who is not exempt from participating in the job opportunities and basic skills program or who, if exempt, has volunteered to participate in that program.

5. "Satisfactory progress" in any postsecondary education or training program means the participant is maintaining progress minimally sufficient to allow continuation of the course of study or training under the standards of the education or training facility.

6. "Work-eligible individual" includes anyone listed in subdivision a, but does not include anyone listed in subdivision b:

   a. Included individuals are:

      (1) Any adult receiving assistance under temporary assistance for needy families;

      (2) Any minor child head of household receiving assistance under temporary assistance for needy families;

      (3) Any minor parent head of household receiving assistance under temporary assistance for needy families; or

      (4) Any nonrecipient parent living with a child receiving assistance, including any parent:

         (a) Sanctioned due to noncompliance with work requirements; or

         (b) Disqualified due to an intentional program violation, status as a fleeing felon, ~~a drug felony conviction,~~ parole or probation violation, or noncompliance with the child support agency.

   b. Individuals not included are:

      (1) A minor parent who is not the head of household;

      (2) A noncitizen who is ineligible to receive assistance due to that individual's immigration status;

      (3) A parent providing care for a disabled family member living in the home;

      (4) A dependent child who is under age sixteen;

      (5) Unless the child is a single head of household, a dependent child who is age sixteen or over, enrolled as a full-time student, who will graduate by the child's nineteenth birthday;

      (6) Those receiving supplemental security income; or

      (7) Those receiving social security disability income.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-84. Job opportunities and basic skills program - Satisfactory participation.

1. Except as otherwise provided in this section, all work-eligible individuals and all eligible children, age sixteen or older, who have completed high school or received a general equivalency diploma~~,~~ and who are not enrolled in secondary or vocational education or employed or who have neither completed high school nor received a general equivalency diploma and are not currently attending school, shall comply with work requirements no fewer than the minimum required hours each week. Work activity may be required in addition to the minimum required hours in an approved work activity.

2. A parent or other eligible caretaker relative of a child under age six, who is personally caring for that child full time, is deemed to comply with subsection 1 if engaged in an allowable work activity an average of at least the minimum required hours per week during each month.

3. A single head of household, under twenty years of age, who has not earned a high school diploma or its equivalent, but who maintains satisfactory attendance in school, is deemed to comply with subsection 1.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.2-90. Job opportunities and basic skills program - Supportive services and post temporary assistance for needy families supportive services.

1. ~~Within the limits described in this section, supportive~~Supportive services may be made available to ~~a~~an eligible participant who, but for supportive ~~service~~services, ~~would be~~is unable to enter into or remain in an allowable work activity. No supportive service may be provided without approval from the employment contractor ~~or~~, eligibility worker, or state office.

2. Post temporary assistance for needy families supportive services may be provided to assist employed former temporary assistance for needy families recipients to succeed in the workforce and avoid the need to receive further temporary assistance for needy families benefits.

3. Supportive services may include:

   a. Relocation assistance provided to a job opportunities and basic skills participant if:

      (1) The individual has a verified bona fide offer of employment~~, verified by the employment contractor~~, which will increase the individual's potential for increased earnings, job advancement, or permanent employment; or

      (2) The individual requests and receives approval ~~from the employment contractor~~ to move from an area of the state with few employment opportunities to another area of the state with greater employment opportunities, or to an area out of state with greater employment opportunities.

   b. Monthly transportation assistance provided to participants in an approved work activity, if necessary for continued participation.

   c. Child care expense reimbursement in amounts consistent with the provisions of the state child care and development fund plan submitted under the Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9858].

   d. Assistance in the purchase of care for an incapacitated or disabled adult member of the participant's household, to whom the participant owes a legal duty to provide care, provided:

      (1) There is no other individual in the household who can provide the care; and

      (2) The incapacitated or disabled adult household member cannot provide self-care.

   e. Assistance in the purchase of employment-related ~~clothing or personal needs~~items determined ~~by the employment contractor~~ to be reasonable and necessary for the participant to enter employment.

f. Assistance in the purchase of tools or equipment determined by the employment contractor to be required for the participant to accept employment.

g. Assistance in the cost of repairs determined ~~by the employment contractor~~ to be reasonable and necessary to return a participant's vehicle to operable condition, provided:

(1) The vehicle is registered to a member of the household;

(2) The vehicle is needed by the participant to get to work or another approved work activity; and

(3) The general condition and value of the vehicle justifies repairs.

h. Assistance for defraying the cost of books, tuition, and fees associated with an allowable work activity, provided:

(1) Other educational fund sources have been explored and are exhausted; and

(2) The participant is ~~a member of a household and~~ eligible for assistance at the time funds are paid or obligated.

i. Assistance with payment for professional license fees and professional examination fees, if there is no other available source of funding, including fee waivers, and the professional license or examination is necessary to achieve an employment-related goal.

j. Assistance with expenses determined ~~by the employment contractor~~ to be reasonable and necessary for the individual to engage in employment or participate in employment interviews, including transportation, lodging, grooming, and clothing.

k. Assistance with housing or shelter expenses for applicant households and for ongoing households who are homeless or at risk of experiencing homelessness, as follows:

(1) Provided the family did not receive temporary assistance for needy families in the month prior to the month of application, assistance with housing or shelter expenses may be used for:

(a) Two months prior to the month of application;

(b) Either of the two months prior to the month of application;

(c) The month of application; or

(d) One month following the month of application.

(2) The ongoing household's payment may be made for up to two months consecutively. It may not be made for more than two months in total while the case is active.

(3) The caretaker or caretaker's spouse must be participating in the job opportunities and basic skills program.

(4) The applicant or recipient shall show ability to sustain payment of expenses in the future.

4. The maximum expenditures permitted for supportive services and transitional supportive services are limited to amounts and availability as the department may by order determine.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011; April 1, 2024; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-103. Job opportunities and basic skills program - Good cause for failure or refusal to comply with a referral to, or participate in, the job opportunities and basic skills program.

1. All work-eligible individuals ~~must~~shall participate in the job opportunities and basic skills program unless good cause is granted by the eligibility worker. Good cause for failure or refusal to participate in the job opportunities and basic skills program exists ~~when~~if:

   a. The household member is incapacitated with a physical or mental impairment verified by reliable medical evidence which, by itself or in conjunction with age, prevents the individual from working or participating in any job opportunities and basic skills program or work activity;

   b. An individual ~~whose~~is substantially continuous presence in the household is necessary to care for another member of the household, to whom the individual seeking good cause for nonparticipation owes a legal duty to provide care, ~~who~~and the member of the household has a condition, verified by reliable medical evidence, which does not permit self-care, care by another household member, or care provided as supportive services;

   c. An individual has an illness or injury, verified by reliable medical evidence and reviewed every thirty days, which is serious enough to temporarily prevent entry into employment or participation in any job opportunities and basic skills program activity; or

   d. ~~In the case of a~~A parent or other eligible caretaker relative of a child under age six, ~~who~~ is personally caring for the child full time and ~~who~~ demonstrates an inability to obtain needed child care for one or more of the following reasons:

      (1) Child care is unobtainable at a location ~~such that~~where the usual commuting time from the parent's home to the location at which child care is provided, and on to the parent's worksite, is one hour or less;

      (2) Suitable child care is unobtainable from a relative, from an approved child care provider licensed or registered under North Dakota Century Code chapter 50-11.1, or from a child care provider not required to be licensed or registered under North Dakota Century Code chapter 50-11.1; or

      (3) Child care is unobtainable, from a child care provider licensed or registered under North Dakota Century Code chapter 50-11.1, at a rate equal to or less than two times the maximum allowable amount ~~as~~ determined by the child care assistance program.

2. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.2-12.

History: Effective December 9, 1996; amended effective July 1, 1997; June 1, 2002; June 1, 2005; January 1, 2009; January 1, 2011; April 1, 2026.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

ARTICLE 75-03
COMMUNITY SERVICES

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CHAPTER 75-03-21
LICENSING OF FOSTER HOMES FOR ADULTS

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75-03-21-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Abuse" means any willful act or omission of a caregiver or any other individual which results in physical injury, mental anguish, unreasonable confinement, sexual abuse, or exploitation to or of a resident.

2. "Agency" means an organization which monitors the facility.

3. "Applicant" means the individual or individuals completing and submitting to the department an application to be licensed to provide care.

4. "Care" means foster care for adults as defined by North Dakota Century Code section 50-11-00.1 and includes the provision of personal, nonmedical services provided to assist a resident with tasks of a personal nature that are performed daily and which involve such activities as bathing, dressing, toileting, transferring from bed or chair, continence, eating or feeding, and mobility inside the facility.

5. "Department" means the North Dakota department of health and human services.

6. "Electronic monitoring device" means a device installed in the room of a resident which is intended to live action monitor, record, or record and transmit video, communications, or other sounds occurring in the room.

7. "Exploitation" means the act or process of a provider using the income, assets, or person of a resident for monetary or personal benefit, profit, gain, entertainment, or gratification.

~~7.~~8. "Facility" means a foster care home for adults.

~~8.~~9. "Home and community-based setting experience interview" means an instrument used to record information about a resident's experiences in the facility.

~~9.~~10. "License" means a document issued by the department authorizing an applicant to operate a facility.

~~10.~~11. "Mental anguish" means psychological or emotional damage that requires medical treatment or medical care, or is characterized by behavioral changes or physical symptoms.

~~11.~~12. "Monitoring" means overseeing the care provided to a resident by a provider and verifying compliance with laws, rules, and standards pertaining to care and the resident's rights related to the facility.

~~12.~~13. "Neglect" means the failure of the provider to provide the goods or services necessary to avoid physical harm, mental anguish, or mental illness.

~~13.~~14. "Person-centered service plan" means a plan that describes the Medicaid waiver recipient resident's assessed needs, outcomes, and goals and how the services and natural supports provided will assist the resident in achieving their outcomes and live safely and successfully in the community.

~~14.~~15. "Provider" means a primary caregiver in active charge of a facility who has documented qualifications in providing care and is enrolled as a qualified service provider.

~~15.~~16. "Qualified service provider" means an individual who has met all standards and requirements for that status established under chapter 75-03-23.

~~16.~~17. "Resident" means any adult who is receiving care in a facility for compensation on a twenty-four-hour basis, but does not mean any other individual who lives or stays in the facility.

~~17.~~18. "Respite care" means care provided by a respite care provider in a facility or substitute caregiver to a resident for the purpose of providing temporary relief to the provider from the stresses and demands associated with daily care or emergencies.

~~18.~~19. "Respite care provider in a facility" means an individual enrolled as a qualified service provider who provides respite care to residents, whose care is funded by the state, in the absence of the provider.

~~19.~~20. "Sexual abuse" means conduct directed against a resident which constitutes any of those sex offenses defined in North Dakota Century Code sections 12.1-20-02, 12.1-20-03,

12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-06.1, 12.1-20-07, 12.1-20-11, 12.1-20-12.1, and 12.1-20-12.2 and North Dakota Century Code chapter 12.1-41.

~~20.~~21. "Substitute caregiver" means an individual who meets qualified service provider standards and provides respite care to private pay residents in the absence of the provider.

History: Effective May 1, 1992; amended effective May 1, 1995; April 1, 1999; September 1, 2004; October 1, 2012; October 1, 2016; April 1, 2026.
General Authority: NDCC 50-06-16, ~~50-11~~50-11-03
Law Implemented: NDCC 50-11-03

75-03-21-02. Application.

1. An application for a license to operate a facility must be made to the department.
2. An application must be made in the form and manner prescribed by the department.
3. An application for a license must be filed immediately upon change of provider or location.
4. An application is not complete until all required information and verifications are submitted to the department, including:
   a. Fire inspections by the state fire marshal or local fire inspector, if required under subsection 7 of section 75-03-21-06;
   b. A self-declaration of medical history and, when requested by the department, a report of a physician's examination;
   c. A report of psychological examinations, when requested by the department;
   d. Proof of age and relationship, when requested by the department;
   e. Sanitation and safety inspection reports, when requested by the department;
   f. Completed application form;
   g. Drug and alcohol evaluation report, when requested by the department;
   h. Licensing study report assessing the applicant's compliance with this chapter and North Dakota Century Code chapter 50-11;
   i. Documentation of completion of a course related to fire prevention and safety;
   j. Fire safety self-declaration form;
   k. Evidence that all caregivers are properly qualified to provide care as provided in section 75-03-21-08;
   l. A successfully completed criminal background check as specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9;
   m. Examples of service logs to be used to account for service time and tasks performed for each resident;
   n. An evacuation disaster plan; and
   o. A sample menu plan compliant with dietary guidelines outlined in subsection 4 of section 75-03-21-11.

5. The department has sixty days from receipt of all application requirements to issue or deny a license. The department has an additional forty-five days to grant or deny a license required by this chapter if the department notifies the applicant that additional time is necessary.

6. An applicant may not hold itself out as a facility before the applicant has been issued a license by the department.

History: Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; January 1, 2009; October 1, 2012; October 1, 2016; July 1, 2020; April 1, 2026.
General Authority: NDCC 50-06-16, ~~50-11~~50-11-03
Law Implemented: NDCC ~~50-01-09(6)~~50-11-02, 50-11-03, 50-11-06.7

75-03-21-04. Facility.

1. The facility must be:

   a. Free of warped or damaged floors, loose or unsecured floor coverings, loose tiles, broken or damaged windows, loose or broken handrails, broken light bulbs, and other hazards that would affect the safety of an adult residing in the facility;

   b. Maintained free of offensive odors, vermin, and dampness;

   c. Maintained by a central heating system at a temperature of at least sixty-eight degrees Fahrenheit [20 degrees Celsius];

   d. Maintained so as to prevent crawling and flying pests from entering the facility through windows;

   e. Equipped with handrails in all stairways;

   f. Equipped with nonporous surfaces for shower enclosures;

   g. Equipped with safety mats or slip-preventing materials on the bottom of tubs and floors of showers; and

   h. Physically accessible for the resident.

2. Bedrooms for all residents must be constructed as a bedroom with walls or partitions of standard construction which extend from floor to ceiling and which provide privacy for the resident.

3. Bedrooms occupied by one resident must have no less than seventy square feet [6.50 square meters] of usable floor space.

4. Bedrooms occupied by two residents must have no less than one hundred twenty square feet [11.15 square meters] of usable floor space and provide for privacy in the sleeping area.

5. Bedroom ceilings must be at least six feet and eight inches [203.20 centimeters] above the finished floor surface at the ceiling's lowest point.

6. No more than two residents may be assigned to one bedroom and residents sharing a bedroom must have a choice of roommates in that facility.

7. Bedroom and bathroom doors must be lockable by the resident for privacy, with only the resident and appropriate staff having keys to the bedroom doors. Any restrictions on having a lockable bedroom or bathroom door must be documented and justified in the person-centered service plan or service and rental agreement.

8. Bedrooms occupied by residents may not be located in a level of the facility below grade level unless there are two means of egress, one of which leads to the outside of the facility.

9. At least one full bathroom must be available on the same floor as any bedroom occupied by a resident.

10. The facility ~~must~~shall have a telecommunication device on the main floor available for use by residents.

11. ~~Use~~The facility's use of ~~video surveillance equipment~~an electronic monitoring device in the resident's bedroom and bathroom is prohibited if the resident's care is funded by the state in whole or in part unless in compliance with the federal home and community-based services settings rule, 42 CFR 441.530. The allowable modification must be documented in the resident's person-centered service plan by the department or the department's designee.

12. The facility's use of an electronic monitoring device is allowable for monitoring an otherwise unattended private pay resident within a limited range, which allows the provider to remain nearby while ensuring the safety of the resident, if the use is approved in writing by the resident or, if the resident is incapacitated, a family member or legal representative of the resident.

13. The facility shall limit access to the electronic monitoring device and to any information on or obtained by it to individuals with a need to have the information. Information on or obtained by the electronic monitoring device must be obtained, transmitted, and stored securely.

14. Mobile home units used as a facility must:

    a. Have been constructed since 1976;

    b. Have been designed for use as a dwelling, rather than as a travel trailer;

    c. Meet the flame spread rate requirements; and

    d. Have a manufacturer's label permanently affixed stating the mobile home meets the requirements of the department of housing and urban development or the American national standards institute.

History: Effective May 1, 1992; amended effective May 1, 1995; January 1, 2009; October 1, 2012; October 1, 2016; April 1, 2026.
General Authority: NDCC 50-06-16, ~~50-11~~50-11-03
Law Implemented: NDCC 50-11-02, 50-11-03, 50-11-03.7; 42 CFR 441.530

75-03-21-07. Insurance.

The provider shall maintain ~~adequate~~ liability insurance, uninsured motorist coverage, and underinsured motorist coverage, according to the terms and conditions of North Dakota Century Code sections 39-16.1-11, 26.1-40-15.2, and 26.1-40-15.3, on all vehicles operated by the provider or members of the provider's household in which residents may be a passenger. The provider shall submit proof of insurance coverage to the department, upon request.

History: Effective May 1, 1992; amended effective May 1, 1995; October 1, 2012; April 1, 2026.
General Authority: NDCC 50-06-16, ~~50-11~~50-11-03
Law Implemented: NDCC 50-11-02, 50-11-03

75-03-21-09. General practices.

1. The provider:

~~1.~~ a. Shall permit a representative of the department, human service zone, or other individual or organization serving a resident entry into the facility without prior notice;

~~2.~~ b. Shall provide information about the residents to the department, human service zone, or other individual or organization serving a resident with reasonable promptness;

~~3.~~ c. Shall report illness, hospitalization, or unusual behavior of a resident to the individual or organization serving the resident, or to the resident's representative, whichever is appropriate;

~~4.~~ d. Shall assure that information related to the resident is kept confidential, except as may be necessary in the planning or provision of care or medical treatment, as related to an investigation or license review under this chapter, or as authorized by the resident;

~~5.~~ e. May not practice, condone, facilitate, or collaborate with any form of illegal discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, or mental or physical handicap;

~~6.~~ f. Shall accept direction, advice, and suggestions concerning the care of residents from the department, human service zone, or other individual or organization serving a resident;

~~7.~~ g. Shall assure that residents receiving care are not subjected to abuse, sexual abuse, neglect, or exploitation;

~~8.~~ h. Shall undergo a medical examination, psychological evaluation, or drug and alcohol evaluation when requested by the department when there is reason to believe that such an examination or evaluation is reasonably necessary;

~~9.~~ i. Shall authorize the release of a report of any examination or evaluation, required under subsection 8, to the department;

~~10.~~ j. Shall immediately report changes in the identity or number of individuals living in the facility to the department;

~~11.~~ k. Shall immediately report an inability to provide care to the resident to the department;

~~12.~~ l. Shall allow a representative of the department to enter the premises, examine the facility and records maintained with respect to the residents, and interview the residents, provider, and caregivers in order to evaluate compliance with this chapter;

~~13.~~ m. Shall cooperate with the department or human service zone in inspections, complaint investigations, planning for the care of a resident, application procedures, and other necessary activities, and allow access of the department, human service zone, ombudsman, or other authorized individuals to the facility and its residents;

~~14.~~ n. May not retaliate against any resident, who has filed a complaint with the department or human service zone, by taking away rights or privileges~~;~~, threatening to take away rights or privileges~~;~~, or by abusing or threatening to abuse a resident in any manner;

~~15.~~ o. Shall meet criteria established by the department for employment outside of the facility;

~~16.~~ p. Must be free of influence, control, and direction in the operation of the facility by the landlord if the private residence is being rented;

~~17.~~ q. May not use a transfer of ownership of a resident's possessions or property as payments;

~~18.~~ r. May not purchase property or possessions from a resident without providing documented proof to the department that the item or property was purchased at fair market value;

~~19.~~ s. May not accept or solicit personal property or a purchased item with a fair market value of at least twenty-five dollars that the resident, resident's family, or both, choose to give to the licensed provider;

~~20.~~ t. May not accept or solicit personal property or a purchased item with a fair market value of twenty-five dollars or less that the resident, resident's family, or both, chose to give to the licensed provider exceeding more than two times in a calendar year;

~~21. For the purpose of this section, fair market value means:~~

~~a. In the case of a liquid asset that is not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, one hundred percent of apparent fair market value;~~

~~b. In the case of real or personal property that is subject to reasonable dispute concerning its value:~~

~~(1) If conveyed in an arm's-length transaction to someone not in a confidential relationship with the individual or anyone acting on the individual's behalf, seventy-five percent of estimated fair market value; or~~

~~(2) If conveyed to someone in a confidential relationship with the individual or anyone acting on the individual's behalf, one hundred percent of estimated fair market value; and~~

~~c. In the case of income, one hundred percent of apparent fair market value;~~

~~22.~~ u. Shall notify the department if the provider holds, or will be accepting, appointment as a power of attorney agent for a resident. The department may revoke the license of a provider who holds, or will be accepting, appointment as a power of attorney agent for a resident if the department considers it to be a conflict of interest or a result of undue influence;

~~23.~~ v. Shall notify the resident or the resident's legal representative of their right to manage the resident's finances. The provider shall notify the department in writing if the resident, or the resident's legal representative, requests the provider to act as representative payee;

~~24.~~ w. Shall provide the department, upon request, an accounting of the resident's expenses, including receipts, for all deposits and expenditures if the provider is assisting a resident with management of personal funds;

~~25.~~ x. Shall provide twenty-four-hour care and supervision of all residents residing in the facility, unless otherwise documented and justified in the person-centered service plan or service and rental agreement; and

~~26.~~ y. Use of a respite care provider in a facility or a substitute caregiver is required in the absence of the provider if the resident cannot safely be left alone as documented and justified in the person-centered service plan or service and rental agreement. Resident or the resident's legal representative shall be allowed to choose their provider of respite care ~~provider~~.

2. For the purpose of this section, fair market value means:

a. In the case of a liquid asset that is not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, one hundred percent of apparent fair market value;

b. In the case of real or personal property that is subject to reasonable dispute concerning its value:

(1) If conveyed in an arm's-length transaction to someone not in a confidential relationship with the individual or anyone acting on the individual's behalf, seventy-five percent of estimated fair market value; or

(2) If conveyed to someone in a confidential relationship with the individual or anyone acting on the individual's behalf, one hundred percent of estimated fair market value; and

c. In the case of income, one hundred percent of apparent fair market value;

History: Effective May 1, 1992; amended effective May 1, 1995; March 1, 1997; April 1, 1999; September 1, 2004; October 1, 2012; October 1, 2016; April 1, 2026.
General Authority: NDCC 50-06-16, ~~50-11~~50-11-03
Law Implemented: NDCC 50-11-02, 50-11-03, 50-11-04

75-03-21-10. Substitute caregiver ~~and respite care~~ provider qualifications.

1. A substitute caregiver ~~or respite care~~ provider:

   a. Must be eighteen years of age or older;

   b. ~~Must~~May not be a resident;

   c. Must possess qualifications of a provider specified in subsections 1 and 2 of section 75-03-21-08 excluding subdivision b of subsection 1 of section 75-03-21-08; and

   d. Successfully shall complete criminal background check requirements specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9. ~~If the substitute caregiver's or respite care provider's enrollment as a qualified service provider lapses for more than thirty days, the criminal background check must be repeated if the individual reapplies for enrollment as a qualified service provider subsequent to the lapse.~~

2. The provider is responsible for the care of residents at all times, ~~even though~~including if the duties or tasks of furnishing care have been delegated to a substitute caregiver ~~or respite care provider~~.

3. ~~Respite care providers are limited to the respite care service funding cap. Residents whose care is being paid by the state can only receive respite care from a respite care provider. Respite care providers shall bill the department for time spent caring for residents in their care.~~

~~4.~~ Substitute caregivers who are providing care to private pay residents may not provide resident care on behalf of a facility for more than ~~one~~two hundred ~~ninety-two~~twenty calendar days during the twenty-four-month period immediately following the renewal date of the initial license or for more than ~~ninety-six~~one hundred ten days during the twelve-month period immediately following the date of the issuance of the initial license.

~~5.~~4. For purposes of this section, whenever a substitute caregiver ~~or respite care provider~~ provides resident care on behalf of a facility for more than ~~eight~~twelve hours during a calendar day, the calendar day ~~will~~must be counted toward the ~~one~~two hundred ~~ninety-two~~twenty calendar day or ~~ninety-six~~one hundred ten calendar day limit a substitute caregiver may provide resident care on behalf of a facility ~~or toward the respite care service funding cap to which a respite care provider established by the department for each qualifying resident~~.

~~6. Employing individuals other than those who meet the definition of substitute caregiver or respite care provider to provide services to a resident is prohibited.~~

History: Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; January 1, 2009; October 1, 2012; October 1, 2016; April 1, 2026.
General Authority: NDCC 50-06-16, ~~50-11~~50-11-03
Law Implemented: NDCC 50-11-03, 50-11-03.6

75-03-21-10.1. Qualifications of a respite care provider in a facility.

1. A respite care provider in a facility:

   a. Must be eighteen years of age or older;

   b. May not be a resident;

   c. Must possess qualifications of a provider specified in subsections 1 and 2 of section 75-03-21-08 excluding subdivision b of subsection 1 of section 75-03-21-08; and

   d. Successfully shall complete criminal background check requirements specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9. If the respite care provider in a facility's enrollment as a qualified service provider lapses for more than thirty days, the criminal background check must be repeated if the individual reapplies for enrollment as a qualified service provider after the lapse.

2. The provider is responsible for the care of residents at all times, including if the duties or tasks of furnishing care have been delegated to a respite care provider in a facility.

3. Residents whose care is being paid by the state, in whole or in part, only may receive paid or informal respite care from a respite care provider in a facility. If respite care services exceed the state funding cap, a facility may use a qualified respite care provider in a facility at the facility's expense up to the permitted days set forth in subsection 5, if the following requirements are met:

   a. The additional respite hours must be documented as an informal service on the person-centered service plan;

   b. The provider or the respite care provider in a facility may not charge the resident or anyone on behalf of the resident for the additional respite hours;

   c. The provider shall keep records of the dates and time used for of all respite care providers in a facility;

   d. The provider may not bill the daily rate for days during which the provider is gone more than the hours permitted by subsection 5; and

   e. The respite care provider in a facility shall comply with requirements in section 75-03-21-09 and this section.

4. Respite care providers in a facility may not provide resident care on behalf of a facility for more than one hundred ninety-two calendar days during the twenty-four-month period immediately following the renewal date of the initial license or for more than ninety-six days during the twelve-month period immediately following the date of the issuance of the initial license.

5. For purposes of this section, whenever a respite care provider in a facility provides resident care on behalf of a facility for more than twelve hours during a calendar day, the calendar day must be counted toward:

a. The one hundred ninety-two calendar day or ninety-six calendar day limit a respite care provider in a facility may provide resident care on behalf of a facility; or

b. The respite care service funding cap to which a respite care provider in a facility established by the department may provide resident care for each qualifying resident.

6. Employing individuals other than those who meet the definition of respite care provider in a facility to provide services to a resident is prohibited.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-16, 50-11-03
Law Implemented: NDCC 50-11-03, 50-11-03.6

75-03-21-10.2. Adult foster care facility temporary assistants.

A provider:

1. May employ a temporary assistant who meets the standards of a substitute caregiver or a respite care provider in a facility as needed to assist with private pay residents who have physical limitations that require more than one provider to properly assist.

2. May not employ a temporary assistant to assist with public pay residents.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-16, 50-11-03
Law Implemented: NDCC 50-11-03, 50-11-03.7

CHAPTER 75-03-39
AUTISM SERVICES WAIVER

Section
75-03-39-01 Definitions
75-03-39-02 Eligibility for Services Under the Medicaid Autism Spectrum Disorder Birth Through ~~Seventeen~~Twenty Waiver

75-03-39-02. Eligibility for services under the Medicaid autism spectrum disorder birth through ~~seventeen~~twenty waiver.

1. A child is eligible for autism services under the department's Medicaid autism spectrum disorder birth through ~~seventeen~~twenty waiver if the following conditions are met:

   a. The age of the child is birth through ~~seventeen~~twenty years of age;

   b. The child has an autism spectrum disorder diagnosis from a qualified professional able to determine diagnosis;

   c. An autism spectrum disorder waiver slot is available; and

   d. The child meets the institutional level of care required by the centers for Medicare and Medicaid services.

2. Annual redetermination for continued waiver services is required to determine if the child meets the institutional level of care required by the centers for Medicare and Medicaid services.

History: Effective July 1, 2014; amended effective April 1, 2018; January 1, 2020; January 1, 2022; January 1, 2024; April 1, 2026.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-26

CHAPTER 75-03-42
AUTHORIZED ELECTRONIC ~~MONITORING~~RECORDING

Section
75-03-42-01 Definitions
75-03-42-02 Determination of Capacity to Consent
75-03-42-03 Documentation
75-03-42-04 Signs
75-03-42-05 Use of Internet and Responsibilities

75-03-42-01. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-10.2-01. In addition, as used in this chapter, unless the context or subject matter otherwise requires, "roommate" means a resident occupying the same room as the resident requesting to install and use an authorized electronic ~~monitoring~~recording device.

History: Effective April 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 50-10.1-03, 50-10.2-02.1, 50-10.2-03
Law Implemented: NDCC 50-10.2-02.1, 50-10.2-03

75-03-42-02. Determination of capacity to consent.

1. A resident is presumed to have the capacity to consent to authorized electronic ~~monitoring~~recording if the resident understands and appreciates the nature and consequences of the decision to consent to authorized electronic ~~monitoring~~recording, including the benefits and risks of the decision. If a resident has capacity to consent, only the resident may consent to authorized electronic ~~monitoring~~recording in the resident's room.

2. A resident's lack of capacity to consent to authorized electronic ~~monitoring~~recording must be documented in writing by the resident's attending physician or by a court order pursuant to North Dakota Century Code chapter 30.1-28. If the resident is not under a guardianship, the attending physician also shall document in writing if the resident regains the capacity to consent to authorized electronic ~~monitoring~~recording.

3. If a resident is determined to lack capacity to consent to authorized electronic ~~monitoring~~recording, the resident representative may consent to authorized electronic ~~monitoring~~recording and complete the required forms.

4. The resident representative shall make the decision of whether to consent to authorized electronic ~~monitoring~~recording in the resident's room in accordance with the resident's wishes, values, preferences, and directions.

5. If a facility has reason to believe a resident representative is making decisions or taking actions that are not in the best interests of a resident regarding the use of authorized electronic ~~monitoring~~recording, the facility shall report this concern in the manner required to the department or the department's designee.

History: Effective April 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 50-10.1-03, 50-10.2-02.1, 50-10.2-03
Law Implemented: NDCC 50-10.2-02.1, 50-10.2-03

75-03-42-03. Documentation.

1. The forms and information relating to authorized electronic ~~monitoring~~recording must be provided by the facility upon request in a language, form, and manner residents, resident representatives, and visitors can access and understand.

2. At the request of the resident or the resident representative, the facility shall provide a copy of the facility's standards and regulations regarding the installation, use, maintenance, disabling, and removal of the authorized electronic ~~monitoring~~recording device to the resident or resident representative.

3. Before the use of authorized electronic ~~monitoring~~recording or the installation of an authorized electronic ~~monitoring~~recording device, the resident or resident representative shall submit the following documentation to the facility:

   a. A written notice to the facility of the intent to place and use an authorized electronic ~~monitoring~~recording device, including an installation plan that complies with the facility's standards and regulations.

   b. ~~A statement that the facility is not civilly or criminally liable for a violation of any resident's right to privacy arising from authorized electronic monitoring.~~

   ~~c.~~ A written consent form for placement and use of an authorized electronic ~~monitoring~~recording device signed by the existing or proposed roommate or roommate's resident representative. The form must:

      (1) Allow the roommate or roommate's resident representative to specify any conditions or restrictions the roommate or roommate's resident representative may elect to place on the device's time of operation, direction, and focus, including verifying the viewing area captured by the camera, prohibiting audio, and turning off the authorized electronic ~~monitoring~~recording device during certain times when total privacy is wanted.

      (2) State the roommate or roommate's resident representative has the right to withdraw consent at any time in writing and have the device disabled in compliance with the facility's standards and regulations after receipt of the written withdrawal.

      ~~(3) State the facility may not be held civilly or criminally liable for a violation of the roommate's right to privacy arising out of authorized electronic monitoring conducted by the resident or the resident representative.~~

   ~~d.~~c. An authorization signed by the existing or proposed roommate or roommate's resident representative for the disclosure of protected health information in compliance with title 45, Code of Federal Regulation, parts 160 and 164.

4. The facility shall maintain a copy of the applicable consent and authorization forms submitted pursuant to this section.

History: Effective April 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 50-10.1-03, 50-10.2-02.1, 50-10.2-03
Law Implemented: NDCC 50-10.2-02.1, 50-10.2-03

75-03-42-04. Signs.

A facility ~~shall~~ clearly and conspicuously shall post a sign where authorized electronic ~~monitoring~~recording is being conducted to alert and inform other residents, staff, and visitors to the facility. The sign must be provided in a language, form, and manner residents, staff, and visitors can access and understand.

History: Effective April 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 50-10.1-03, 50-10.2-02.1, 50-10.2-03
Law Implemented: NDCC 50-10.2-02.1, 50-10.2-03

75-03-42-05. Use of internet and responsibilities.

1. The resident or resident representative shall select the type of ~~monitoring~~recording device that will be used in the resident's room, accounting for any restrictions imposed by the roommate or roommate's resident representative. If the resident or resident representative chooses to install a ~~monitoring~~recording device that uses internet technology, the ~~monitoring~~recording device must have at least one hundred twenty-eight-bit encryption and enable a secure socket layer.

2. The resident or resident representative is responsible to contract with an internet provider if ~~that is~~ needed to operate the authorized electronic ~~monitoring~~recording device and shall comply with facility's standards and regulations. The facility is not required to allow internet access through facility or corporate networks that maintain confidential patient, medical, financial, or personnel records.

History: Effective April 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 50-10.1-03, 50-10.2-02.1, 50-10.2-03
Law Implemented: NDCC 50-10.2-02.1, 50-10.2-03

CHAPTER 75-03-44
CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINIC CERTIFICATION

Section
75-03-44-01 Definitions
75-03-44-02 Eligibility
75-03-44-03 Intent to Pursue Certification
75-03-44-04 Application for Certification - Applicant Submission
75-03-44-05 Application for Certification - Department Review
75-03-44-06 Initial Certification
75-03-44-07 Initial Certification - Department Review
75-03-44-08 Certification
75-03-44-09 Certificate Review, Report, and Renewal Procedures
75-03-44-10 Corrective Action Plan
75-03-44-11 Certification Revocation
75-03-44-12 Staffing
75-03-44-13 Licensure and Credentialing of Providers
75-03-44-14 Training
75-03-44-15 Linguistic Competence
75-03-44-16 Availability and Accessibility of Services
75-03-44-17 Timely Access to Services and Initial and Comprehensive Evaluation
75-03-44-18 Access to Crisis Management Services
75-03-44-19 No Refusal of Services
75-03-44-20 Provision of Services Regardless of Residence
75-03-44-21 Care Coordination
75-03-44-22 Health Information Systems
75-03-44-23 Care Coordination Partnerships
75-03-44-24 Care Treatment Team, Treatment Planning, and Care Coordination Activities
75-03-44-25 General Service Provisions
75-03-44-26 Requirement of Person-Centered and Family-Centered Care
75-03-44-27 Crisis Behavioral Health Services
75-03-44-28 Screening, Assessment, and Diagnosis
75-03-44-29 Person-Centered and Family-Centered Treatment Planning
75-03-44-30 Outpatient Behavioral Health Services
75-03-44-31 Evidence-Based Services
75-03-44-32 Outpatient Clinic Primary Care Screening and Monitoring
75-03-44-33 Targeted Case Management Services
75-03-44-34 Psychiatric Rehabilitation Services
75-03-44-35 Peer Supports, Peer Counseling, and Family and Caregiver Supports
75-03-44-36 Intensive, Community-Based Mental Health Care for Members of the Armed Forces and Veterans
75-03-44-37 Data Collection, Reporting, and Tracking
75-03-44-38 Continuous Quality Improvement Plan
75-03-44-39 General Requirements of Organizational Authority and Finances
75-03-44-40 Governance
75-03-44-41 Accreditation
75-03-44-42 Designated Collaborating Organization Agreement

75-03-44-01. Definitions.

1. "Applicant" means an entity applying for certification or renewal as a certified community behavioral health clinic.

2. "Application" means a department form submitted by an applicant for certified community behavioral health clinic certification and renewal.

3. "Behavioral health services" means mental health and substance use disorder services.

4. "Certified clinic" means an entity that has received the certification as a certified community behavioral health clinic from the department.

5. "Certified community behavioral health clinic" means a private or public behavioral health clinic or a state-operated behavioral health clinic designated by the department to deliver a comprehensive range of behavioral health services in accordance with the certification criteria set forth by this chapter.

6. "Community needs assessment" means a systematic approach to identifying community needs and determining program capacity to address the needs of the population being served.

7. "Corrective action plan" means a written strategy developed by a certified clinic in response to the department identifying an area of noncompliance with standards set forth in this chapter.

8. "Department" means the North Dakota department of health and human services.

9. "Designated collaborating organization" means an entity that is not under the direct supervision of the certified clinic but is engaged in a formal relationship with the certified clinic to deliver one or more of the required services or an element of a required service.

10. "Individual" means an individual receiving services from a certified clinic.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-02. Eligibility.

An applicant shall meet the following criteria to be eligible for a certified community behavioral health clinic certification:

1. Be accredited by a nationally recognized accreditation body with standards specific to delivery of behavioral health care services for mental illness and substance use disorders or have a pending application submitted at the time of application for a certified community behavioral health clinic certification;

2. Have a minimum of three years of demonstrated experience providing evidence-based practices for individuals experiencing serious and persistent mental illness, serious mental illness, serious emotional disturbance, or complex or severe substance use disorders and a track record of providing person-centered, recovery-oriented, and trauma-informed care;

3. Be a qualified Medicaid provider;

4. Have received department approval on the intent to pursue certification pursuant to section 75-03-44-03; and

5. Meet at least one of the following criteria:

   a. Be a nonprofit organization, exempt from taxation as provided under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)];

   b. Be part of a state or local government behavioral health authority;

c. Be operated under the authority of the Indian health service, an Indian tribe, or tribal organization pursuant to a contract, grant, cooperative agreement, or compact with the Indian health service pursuant to the Indian Self-Determination Act [25 U.S.C.A. 5301 et seq.]; or

d. Be an urban Indian organization pursuant to a grant or contract with the Indian health service under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.].

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-03. Intent to pursue certification.

1. Prior to submitting an application for a certified community behavioral health clinic, an applicant shall submit to the department an intent to pursue certification in the form and manner prescribed by the department.

2. An applicant's intent to pursue certification must be approved by the department for the applicant to be eligible for a certified community behavioral health clinic certification.

3. The department may deny an intent to pursue certification in accordance with North Dakota Century Code section 50-06-41.4.

4. The applicant may resubmit to the department an intent to pursue certification no sooner than six months after notification of the denied intent to pursue certification.

5. The department shall notify an applicant if an intent to pursue certification is incomplete, denied, or approved.

6. The department may declare an intent to pursue certification withdrawn if an applicant fails to submit all required documentation within thirty days of notification of incompleteness.

7. An applicant may appeal an intent to pursue certification by completing a written appeal with the department within thirty days of the decision. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-04. Application for certification - Applicant submission.

1. An applicant shall submit to the department an application and all required information and documentation for a certified community behavioral health clinic certification in the form and manner prescribed by the department.

2. The department shall consider an application complete if the department has received all required information and documents.

3. The department shall notify an applicant if an application is incomplete.

4. The department may declare an application withdrawn if an applicant fails to submit all required documentation within thirty days of notification of incompleteness.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-05. Application for certification - Department review.

1. The department shall conduct a review of the submitted application.

2. The department may conduct an onsite visit as part of the application for a certified community behavioral health clinic certification.

3. If the department determines the application does not meet criteria for a certified community behavioral health clinic certification, the department shall notify the applicant.

4. If an applicant does not meet criteria for a certified community behavioral health clinic certification, an applicant may resubmit the areas of the application that did not meet criteria for a certified community behavioral health clinic certification in a manner and form prescribed by the department.

5. If an applicant has resubmitted the areas of the application that did not meet criteria for a certified community behavioral health clinic certification three times or if ninety days have passed from the original submission date and the application still does not meet criteria for a certified community behavioral health clinic certification, the department shall deny the application for a certified community behavioral health clinic certification. The applicant may resubmit to the department an intent to pursue certification in accordance with section 75-03-44-04 no sooner than six months after notification of the denied application for a certified community behavioral health clinic certification.

6. An applicant may appeal a denied application for a certified community behavioral health clinic certification by completing a written appeal with the department within thirty days of the decision. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

7. The department shall notify an applicant if the application submission for a certified community behavioral health certification is approved and shall provide an initial certified community behavioral health clinic certification to the applicant.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-06. Initial certification.

1. Upon approval of an applicant's first approved application, the department shall issue an initial certified community behavioral health clinic certification.

2. An initial certified community behavioral health clinic certification is in effect for the period specified in the certified community behavioral health clinic certificate and may not exceed one year from the date of issuance.

3. The department may extend an initial certified community behavioral health clinic certification in order to complete its review processes for a certified community behavioral health clinic certification.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-07. Initial certification - Department review.

1. The department shall conduct a certified community behavioral health clinic certification review within the initial certified community behavioral health clinic certification period. The department's review may include requests for documentation and an onsite visit.

2. If the applicant is not in compliance with all applicable requirements in accordance with this chapter, the department shall issue a report and require a corrective action plan.

3. If the applicant meets all applicable requirements in accordance with this chapter, the department shall issue a certified community behavioral health clinic certification.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-08. Certification.

1. A certified community behavioral health clinic certification is effective when approved by the department and the certified community behavioral health clinic certificate has been issued to the applicant.

2. A certified community behavioral health clinic certificate is effective for a period of three years.

3. A certified community behavioral health clinic certificate expires at midnight of the expiration date provided on the certified community behavioral health clinic certification.

4. A certified community behavioral health clinic certification may not be transferred.

5. The certified clinic shall notify the department within seven business days of any significant change in policy or practice that would impact a certified clinic's ability to comply with this chapter.

6. The department may extend a certified community behavioral health clinic certification to complete its review processes for renewal.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-09. Certificate review, report, and renewal procedures.

1. The department shall conduct scheduled or unscheduled certified community behavioral health clinic certification reviews, which may include site visits, to ensure compliance with this chapter.

2. Within thirty days of a review of certified community behavioral health clinic certification, the department shall send a certified community behavioral health clinic certification report to the certified clinic that was reviewed.

3. A certified community behavioral health clinic certification report must contain a description of the certified clinic, services reviewed, and a description of findings.

4. To renew a certified community behavioral health clinic certification:

   a. A certified clinic shall submit an application for renewal, along with all required supporting information and documentation, in the form and manner prescribed by the department, within one hundred eighty days of certificate expiration; and

b. The department shall complete a certificate review.

5. The applicant may resubmit to the department an intent to pursue certification in accordance with section 75-03-44-04 no sooner than six months after notification of the certification lapse.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-10. Corrective action plan.

1. The department shall issue a report requiring the certified clinic to develop a corrective action plan if at any time during the certified community behavioral health clinic certification period, including the renewal process and initial certification, the certified clinic is found to be out of compliance with this chapter.

2. The certified clinic has thirty days to develop and submit a corrective action plan to the department, unless otherwise specified by the department, upon notification by the department of being out of compliance with this chapter.

3. The department has ten days to review a certified clinic's completed and submitted corrective action plan. The department shall notify the certified clinic as to whether the corrective action plan is approved or not approved. If the corrective action plan is:

a. Not approved:

(1) The certified clinic shall resubmit the updated corrective action plan within ten days of notification that its previous corrective action plan submission was not approved.

(2) The department may revoke a certified clinic's certified community behavioral health clinic certification if the certified clinic has submitted the corrective action plan three times without receiving approval, or ninety days have passed from the initial corrective action plan submittal and the corrective action plan is not approved.

b. Approved:

(1) The certified clinic shall implement the approved corrective action plan.

(2) Within ninety days of the corrective action plan approval, the department shall review the certified clinic's implementation of the corrective action plan.

(3) Following the review, the department shall notify the certified clinic whether the corrective action plan implementation is approved.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-11. Certification revocation.

1. The department may revoke the certified community behavioral health clinic certification for the following reasons:

a. The certified clinic fails to provide the department with requested documentation demonstrating compliance with this chapter;

b. The certified clinic fails to correct identified deficiencies in meeting the requirements of this chapter;

c. The certified clinic fails to maintain required licensures and certifications, as applicable;

d. The certified clinic fails to comply with ratesetting, including rebasing requirements; or

e. The certified clinic provides false or misleading information or data.

2. The department shall provide a certified clinic with thirty days' written notice of the intent to revoke a certified community behavioral health clinic certification.

3. A revoked certified clinic may resubmit to the department an intent to pursue certification in accordance with section 75-03-44-04 no sooner than six months after the revocation is finalized.

4. A revoked certified clinic may appeal a decision to revoke a certified community behavioral health clinic certification by completing a written appeal with the department within thirty days of the decision. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-12. Staffing.

1. The certified clinic shall complete and document a community needs assessment in the manner prescribed by the department and shall complete and document a staffing plan that is responsive to the community needs assessment no less frequently than once every three years.

2. The certified clinic director shall maintain a fully staffed management team as appropriate for the size and needs of the clinic, as determined by the current community needs assessment and staffing plan. The management team must include, at a minimum, a director, clinical director, and a psychiatrist as medical director, except as provided under subsection 3. The medical director does not need to be a full-time staff member of the certified clinic.

3. If a certified clinic is unable, after reasonable efforts, to employ or contract with a psychiatrist as medical director, a certified clinic may employ as the medical director a medically trained behavioral health care professional who can prescribe and manage medications independently and who has the appropriate education, licensure, and experience in psychopharmacology.

4. If a certified clinic is unable to hire a psychiatrist and hires another prescriber instead, a certified clinic shall obtain psychiatric consultation regarding behavioral health clinical service delivery, quality of the medical component of care, and integration and coordination of behavioral health and primary care.

5. The certified clinic shall ensure that clinical and nonclinical staff are appropriate in size and composition:

a. For the population receiving services, as determined by the community needs assessment;

b. To provide the types of services required by this chapter and as informed by the community needs assessment;

c. To address the needs of individuals at the certified community behavioral health clinic, as reflected in the individuals' treatment plans, and as required by this chapter; and

d. By supplementing its core staff as necessary to meet needs identified in the community needs assessment and staffing plan.

6. The certified clinic shall maintain a core workforce informed by the community needs assessment and staffing plan, which is comprised of staff and contracted staff, including:

a. A medically trained behavioral health care provider, either staff or contracted staff, who can prescribe and manage medications independently, including buprenorphine and other food and drug administration-approved medications used to treat opioid, alcohol, and tobacco use disorders;

b. A licensed psychologist or psychologist resident under supervision;

c. A licensed addiction treatment provider;

d. An independently licensed mental health clinician. If a certified clinic is unable, after reasonable efforts, to employ an independently licensed mental health clinician, a certified clinic may employ a master's-level licensed mental health clinician under a supervision plan;

e. A nurse;

f. A peer support specialist;

g. A quality improvement specialist;

h. A care coordinator; and

i. Staff or contracted staff with expertise in addressing trauma and promoting the recovery of children with serious emotional disturbance and adults with serious mental illness.

7. The certified clinic is not precluded by this chapter from utilizing staff working toward professional licensure if staff is working under appropriate supervision within the scope of applicable state laws and regulations.

8. A nonstate operated certified clinic shall maintain liability and malpractice insurance for the staffing and scope of services provided.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-13. Licensure and credentialing of providers.

1. All certified clinic staff, including any designated collaborating organization provider staff and contracted staff that furnish services under arrangement with a certified clinic, shall have and maintain all necessary state-required licenses, certifications, or other credentialing and act only within scope of the staff's respective state licenses, certifications, or other credentialing and in accordance with all applicable state laws and regulations. This includes any applicable state Medicaid billing regulations, policies, or provider agreements.

2. If certified clinic staff, including any designated collaborating organization provider staff and contracted staff that furnish services under arrangement with a certified clinic, are working toward professional licensure, appropriate supervision must be provided in accordance with applicable state laws and regulations.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4

Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-14. Training.

1. The certified clinic shall have a training plan for all employed and contracted staff who have direct contact with an individual, the individual's legal representatives, or the individual's families, which incorporates the needs identified in the community needs assessment. The certified clinic shall provide training at orientation and annually thereafter on:

   a. Evidence-based practices;

   b. Cultural responsiveness;

   c. Person-centered, family-centered, and recovery-oriented planning and services;

   d. Trauma-informed care;

   e. The certified clinic's policy and procedures for continuity of operations and disasters;

   f. The certified clinic's policy and procedures for integration and coordination with primary care;

   g. Care for co-occurring mental health and substance use disorders;

   h. Risk assessment;

   i. Suicide prevention and response;

   j. Overdose prevention and response;

   k. The roles of parent and legal representative, and peer team members;

   l. Confidentiality, privacy, Health Insurance Portability and Accountability Act of 1996 [Pub. L. No. 104-191, 110 Stat. 1936], title 42, Code of Federal Regulations, part 2;

   m. Military culture;

   n. Care for adults with serious mental illness and children with emotional disturbance;

   o. Abuse, neglect, and exploitation; and

   p. Client rights.

2. The certified clinic may provide the trainings through an online forum.

3. The certified clinic shall regularly assess the skills and competence of each staff, including contracted staff furnishing services and, as necessary, provide training and education programs.

4. The certified clinic shall have written policies and procedures describing its method of assessing competency and shall maintain a written accounting of the training provided for the duration of employment of each staff, including contracted staff, who have direct contact with individuals.

5. The certified clinic shall document the training and demonstration of competency for staff, including contracted staff, are successfully completed.

6. The certified clinic shall ensure people providing staff training are qualified as evidenced by their education, training, and experience.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-15. Linguistic competence.

1. The certified clinic shall take reasonable steps to provide meaningful access to services, such as language assistance, for individuals with limited English proficiency and language-based disabilities.

2. The certified clinic shall use an interpretation and translation service that is readily available and appropriate for the size and needs of the limited English proficiency population receiving services by the certified clinic. If the certified clinic uses an interpreter and translation service, the interpreter and translation service provider must be trained to function in a medical or behavioral health setting.

3. The certified clinic shall ensure that auxiliary aids and services are readily available, Americans with Disabilities Act compliant, and responsive to the needs of individuals with physical, cognitive, or developmental disabilities receiving services from the certified clinic.

4. The certified clinic shall ensure documents or information necessary for an individual to access certified community behavioral health clinic services are available online and in paper format. The documents or information must be in languages commonly spoken within the community served, taking account of literacy levels and the need for alternative formats based on community needs assessment findings. The certified clinic shall provide the documents or information in a timely manner at intake and throughout the time an individual is served by the certified clinic.

5. The certified clinic shall have policies with explicit provisions ensuring all staff, contracted staff, translators, and interpreters understand and adhere to confidentiality and privacy requirements applicable to the certified clinic, including the requirements of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. No. 104-191, 110 Stat. 1936], title 42, Code of Federal Regulations, part 2, and other federal and state laws and regulations.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-16. Availability and accessibility of services.

1. The certified clinic shall provide a safe, functional, clean, sanitary, and welcoming environment for individuals, staff, and contracted staff, if applicable, conducive to the provision of services identified in sections 75-03-44-25 through 75-03-44-36. The certified clinic shall operate nicotine-free campuses.

2. As informed by the community needs assessment, the certified clinic shall ensure services are provided during times that facilitate accessibility and meet the needs of the population served by the certified clinic, including some evening and weekend hours.

3. As informed by the community needs assessment, the certified clinic shall provide services at locations that ensure accessibility and meet the needs of the population to be served, such as settings in the community, including rural areas and reservations, and, as appropriate and feasible, in the homes of individuals.

4. The certified clinic shall provide transportation or transportation vouchers for individuals to the extent possible with relevant funding or programs in order to facilitate access to services in alignment with the person-centered and family-centered treatment plan.

5. To the extent possible, the certified clinic shall use telehealth, telemedicine, videoconferencing, remote patient monitoring, asynchronous interventions, or other technologies in alignment with the preferences of the individual to support access to all required services.

6. As informed by the community needs assessment, the certified clinic shall conduct outreach, engagement, and retention activities to support inclusion and access for individuals and populations.

7. Services provided by a certified clinic are subject to all state standards for the provision of both voluntary and court-ordered behavioral health services.

8. The certified clinic shall have a continuity of operations and disaster plan to ensure the certified clinic is able to effectively notify staff, individuals, and health care and community partners if a disaster or emergency occurs or if services are disrupted. The certified clinic, to the extent feasible, shall identify alternative locations and methods to sustain service delivery and access to behavioral health medications during a disaster, emergency, or disruption of services. The certified clinic's plan must also address health information technology systems security, ransomware protection, and backup and access to the information technology systems, including health records, in case of disaster, emergency, or disruption of service.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-17. Timely access to services and initial and comprehensive evaluation.

1. All individuals new to receiving services, whether requesting or being referred for behavioral health services at the certified clinic, shall, at the time of first contact, receive a preliminary triage, including assessment of risk, from the certified clinic to determine acuity of needs.

2. If the preliminary triage identifies a crisis need in accordance with section 75-03-44-27, the certified clinic immediately shall take appropriate action, including plans to reduce or remove risk of harm and to facilitate any necessary subsequent outpatient followup.

3. If the preliminary triage identifies an urgent need, the certified clinic shall provide clinical services, including completing an initial evaluation, within one business day of the time the request is made. The clinical services may be provided at a later time if that is the preference of the individual receiving services.

4. If the preliminary triage identifies routine needs, the certified clinic shall provide clinical services and complete the initial evaluation within ten business days, or a later time if that is the preference of the individual if the preliminary triage identifies routine needs.

5. The certified clinic may conduct the initial evaluation through use of technologies for telehealth, telemedicine, videoconferencing, remote patient monitoring, asynchronous interventions, or other technologies for those individuals presenting with a crisis or urgent needs. If the certified clinic conducts the initial evaluation through use of technologies for telehealth, telemedicine, videoconferencing, remote patient monitoring, asynchronous interventions, or other technologies and the crisis or urgent need is resolved, the individual must be seen in-person at the next encounter with the certified clinic and the certified clinic shall review the initial evaluation.

6. The certified clinic shall follow the preliminary triage by conducting:

   a. An initial evaluation in accordance with subsection 3 of section 75-03-44-28; and

b. A comprehensive evaluation in accordance with subsection 4 of section 75-03-44-28.

7. Unless subject to more stringent state, federal, or applicable accreditation standards, all new individuals shall receive a comprehensive evaluation. The certified clinic shall complete the comprehensive evaluation within sixty days of the first request for services. This requirement does not preclude the provision of treatment during the sixty-day period.

8. The certified clinic shall consider any known past initial and comprehensive evaluations, past treatments, and history of the individual during an initial and a comprehensive evaluation.

9. The certified clinic shall review and update the comprehensive person-centered and family-centered treatment plan in compliance with the standards for accreditation of an accrediting body or licensing standards, whichever is more stringent, in agreement with and endorsed by the individual. The certified clinic shall update the treatment plan if changes occur with the status of the individual, based on responses to treatment or if there are changes in treatment goals.

10. The certified clinic shall provide individuals who are already receiving services from the certified clinic and who are seeking routine outpatient clinical services an appointment within ten business days of the request for an appointment, unless the applicable state and federal regulations or accreditation standards are more stringent.

11. If an individual already receiving services presents with a crisis need, the certified clinic immediately shall take appropriate action based on the needs of the individual, including immediate crisis response if necessary.

12. If an individual already receiving services presents with an urgent, noncrisis need, the certified clinic shall attempt to provide clinical services within one business day of the time the request is made, or at a later time if that is the preference of the individual.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-18. Access to crisis management services.

1. In accordance with section 75-03-44-27, the certified clinic shall provide crisis management services that are available and accessible twenty-four hours a day, seven days a week.

2. The certified clinic shall maintain policies and procedures, including a description of methods for providing a continuum of crisis prevention, response, and postvention services, which must be made available to the public.

3. The certified clinic shall educate individuals at the time of the initial evaluation meeting about crisis planning, health care directives, and how to access crisis services, including the 988 suicide and crisis lifeline, and overdose prevention, if risk is indicated.

4. In accordance with sections 75-03-44-23 through 75-03-44-26, the certified clinic shall maintain a working relationship with local hospital emergency departments. The certified clinic shall establish protocols for certified clinic staff to address the needs of individuals in behavioral health crisis who come to local hospital emergency departments.

5. The certified clinic shall establish protocols, including those for the involvement of law enforcement, to reduce delays for initiating services during and following a behavioral health crisis. The protocols must be designed to maximize the delivery of recovery-oriented treatment and services. The protocols established by the certified clinic must attempt to minimize contact

with law enforcement and the criminal justice system and must promote safety and comply with applicable state and local laws and regulations.

6. Following a crisis, in collaboration with the individual, the certified clinic shall create, maintain, and follow a crisis plan to prevent and de-escalate future crisis situations.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-19. No refusal of services.

1. The certified clinic shall ensure:

   a. An individual seeking services is not denied behavioral health care services, including crisis management services, because of an individual's inability to pay for such services, pursuant to the Protecting Access to Medicare Act of 2014 [Pub. L. No. 113-93]; and

   b. Any fees or payments required by the certified clinic for such services must be reduced or waived to enable the certified clinic to fulfill the assurance described in subdivision a.

2. The certified clinic shall publish a sliding fee discount schedule that includes all services the certified clinic offers pursuant to the criteria in subsection 1. The certified clinic shall include the sliding fee discount schedules on the certified clinic's website, post a copy in the certified clinic's waiting room, and otherwise make the information readily accessible to adult individuals and legal representatives, if applicable, and the adult individual's family or other supports if the adult individual so wishes or if the individual is a child, the family or legal representation if permitted by federal laws and regulations. The certified clinic shall communicate the sliding fee discount schedule in languages and formats appropriate for individuals seeking services.

3. The certified clinic's fee schedules, if relevant, must conform to federal and state laws and regulations. Absent applicable state or federal requirements, the schedule must be based on locally prevailing rates or charges and must include reasonable costs of operation.

4. The certified clinic shall have written policies and procedures describing eligibility for and implementation of the sliding fee discount schedule. The certified clinic shall apply these policies equally to all individuals seeking services.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-20. Provision of services regardless of residence.

1. The certified clinic shall ensure that no individual seeking services is denied behavioral health care services, including crisis management services, because of place of residence, homelessness, or lack of a permanent address.

2. The certified clinic shall have protocols addressing the needs of individuals who do not live close to the certified clinic or within the certified clinic service area. The certified clinic is responsible for providing, at a minimum, crisis response, preliminary triage, and stabilization services in the certified clinic service area regardless of place of residence. The certified clinic's required protocols shall address management of the individual's ongoing treatment needs beyond crisis response, preliminary triage, and stabilization services.

3. The certified clinic shall demonstrate effort to use technologies for telehealth, telemedicine, videoconferencing, remote patient monitoring, asynchronous interventions, or other technologies:

   a. In alignment with the preferences of the individual;

   b. To the extent practical for individuals who live within the certified clinic's service area but live a long distance from the certified clinic; and

   c. For situations in which timely in-person crisis response is not possible.

4. A certified clinic is not required to provide continuous services to individuals who live outside of the certified clinic's service area.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-21. Care coordination.

1. The certified clinic shall coordinate care across the spectrum of health care services based on a person-centered and family-centered treatment plan that aligns with the requirements of section 2402(a) of the Patient Protection and Affordable Care Act of 2010 [Pub. L. No. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. No. 111-152] and with state laws and regulations and is consistent with best practices. The coordination of care must include access to high-quality acute and chronic physical health and behavioral health care, social services, housing, educational systems, and employment opportunities as necessary to facilitate wellness and recovery of the individual. The certified clinic shall coordinate with other systems to meet the needs of the individuals they serve, including criminal and juvenile justice and child welfare.

2. The certified clinic shall maintain the necessary documentation to satisfy the requirements of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. No. 104-191, 110 Stat. 1936], title 42, Code of Federal Regulations, part 2 and other federal and state laws and regulations.

3. To promote coordination of care, the certified clinic shall obtain necessary consents for sharing information with community partners and other systems if information is not able to be shared under the Health Insurance Portability and Accountability Act of 1996 [Pub. L. No. 104-191, 110 Stat. 1936], title 42, Code of Federal Regulations, part 2, and other federal and state laws and regulations. If the certified clinic is unable, after reasonable attempts, to obtain the necessary consent for any care coordination activity specified in sections 75-03-44-23 through 75-03-44-26, such attempts must be documented and revisited periodically.

4. Consistent with requirements of privacy, confidentiality, and the preferences and needs of individuals, the certified clinic shall assist individuals and the families or legal representatives of the children referred to external providers or resources in obtaining an appointment and tracking participation in services to ensure coordination and receipt of supports.

5. The certified clinic shall coordinate care in keeping with the preferences of the individual and the individual's care needs. To the extent possible, the certified clinic shall provide care coordination, as appropriate, in collaboration with the legal representative of the adult individual, if applicable, and the adult individual's family or other supports to the extent the adult individual so wishes, or if the individual is a child, in collaboration with the family or legal representative if permitted by federal laws and regulations.

6. To identify the preferences of the individual in the event of a behavioral health crisis, the certified clinic shall develop a crisis plan with each individual. At minimum, the certified clinic shall counsel individuals about the use of the 988 suicide and crisis lifeline, mobile crisis, and stabilization services should a behavioral health crisis arise when providers are not in their office.

7. The certified clinic shall make and document reasonable attempts to determine any medications prescribed by other providers. If state laws and regulations allow, the certified clinic shall consult the state prescription drug monitoring program before prescribing medications. Upon appropriate consent to release of information or as otherwise authorized by federal and state laws and regulations, the certified clinic shall provide a list of medications prescribed by the certified clinic to other providers not affiliated with the certified clinic as necessary for safe and quality care.

8. A certified clinic may not limit the freedom of choice of an individual receiving care coordination services from choosing the individual's appropriate provider within the certified clinic, with its designated collaborating organizations or with any other provider, unless limited by federal or state laws or regulations.

9. The certified clinic shall assist individuals and families or the legal representatives to access benefits, including Medicaid, and enroll in programs or supports that may benefit the individuals and their families or legal representatives.

10. The certified clinic shall work with its designated collaborating organizations to ensure all steps are taken, including obtaining consent to release of information from the individual to comply with privacy and confidentiality requirements, including the Health Insurance Portability and Accountability Act of 1996 [Pub. L. No. 104-191, 110 Stat. 1936], title 42, Code of Federal Regulations, part 2 and other federal and state laws and regulations.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-22. Health information systems.

1. The certified clinic shall establish or maintain a secure health information technology system, including the storage, access, and use of electronic health records.

2. The certified clinic shall use its secure health information technology system and related technology tools to conduct activities such as population health management, quality improvement, quality measurement and reporting, outreach, and research.

3. The certified clinic shall use technology certified in accordance with 45 CFR 170 for the following required core set of certified health information technology capabilities that align with key clinical practice and care delivery requirements for certified clinics:

   a. Capture health information, as feasible, including demographic information such as age, sex, and disability status;

   b. Support care coordination by sending and receiving summary of care records;

   c. Provide an individual timely electronic access to view, download, or transmit the individual's health information or access to the individual's health information via an application programming interface using a personal health application of the individual's choice;

   d. Provide evidence-based clinical decision support; and

e. Conduct electronic prescribing.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4; 45 CFR 170

75-03-44-23. Care coordination partnerships.

1. The certified clinic shall have a partnership establishing care coordination expectations with federally qualified health centers located in the certified clinic service area to provide health care services, if the services are not provided directly through the certified clinic. For individuals who are served by other primary care providers, including federally qualified health center look-alikes and community health centers, the certified clinic shall establish protocols to ensure adequate care coordination.

2. The certified clinic shall establish partnerships for care coordination expectations with programs, including tribal programs, if any exist within the certified clinical service area, that can provide inpatient behavioral health treatment, opioid treatment program services, medical withdrawal management, ambulatory medical withdrawal management for substance use disorders, and residential substance use disorder treatment.

3. The certified clinic shall track when individuals are admitted to facilities providing the services listed in subsection 2, and when individuals are discharged, unless there is a formal transfer of care to a noncertified clinic entity.

4. The certified clinic shall establish protocols and procedures for transitioning individuals from emergency departments, inpatient behavioral health programs, medically monitored withdrawal management services, and residential or inpatient facilities that serve children to a safe community setting. The certified clinic's established protocols and procedures must include the transfer of health records of services received, a plan to follow up actively after discharge, and, as appropriate, a plan for suicide prevention and safety, overdose prevention, and provision for peer services.

5. The certified clinic shall establish partnerships with a variety of community or regional services, supports, and providers. The certified clinic's partnerships shall support joint planning for care and services, provide opportunities to identify individuals in need of services, enable the certified clinic to provide services in community settings, enable the certified clinic to provide support and consultation with a community partner, and support certified clinic outreach and engagement efforts.

6. A certified clinic shall develop partnerships with the following community or regional services, supports, and providers that provide services within the certified clinic's service area:

   a. Schools;

   b. Child welfare agencies;

   c. Criminal and juvenile justice agencies and facilities, including jails and other specialty courts;

   d. Treatment facilities, mental health facilities, facilities serving veterans, and facilities serving individuals with brain injury;

   e. Indian health service youth regional treatment centers;

   f. State licensed and nationally accredited child-placing agencies for therapeutic foster care service; and

g. 988 suicide and crisis lifeline call center.

7. The certified clinic shall establish a partnership with the nearest department of veterans' affairs medical center, independent clinic, drop-in center, or other facility of the department of veterans' affairs. If multiple department of veterans' affairs facilities of different types are located in the certified clinic's service area, the certified clinic shall work to establish care coordination agreements with facilities of each type.

8. The certified clinic's care coordination partnerships shall establish expectations with inpatient acute-care hospitals in the certified clinic's service area and with the inpatient acute-care hospital's associated facilities, including emergency departments, hospital outpatient clinics, urgent care centers, and residential crisis settings. The certified clinic's care coordination partnerships' expectations must include procedures and services to help individuals successfully transition from emergency department or hospital to the certified clinic and community care to ensure continuity of services and minimize the time between discharge and followup. The certified clinic shall work with the discharging facility ahead of discharge to assure a seamless transition. The certified clinic's partnerships shall support tracking if individuals are admitted to facilities providing the services in this subsection, and if the individuals are discharged. The certified clinic's partnerships shall support the transfer of health records of services received and provide for active followup after discharge.

9. The certified clinic shall make and document reasonable attempts to contact all individuals who are discharged from the facilities providing services in subsection 8 within twenty-four hours of discharge. For all individuals being discharged from facilities providing services in subsection 8 who are at risk for suicide or overdose, the care coordination agreement between facilities providing services in subsection 8 and the certified clinic must include a requirement to coordinate consent and followup services with the individual within twenty-four hours of discharge and must continue until the individual is connected to services, assessed to be no longer at risk, or refuses care.

10. The certified clinic shall attempt to enter a formal, signed care coordination agreement detailing the roles of each party. At a minimum, the certified clinic shall develop written protocols for supporting coordinated care undertaken by the certified clinic and efforts to deepen the partnerships required by this section over time so jointly developed protocols or formal agreements may be developed.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-24. Care treatment team, treatment planning, and care coordination activities.

1. The certified clinic treatment team must include the adult individual and legal representative, if applicable, and the adult individual's family or other supports if the adult individual so wishes or if the individual is a child, the family or legal representative if permitted by federal laws or regulations.

2. The certified clinic's treatment planning and care coordination activities must be person centered and family centered and must align with the requirements of section 2402(a) of the Patient Protection and Affordable Care Act of 2010 [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. No. 111-152].

3. The certified clinic's treatment planning and care coordination activities are subject to the Health Insurance Portability and Accountability Act of 1996 [Pub. L. No. 104-191, 110 Stat. 1936], title 42, Code of Federal Regulations, part 2 and other federal and state laws and regulations.

4. The certified clinic shall designate team members within an interdisciplinary treatment team framework who are responsible, with the adult individual and legal representative, if applicable, and the adult individual's family or other supports if the adult individual so wishes or if the individual is a child, the family or legal representative if permitted by federal laws and regulations, for directing, coordinating, and managing care and services.

5. The designated certified clinic team members must be composed of staff who work together to coordinate the medical, psychiatric, psychosocial, emotional, therapeutic, and recovery support needs of the individuals, including, as appropriate and desired by the individuals, traditional approaches to care for individuals who are American Indian or Alaska native or from other groups.

6. The certified clinic shall coordinate care and services provided by designated collaborating organizations in accordance with the individual's current treatment plan.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-25. General service provisions.

1. Whether delivered directly or through a designated collaborating organization agreement, the certified clinic is responsible for ensuring access to all care specified in the Protecting Access to Medicare Act of 2014 [Pub. L. No. 113-93], including, as more explicitly provided in sections 75-03-44-27 through 75-03-44-36 the following required services:

   a. Crisis services;

   b. Screening, assessment, and diagnosis;

   c. Person-centered and family-centered treatment planning;

   d. Outpatient behavioral health services;

   e. Outpatient primary care screening and monitoring;

   f. Targeted case management;

   g. Psychiatric rehabilitation;

   h. Peer, parent, or legal representative supports; and

   i. Intensive community-based outpatient behavioral health care for members of the United States armed forces and veterans.

2. The certified clinic shall deliver directly the majority of encounters across the required services, excluding crisis services, rather than through a designated collaborating organization.

3. The certified clinic shall ensure all certified community behavioral health clinic services, if not available directly through the certified clinic, are provided through a designated collaborating organization, consistent with the freedom of choice of the individual to choose appropriate providers within the certified clinic and its designated collaborating organizations, unless limited by federal or state laws or regulations. This subsection does not preclude the certified clinic's use of referrals outside the certified clinic or designated collaborating organization if a needed specialty service is unavailable through the certified clinic or designated collaborating organizations.

4. Regarding certified clinic and designated collaborating organization services, individuals must be informed of and have access to the certified clinic's existing grievance procedures, which must satisfy the minimum requirements of Medicaid and other grievance requirements such as those mandated by relevant accrediting entities or state laws and regulations.

5. Designated collaborating organization-provided services for individuals must meet the same quality standards as those provided by the certified clinic. The entities with which the certified clinic coordinates care and all designated collaborating organizations, taken in conjunction with the certified clinic itself, shall satisfy the mandatory aspects of this chapter.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-26. Requirement of person-centered and family-centered care.

1. The certified clinic shall ensure all certified community behavioral health clinic services, including those supplied by its designated collaborating organizations, are provided in a manner aligned with the requirements of section 2402(a) of the federal Patient Protection and Affordable Care Act of 2010 [Pub L. No. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. No. 111-152]. These requirements reflect: person-centered and family-centered, recovery-oriented care; being respectful of the needs, preferences, and values of the individuals; and ensuring both involvement of the individual and self-direction of services received. The certified clinic shall ensure services for children are family centered, child guided, and developmentally appropriate.

2. The certified clinic and designated collaborating organizations shall deliver person-centered and family-centered care that is responsive to the development of the individual and includes care that recognizes the particular needs of the individual.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-27. Crisis behavioral health services.

1. The certified clinic shall directly, or by a designated collaborating organization, provide robust and timely crisis behavioral health services. The available crisis behavioral health services must include:

   a. Crisis intervention services through coordination with the 988 suicide and crisis lifeline telephone, text, and chat crisis intervention call center;

   b. Community-based behavioral health crisis intervention services using mobile crisis teams available twenty-four hours per day, seven days per week, to individuals and their families or legal representatives anywhere within the certified clinic's service area, including at home, work, or anywhere else the crisis is experienced. Mobile crisis teams are expected to arrive in-person within thirty minutes plus travel time from the time they are dispatched, with response time not to exceed three hours. Telehealth, telemedicine, videoconferencing, remote patient monitoring, asynchronous interventions, or other technologies may be used to connect individuals in crisis to appropriate providers during the interim travel time. These technologies also may be used to provide crisis care to individuals if remote travel distances make the three-hour response time unachievable, but the ability to provide an in-person response must be available if necessary to ensure safety; and

c. Crisis receiving and stabilization services including, at minimum, walk-in behavioral health services for voluntary individuals. Walk-in behavioral health services must identify the individual's immediate needs, de-escalate the crisis, and connect the individual to a safe and least restrictive setting for ongoing care. The certified clinic shall establish walk-in hours based on the community needs assessment, including evening hours, which are publicly posted. The certified clinic is not required by this section to manage the highest acuity individuals in this setting.

2. The certified clinic's crisis behavioral health care services must include suicide prevention and intervention.

3. The certified clinic or its designated collaborating organization shall offer services capable of addressing crises related to substance use, including the risk of drug and alcohol-related overdose, and shall offer support following a nonfatal overdose after the individual is medically stable. The certified clinic's overdose prevention activities must include access to naloxone for overdose reversal to individuals who are at risk of opioid overdose and, as appropriate, to their family members or legal representatives.

4. The certified clinic or its designated collaborating organization shall offer developmentally appropriate responses, sensitive de-escalation supports, and connections to ongoing care, when needed.

5. The certified clinic shall have an established protocol specifying the role of law enforcement during the provision of crisis services.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-28. Screening, assessment, and diagnosis.

1. The certified clinic shall directly provide screenings, assessments, and diagnoses, including risk assessments for behavioral health conditions, to individuals. If specialized services outside the expertise of the certified clinic are required for purposes of screening, assessment, or diagnosis of an individual, the certified clinic shall refer the individual to an appropriate provider. The certified clinic, if necessary and appropriate, may provide the screening, assessment, and diagnosis through telehealth, telemedicine, videoconferencing, remote patient monitoring, asynchronous interventions, or other technologies.

2. The certified clinic shall conduct the screening, assessment, and diagnosis in a time frame responsive to the needs and preferences of the individual and shall ensure the screening, assessment, and diagnosis are of sufficient scope to assess the need for all services required to be provided by the certified clinic.

3. The initial evaluation, as required in section 75-03-44-17, provided by the certified clinic, must include at a minimum:

a. Preliminary diagnoses;

b. The source of referral;

c. The reason for seeking care, as stated by the adult individual and legal representative, if applicable, and the adult individual's family or other supports if the adult individual so wishes or if the individual is a child, the family or legal representatives;

d. Identification of the immediate clinical care needs related to the diagnosis for mental and substance use disorders of the individual;

e. A list of all known current prescriptions and over-the-counter medications, herbal remedies, and dietary supplements used by the individual and the indication for any medications;

f. A summary of known previous mental health and substance use disorder treatments with a focus on which treatments were beneficial and which were not;

g. The use of alcohol or drugs;

h. An assessment of whether the individual is a risk to self or to others, including suicide risk factors;

i. An assessment of whether the individual has other concerns for the individual's safety, such as intimate partner violence;

j. Assessment of need for medical care, with a referral and followup as required;

k. A determination of whether the individual presently is, or ever has been, a member of the United States armed forces; and

l. For a child, whether the child has criminal and juvenile justice or child welfare system involvement.

4. A certified clinic shall provide a comprehensive evaluation for all individuals. Subject to applicable federal and state laws and regulations and accreditation standards, certified clinic's clinicians shall use their clinical judgment with respect to the depth of questioning within the comprehensive evaluation so the comprehensive evaluation actively engages the individual around the individual's presenting concern. The certified clinic's comprehensive evaluation must gather the amount of information commensurate with the complexity of the individual's specific needs and prioritize preferences of the individual with respect to the depth of the comprehensive evaluation and the individual's treatment goals. The comprehensive evaluation must include:

a. The individual's reasons for seeking services at the certified clinic, including information regarding onset of symptoms, severity of symptoms, and circumstances leading to the presentation to the certified clinic of the individual;

b. An overview of the individual's relevant social supports, social determinants of health, health-related social needs such as housing, vocational, and educational status, family or legal representative and social supports legal issues, and insurance status;

c. A description of the individual's cultural and environmental factors that may affect the treatment plan of the individual, including the need for linguistic services or supports for individuals with limited English proficiency;

d. The individual's pregnancy and parenting status;

e. The individual's behavioral health history, including trauma history and previous therapeutic interventions and hospitalizations with a focus on what was beneficial and what was not beneficial in past treatments;

f. The individual's relevant medical history and major health conditions that impact the individual's current psychological status;

g. A medication list including prescriptions, over-the counter medications, herbal remedies, dietary supplements, and other treatments or medications of the individual. A certified clinic's medication list must include treatments or medications identified in a prescription

drug monitoring program that may affect the individual's clinical presentation and pharmacotherapy, as well as information on allergies including medication allergies;

h. An examination of the individual which includes current mental status, mental health, and substance use disorders;

i. Basic cognitive screening of the individual for cognitive impairment;

j. Assessment of imminent risk to the individual, including suicide risk, withdrawal and overdose risk, danger to self or others, urgent or critical medical conditions, and other immediate risks, including threats from another person;

k. The strengths, goals, preferences, and other factors to be considered in treatment and recovery planning of the individual;

l. Assessment of the need for other services required by this chapter;

m. Assessment of any relevant social or human service needs of the individual, with necessary referrals made to social or human services. For children receiving services, assessment of criminal and juvenile justice and child welfare system involvement and referral to child welfare agencies as appropriate;

n. An assessment of need for a physical examination or further evaluation by appropriate health care professionals, including the primary care provider, with appropriate referral and followup, of the individual; and

o. The preferences of the individual regarding the use of technologies such as telehealth, telemedicine, videoconferencing, remote patient monitoring, asynchronous interventions, or other technologies.

5. A certified clinic shall include data and quality metrics in screening, assessment, and evaluations as identified in sections 75-03-44-37 and 75-03-44-38, and as clinically indicated.

6. The certified clinic shall use standardized, validated, and developmentally appropriate screening and assessment tools appropriate for the individual and, if warranted, brief motivational interviewing techniques to facilitate engagement. If the certified clinic's screening identifies unsafe substance use, including problematic alcohol or other substance use, the certified clinic shall conduct a brief intervention and shall provide a full assessment and treatment for the individual, if appropriate within the level of care of the certified clinic. If the full assessment and treatment for the individual is not appropriate within the level of care provided by the certified clinic, the certified clinic shall refer the individual to a more appropriate level of care. If the certified clinic's screening identifies more immediate threats to the safety of the individual, the certified clinic shall take appropriate action as described in subsection 1 of section 75-03-44-17.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-29. Person-centered and family-centered treatment planning.

1. The certified clinic directly shall provide person-centered and family-centered treatment planning, including risk assessment and crisis planning.

2. The certified clinic shall develop an individualized treatment plan based on information obtained through the comprehensive evaluation and the individual's goals and preferences. The individualized treatment plan must:

a. Address the individual's prevention, medical, and behavioral health needs;

b. Be comprehensive, addressing all services required, including recovery supports, with provision for monitoring of progress toward goals;

c. Be developed in collaboration with and be endorsed by the adult individual and legal representative, if applicable, and the adult individual's family or other supports to the extent the adult individual so wishes or if the individual is a child, the family or legal representative if permitted by federal laws and regulations;

d. Be coordinated with staff or programs necessary to carry out the plan;

e. Support care in the least restrictive setting possible; and

f. Include needs, strengths, abilities, preferences, and goals, expressed in a manner capturing the words or ideas of the adult individual and legal representative, if applicable, and the adult individual's family or other supports or if the individual is a child, the family or legal representative.

3. The certified clinic shall use the initial evaluation, comprehensive evaluation, and ongoing screening and assessment of the individual to inform the treatment plan and services provided.

4. The certified clinic's treatment planning must include needs, strengths, abilities, preferences, and goals, expressed in a manner capturing the words or ideas of the individual and legal representative, if applicable, and the adult individual's family or other supports or if the individual is a child, the family or legal representative.

5. The certified clinic's treatment plan must be built upon a shared decisionmaking approach and must be comprehensive, addressing all services required, including recovery supports, with provision for monitoring of progress toward goals.

6. The certified clinic shall, where appropriate, seek consultation during treatment planning.

7. The certified clinic shall document any health care directives related to treatment and crisis planning in the individual's health record. If the individual does not wish to share the individual's preferences with the certified clinic, the certified clinic shall document the individual's decision in the individual's health record.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-30. Outpatient behavioral health services.

1. The certified clinic directly, or through a designated collaborating organization, shall provide outpatient behavioral health care.

2. The certified clinic directly, or through a designated collaborating organization, shall provide evidence-based services using best practices for treating mental health and substance use disorders across the lifespan of an individual utilizing tailored approaches.

3. The certified clinic shall provide the following outpatient services:

a. Mental health counseling for individuals and their families;

b. Psychopharmacological treatment, psychiatric evaluation, and medication management for individuals;

c. Psychological and psychometric evaluations;

d. Substance use disorder treatment at an intensive outpatient level of care and less intensive levels of care as described by article 75-03 for adults;

e. Substance use disorder treatment at an outpatient level of care as described by article 75-03 for adolescents; and

f. Treatment of tobacco use disorders.

4. If specialized or more intensive services outside the expertise of the certified clinic or designated collaborating organization are required for purposes of outpatient mental and substance use disorder treatment, the certified clinic shall make those services available through referral or other formal arrangement with other providers or, where necessary and appropriate, through use of telehealth, telemedicine, videoconferencing, remote patient monitoring, asynchronous interventions, or other technologies, in alignment with federal and state laws and regulations.

5. The certified clinic shall provide, or make available through a formal arrangement, traditional practices and treatment as appropriate for the individuals served in the certified clinic area. If specialist service providers are not available to provide direct care to a particular individual, or specialist care is not practically available, the certified clinic staff may consult with specialized services providers for highly specialized treatment needs.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-31. Evidence-based services.

1. The certified clinic shall provide the following evidence-based practices:

a. Motivational interviewing;

b. Cognitive behavioral therapy;

c. Trauma-focused cognitive behavioral therapy;

d. Long-acting injectable medications and other effective but underutilized medications to treat both mental and substance use disorders; and

e. Food and drug administration-approved medications for mental and substance use disorders including opioid use disorder and nicotine replacement therapies.

2. A certified clinic shall provide, directly or through a designated collaborating organization or formal partner, evidence-based services appropriate for the phase of life and development of the individual, specifically considering what is appropriate for children of various ages and older adults, as distinct groups for whom life stage and functioning may affect treatment. The certified clinic's treatments must be delivered by staff with specific training in treating the segment of the population being served, as follows:

a. If treating children, the certified clinics shall provide evidence-based services that are developmentally appropriate, child guided, and family driven.

b. If treating older adults, the certified clinic shall consider the desires and functioning of the individual and provide the appropriate evidence-based treatments.

c. If treating individuals with developmental, brain injury, or other cognitive disabilities, the certified clinic shall consider the level of functioning and provide the appropriate evidence-based treatments.

3. Supports for children must comprehensively address family, legal representative, school, medical, mental health, substance use, psychosocial, and environmental issues.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-32. Outpatient clinic primary care screening and monitoring.

1. The certified clinic is responsible for outpatient primary care screening and monitoring of key health indicators and health risk. Whether directly provided by the certified clinic or through a designated collaborating organization, the certified clinic shall ensure these services are received.

2. The medical director shall establish protocols that give consideration to screening recommendations with scores of A and B, in accordance with United States preventive services task force recommendations for HIV and viral hepatitis.

3. The medical director shall identify and establish parameters for primary care referrals in accordance with sections 75-03-44-37 and 75-03-44-38.

4. The medical director shall develop organizational protocols to ensure screening is conducted for individuals who are at risk for common physical health conditions experienced by populations across the lifespan. Protocols must include:

a. Identifying individuals with chronic diseases;

b. Ensuring individuals are asked about physical health symptoms; and

c. Establishing systems for collection and analysis of laboratory samples.

5. The certified clinic shall have the ability to collect biologic samples directly, through a designated collaborating organization, or through protocols with an independent clinical laboratory organization. A certified clinic may conduct laboratory analyses directly, through a designated collaborating organization, or through another arrangement with an organization separate from the certified clinic.

6. If the individual's primary care provider conducts the necessary screening and monitoring, the certified clinic is not required to do so if it has a record of the screening and monitoring and the results of any tests that address the health conditions included in the certified clinics screening and monitoring protocols developed under section 75-03.1-44-32.

7. The certified clinic shall provide ongoing primary care monitoring of health conditions as clinically indicated for the individual. Monitoring of health conditions includes the following:

a. Ensuring individuals have access to primary care services;

b. Ensuring ongoing periodic laboratory testing and physical measurement of health status indicators and changes in the status of chronic health conditions;

c. Coordinating care with primary care and specialty health providers, including tracking attendance at needed physical health care appointments; and

d. Promoting a healthy behavior lifestyle.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-33. Targeted case management services.

1. The certified clinic is responsible for providing directly, or through a designated collaborating organization, targeted case management services that must assist individuals in sustaining recovery and gaining access to needed medical, social, legal, educational, housing, vocational, and other services and supports.

2. Certified clinic's targeted case management must provide an intensive level of support that goes beyond the care coordination that is a basic expectation for all individuals. The targeted case management must:

   a. Include supports for individuals deemed at high risk of suicide or overdose, particularly during times of transition such as from a residential treatment, hospital emergency department, or behavioral health hospitalization;

   b. Be used and accessible during other critical periods, such as episodes of homelessness or transitions to the community from jails or prisons; and

   c. Be used for individuals with complex or serious mental health, including those at risk for out-of-home placement or substance use conditions, and for individuals who have a short-term need for support in a critical period, such as an acute episode or care transition.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-34. Psychiatric rehabilitation services.

1. The certified clinic is responsible for providing directly, or through a designated collaborating organization, evidence-based psychiatric rehabilitation services for behavioral health disorders.

2. Psychiatric rehabilitative services must include services and supports that:

   a. Help individuals develop skills and functioning to facilitate community living;

   b. Support positive social, emotional, and educational development;

   c. Facilitate inclusion and integration; and

   d. Support pursuit of their goals in the community.

3. Psychiatric rehabilitation services must support individuals to:

   a. Participate in supported education and other educational services;

   b. Achieve social inclusion and community connectedness;

   c. Participate in medication education, self-management, and individual and family or legal representative psychoeducation; and

   d. Find and maintain safe and stable housing.

4. Psychiatric rehabilitation services must include supported employment programs designed to provide individuals with ongoing support to obtain and maintain competitive, integrated employment.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-35. Peer supports, peer counseling, and family and caregiver supports.

1. The certified clinic is responsible for providing directly, or through a designated collaborating organization, peer supports, including peer support specialist and parent and caregiver peer supports.

2. The certified clinic shall provide peer support and parent and caregiver peer support services by professionals certified in North Dakota in accordance with chapter 75-03-43.

3. The certified clinic's peer services must include:

   a. Peer-run wellness and recovery centers; and

   b. Peer recovery services.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-36. Intensive, community-based mental health care for members of the armed forces and veterans.

1. The certified clinic is responsible for providing directly, or through a designated collaborating organization, intensive and community-based behavioral health care for certain members of the United States armed forces and veterans, particularly armed forces members located fifty miles or more from a military treatment facility and veterans living forty miles or more from a veterans administration hospital, or as otherwise required by federal laws and regulations.

2. The certified clinic shall ask all individuals seeking services whether they have ever served in the United States military.

3. The certified clinic shall offer assistance to individuals affirming current military service in the following manner:

   a. Active duty service members shall use their servicing military treatment facility. The certified clinic and its designated collaborating organization shall contact the active duty service member's military treatment facility's primary care managers regarding referrals outside the military treatment facility;

   b. An active duty service member and activated reserve component members who reside more than fifty miles from a veterans administration hospital or military clinic enrolled in TRICARE prime remote shall use the network primary care manager or select any other TRICARE authorized provider as the primary care manager. The primary care manager shall refer an active duty service member or activated reserve component member to specialists for care the primary care manager cannot provide and the primary care manager shall work with the regional managed care support contractor for referrals and authorizations; and

c. Members of the selected reserves, not on active duty orders, are eligible for TRICARE reserve select. The certified clinic and its designated collaborating organization shall direct members of the select reserves, not on active duty orders, to schedule an appointment with any TRICARE authorized provider, network or non-network.

4. The certified clinic and its designated collaborating organization shall offer assistance to individuals affirming former military service to enroll in veterans health administration services for the delivery of health and behavioral health services. Veterans who decline or are ineligible for veterans health administration services must be served by the certified clinic or its designated collaborating organization, consistent with minimum clinical mental health requirements promulgated by the veterans health administration directive 1160.01, Uniform Mental Health Services in VHA Medical Points of Service, dated April 27, 2023.

5. The certified clinic and its designated collaborating organization shall ensure there is integration or coordination between care for substance use disorders and other mental health conditions for veterans who experience both and integration or coordination between care for behavioral health conditions and other components of health care for all veterans.

6. The certified clinic shall assign a principal behavioral health provider to every veteran seen for behavioral health services. If a veteran is seeing more than one behavioral health provider and is involved in more than one program, the certified clinic shall make clear the identity of the principal behavioral health provider to the veteran and identify the principal behavioral health provider in the veteran's health record. The certified clinic shall identify the principal behavioral health provider on a tracking database for veterans who need case management. The principal behavioral health provider shall:

a. Maintain regular contact with the veteran as clinically indicated if ongoing care is required;

b. Review and reconcile each veteran's psychiatric medication on a regular basis with a psychiatrist or other independent prescriber as permitted by the requirements of veterans health administration directive 1160.01, Uniform Mental Health Services in VHA Medical Points of Service, dated April 27, 2023;

c. Coordinate and develop the veteran's treatment plan. The veteran's treatment plan must incorporate input from the veteran and legal representative, if applicable, and when appropriate, the veteran's family with the veteran's and legal representative's, if applicable, consent;

d. Document and monitor the implementation of the treatment plan, including tracking progress in the care delivered, the outcomes achieved, and the goals attained;

e. Revise the treatment plan when necessary;

f. With the veteran and legal representative, if applicable, and the veteran's family with the veteran's and legal representative's, if applicable, consent communicate about the treatment plan and address any of the veteran’s problems or concerns about their care. For veterans who are at high risk of losing decisionmaking capacity, such as those with a diagnosis of schizophrenia or schizoaffective disorder, communications must include discussions regarding future behavioral health care treatment; and

g. Ensure the treatment plan reflects the veteran's goals and preferences for care and that the veteran verbally consents to the treatment plan in accordance with veterans health administration directive 1004.01(3), Informed Consent for Clinical Treatments and Procedures, dated December 12, 2023.

7. If the principal behavioral health provider suspects the veteran lacks the capacity to make a decision about the mental health treatment plan, the principal behavioral health provider shall ensure the veteran's decisionmaking capacity is formally assessed and documented. For veterans who are determined to lack capacity, the principal behavioral health provider shall identify the authorized surrogate and document the authorized surrogate's verbal consent to the treatment plan. The use of supported decisionmaking may also be considered.

8. To satisfy the federal requirements that care for veterans adheres to requirements promulgated by the veteran health administration, the certified clinic, and its designated collaborating organization shall provide behavioral health services that are recovery-oriented.

9. The certified clinic, and its designated collaborating organization shall provide culturally responsive behavioral health care. Any staff of the certified clinic staff and its designated collaborating organization who are not a veteran shall undergo training about military and veterans' culture to be able to understand the experiences and contributions of those who have served their country.

10. The certified clinic shall ensure there is a behavioral health treatment plan for all veterans receiving behavioral health services. The treatment plan must:

    a. Include the veteran's diagnosis and document consideration of each type of evidence-based intervention for each diagnosis;

    b. Include approaches to monitoring the therapeutic benefits and adverse effects of care, milestones for reevaluation of interventions, and the plan itself;

    c. Include, as appropriate, the interventions intended to reduce and manage symptoms, improve functioning, and prevent relapses or recurrences of episodes of illness;

    d. Be recovery oriented, attentive to the veteran's values and preferences, and evidence based regarding what constitutes effective and safe treatments; and

    e. Be developed with input from the veteran and legal representative, if applicable, and the veteran's family with the veteran's and legal representative's, if applicable, consent. The veteran's verbal consent to the treatment plan is required in accordance with veterans health administration directive 1004.01(3), Informed Consent for Clinical Treatments and Procedures, dated December 12, 2023.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-37. Data collection, reporting, and tracking.

1. The certified clinic shall collect, report, and track encounter, outcome, and quality data, including data regarding:

    a. Characteristics of individuals;

    b. Staffing;

    c. Access to services;

    d. Use of services;

    e. Screening, prevention, and treatment;

    f. Care coordination;

g. Other processes of care;

h. Costs; and

i. Outcomes of individuals.

2. If feasible, the certified clinic shall capture the information about individuals and care delivery electronically using widely available standards.

3. The certified clinic shall collect and report annually the required clinic-collected quality measures in the form and manner prescribed by the department.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-38. Continuous quality improvement plan.

1. In order to maintain a continuous focus on quality improvement, the certified clinic shall develop, implement, and maintain an effective, certified clinicwide continuous quality improvement plan for the services provided. The continuous quality improvement plan must focus on indicators related to improved behavioral and physical health outcomes and take action to demonstrate improvement in certified clinic performance.

2. The certified clinic shall establish a critical review process to review continuous quality improvement outcomes and implement changes to staffing, services, and availability that must improve the quality and timeliness of services.

3. The certified clinic shall involve the medical director in the aspects of the continuous quality improvement plan which apply to the quality of the medical components of care, including coordination and integration with primary care.

4. The certified clinic's continuous quality improvement plan must address how the certified clinic shall review known significant events including, at a minimum:

a. Deaths by suicide or suicide attempts of individuals;

b. Fatal and nonfatal overdoses;

c. All-cause mortality among individuals;

d. Thirty-day hospital readmissions for behavioral health reasons; and

e. Such other events the state or applicable accreditation bodies may deem appropriate for examination and remediation as part of a continuous quality improvement plan.

5. The continuous quality improvement plan must be data driven and the certified clinic shall use quantitative and qualitative data in its continuous quality improvement activities. The certified clinic's continuous quality improvement plan must be in the form and manner prescribed by the department.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-39. General requirements of organizational authority and finances.

1. If the certified clinic is not operated under the authority of the Indian health service, an Indian tribe, or tribal or urban Indian organization, the certified clinic shall reach out to such entities within the certified clinic's service area and offer to enter into arrangements with those entities to assist in the provision of services to tribal members and to inform the provision of services to tribal members. If the certified clinic and such entities jointly provide services, the certified clinic and those entities shall satisfy the requirements of this subsection. At a minimum, the certified clinic shall develop written protocols for supporting coordinated care undertaken by the certified clinic and efforts to deepen the partnership over time so jointly developed protocols or formal agreements can be developed.

2. The certified clinic shall have an independent financial audit performed annually for the duration the certified clinic is designated as a certified clinic in accordance with federal audit requirements and, if indicated, shall submit a corrective action plan addressing all findings, questioned costs, reportable conditions, and material weaknesses cited in the audit report.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-40. Governance.

1. Governance of the certified clinic must be informed by representatives of the individuals being served by the certified clinic in terms of demographic factors such as geographic area, sex, disability, and age, and in terms of health and behavioral health needs. Members of the governing or advisory boards must be selected for their expertise in health services, community affairs, local government, finance and accounting, legal affairs, trade unions, faith communities, commercial and industrial concerns, or social service agencies within the communities served or in accordance with North Dakota Century Code section 50-06-05.3.

2. The certified clinic shall incorporate meaningful participation from individuals of various ages with lived experience of mental or substance use disorders, their legal representatives, and their families. Meaningful participation means involving a substantial number of individuals with lived experience, their legal representatives, and their family members in developing initiatives, identifying community needs, goals, and objectives, and providing input on service development and continuous quality improvement processes.

3. The certified clinic shall reflect meaningful participation by meeting one of the two following requirements:

   a. At least fifty-one percent of the governing board must be comprised of individuals with lived experience of mental or substance use disorders, their legal representatives, and their families; or

   b. Other means must be established to demonstrate meaningful participation in board governance involving individuals with lived experience, their legal representatives, and their families as an alternative arrangement. Individuals with lived experience of mental or substance use disorders, their legal representatives, and their family members must have representation in governance assures input into identifying community needs and goals and objectives of the certified community behavioral health clinic service development, quality improvement, and the activities of the certified clinic. The governing board shall establish protocols for incorporating input from individuals with lived experience, their legal representatives, and their family members, including:

(1) Board meeting summaries must be shared with participants in the alternate arrangement and recommendations from the alternate arrangement must be entered into the formal board record.

(2) A member or members of this established alternate arrangement must be invited to board meetings.

(3) Representatives of the alternate arrangement must have the opportunity to regularly address the board directly, directly share recommendations with the board, and have their comments and recommendations recorded in the board minutes.

(4) The certified clinic shall provide staff support for posting an annual summary of the recommendations from this alternate arrangement on the certified clinic's website.

(5) The certified clinic shall provide staff support to the individuals involved in any alternate approach in a manner that is equivalent to the support given to the governing board.

4. If the certified clinic is comprised of a governmental or tribal organization, subsidiary, or part of a larger corporate organization that cannot meet these requirements for board membership, the certified clinic shall specify the reasons why it cannot meet these requirements. The certified clinic shall maintain or develop an advisory structure and describe other methods for individuals with lived experience, their legal representatives, and their families to provide meaningful participation.

5. No more than fifty percent of the governing board members in this subsection may derive more than ten percent of their annual income from the health care industry.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-41. Accreditation.

1. The certified clinic shall maintain enrollment as a Medicaid provider and adhere to applicable state certification, licensing, and national accreditation requirements.

2. The certified clinic is required to participate in the North Dakota mental health directory and the substance abuse and mental health services administration's behavioral health treatment locator.

History: Effective April 1, 2026.
General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

75-03-44-42. Designated collaborating organization agreement.

1. The formal relationship between a certified clinic and a designated collaborating organization must create a platform for seamlessly integrated services delivered across providers under the umbrella of a certified clinic.

2. A designated collaborating organization agreement must include provisions that assure that the required certified clinic services that a designated collaborating organization provides under the certified clinic umbrella are delivered in a manner that meets the standards of this chapter.

History: Effective April 1, 2026.

General Authority: NDCC 50-06-05.2, 50-06-41.4
Law Implemented: NDCC 50-06-05.2, 50-06-41.4

TITLE 85

UNIVERSITY AND SCHOOL LANDS, BOARD OF

APRIL 2026

CHAPTER 85-01-01

85-01-01-01. Definitions.

The following definitions, in addition to the definitions in North Dakota Century Code chapters 15-05, 15-06, 15-07, 15-08, 15-08.1, 38-09, 47-06, 47-30.2, and 57-62, apply to this title:

1. "Acquired lands" includes all property defined as "nongrant" and "other than original grant lands" in North Dakota Century Code section 15-07-01.

2. "Arm's length transaction" means a transaction between parties with adverse economic interests in which each party to the transaction is in a position to distinguish its economic interest from that of the other party and does not mean a transaction made by a corporation or other entity with itself, or a parent, subsidiary, or interrelated corporation or entity, or between partners or co-joint venturers, or between corporations or other entities having interlocking directorships or close business relationships that may compromise their individual interests.

3. "Agricultural use" includes the use of trust lands for the purpose of grazing, cropping, and haying.

4. "Board" means the board of university and school lands.

5. "Bonus" means the monetary consideration paid by a lessee for the execution of a lease by the board.

6. "Certified appraiser" means a certified general appraiser or a certified residential appraiser who holds a valid permit issued by the North Dakota real estate appraiser qualifications and ethics board.

7. "Coal" means a dark-colored compact and earthy organic rock with less than forty percent inorganic components, based on dry material, formed by the accumulation and decomposition of plant material. The term includes consolidated lignitic coal, in both oxidized and nonoxidized forms, and leonardite, having less than eight thousand three hundred British thermal units per pound [453.59 grams], moist and mineral matter free, whether or not the material is enriched in radioactive materials.

8. "Coal lease" means a contract entered between the board and a third party for a coal mining operation on trust lands.

9. "Coal leased premises" means the land subject to a given coal lease.

10. "Coal mining operation" means any type of activity conducted to discover, or prospect for, the presence of coal, or to remove the coal so discovered from its original position on or in the land by any means whatsoever.

11. "Commercial quantities" means whether:

    a. The well yields a profit exceeding operating costs over a reasonable period of time; and

    b. A reasonably prudent operator would continue operating a well in the manner being operated under the facts and circumstances.

12. "Commissioner" means the commissioner of university and school lands.

13. "Construction aggregate" means gravel, sand, scoria, road material, building stone, colloidal or other clays, and cement materials.

14. "Construction aggregate lease" means a contract entered between the board and a third party for mining of construction aggregate on trust lands.

15. "Construction aggregate leased premises" means the land area subject to a given construction aggregate lease.

16. "Construction aggregate mining operation" means any type of activity conducted to discover, or prospect for, the presence of construction aggregate, or to remove the construction aggregate so discovered from its original position on or in the land by any means whatsoever.

17. "Custodial agreement" means an agreement between the lessee and a third party in which the lessee agrees to take custody of livestock not owned by the lessee for a specified period of time and to provide day-to-day care for the livestock.

18. "Delay rental" means the annual minimum payment given to maintain a lease in the absence of production in commercial quantities during the primary term.

19. "Department" means the office of the commissioner and the department of trust lands.

20. "Disturbed" means any alteration of the surface or subsurface of any lands subject to a lease or encumbrance with the board.

21. "Encumbrance" means a right other than an ownership interest in real property. The term includes easements, permits, surface damage agreements and any other restrictions, encroachments, licenses, mortgages, and liens that relate to trust lands, and specifically excludes leases which are administered separately.

22. "Fair market value" means the price set by the commissioner after an analysis of prices paid for similar products or services in the local area under article 85-04.

23. "F.O.B." means free on board.

24. "Gas" means all natural gas and all other gaseous or fluid hydrocarbons not defined as oil, but does not include coal, lignite, oil shale, or similar hydrocarbons.

25. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the North Dakota industrial commission, other than from coalbed methane.

26. "Gross proceeds" means the sum of all consideration in whatever form or forms, paid for the gas attributable to the lease.

27. "Invasive species" means a species that is nonnative to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

28. "Market value" means the price a willing buyer would pay a willing seller in an arm's length transaction in which the buyer is not compelled to buy or the seller is not compelled to sell.

29. "Net construction aggregate interest" means the undivided portions of the total construction aggregate estate on a given tract of land.

30. "Nonpermanent improvement" means agricultural structures that can be readily removed from the land, including fences, creep feeders, and stock tanks.

~~30~~31. "Offset drainage" means the drainage of oil or gas to an adjoining tract of land on which a well is being drilled or is already in production.

~~31~~32. "Offset well" means any well drilled opposite another well on adjoining property with the specific purpose of preventing drainage to the adjoining property.

~~32~~33. "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity produced in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.

~~33~~34. "Oil and gas lease" means a contract entered between the board and a third party for oil and gas production.

~~34~~35. "Oil and gas leased premises" means the land subject to a given oil and gas lease.

~~35~~36. "Oil well" means a well capable of producing oil and which is not a gas well as defined herein.

~~36~~37. "Original grant lands" means all those lands granted to the state of North Dakota by virtue of the Enabling Act of 1889, as further defined in North Dakota Century Code section 15-06-01.

~~37~~38. "Payor" means either the lessee or an entity other than the lessee who assumes, or agrees to perform, any of the lessee's rights and responsibilities under a lease.

39. "Permanent improvement" means agricultural structures that are permanently affixed to the land, including well casting, dams, and dugouts.

~~38~~40. "Pest" means any insect, rodent, nematode, fungus, weed, any form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms, except viruses, bacteria, or other micro-organisms, whose presence causes or is likely to cause economic or environmental harm or harm to human health.

~~39~~41. "Surface land lease" means a contract entered between the board and a third party for agricultural use on trust lands.

~~40~~42. "Surface land leased premises" means the land area subject to a given surface land lease.

~~41~~43. "Terminate," unless otherwise provided, has the same meaning as the word "cancel."

~~42~~44. "Trust lands" means any property owned by the state of North Dakota and managed by the board.

~~43~~45. "Trusts" means permanent trusts and other funds managed or controlled by the board.

~~44~~46. "Vertical oil and gas well" means a well, the wellbore of which is drilled on a vertical or directional plane into a non-shale formation and is not turned or curved horizontally to allow the wellbore additional access to the oil and gas reserves in the formation.

~~45~~47. "When run" means that point in the time when the production from a well is removed or sold from the leased premises and delivered to the purchaser or user of such production; for purposes of computing royalties, that point in time must be considered to be 7:00 a.m., on the day the production is delivered, using central standard time, to the purchaser or user regardless of the actual time delivered.

History: Effective January 1, 2019; amended effective January 1, 2020; January 1, 2021; April 1, 2022; April 1, 2024; April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-05, 15-05-09, 15-05-18, 15-07-02, 15-07-20, 15-08.1-06, 43-30.2-03, 61-33-06
Law Implemented: NDCC 4.1-47-04, 15-01-02, 15-04, 15-05, 15-07, 15-08, 15-08.1

CHAPTER 85-03-03

85-03-03-02. Required documentation.

A claimant shall provide adequate documentation to establish ownership of the abandoned property, including photo identification and documentation of social security number.

1. The following additional documentation is required ~~when~~if a claim is submitted on behalf of:

   a. Deceased individuals: Copy of death certificate and documentation providing legal claim authority.

   b. Business claims: Federal employer identification number and documentation providing legal claim authority.

   c. Incapacitated individuals: Copy of documentation providing legal claim authority.

   d. Minors: Documentation sufficient to establish legal authority to act on the owner's behalf, if the owner is under the age of eighteen.

2. If there are multiple owners, all reported owners or the legal representative shall submit a claim form.

3. The administrator may request additional documentation necessary to support a claim.

4. If a claimant chooses to donate the property to the common schools trust fund, required documentation remains the same.

History: Effective January 1, 2019; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 47-30.2-03
Law Implemented: NDCC 47-30.2-50, 47-30.2-51, 47-30.2-52

CHAPTER 85-04-01
LEASING TRUST LANDS FOR AGRICULTURAL USE

Section
85-04-01-01 Failure to Pay or ~~Nonsufficient~~Insufficient Funds at Auction
85-04-01-02 Annual Surface Land Lease Rental Payment
85-04-01-03 Assignment and Use by a Third Party
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85-04-01-07 Right of Entry
85-04-01-08 Surface Land Lease Termination
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85-04-01-10 Weed and Pest Cost-Share on Surface Land Leased Premises
85-04-01-11 Weed and Pest Cost-Share Application
85-04-01-12 Weed and Pest Cost-Share on Cropland
85-04-01-13 Weed and Pest Cost-Share Payments
85-04-01-14 Biological Control Agents
85-04-01-15 Record Maintenance

85-04-01-01. Failure to pay or ~~nonsufficient~~insufficient funds at auction.

1. The commissioner may not issue a surface land lease for agricultural use until payment in full is received by the department.

2. A successful bidder who fails to pay for a surface land lease ~~is~~may be deemed ineligible to bid at subsequent surface land lease auctions administered by the board for the remainder of the current calendar year ~~plus~~and a minimum of three additional calendar years after the current calendar year.

3. If a surface land lease payment made at auction ~~is,~~fails to clear for any reason, ~~not paid by the bank on which it is drawn,~~ the commissioner shall notify the bidder by mail addressed to the bidder's ~~post office~~ address on file with the department that payment by cashier's check or money order is required within ten business days from the date the letter is mailed.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-07-20, 28-32-02
Law Implemented: NDCC 15-07-20, 54-30-17.1

85-04-01-02. Annual surface land lease rental payment.

1. The annual surface land lease rental payment for the second and each succeeding ~~years~~year of a surface land lease must be received by the department ~~no later than five p.m. central standard time~~by the close of business on the last business day of January of the surface land lease year. If payment is not received, the surface land lease automatically terminates without notice.

2. If the annual surface land lease rental payment, for any reason, ~~is not paid by the bank on which it is drawn~~fails to clear after ~~five p.m. central standard time~~the close of business on the last business day of January of the surface land lease year in which it is due, the surface land lease automatically terminates and the commissioner may designate the lessee ineligible to bid at subsequent surface land lease auctions for the remainder of the current calendar year ~~plus~~and a minimum of three ~~additional~~full calendar years after the current calendar year.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-07-20, 28-32-02

Law Implemented: NDCC 15-04-01, 15-07-20, 54-30-17.1

85-04-01-03. Assignment and use by a third party.

1. A surface land lease or any part ~~thereof~~of the lease may not be assigned~~, nor may the~~. The lessee may not allow the surface land leased premises or any part ~~thereof~~of the premises to be used in any manner by anyone other than the lessee without the written consent of the commissioner. A grazing permit issued by a grazing association to a member-permittee is authorized.

2. A lessee may request an assignment of a surface land lease from the department. The commissioner shall approve or deny an assignment based on the best interests of the trusts. The following assignments may be approved:

   a. An assignment without restriction to a close relative including the spouse, father, mother, son, daughter, brother, or sister for the same terms and conditions as the original surface land lease.

   b. ~~An assignment of less than the full surface land lease term to a third party if the lessee is temporarily out of the livestock business or unable to properly stock the surface land leased premises. Being temporarily out of the livestock business means no longer owning or leasing the livestock and personally providing for their day-to-day care, with the intent to return to the livestock business within two years or less. The assignment must be for two years or less. The rent payable by the assignee must be at a rate consistent with the current year's fair market value minimum rent or the current surface land lease price, whichever is greater.~~

   ~~c.~~ An assignment to a third party with the surface land lease expiring at the end of the current surface land lease year. The rent payable by the assignee must be at a rate consistent with the current year's fair market value minimum rent or the current surface land lease price, whichever is greater.

3. A lessee may request to add one or more additional lessees to a surface land lease. All such additional lessees must be bound by the full terms and conditions of the surface land lease.

4. A lessee may request to remove one or more lessees from a surface land lease. The removal of any lessee must be approved in writing by all current lessees named on the lease.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02,15-07-20, 28-32-02
Law Implemented: NDCC 15-04-01, 15-07-20, 54-30-17.1

85-04-01-08. Surface land lease termination.

1. Failure to comply with the surface land lease terms, board rules ~~and~~, board policies, ~~and~~or applicable laws, except as otherwise stated in this chapter, may result in surface land lease termination by the commissioner. ~~Before a surface land lease is terminated, the department personally shall serve the lessee with the notice of intent to terminate the surface land lease specifying the reason for termination.~~

2. ~~A lessee may file with the department a written request for waiver of the notice of intent to terminate the surface land lease, which must include a statement of the specific grounds for the request. A request must be filed with the department within ten business days after service on the lessee of the notice of intent to terminate the surface land lease. A request for a waiver is deemed filed when personally delivered to or when received by the department.~~ The commissioner may ~~waive~~:

a. Waive any breach except those terms required under applicable laws~~, or the commissioner may allow~~;

b. Allow the lessee time to cure the breach; or

c. Terminate the surface land lease.

3. ~~Not less than ten business days after the notice of intent to terminate the surface land lease is served on the lessee, the commissioner may terminate the surface land lease. Surface land lease termination is effective upon actual delivery of a notice of termination by the department. The notice of termination of the surface land lease must be served personally, by mail requiring a signed receipt, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.~~ The procedure to terminate a surface land lease is as follows:

a. The department shall provide notice of intent to terminate the surface land lease with specific reasons for termination by certified mail to the lessee's last-known address on file with the department.

b. A lessee may file with the department a written request for review of the intent to terminate the surface land lease. The request for review must:

(1) Be received by the department within fifteen business days after service of notice to the lessee: and

(2) Include a statement for reason of review.

c. The commissioner may terminate a surface land lease no earlier than fifteen business days after the date of notice of intent to terminate the surface land lease.

d. A notice of termination of a surface land lease must be sent by certified mail requiring a signed receipt or by overnight courier or delivery service requiring a signed receipt.

e. Termination of a construction aggregate lease is effective upon the date of notice of termination.

4. Termination of the surface land lease does not release the lessee from liability for any ~~sum due~~amounts or damages owed to the board~~ or from any damages due~~.

~~4.~~5. ~~When~~If a surface land lease is terminated, the commissioner may deem the the former lessee is ineligible to bid at a surface land lease auction administered by the department for~~ a minimum of~~ the remainder of the current calendar year ~~plus~~and a minimum of three ~~additional~~full calendar years after the current calendar year.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-07-20, 28-32-02
Law Implemented: NDCC 15-04-01, 15-07-20, 15-07-21, 54-30-17.1

85-04-01-09. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall ~~recommend~~determine if board review is warranted.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-07-20, 28-32-02

Law Implemented: NDCC 15-04-01, 15-07-20, 54-30-17.1

85-04-01-10. ~~Cost-share~~Weed and pest cost-share on surface land leased premises.

The lessee is responsible for noxious weed and invasive species and pest control on the surface land leased premises. The department may participate in weed and pest cost-share reimbursement~~, as follows~~ for:

1. Payments for state-listed noxious weed control costs;
2. Payments for county-listed noxious weed control costs; or
3. Payments for other invasive species and pests as allowed by the department.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-04-24

85-04-01-11. ~~Cost-share~~Weed and pest cost-share application.

A lessee ~~shall~~may submit a request for weed and pest cost-share. The request must be submitted using the electronic cost-share application available on the department's website or a paper application provided upon request. A lessee shall provide all information specifically required by the application and any supplemental information requested by the department. The amount of the cost-share must be determined by the department consistent with the department's cost-share policy.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-04-24

85-04-01-12. ~~Cost-share~~Weed and pest cost-share on cropland.

Noxious weeds and invasive species on cropland are not eligible for cost-share.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-04-24

85-04-01-13. ~~Cost-share~~Weed and pest cost-share payments.

Cost-share payments may be made ~~upon receipt of an invoice~~ for allowable expenses related to weed and pest control.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-04-24

CHAPTER 85-04-02
CONSTRUCTION AGGREGATE

Section
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85-04-02-13 Records and Inspections
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85-04-02-16 Board Review
85-04-02-17 Surrender by Lessee
85-04-02-18 Conditions on Expiration, Termination, or Surrender
85-04-02-19 Surface Owner Consent
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85-04-02-21 Protection of Cultural Resources
85-04-02-22 Assignment of Construction Aggregate Lease
85-04-02-23 Reserved Rights

85-04-02-01. Application.

An applicant shall submit a request for a construction aggregate lease, amendment, assignment, or extension using the electronic application available on the department's website or a paper application provided upon request. ~~The application must clearly state whether the request is for a construction aggregate lease, amendment, assignment, or extension. An application submitted on any other form may not be accepted.~~

1. An application fee may be charged as determined by the board. ~~Each application and construction aggregate lease is limited to a maximum of one hundred sixty contiguous acres [64.75 contiguous hectares] of like net construction aggregate interest. An application must be made as follows:~~

~~1. Construction aggregate lease. An applicant shall provide all information required by the application and any supplemental information requested by the department. An application must designate the type of construction aggregate desired. An application is deemed filed and complete when the department receives an application, the application fee, and any supplemental information requested by the department.~~

2. ~~Amendment.~~ An application is deemed filed and complete if the department receives the application, the application fee if applicable, and any supplemental information requested by the department.

3. An application for a construction aggregate lease must:

   a. Designate the type of construction aggregate desired; and

b. Provide all information required by the application and any supplemental information requested by the department.

4. A lessee may submit a request for an amendment to a construction aggregate lease for a specific purpose. ~~If the request for an amendment is granted, the department shall mail the amendment to the applicant for signature.~~

~~3.~~5. ~~Assignment.~~ A construction aggregate lease may be assigned upon prior written consent of the commissioner. ~~Assignments must be granted by the commissioner through written notification to both the assignor and assignee. The commissioner may refuse to assign a construction aggregate lease for good cause. The assignor remains responsible for compliance of all construction aggregate lease terms and this chapter until the assignment is approved by the commissioner. Upon approval, the assignee is responsible for compliance with all construction aggregate lease terms and this chapter. If the request for an assignment is granted, the department shall mail the assignment to the applicant for signature.~~

~~4.~~6. a. ~~Extension.~~ A lessee may submit ~~a request~~an application for an extension of a construction aggregate lease for up to an additional five-year term to be granted at the discretion of the commissioner.

b. The department may adjust the royalty rate if an additional term is granted. ~~If the request for a construction aggregate lease extension is granted, the department shall mail the construction aggregate lease extension to the applicant for signature.~~

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18

85-04-02-02. Construction aggregate lease term.

1. A construction aggregate lease term may not exceed five years.

2. ~~When~~If the lessee is a state agency or a political subdivision~~,~~ and the:

a. Lease term is one year or less, the royalty rate must be a fixed ~~for a construction aggregate lease term of one year or less. For a construction aggregate lease~~amount based on fair market value;

b. Lease term is greater than one year, the royalty rate must be based on fair market value ~~with~~. The department may include an annual adjustment based on the current fair market value.

3. ~~When~~If the lessee is a private entity ~~requesting less than five thousand cubic yards [3822.77 cubic meters] of construction aggregate, the term of the construction aggregate lease must be for one year or less~~:

a. For leases with a term of one year or less:

(1) The royalty rate must be a fixed amount based on fair market value; and

(2) The lease must be for less than five thousand cubic yards [3822.77 cubic meters] of construction aggregate.

b. For leases with a term greater than one year:

(1) The lease shall be offered at public auction; and

(2) The royalty rate must be based on fair market value. The department may include an annual adjustment based on the current fair market value.

4. ~~A construction aggregate lease to any entity other than a state agency or a political subdivision for a term greater than one year must be offered at public auction.~~

~~5. When~~If construction aggregate is requested for an emergency, the term of the construction aggregate lease may not exceed one year.

5. A construction aggregate lease is limited to a maximum of one hundred sixty contiguous acres [64.75 contiguous hectares] of like net construction aggregate interest.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18

85-04-02-04. Notice of construction aggregate leasing.

Upon receipt of an application for a construction aggregate lease and a determination that the application covers a tract the commissioner is willing to lease, the department shall post on the department's website a notice of the application for construction aggregate lease, any supporting documentation, and instructions for submitting public comments. Comments must be received by the department no later than five p.m. central standard time fourteen days after posting the notice of the application for a construction aggregate lease to be considered. All comments must be in writing and contain the following:

1. Name and address of the interested person;

2. ~~Applicant's name and address;~~

~~3.~~ The legal description of the proposed construction aggregate leased premises as shown on the published notice; and

~~4.~~3. A detailed statement as to whether the interested person supports or opposes the issuance of the construction aggregate lease.

~~Those comments must be brought to the board along with the department's recommendations.~~

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18

85-04-02-05. Auctioned construction aggregate leases.

1. Notice of an auction must be published in the official newspaper of the county where the proposed construction aggregate leased premises is located and in the Bismarck Tribune.

2. The notice must be published once at least ten days prior to the day of the auction.

3. The notice must contain the legal description of the proposed construction aggregate leased premises, the construction aggregate lease term, and the time and place where the auction will be held. ~~Bidding must be on a royalty per yard basis. Immediately after the bidding session, comments as to whether a construction aggregate lease should be issued can be presented to the department.~~

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18

85-04-02-07. Advance royalties.

1. As consideration for a construction aggregate lease with a term greater than one year, the lessee shall pay on the date a construction aggregate lease is issued an advance on the yearly royalty, as determined by the commissioner, but not less than one thousand dollars.

~~a.~~2. The advance payment is due each year in which the construction aggregate lease is in force ~~and is due prior to the construction aggregate lease anniversary date~~.

~~b.~~3. The advance payment may be credited against construction aggregate mined during the term of the construction aggregate lease. Advance royalty payments for which a credit is not claimed must be forfeited.

~~c.~~4. The commissioner may adjust the advance royalty payment amount. ~~Any adjustment takes effect on the anniversary date of the construction aggregate lease following notice to lessee.~~

~~2.~~5. The commissioner may require an advance royalty deposit for a construction aggregate lease with a term of one year or less. The deposit must be credited against construction aggregate mined during the term of the construction aggregate lease.

~~3.~~6. If payment is not ~~timely~~ received timely, a notice of intent to terminate the construction aggregate lease must be issued by the department.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18

85-04-02-08. Royalties.

1. Royalties must be received by the department by five p.m. central ~~standard~~prevailing time on the last business day of the calendar ~~month~~year following sale, utilization, stockpiling, or removal from the construction aggregate leased premises of the construction aggregate mined.

2. ~~If payment is not timely received, a notice of intent to terminate the construction aggregate lease must be issued.~~ Royalties must be paid in full on any stockpiled construction aggregate remaining on the construction aggregate leased premises ninety days prior to the expiration of the construction aggregate lease.

3. The commissioner may terminate a construction aggregate lease if payment is not received in accordance with this section.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18

85-04-02-09. Testing.

The department may require a lessee to conduct drilling tests on the construction aggregate leased premises prior to mining. The commissioner may terminate a lease for failure to conduct test drilling if required or failure to furnish the required information. If testing is required~~, sufficient~~:

1. Sufficient test holes must be drilled to outline the boundaries, thickness, and depth of the construction aggregate deposit and estimate the quality, quantity, and type of construction aggregate located on the ~~construction aggregate~~ leased premises.

2. The lessee shall furnish the department a map of the ~~construction aggregate~~ leased premises showing the boundaries of the construction aggregate deposit and furnish the department a

written report estimating the thickness, depth, quality, quantity, and type of construction aggregate.

3. All test holes must be reclaimed to the satisfaction of the department at the conclusion of testing. ~~Failure to conduct test drilling when required or failure to furnish the required information must result in a notice of intent to terminate the construction aggregate lease being issued.~~

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18

85-04-02-10. Mining and reclamation plan.

1. Prior to issuance of a construction aggregate lease, the department, in consultation with the lessee, ~~will~~shall develop a mining and reclamation plan for the commissioner's approval. Mining must not begin on the construction aggregate leased premises unless the mining and reclamation plan is approved by the commissioner and a lease is issued.

2. The intent of the reclamation plan is to reclaim the construction aggregate leased premises to its previous potential use and productivity. ~~The reclamation plan may be modified by the commissioner and the lessee shall comply with any modifications to the plan. In the event the lessee does not comply with the modified reclamation plan, the construction aggregate lease may be terminated.~~

3. The commissioner may terminate the construction aggregate lease if the lessee fails to comply with the reclamation plan.

4. The reclamation plan must ~~indicate the location of~~include:

   a. Details describing the construction aggregate mining operation in relation to the construction aggregate deposit and a plan for ~~the~~ reclamation ~~once~~after the construction aggregate has been removed. ~~The reclamation plan must include the~~

   b. The leveling of the disturbed surface at the close of the construction aggregate mining operations to as close to its original contour as is reasonably possible taking into consideration the amount of construction aggregate removed~~,~~.

   c. Details for the preservation and respreading of topsoil, and the revegetation of the surface with appropriate flora.

~~4.~~5. Special reclamation plans for the propagation of wildlife habitat, the creation of a nature preserve, or other alternate land use may be required by the commissioner, provided the costs of such reclamation do not unreasonably increase the cost of reclamation.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18

85-04-02-11. Bond.

1. ~~Payment of all royalties and reclamation of any portion of the construction aggregate leased premises disturbed by the lessee is the responsibility of the lessee.~~ To assure payment of royalties and satisfactory reclamation, the lessee ~~must~~shall obtain and retain in force a surety bond, in an amount determined by the commissioner.

2. ~~The lessee, in lieu of a surety bond, may file another form of security subject to the commissioner's approval.~~Upon written request, the commissioner may waive the bonding requirement for a political subdivision or other state agency.

3. The commissioner shall set the initial surety bond amount at a minimum of five thousand dollars per acre for the initial mine area, with no initial surety bond amount being less than ten thousand dollars.

4. The commissioner may adjust the amount of the surety bond annually, with the adjustment based on the estimated cost to reclaim the remaining disturbed site and the amount of stockpiled construction aggregate. If the commissioner determines an additional surety bond or other security is required, the lessee shall submit the additional surety bond or other security within thirty days after request by the commissioner as required by this section.

5. In lieu of a surety bond, the lessee may file another form of security subject to the commissioner's approval.

6. The lessee may submit a written request for a full or partial release of the surety bond to the commissioner. At the commissioner's discretion, the surety bond may be released in whole or in part.

~~6.~~7. Upon the payment of all outstanding royalties and satisfactory completion of ~~the~~ reclamation, the commissioner shall release the surety bond. The lessee may forfeit the surety bond ~~may be forfeited~~ to pay outstanding royalties or to complete reclamation. The commissioner shall give final approval of the reclamation before the surety bond is released. ~~The forfeiture of the surety bond by the lessee does not release the lessee of the duty and responsibility to reclaim the construction aggregate leased premises.~~

~~7. Upon written request, the commissioner may waive the bonding requirement for a political subdivision or other state agency.~~

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18

85-04-02-14. Construction aggregate mining operations.

The lessee shall conduct construction aggregate mining operations in a good and ~~workmanlike~~professional manner and in accordance with the construction aggregate lease terms, board rules and policies, and applicable laws~~, and a construction aggregate lease may be terminated by the lessor for a failure to comply~~. The lessee shall take reasonable steps to prevent construction aggregate mining operations from unnecessarily causing or increasing soil erosion or drainage and damage to crops, pasture, or trees.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18

85-04-02-15. ~~Reserved rights and termination~~Termination of a construction aggregate lease.

1. Failure to comply with construction aggregate lease terms, board rules ~~and~~, board policies, ~~and~~or applicable laws may result in construction aggregate lease termination by the commissioner. ~~Before a construction aggregate lease is terminated, the department personally shall serve the lessee with the notice of intent to terminate construction aggregate lease specifying the reason for termination.~~The commissioner may:

   a. Waive any breach except those terms required under applicable law;

b. Allow the lessee time to cure the breach; or

c. Terminate the construction aggregate lease.

2. The procedure to terminate a construction aggregate lease is as follows:

a. The department shall provide notice of intent to terminate the construction aggregate lease with specific reasons for termination by certified mail to the lessee's last-known address on file with the department.

~~2.~~ b. The lessee may file with the department a written request for ~~waiver~~review of the ~~notice of~~ intent to terminate the construction aggregate lease~~, which must include a statement of the specific grounds for the request. A request must be filed with the department within ten business days after service on the lessee of the notice of intent to terminate the construction aggregate lease. A request for a written waiver is deemed filed when personally delivered to or when received by the department. The commissioner may waive any breach except a breach in violation of applicable laws, or the commissioner may allow the lessee time to cure the breach~~. The request for review must:

(1) Be received by the department within fifteen business days of the date of notice; and

(2) Include a statement of reason why review is warranted.

c. The commissioner may terminate a construction aggregate lease no earlier than fifteen business days after the date of notice of intent to terminate the construction aggregate lease.

d. A notice of termination of a construction aggregate lease must be sent by certified mail requiring a signed receipt, or by overnight courier or delivery service requiring a signed receipt.

e. Termination of a construction aggregate lease is effective upon the date of notice of termination.

3. Termination does not release the lessee from liability for royalty owed to the board, for damages resulting from a breach of a construction aggregate lease term, or to reclaim the construction aggregate leased premises.

~~3. The board reserves the right to use, rent, lease, sell, or encumber the construction aggregate leased premises and reserves all historical, archaeological, and paleontological materials on or beneath the surface of the construction aggregate leased premises. Leases for the production of coal, oil and gas, uranium, potash, or other valuable minerals have priority over any lease for the mining of construction aggregate.~~

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18

85-04-02-16. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall ~~recommend if~~determine whether board review is warranted.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18

85-04-02-17. Surrender by lessee.

The lessee may surrender a construction aggregate lease upon payment of all outstanding royalties and other debts owed the board. Surrender of a construction aggregate lease does not release the lessee from its responsibility to reclaim the construction aggregate leased premises in accordance with these rules and terms of the construction aggregate lease.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18

85-04-02-18. Conditions on expiration, termination, or surrender.

At the expiration, termination, or surrender of a construction aggregate lease and, upon the completion of reclamation, unless otherwise waived, the lessee shall remove its property from the construction aggregate leased premises within one hundred twenty days from the date of expiration, termination, surrender, or the date reclamation is completed. The lessee is liable to the board for the costs of removal of any property remaining on the construction aggregate leased premises after the deadline for removal. If the lessee does not remove all stockpiled construction aggregate from the construction aggregate leased premises by the construction aggregate lease expiration, termination, or surrender date, it is considered abandoned and becomes the property of the board unless otherwise approved in writing by the commissioner.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18

85-04-02-20. Surface lessee protection.

~~Where~~If the surface of the construction aggregate leased premises is managed or owned by the board and is leased to a person other than the construction aggregate lessee, the construction aggregate lessee shall restore all fences and other improvements that have been damaged, moved, or removed as a result of construction aggregate mining operations and shall further compensate the surface lessee for any damage to or loss of other improvements owned by the surface lessee.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18

85-04-02-21. Protection of cultural resources.

1. If any historical, archaeological, paleontological, or other cultural artifacts, vestiges, or remains are found prior to, during, or after any exploration, testing, production, mining, or reclamation operations on the construction aggregate leased premises, ~~the director of the state historical board and the commissioner must be notified immediately and~~the lessee shall:

   a. Immediately notify the commissioner and the state historical society.

   b. Protect the site and the materials ~~must be protected by the lessee~~ from further disturbance until a professional examination can be made or until some other form of clearance to proceed is authorized by the commissioner. ~~Upon written request, the commissioner may grant an extension of the construction aggregate lease term for delays in operations caused by the requirements of this section.~~

2. If no further disturbance is allowed, the construction aggregate lease may be terminated ~~and the lessor shall refund to the lessee any advance royalties not already credited or forfeited as provided in this chapter~~.

3. The department and the ~~director of the~~ state historical ~~board~~ society may inspect the construction aggregate leased premises at all times to determine compliance with this section.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18, 55-02-07

85-04-02-22. Assignment of construction aggregate lease.

1. The commissioner may refuse to consent to the assignment of a construction aggregate lease for good cause.

2. The assignor remains responsible for compliance of all construction aggregate lease terms, board rules and policies, and applicable laws until the assignment is approved by the commissioner.

History: Effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18, 55-02-07

85-04-02-23. Reserved rights.

The board reserves the right to use, rent, lease, sell, or encumber the construction aggregate leased premises and reserves all historical, archaeological, and paleontological materials on or beneath the surface of the construction aggregate leased premises. Leases issued by the board for the production of coal, oil, gas, uranium, potash, or other minerals have priority over any lease for the mining of construction aggregate.

History: Effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-18
Law Implemented: NDCC 15-05-18, 55-02-07

CHAPTER 85-04-03

85-04-03-01. Permanent and nonpermanent improvements.

1. Permanent improvements may not be placed on, removed from, or applied to any surface land leased premises without the written consent of the commissioner.

2. Permanent improvements placed on or implemented on any surface land leased premises are the property of the state of North Dakota.

~~2.~~3. A lessee may place nonpermanent improvements on any surface land leased premises without written consent of the commissioner.

4. Upon expiration or termination of the surface land lease, the lessee may remove the nonpermanent improvements within one hundred twenty days after the surface land lease expires or is terminated. The commissioner may, upon written request from the lessee before the end of the one-hundred-twenty-day period and for good cause, extend the period of time for removing nonpermanent improvements.

5. Any nonpermanent improvements not removed within one hundred twenty days become the property of the next lessee~~. The commissioner, upon written application from the lessee before the end of the one-hundred-twenty-day period, for good cause, may extend the period of time for removing nonpermanent improvements~~ unless the commissioner deems the nonpermanent improvements to be a hindrance to the surface land leased premises.

6. Any nonpermanent improvements deemed to be a hindrance must be removed by the responsible party within one hundred twenty days after delivery of written notification from the department. If hindrances are not removed within one hundred twenty days, the department may remove the hindrance and require the responsible party to pay for the cost.

7. A lessee is responsible for any damage or improvements that remain on the leased premises and are deemed a hindrance by the commissioner.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-08-26

85-04-03-03. Rent credit, cost-share, and depreciation.

1. Rent credits, cost-share, and depreciation of project costs may be authorized at the sole discretion of the commissioner.

2. Rent credits or cost-share may not exceed the approved maximum project cost as determined by the commissioner or the actual project cost, less reimbursements from nondepartment sources, whichever is lower.

3. The commissioner may depreciate project costs less reimbursements to the lessee from nondepartment sources and rent credits or cost-share from the department for a period not to exceed ten years.

4. Any unexpired depreciation amount must be available from the department before the surface land lease auction and must be announced at the surface land lease auction.

5. If the former lessee is not the successful bidder at auction, the new lessee is required to compensate the former lessee for the undepreciated amount~~ and the department shall continue to depreciate through the original depreciation term~~. The commissioner may cancel any undepreciated cost of constructing a permanent improvement if the lessee fails to offer

the minimum bid for the land and the land is not leased at the next auction at which the land is offered, or if the lessee fails to comply with the conditions of the surface land lease.

~~5. No rent credits, cost-share, or depreciation for livestock water developments are allowed on surface land leased premises that receive an up-front livestock water deduction in determining the minimum bid for public auction.~~

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-04-24, 15-08-26

85-04-03-05. Issuance of a permit for permanent improvement.

The commissioner may determine whether to issue a permit for the construction of a permanent improvement and ~~to determine~~ the maximum project cost, rent credit, cost-share, and depreciation amounts. The commissioner may impose such terms on a permit as the commissioner deems necessary. A permit must be issued prior to site preparation or construction.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-08-26

CHAPTER 85-04-04
ENCUMBRANCES OF TRUST LANDS

Section
85-04-04-01 Application
85-04-04-02 Surveying and Planning ~~Permit~~ Requirements
85-04-04-03 General Standards for an Encumbrance
85-04-04-04 Issuance of an Encumbrance
85-04-04-05 Right of Entry and Inspection
85-04-04-06 Expiration of an Encumbrance
85-04-04-07 Assignment of an Encumbrance

85-04-04-01. Application.

1. An applicant shall submit a request for an encumbrance, amendment, ~~assignment~~consent to assign, extension, or renewal using the electronic application form available on the department's website or a paper application provided upon request. ~~The application must clearly state whether the request is for an encumbrance, amendment, assignment, extension, or renewal.~~ An application submitted on any other form ~~will~~may not be accepted. ~~An application fee may be charged as determined by the board. An application must be made as follows:~~

~~1.~~2. An application must be submitted for the following:

a. Encumbrance. ~~An applicant shall provide all information required by the application form and any supplemental information requested by the department. An application is deemed filed and complete when the department receives an application form, the application fee, and any supplemental information requested by the department.~~

~~2.~~ b. Amendment to an encumbrance. ~~An applicant may request an amendment to an encumbrance for a specific purpose, including a request to change the site location or route of a previously issued encumbrance. If the request for an amendment is granted, the department will mail the amendment to the applicant for signature.~~

~~3.~~ c. ~~Assignment~~Consent to assignment of an encumbrance. ~~An encumbrance may not be assigned unless specifically authorized by the terms of the encumbrance or upon written consent of the commissioner. An assignment must be granted by the commissioner through written notification to both the assignor and assignee. The commissioner may refuse to assign an encumbrance for good cause. The assignor remains responsible for compliance with all terms of the encumbrance and this chapter until the assignment is approved by the commissioner. If the commissioner's approval is not required, the assignor is responsible for compliance with all terms of the encumbrance and this chapter until the department is notified of the assignment. Upon approval or notification, the assignee shall be responsible for compliance with all terms of the encumbrance and this chapter. If the request for an assignment is granted, the department shall mail the assignment to the applicant for signature.~~

~~4.~~ d. Extension or renewal of an encumbrance. ~~An applicant may request an extension or renewal of an encumbrance for an additional term. Additional compensation may be requested by the department. If the request for an extension or renewal is granted, the department shall notify the applicant.~~

e. Full or partial release of an encumbrance.

3. An application must state a specific purpose for which it is being submitted.

4. An application is deemed filed and complete if the department receives an application form, the application fee, and any supplemental information requested by the department.

5. An application for a consent to assign an encumbrance must be received by the department before execution of an assignment between applicable parties.

6. An application fee may be charged as determined by the board.

7. Compensation may be requested by the department.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-01-02, 15-05-01

85-04-04-02. Surveying and planning ~~permit~~ requirements.

1. ~~Prior to~~Before accessing trust lands to conduct any surveys, including general surveys, metes-and-bounds, centerline, cadastral, ocular reconnaissance cultural resource surveys, and habitat or wetland delineations, ~~an applicant shall obtain a surveying and planning permit from the department. The applicant shall complete an electronic application available on the department's website or a paper application provided upon request. An application is deemed filed and complete when the department receives an application form, the application fee, and any supplemental information requested by the department~~the following criteria must be met:

   a. An application for an encumbrance for which the survey is being conducted must be filed with the department; and

   b. Any person or entity conducting survey work on behalf of the applicant shall obtain a surveying and planning permit from the department.

2. ~~Upon issuance of the surveying and planning permit to the applicant, access to trust lands under the permit is only permissible if a third-party applicant has filed an application for an encumbrance. The surface tenant must be notified by the third-party applicant of the required access to trust lands at least one calendar week prior to the date of access.~~The person or entity conducting the survey shall provide notice to the surface tenant of the need for access to trust lands for survey purposes no later than seven calendar days before the scheduled access date.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-01-02, 15-05-01

85-04-04-04. Issuance of an encumbrance.

1. The commissioner may approve and issue an encumbrance on the board's behalf in accordance with this chapter.

2. ~~If an application does not comply with this chapter, or if the commissioner determines board review is desirable, the application may be brought before the board for its consideration.~~An encumbrance may not be approved or issued until all required payments and information are received by the department.

3. ~~The commissioner may impose such terms as the commissioner deems necessary.~~ An encumbrance must be issued prior to site preparation or construction, except for surveying in accordance with a granted surveying and planning permit.

4. The commissioner may impose such terms to an encumbrance as the commissioner deems necessary.

5. If an application does not comply with this chapter, or if the commissioner determines board review is desirable, the commissioner may bring the application to the board for consideration.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01

85-04-04-05. Right of entry and inspection.

The department may enter the land at any time without notification for the purpose of inspecting the land, activity, or construction.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01

85-04-04-06. Expiration of an encumbrance.

1. Unless otherwise stated in the encumbrance, the encumbrance expires two years from the date of issuance if the activity or construction is not fully completed on trust lands in accordance with the terms of the encumbrance.

2. An encumbrance automatically terminates without notice at the end of its term or for failure to complete an activity or construction. ~~Prior to~~

3. Before the expiration of the encumbrance, the holder may apply for an amendment or extension in accordance with this chapter.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01

85-04-04-07. Assignment of an encumbrance.

1. An encumbrance may not be assigned unless specifically authorized by the terms of the encumbrance or upon written consent of the commissioner.

2. If specifically authorized by the terms of the encumbrance:

   a. The assignor is responsible for compliance with all terms of the encumbrance, this chapter, and applicable laws until the department is notified of the assignment.

   b. Upon the department's notification, the assignee is responsible for compliance with all terms of the encumbrance, this chapter, and applicable law.

3. a. A consent to assignment may not be deemed valid unless provided in writing by the commissioner.

   b. The assignor remains responsible for compliance with all terms of the encumbrance and this chapter until consent to the assignment is provided by the commissioner. Upon approval, the assignee is responsible for compliance with all terms of the encumbrance, this chapter, and applicable law.

History: Effective April 1, 2026.
General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01

CHAPTER 85-04-06

85-04-06-01. Approval of land exchange.

The board may approve an exchange of trust lands which it determines is in the best interests of the trusts and complies with current law. Under North Dakota Century Code section 15-06-01, any land received under an exchange of original grant land maintains its status as "original grant lands".

History: Effective January 1, 2021; amended effective April 1, 2026.
General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02
Law Implemented: N.D. Constitution article IX, § 6; NDCC 15-06-01, 15-06-19.1

85-04-06-02. Criteria for land exchange.

The department shall consider the criteria listed below ~~numbered one through six~~ in any land exchange. Land exchanges are not required to satisfy all ~~six~~ criteria outlined below. Criteria must be considered in a cumulative manner. Meeting certain criteria may not guarantee approval.

1. ~~Equal or greater value.~~

~~a. In connection with any exchange the department may use information, provided by the applicant or the department's own knowledge, regarding lands and resources to estimate value for purposes of a preliminary evaluation, including completion of an environmental assessment. The commissioner shall procure appraisals, completed by a certified appraiser, to determine the value of the trust lands and the proposed exchange land. The same appraiser shall conduct appraisals of the trust lands to be exchanged and the proposed exchange land. In the event the commissioner is not satisfied with the appraisals, the commissioner may require additional appraisals by alternative certified appraisers.~~

~~b. The department shall advise the appraiser regarding the scope of work to ensure the value of the trust lands to be exchanged is determined by the highest and best use of the land, not simply the present use. For example, if an exchange is proposed in which the trust lands to be exchanged are currently leased for grassland but the land is in the path of residential, commercial, or industrial development, the trust lands to be exchanged must be appraised for the highest and best use for residential, commercial, or industrial development rather than its current use as grassland~~Any appraisals considered by the department must include appraised values for the trust lands' highest and best use as well as the current use.

~~c.~~ The department ~~shall~~may consider features not reflected in the market price to which ~~are~~it is difficult to assign a monetary value, including location, proximity to public lands, recreational opportunities, scenery, other amenities, and results of cultural resources inventories in evaluating the relative value of trust lands to be exchanged.

2. ~~Equal or greater income to the trusts.~~ A land exchange must result in the board receiving equal or greater income to the trusts. The projected income for the proposed exchange land ~~will~~must be estimated using the board's minimum lease rate. The minimum lease rate for the proposed exchange land ~~will~~must be compared to the present income received by the trusts from the trust lands to be exchanged, including all current and potential future revenue streams from surface leases, encumbrances, development of natural resources, and other sources, and any tax liability.

3. ~~Acreage.~~ Land exchanges ~~should~~must result in the board receiving equal or greater acreage~~. The~~, except the board~~, however,~~ may consider receiving less acreage in return for ~~substantially higher value or income, or both.~~one or more of the following:

a. Improved dedicated access;

b. Substantially higher value in relation to the amount of acres lost; or

c. Substantially higher income in relation to the amount of acres lost.

4. ~~Consolidation of trust lands.~~ The proposed land exchange ~~must~~may not fragment trust land holdings by creating isolated parcels of trust land. ~~In all exchanges, the board shall reserve all minerals underlying the trust lands to be exchanged pursuant to section 5 of article IX of the Constitution of North Dakota subject to applicable law.~~

5. ~~Potential for long-term appreciation.~~ The proposed exchange land must have similar ~~revenue~~as or greater than income and value potential ~~as~~compared to the trust lands to be exchanged.

6. ~~Access.~~ A land exchange ~~must~~may not diminish access to trust lands. Accessible trust lands ~~should~~must be exchanged with lands that offer equal or improved access.

7. In connection with any exchange of trust land, the department may consider all available information, including information provided by the applicant or the department's own knowledge, regarding lands and resources to estimate value for purposes of a preliminary evaluation, including completion of an environmental assessment.

8. In all exchanges, the board shall reserve all minerals underlying the trust lands to be exchanged pursuant to section 5 of article IX of the Constitution of North Dakota subject to applicable law.

History: Effective January 1, 2021; amended effective April 1, 2026.
General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-06-19.1, 15-06-22, 15-07-02

85-04-06-04. Evaluation of application.

The department shall evaluate the application and may request the applicant provide additional information. After the department's evaluation:

1. The commissioner may reject an application if the application:

   a. ~~If the application does~~Does not meet the requirements of subsections 1 and 2 of section 85-04-06-02; or

   b. ~~If the application fails~~Fails to comply with North Dakota law.

2. If the commissioner determines an application meets the requirements of section 85-04-06-02, the commissioner shall present the application to the board to determine if the application reflects a tract the board is willing to exchange.

3. If the land is leased, the commissioner shall notify the lessee of the intent to exchange the property.

History: Effective January 1, 2021; amended effective April 1, 2026.
General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-06-19.1

85-04-06-05. Comments and notice.

1. ~~Upon receipt of an application for land exchange and a determination by the board that~~If the board determines the application covers a tract of land the board is willing to exchange, the department shall ~~post~~:

   a. Post on the department's website a notice of the application for land exchange, any supporting documentation, and instructions for submitting public comments. ~~The department also shall publish~~

   b. Publish notice of an application for land exchange in the official newspaper of the county where the proposed exchange land and proposed trust lands to be exchanged are located and in the Bismarck Tribune. ~~Notice~~The notice must ~~be~~:

      (1) Be published once each week for three consecutive weeks prior to the deadline for comments~~. The notice must contain~~; and

      (2) Contain the legal description of the proposed exchange land and proposed trust lands to be exchanged and the deadline for comments. If publication of any notice is omitted inadvertently by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled comment period if it appears the omission or error is not prejudicial to the department's interest.

~~2. All comments must be in writing and contain the following:~~

~~a. Name and address of the interested person;~~

~~b. Applicant's name and address;~~

~~c. The legal description of the proposed exchange land and proposed trust lands to be exchanged as shown on the published notice; and~~

~~d. A detailed statement as to whether the interested person supports or opposes the proposed land exchange.~~

   c. Solicit public comment regarding the proposed exchange. All comments must be in writing and include the following:

      (1) Name and address of the interested person;

      (2) The legal description of the proposed tract for exchange as shown on the published notice; and

      (3) A detailed statement as to whether the interested person supports or opposes the exchange.

~~3.~~2. The department shall give notice of the proposed exchange to any entity having a property interest in any portion of trust lands involved in the exchange as reflected in the records of the department and if the land is leased, the commissioner shall notify the lessee of the intent to exchange the property during the months of October through January.

History: Effective January 1, 2021; amended effective April 1, 2026.
General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-06-19.1

85-04-06-07. Board authorization.

~~Upon receipt of the department's exchange report, the board shall consider the specific recommendations of the department and public comments and evaluate the merits of the land exchange. The board shall determine whether further review and public comment are required.~~

~~When a proposed exchange satisfies the exchange criteria, the board may exercise its discretion to suspend further review and disapprove the application as not in the best interests of the trusts.~~

~~Alternatively, the board may direct the commissioner to complete specific tasks relating to the merits of the proposed exchange and report back to the board with findings before proceeding further. When the board is satisfied that the department and applicant have generated all information necessary for its decision, the board shall review and determine whether the proposed exchange is in the best interests of the trusts.~~

~~The commissioner is authorized to complete all documents for the exchange on the board's behalf if the board approves the exchange.~~The board shall review the exchange report, department recommendations, and public comments and determine whether to proceed with the exchange. The commissioner is authorized to complete all documents for the exchange on the board's behalf if the board approves the exchange. If the land is leased, the commissioner shall notify the lessee within the months of October through January of the intent to exchange the property.

History: Effective January 1, 2021; amended effective April 1, 2026.
General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-06-19.1

CHAPTER 85-04-07
LAND SALES UNDER NORTH DAKOTA CENTURY CODE CHAPTER 15-06

Section
85-04-07-01 Sale of Original Grant Lands
85-04-07-02 Requirements of No Net Loss Sale
85-04-07-03 No Net Loss Sale Procedure
85-04-07-04 Payment of Costs
85-04-07-05 Board Review

85-04-07-01. Sale of original grant lands.

The board shall retain and manage original grant lands to produce revenue consistent with the long-term maintenance of the original grant lands' income producing potential and ecological health. The commissioner may propose~~, or accept letters of application for,~~ the sale of original grant lands after the original grant lands have been evaluated ~~by the commissioner~~ for "highest and best use" as defined in North Dakota Century Code section 15-02-05.1 and the department considers the following criteria:

1. If the tract has been zoned or has high potential to be zoned residential, commercial, ~~or~~ industrial, or similar zoning type;

2. ~~The tract's potential for mineral development, including sand, gravel, clay, and scoria;~~

~~3.~~ If the tract has been a source of persistent management problems, resulting in the sale of the tract being prudent from a long-term financial point of view;

~~4.~~3. If the tract and adjacent trust land tracts total less than eighty acres [32.37 hectares] in size, more or less, for grassland and less than forty acres [16.19 hectares], more or less, for cropland or hayland, except those tracts which are severed by a highway, road, railroad, canal, river, or lake, which may be sold if the severed portion is less than these amounts; or

~~5.~~4. If the tract and adjacent trust land tracts exceed eighty acres [32.37 hectares] in size, more or less, for grassland or more than forty acres [16.19 hectares] in size, more or less, for cropland.

History: Effective January 1, 2021; amended effective April 1, 2026.
General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-06, 15-08

85-04-07-02. Requirements of no net loss sale.

~~Any~~A sale of original grant lands, ~~with the exception~~excluding sale of of tracts ~~provided~~listed in subsection 1, 2, or 3 of section 85-04-07-01 is subject to the following:

1. The proposed sale ~~would~~must result in no net loss of leasable original grant lands; and

2. The ~~applicant agrees to~~land provided as consideration must provide accessible and leasable land equal or greater in acres, unless otherwise provided in this section, and value to the trust from which the original grant lands were sold, for which the department then shall consider the criteria listed below ~~in subsections a through f in~~for any no net loss sale. Land provided for a no net loss sale is not required to satisfy all ~~six~~ criteria outlined below. Criteria must be considered in a cumulative manner and meeting certain criteria may not guarantee approval.

   a. ~~Equal or greater value.~~

      ~~(1) In connection with any no net loss sale the department may use information, provided by the applicant or the department's own knowledge, regarding lands and~~

~~resources to estimate value for purposes of a preliminary evaluation, including completion of an environmental assessment. The commissioner shall procure appraisals in accordance with North Dakota Century Code sections 15-06-22 and 15-06-23, and shall request additional appraisals be completed by a certified appraiser, to determine the value of the trust lands and the proposed no net loss sale land. The same appraiser shall conduct appraisals of the trust lands and the proposed no net loss sale land. In the event the commissioner is not satisfied with the appraisals, the commissioner may require additional appraisals by alternative certified appraisers.~~

~~(2) The department shall advise the appraiser regarding the scope of work to ensure the value of the trust lands is determined by the highest and best use of the land, not simply the present use. For example, if a no net loss sale is proposed in which the trust lands are currently leased for grassland but the land is in the path of residential, commercial, or industrial development, the trust lands must be appraised for the highest and best use for residential, commercial, or industrial development rather than its current use as grassland.~~A no net loss sale must result in the board receiving equal or greater asset value to the trusts. Any appraisals considered by the department must include both the values for the trust lands' highest and best use and the current use.

~~(3)~~b. The department ~~shall~~may consider features not reflected in the market price ~~that are~~to which it is difficult to assign a monetary value, including location, proximity to public lands, recreational opportunities, scenery, other amenities, and results of cultural resources inventories in evaluating the relative value of trust lands.

~~b.~~c. ~~Equal or greater income to the trusts.~~ A no net loss sale must result in the board receiving equal or greater income to the trusts. The projected income for the proposed no net loss sale land ~~will~~must be estimated using the board's minimum lease rate. The minimum lease rate for the proposed no net loss sale land ~~will~~must be compared to the present income received by the trusts from the trust lands, including all current and potential future revenue streams from surface leases, encumbrances, development of natural resources, and other sources, and any tax liability.

~~c.~~d. ~~Acreage.~~ A no net loss sale ~~should~~must result in the board receiving equal or greater acreage~~. The~~, except the board may~~, however,~~ consider receiving less acreage in return for one or more of the following:

(1) Improved dedicated access;

(2) Substantially higher value in relation to the amount of acres lost; or

(3) Substantially higher income in relation to the amount of acres lost.

~~d.~~e. ~~Consolidation of trust lands.~~ The proposed no net loss sale ~~must~~may not fragment trust land holdings by creating isolated parcels of trust land. ~~In all no net loss sales, the board shall reserve all minerals underlying the trust lands pursuant to section 5 of article IX of the Constitution of North Dakota subject to applicable law.~~

~~e.~~f. ~~Potential for long-term appreciation.~~ The proposed no net loss sale land must have similar ~~revenue~~income and value potential as the trust lands.

~~f.~~g. ~~Access.~~ A no net loss sale ~~must~~may not diminish access to trust lands. The no net loss land should provide equal or improved access.

3. ~~Any land acquired pursuant to a sale of original grant lands, subject to no net loss, shall be treated by the board as "original grant lands"~~In connection with any no net loss sale the

department may use any available information, including information provided by the applicant or the department's own knowledge, regarding lands and resources to estimate value for purposes of a preliminary evaluation, including completion of an environmental assessment.

4. In all no net loss sales and subject to applicable law, the board shall reserve all minerals underlying the trust lands pursuant to section 5 of article IX of the Constitution of North Dakota.

History: Effective January 1, 2021; amended effective April 1, 2026.
General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-06, 15-08

85-04-07-03. ~~Sale~~No net loss sale procedure.

1. ~~A letter of application for purchase of original grant lands meeting the criteria in section 85-04-07-01 may be accepted at any time. An application must include:~~

~~a. A nonrefundable application fee in an amount set by the board;~~

~~b. A legal description of the trust lands; and~~

~~c. A legal description of the lands to be provided to ensure no net loss.~~

~~Upon board approval, a sale of original grant lands must be conducted in accordance with North Dakota Century Code chapter 15-06.~~

~~2. Upon receipt of a letter of application to purchase a tract, the potential sale must be presented to the commissioner for preliminary approval or rejection.~~

~~3. The commissioner may recommend to the board that a tract meeting the criteria of section 85-04-07-01 may be offered for sale even though no letter of application has been received.~~

~~Upon a determination that the application covers a tract the board is willing to sell, the department shall post on the department's website a notice of the application for sale, any supporting documentation, and instructions for submitting public comments. The department also shall publish notice of a letter of application for sale in the official newspaper of the county where the nominated tract is located and in the Bismarck Tribune. Notice must be published once each week for three consecutive weeks prior to the deadline for comments. The notice must contain the legal description of the proposed tract and the deadline for comments. If publication of any notice is omitted inadvertently by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled comment period if it appears the omission or error is not prejudicial to the department's interest. All comments must be in writing and contain the following:~~

~~a. Name and address of the interested person;~~

~~b. Applicant's name and address;~~

~~c. The legal description of the proposed tract for sale as shown on the published notice; and~~

~~d. A detailed statement as to whether the interested person supports or opposes the sale.~~

~~4. The board shall review all appraisals, any public comments, other relevant information including title examinations, and determine whether to proceed with the sale. If the board decides to proceed with the sale, the board shall establish a minimum acceptable sale price.~~

~~5. If the land is leased, the commissioner shall notify the lessee of the intent to sell the property during the months of October through January.~~

~~6. The department shall notify the applicant, if any, of the price set by the board, which must be the minimum acceptable sale price.~~

~~7. The department may contract a legal metes and bounds survey for the tract to be sold at public auction under North Dakota Century Code chapter 15-06.~~

~~8. If the applicant desires to proceed, the applicant shall submit to the department a formal offer to purchase. The formal offer to purchase must serve as the opening bid at the public sale. The applicant shall provide five percent of the minimum sale price as earnest money, as a condition of the formal offer to purchase.~~

~~9. Land must be advertised for sale at public auction under North Dakota Century Code chapter 15-06.~~

~~10. If no bids are received on a tract for which no formal application was received, the tract may be sold for the board-established minimum acceptable sale price to the first interested party at a private sale during the six months following the date of the auction.~~

~~11. The sale of any tract under this chapter may be by:~~

~~a. Contract under section 6 of article IX of the Constitution of North Dakota; or~~

~~b. A purchase agreement requiring twenty percent payment of the purchase price on the day of the sale, which may include earnest money paid, and the balance due within sixty calendar days. The balance due date may be extended at the commissioner's discretion, up to a maximum of one hundred eighty days from the date of the sale. Interest must be charged on any remaining balance, beginning sixty days after the date of sale, at the Bank of North Dakota base rate plus one percent.~~The department may recommend a tract of land that meets the criteria of section 85-04-07-02 to the commissioner for consideration for a no net loss sale.

2. If the commissioner determines to proceed with the sale, the commissioner shall present to the board the proposed no net loss land sale for preliminary review. Upon a determination that the board is willing to sell, the department shall:

a. Notify the lessee if the lands are leased.

b. Publish a notice of sale, that includes a request for bidders, pursuant North Dakota Century Code chapter 15-06. The notice of sale must contain:

(1) The legal description of the proposed trust land tract to be sold;

(2) Instructions on how to register to bid; and

(3) Deadline for bidders to register.

c. Procure all appraisals from a certified appraiser for tracts to be sold and for lands provided for consideration as follows:

(1) Appraisals must be obtained in accordance with North Dakota Century Code sections 15-06-22 and 15-06-23.

(2) Appraisals for trust lands and the proposed no net loss sale land must be appraised by the same certified appraiser.

(3) If the commissioner is not satisfied with the appraisals, the commissioner may require additional appraisals by alternative certified appraisers.

d. Solicit public comment regarding the proposed sale. All comments must be in writing and include the following:

(1) Name and address of the interested person;

(2) The legal description of the proposed tract for sale as shown on the published notice; and

(3) A detailed statement as to whether the interested person supports or opposes the sale.

3. a. To register, bidders shall provide the following:

(1) A nonrefundable application fee; and

(2) A legal description of the lands to be provided for consideration.

b. Bidders shall agree to an offer to purchase that contains the following:

(1) Bidder is subject to all costs associated to the bidder review and sale process, including:

(a) Appraisal costs;

(b) Title examination; and

(c) Legal survey, if deemed necessary by the commissioner.

(2) Bidder agrees to allow the department and its agents access to the lands offered for consideration or shall procure access on department's behalf.

c. The department shall review the lands proposed by each potential bidder to determine if they meet the criteria under section 85-04-07-02.

4. The board shall review all approved registered bidders, including appraisals and land offered for consideration, any public comments, other relevant information including title examinations, and determine whether to proceed with the sale. If the board decides to proceed with the sale, the board shall establish a minimum acceptable sale price and the following must be conducted:

a. If the land is leased, the commissioner shall notify the lessee within the months of October through January of the intent to sell the property.

b. The commissioner shall conduct an auction pursuant to North Dakota Century Code chapter 15-06.

c. A purchase agreement shall be executed with the winning bidder at the closing of the sale. The purchase agreement must require:

(1) The purchaser to pay twenty percent of the purchase price at the time the purchase agreement is executed; and

(2) The purchaser to convey the land used as consideration within sixty calendar days after execution of the agreement. The commissioner may extend the deadline to convey, at the commissioner's sole discretion, up to a maximum of one hundred eighty days after execution of the purchase agreement.

d. If no bids are received at auction, the tract may be sold for the board established minimum acceptable sale price to the first interested party at a private no net loss sale during the six months following the date of the auction.

History: Effective January 1, 2021; amended effective April 1, 2026.
General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-06, 15-08

85-04-07-04. Payment of costs.

The purchaser is responsible for payment of ~~all~~ costs, including appraisals, title examinations, and other costs as may be necessary to complete the sale.

History: Effective January 1, 2021; amended effective April 1. 2026.
General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-06, 15-08

85-04-07-05. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall ~~recommend~~determine if board review is warranted.

History: Effective January 1, 2021; amended effective April 1, 2026.
General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-06, 15-08

CHAPTER 85-04-08
LAND SALES UNDER NORTH DAKOTA CENTURY CODE CHAPTER 15-07

Section
85-04-08-01 Sale of Acquired Lands
85-04-08-02 Requirements of No Net Loss Sale
85-04-08-03 No Net Loss Sale Procedure
85-04-08-04 Payment of Costs
85-04-08-05 Board Review

85-04-08-01. Sale of acquired lands.

The board shall retain and manage acquired lands to produce revenue consistent with the long-term maintenance of the acquired lands' income producing potential and ecological health until sold. The commissioner may propose~~, or accept a letter of application for,~~ the sale of acquired lands if the~~ department has reviewed its potential for mineral development and the acquired~~ lands have been evaluated~~ by the commissioner~~ for "highest and best use" as defined in North Dakota Century Code section 15-02-05.1 and the department considers the following criteria:

1. If a tract is acquired through foreclosure or deed in lieu of foreclosure from the board's loan pool account, established under North Dakota Century Code section 15-03-04.1, after January 1, 2020;

2. If the tract has been zoned or has high potential to be zoned residential, commercial,~~ or~~ industrial, or similar zoning type;

3. ~~The tract's potential for mineral development, including sand, gravel, clay, and scoria;~~

~~4.~~ If the tract has been a source of persistent management problems, resulting in the sale of the tract being prudent from a long-term financial point of view;

~~5.~~4. If the tract and adjacent trust land tracts total less than eighty acres [32.37 hectares] in size, more or less, for grassland and less than forty acres [16.19 hectares], more or less, for cropland or hayland, except those tracts which are severed by a highway, road, railroad, canal, river, or lake, which may be sold if the severed portion is less than these amounts; or

~~6.~~5. If the tract and adjacent trust land tracts exceed eighty acres [32.37 hectares] in size, more or less, for grassland or more than forty acres [16.19 hectares] in size, more or less, for cropland.

History: Effective January 1, 2021; amended effective April 1, 2026.
General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-07, 15-08

85-04-08-02. Requirements of no net loss sale.

~~Any~~A sale of acquired lands, with the exception of tracts provided in subsections 1, 2, 3, and ~~2~~4 of section 85-04-08-01, is subject to the following:

1. The proposed sale ~~would~~must result in no net loss of leasable acquired lands; and

2. The ~~applicant agrees to~~land provided as consideration must provide accessible and leasable land equal or greater in acres, unless otherwise provided in this section, and value to the trust from which the acquired lands were sold, for which the department then shall consider the criteria listed below ~~in subdivisions a through f in~~for any no net loss sale. Land provided for a no net loss sale is not required to satisfy all~~ six~~ criteria outlined below. Criteria will be considered in a cumulative manner and meeting certain criteria may not guarantee approval.

a. ~~Equal or greater value.~~

~~(1) In connection with any no net loss sale the department may use information, provided by the applicant or the department's own knowledge, regarding lands and resources to estimate value for purposes of a preliminary evaluation, including completion of an environmental assessment. The commissioner shall procure appraisals, completed by a certified appraiser, to determine the value of the trust lands and the proposed no net loss sale land. The same appraiser shall conduct appraisals of the trust lands and the proposed no net loss sale land. In the event the commissioner is not satisfied with the appraisals, the commissioner may require additional appraisals by alternative certified appraisers.~~

~~(2) The department shall advise the appraiser regarding the scope of work to ensure the value of the trust lands is determined by the highest and best use of the land, not simply the present use. For example, if a no net loss sale is proposed in which the trust lands are currently leased for grassland but the land is in the path of residential, commercial, or industrial development, the trust lands must be appraised for the highest and best use for residential, commercial, or industrial development rather than its current use as grassland~~A no net loss sale must result in the board receiving equal or greater asset value to the trusts. Any appraisals considered by the department must include appraised values for both the trust lands highest and best use as well as the current use.

~~(3)~~b. The department ~~shall~~may consider features not reflected in the market price ~~that are~~to which it is difficult to assign a monetary value, including location, proximity to public lands, recreational opportunities, scenery, other amenities, and results of cultural resources inventories in evaluating the relative value of trust lands.

~~b.~~c. ~~Equal or greater income to the trusts.~~ A no net loss sale must result in the board receiving equal or greater income to the trusts. The projected agricultural income for the proposed no net loss sale land ~~will~~must be estimated using the board's minimum lease rate. The minimum lease rate for the proposed no net loss sale land ~~will~~must be compared to the present income received by the trusts from the trust lands, including all current and potential future revenue streams from surface leases, encumbrances, development of natural resources, and other sources, and any tax liability.

~~c.~~d. ~~Acreage.~~ A no net loss sale ~~should~~must result in the board receiving equal or greater acreage~~. The~~, except the board may~~, however,~~ consider receiving less acreage in return for one or more of the following:

(1) Improved dedicated access;

(2) Substantially higher value in relation to the amount of acres lost; or

(3) Substantially higher income in relation to the amount of acres lost.

~~d.~~e. ~~Consolidation of trust lands.~~ The proposed no net loss sale ~~must~~may not fragment trust land holdings by creating isolated parcels of trust land. ~~In all no net loss sales, the board shall reserve all minerals underlying the trust lands pursuant to section 5 of article IX of the Constitution of North Dakota subject to applicable law.~~

~~e.~~f. ~~Potential for long-term appreciation.~~ The proposed no net loss sale land must have similar ~~revenue~~income and value potential as the trust lands.

~~f.~~g. ~~Access.~~ A no net loss sale ~~must~~may not diminish access to trust lands. The no net loss land should provide equal or improved access.

3. In connection with any no net loss sale, the department may consider all available information, including information provided by the applicant or the department's own knowledge, regarding lands and resources to estimate value for purposes of a preliminary evaluation, including completion of an environmental assessment.

4. In all no net loss sales, the board shall reserve all minerals underlying the trust lands pursuant to section 5 of article IX of the Constitution of North Dakota subject to applicable law.

History: Effective January 1, 2021; amended effective April 1, 2026.
General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-07, 15-08

85-04-08-03. ~~Sale~~No net loss sale procedure.

1. ~~A letter of application for purchase of acquired lands meeting the criteria in section 85-04-08-01 may be accepted at any time. An application must include:~~

~~a. A nonrefundable application fee in an amount set by the board;~~

~~b. A legal description of the trust lands; and~~

~~c. A legal description of the lands to be provided to ensure no net loss.~~

~~Upon board approval, a sale of acquired lands must be conducted in conformance with North Dakota Century Code sections 15-06-25 and 15-07-04.~~

~~2. Upon receipt of a letter of application for sale of a tract, the potential sale must be presented to the commissioner for preliminary approval or rejection.~~

~~3. The commissioner may recommend to the board that a tract be sold even though no letter of application for sale has been received.~~

~~4. Upon a determination that the application covers a tract the board is willing to sell, the department shall post on the department's website a notice of the application for sale, any supporting documentation, and instructions for submitting public comments. The department also shall publish notice of a letter of application for sale in the official newspaper of the county where the nominated tract is located and in the Bismarck Tribune. Notice must be published once each week for three consecutive weeks prior to the deadline for comments. The notice must contain the legal description of the proposed tract and the deadline for comments. If publication of any notice is omitted inadvertently by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled comment period if it appears the omission or error is not prejudicial to the department's interest. All comments must be in writing and contain the following:~~

~~a. Name and address of the interested person;~~

~~b. Applicant's name and address;~~

~~c. The legal description of the proposed tract for sale as shown on the published notice; and~~

~~d. A detailed statement as to whether the interested person supports or opposes the sale.~~

~~5. The board shall review all appraisals, public comments received, and any other relevant information, and determine whether to proceed with the sale. If the board decides to proceed with the sale, the board shall use the appraisal to establish a sale price. The board reserves the right to increase the sale price if it deems the appraised value is inadequate.~~

~~6. If the land is leased, the commissioner shall notify the lessee of the intent to sell the property during the months of October through January.~~

~~7. The department shall notify the applicant, if any, of the price set by the board, which must be the minimum acceptable sale price.~~

~~8. The department may contract a legal metes and bounds survey for the tract to be sold at public auction under North Dakota Century Code chapter 15-07.~~

~~9. If the applicant desires to proceed, the applicant shall submit to the department a formal offer to purchase. The formal offer to purchase must serve as the opening bid at the public sale. The applicant shall provide five percent of the minimum sale price as earnest money, as a condition of the formal offer to purchase.~~

~~10. The department shall determine if acquired lands will be advertised for sale at public auction or by sealed bids, with the sale price set by the board as the minimum bid. If no bids are received on property for which an application has been received, the acquired lands may be sold to the applicant at the minimum bid.~~

~~11. If no bids are received on property for which no formal application was received, the property may be sold for the board-established minimum acceptable sale price to the first interested party at a private sale during the six months following the date of the auction.~~

~~12. The sale of land may be by:~~

~~a. Contract under section 6 of article IX of the Constitution of North Dakota; or~~

~~b. A purchase agreement requiring twenty percent payment of the purchase price on the day of the sale, which may include earnest money paid, and the balance due within sixty calendar days. The balance due date may be extended at the commissioner's discretion, up to a maximum of one hundred eighty days from the date of the sale. Interest must be charged on any remaining balance, beginning sixty days after the date of sale, at the Bank of North Dakota base rate plus one percent.~~The department may recommend a tract of land that meets the criteria of section 85-04-08-02 to the commissioner for consideration for a no net loss sale.

2. If the commissioner determines to proceed with the sale, the commissioner shall present to the board the proposed no net loss land sale for preliminary review. Upon a determination the board is willing to sell, the department shall:

a. Notify the lessee if the lands are leased.

b. Publish a notice of sale, that includes a request for bidders, in accordance with the procedures set out in North Dakota Century Code chapter 15-06. The notice of sale must contain:

(1) The legal description of the proposed trust land tract to be sold;

(2) Instructions on how to register to bid; and

(3) Deadline for bidders to register.

c. Obtain all appraisals from a certified appraiser for tracts to be sold and for lands provided for consideration, as follows:

(1) Appraisals must be obtained in accordance with the procedures set out in North Dakota Century Code sections 15-06-22 and 15-06-23.

(2) Appraisals for trust lands and the proposed no net loss sale land must be appraised by the same certified appraiser.

(3) If the commissioner is not satisfied with the appraisals, the commissioner may require additional appraisals by alternative certified appraisers.

d. Solicit public comment regarding the proposed sale. All comments must be in writing and include the following:

(1) Name and address of the interested person;

(2) The legal description of the proposed tract for sale as shown on the published notice; and

(3) A detailed statement as to whether the interested person supports or opposes the sale.

3. a. To register, bidders shall provide the following:

(1) A nonrefundable application fee; and

(2) A legal description of the lands to be provided for consideration.

b. Bidders shall agree to an offer to purchase that contains the following:

(1) Bidder is subject to all costs associated to the bidder review and sale process, including:

(a) Appraisal costs;

(b) Title examination; and

(c) Legal survey, if deemed necessary by the commissioner.

(2) Bidder agrees to allow the department and its agents access to the lands offered for consideration or shall obtain access on department's behalf.

c. The department shall review the lands proposed by each potential bidder to determine if they meet the criteria under section 85-04-07-02.

4. The board shall review all approved registered bidders, including appraisals, land offered as consideration, any public comments, other relevant information including title examinations, and determine whether to proceed with the sale. If the board decides to proceed with the sale, the board shall establish a minimum acceptable sale price and the following shall be conducted:

a. If the land is leased, the commissioner shall notify the lessee of the intent to sell the property.

b. The commissioner shall conduct an auction pursuant to North Dakota Century Code chapter 15-07.

c. A purchase agreement must be executed with the winning bidder at the closing of the sale. The purchase agreement must require that the purchaser:

(1) Pay twenty percent of the purchase price at the time the purchase agreement is executed; and

(2) Convey the land used as consideration within sixty calendar days after execution of the agreement. The commissioner may extend the deadline to convey, at the commissioner's sole discretion, up to a maximum of one hundred eighty days after execution of the purchase agreement.

d. If no bids are received at auction, the tract may be sold for the board-established minimum acceptable sale price to the first interested party at a private sale during the six months following the date of the auction.

~~13.~~5. Acquired lands acquired after January 1, 2020, may be sold to any mortgagor or a member of the mortgagor's immediate family under North Dakota Century Code section 15-07-10. The sale must be for cash only with twenty percent payment of the purchase price on the day of the sale, which may include earnest money paid, and the balance due within sixty calendar days. The balance due date may be extended at the commissioner's discretion, up to a maximum of one hundred eighty days from the date of the sale. Interest must be charged on any remaining balance, beginning sixty days after the date of sale, at the Bank of North Dakota base rate plus one percent.

History: Effective January 1, 2021; amended effective April 1, 2026.
General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-07, 15-08

85-04-08-04. Payment of costs.

The purchaser is responsible for payment of ~~all~~ costs, including appraisals, title examinations, and other costs as may be necessary to complete the sale.

History: Effective January 1, 2021; amended effective April 1, 2026.
General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-07, 15-08

85-04-08-05. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall ~~recommend~~determine if board review is warranted.

History: Effective January 1, 2021; amended effective April 1, 2026.
General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-07, 15-08

CHAPTER 85-04-09

85-04-09-02. Sale procedure.

1. ~~An~~The commissioner may accept an application ~~for~~to purchase ~~of~~ land ~~may be accepted and the land sold in conformance~~in accordance with North Dakota Century Code chapter 15-09.

2. An application must be submitted ~~using a paper application provided~~on a form prescribed by the department upon request ~~and be~~.

3. The application must:

   a. Be completed and signed by authorized personnel ~~and must include~~;

   b. Include a nonrefundable application fee in an amount set by the board unless waived by the commissioner~~. The application must meet~~; and

   c. Meet the requirements of North Dakota Century Code section 15-09-01 ~~and may require, depending on the land to be purchased, the following:~~.

   ~~a. A siting and environmental review completed by the department; and~~

   ~~b.~~4. ~~A "metes and bounds" survey of the land to be purchased, including both a plat and written narrative of the survey completed by the applicant. The narrative must include the distances and angles between points of intersection and points of entry and exit tied into the section corners, quarter section corners, or lot corners, and a breakdown of the acreage in the parcel for each separate quarter section or lot included in the purchase~~The department may request additional supporting documents for the application.

~~2.~~5. If the land is leased, the commissioner shall notify the lessee of the intent to sell the property ~~during the months of October through January~~.

~~3. Upon receipt of an application for sale of lands for public or quasi-public purpose and a determination that the application covers a tract the commissioner is willing to consider for sale, the department shall post on the department's website a notice of the application for sale of lands for public or quasi-public purpose, any supporting documentation, and instructions for submitting public comments. All comments must be in writing and contain the following:~~

~~a. Name and address of the interested person;~~

~~b. Applicant's name and address;~~

~~c. The legal description of the proposed tract as shown on the published notice; and~~

~~d. A detailed statement as to whether the interested person supports or opposes the sale.~~

~~4. The department shall secure a real property appraisal in accordance with North Dakota Century Code sections 15-06-22 and 15-06-23 and may secure additional appraisals from certified appraisers. Appraisals must consider the matter of severance of adjacent trust lands caused by the sale and the effect on the value of adjacent trust lands, which may reflect a higher appraisal.~~

~~5. The department shall provide the board a report of all appraisals, public comments, and any other relevant information to allow the board to determine whether to proceed with the sale. If the board decides to proceed with the sale, the board shall establish a minimum acceptable sale price. The board reserves the right to increase the sale price if it deems the appraised value is inadequate.~~

~~6. The board shall obtain fair market value for all land sold under North Dakota Century Code chapter 15-09 and must consider its "highest and best use" as defined in North Dakota Century Code section 15-02-05.1.~~

~~7. The department shall notify the applicant, if any, of the price set by the board, which must be the approved sale price.~~

~~8. The notice of the application and the board approved sale price must be published and a hearing must be held in conformance with North Dakota Century Code section 15-09-03. If publication of any notice is omitted inadvertently by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled hearing if it appears the omission or error is not prejudicial to the department's interest.~~

~~9. Any comments made at the hearing must be brought to the board, along with the department's recommendations regarding those comments.~~

~~10. If the applicant desires to purchase the property at the price set by the board and pays full purchase price, the commissioner may complete the sale on the board's behalf. If an agreement as to price cannot be reached, the applicant may proceed under North Dakota Century Code section 15-09-05.~~

6. If the commissioner determines to proceed with the sale, the department shall:

   a. Notify the lessee if the lands are leased.

   b. Obtain all appraisals from a certified appraiser for tracts to be sold. The commissioner may require additional appraisals be conducted by different certified appraisers.

   c. Obtain from the applicant a "metes and bounds" survey of the land to be purchased, including both a plat and written narrative of the survey. The narrative must include the distances and angles between points of intersection and points of entry and exit tied into the section corners, quarter section corners, or lot corners, and a breakdown of the acreage in the parcel for each separate quarter section or lot included in the purchase.

7. The commissioner shall present to the board the proposed land sale, including appraisals public comments and any other relevant information. Upon a determination by the board it is willing to sell:

   a. The board shall set a minimum acceptable sale price.

   b. The department shall:

      (1) Publish a notice of sale that includes a request for bidders. The notice of sale must include:

         (a) The legal description of the proposed trust land tract to be sold;

         (b) Instructions on how to register to bid; and

         (c) The deadline for bidders to register.

      (2) Notify the lessee of the intent to sell the property within the months of October through January if the land is leased.

      (3) Conduct a hearing according to North Dakota Century Code section 15-09-03. Any comments made at the hearing must be brought to the board, along with recommendations regarding the comments.

8. If the applicant desires to purchase the property at the price set by the board and pays full purchase price, the commissioner may complete the sale on the board's behalf.

History: Effective January 1, 2021; amended effective April 1, 2026.
General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-09

85-04-09-06. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review, and the commissioner shall ~~recommend~~determine if board review is warranted.

History: Effective January 1, 2021; amended effective April 1, 2026.
General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02
Law Implemented: NDCC 15-09

CHAPTER 85-06-01
OIL AND GAS

Section
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85-06-01-01. Oil and gas lease nomination.

1. The department ~~shall~~may accept an oil and gas lease nomination for a tract not already under an oil and gas lease as reflected in department records and may accept a nomination for a tract under an oil and gas lease which will expire prior to the date of the oil and gas lease sale. The first nomination received on a tract is considered an offer and determines the opening bid.

~~1.~~2. The department ~~shall~~may accept a nomination for an oil or gas lease either electronically through the department's website or in writing. The nomination period for an oil and gas lease must be the period set by the commissioner during which the department ~~shall~~may accept oil and gas lease nominations.

~~2.~~3. An oil and gas lease nomination must be limited to a maximum of one quarter section, unless otherwise authorized under subsection 3, or by the board.

~~3.~~4. A nomination for a tract containing a body of water may include up to a section of land if the tract cannot reasonably be subdivided by quarter section or half section. The tract acreage, including islands, may be offered and described as "more or less" and may be adjusted by the board within each quarter section.

History: Effective January 1, 2020; amended effective April 1, 2024; April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06
Law Implemented: N.D. Constitution article IX, § 5; NDCC 15-01-02, 15-02-05, 15-05-09, 61-33-06, 61-33.1

85-06-01-02. Advertisement for public auction.

The department shall publish notice of an oil and gas lease auction ~~in the official newspaper of the county where the nominated tract is located and in the Bismarck Tribune~~on the department's website. The notice must be published ~~once,~~at least ten days prior to the day of the auction. The advertisement must specify the date, time, and place of the auction, and how an interested person may obtain a list of the tracts to be auctioned. ~~Should~~If publication of any notice is inadvertently omitted by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled leasing if it appears the omission or error is not prejudicial to the department's interest.

History: Effective January 1, 2020; amended effective April 1, 2026.

General Authority: NDCC 15-01-02, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06
Law Implemented: NDCC 15-05-09, 38-09-15

85-06-01-03. Public auction.

1. The board may issue an oil and gas lease by public auction. Public auctions may be hosted ~~either~~ live or online at the discretion of the commissioner. Bidding is based on a bonus of not less than one dollar per acre, and an annual delay rental of not less than one dollar per acre per year based on the acreage shown in the records of the department at the time the oil and gas lease is issued.

~~1.~~2. The successful bidder at an auction shall pay the bonus, the rental payments for the primary term as defined by the oil and gas lease, the advertising fee, the lease auction administration fee, and any processing fees via automated clearing house or wire transfer, by five p.m. central prevailing time, ten days after the date the auction closed. ~~The board may not issue an oil and gas lease until receipt of the bonus, rental payments, and fees.~~

~~2.~~3. If no bids are received, the nominator is the successful bidder.

~~3.~~4. The board may not issue an oil and gas lease until receipt of the bonus, rental payments, and fees.

History: Effective January 1, 2020; amended effective April 1, 2024; April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06
Law Implemented: N.D. Constitution article IX, § 5; NDCC 15-01-02, 15-02-05, 15-05-09, 15-05-10

85-06-01-06. Assignment, amendment, or extension.

1. A lessee shall submit ~~a written request~~an application to the department for an assignment, amendment, or extension of an oil and gas lease, or a portion of the oil and gas leased premises, utilizing the form available on the department's website. ~~A request must include~~The lessee shall provide any documents requested by the department. The lessee shall submit a fee, in an amount set by the board, to the department with the ~~request~~application.

~~1.~~2. ~~Assignments.~~ All oil and gas lease obligations must be current at the time the assignment is approved. The lessee remains bound by the terms and conditions of the oil and gas lease, board rules and policies, and applicable laws until the assignment is approved by the department. Upon approval of the assignment, the assignee is bound by all the terms and conditions of the oil and gas lease, board rules and policies, and applicable laws. The assignor shall provide the department with a copy of the fully executed assignment within thirty days from the approval.

~~2.~~3. ~~Extensions.~~ If, at the expiration of the primary term, production of oil or gas or both has not been obtained in commercial quantities on the leased premises but drilling, testing, completion, recompletion, reworking, deepening, plugging back, or repairing operations are being conducted ~~thereon~~on the premises in good faith, the lessee may, on or before the expiration of the primary term, file a written application with the department for a one hundred eighty day extension of ~~this~~the oil and gas lease, ~~such application to be accompanied by~~including a payment of ten dollars per acre, and the commissioner, in writing, shall extend ~~this~~the oil and gas lease for a period of one hundred eighty days beyond the expiration of the primary term and as long as oil or gas or both is produced in commercial quantities~~; the~~. The lessee may, as long as such drilling, testing, or completion operations are being conducted in good faith, make written application to the commissioner, on or before the expiration of the initial extended period of one hundred eighty days for an additional extension of one hundred eighty days, ~~such application to be accompanied by~~including a payment of twenty dollars per acre, and the commissioner, in writing, shall extend ~~this~~the oil and gas lease for an additional

one hundred eighty day period from and after the expiration of the initial extended period of one hundred eighty days, and as long as oil or gas or both is produced in commercial quantities~~; this~~. The oil and gas lease ~~must~~may not be extended for more than a total of three hundred sixty days from and after the expiration of the primary term unless production in commercial quantities has been obtained or unless extended by some other provision ~~hereof~~of the lease.

~~3.~~4. ~~Amendments.~~ A lessee may request an amendment to an oil and gas lease for a specific purpose. A request for an amendment must state the specific grounds for the request. Approval of a request is at the discretion of the commissioner and the department shall notify the lessee in writing whether or not the request is approved.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06
Law Implemented: NDCC 15-05-09, 15-05-15

85-06-01-07. Voluntary release.

To request a voluntary release of an oil and gas lease, a lessee shall submit a written request to the department for the voluntary release of an oil and gas lease, or portion of an oil and gas leased premises, ~~utilizing the form available on the department's website~~ and shall provide all other documents requested by the department. Approval of a voluntary release is at the discretion of the commissioner and the department shall notify the lessee in writing whether ~~or not~~ the voluntary release is approved. All oil and gas lease obligations must be current at the time the voluntary release is approved. The lessee remains bound by the terms and conditions of the oil and gas lease, board rules and policies, and applicable laws until the voluntary release is approved by the commissioner.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06
Law Implemented: NDCC 15-05-09

85-06-01-10. ~~Breach~~Cancellation of oil and gas lease.

1. Other than as provided in subsection 7, an oil and gas lease may be canceled for:

   a. Nonpayment of any sum due under the oil and gas lease;

   b. Breach of any oil and gas lease terms or conditions; or

   c. A violation of applicable laws, rules, or board policies.

2. Before an oil and gas lease is canceled, the department shall send a notice of intention to cancel the lease specifying the reason for cancellation to the lessee listed in the records of the department by certified or registered mail ~~requiring a signed receipt~~ to the lessee's address as shown in the records of the department.

3. A lessee may file with the commissioner a request for a waiver, or a request for the commissioner to review the notice of intention to cancel the oil and gas lease, which must include a statement of the specific grounds for the request. A request must be in writing and filed with the commissioner within thirty days after the date the notice of intention to cancel the oil and gas lease is postmarked. A request for a waiver or review is deemed filed when personally delivered or when received by the department. The commissioner may allow the lessee time to cure the breach, or may waive any breach, except a breach of oil and gas lease terms required under North Dakota Century Code. Any waiver must be limited to the particular breach waived and does not limit the board's right to cancel the oil and gas lease for any other breach. If, after review of the request, the commissioner determines cancellation of the lease is still warranted, the commissioner shall request board approval of the cancellation. An oil and

gas lease cancellation under this section is exempt from the requirements of section 85-06-01-11.

4. If the lessee has not filed a release of the oil and gas lease with the applicable county recorder's office or requested a waiver or commissioner review within thirty days after the postmark date of a notice of intention to cancel the lease, the commissioner may cancel the lease.

5. Release of the oil and gas lease by the lessee or cancellation of the lease does not release the lessee from liability for any sum due to the board or from any damages caused by a breach of the lease.

6. Upon cancellation of the oil and gas lease, the department shall file a notice of cancellation of oil and gas lease with the applicable county recorder's office.

7. An oil and gas lease automatically terminates for failure to pay the annual delay rental by the date due without further notice by the department or opportunity for the lessee to remedy the default.

History: Effective January 1, 2020; amended effective April 1, 2024; April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06
Law Implemented: N.D. Constitution article IX, § 5; NDCC 15-01-02, 15-02-05, 15-05-09, 15-05-10

85-06-01-11. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall ~~recommend~~determine if a board review is warranted.

History: Effective January 1, 2020; amended effective April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06
Law Implemented: NDCC 15-05-09, 15-05-10

85-06-01-12. Reports of lessee - Delinquency penalty.

Royalty payment and reporting are due on forms prescribed by the department as follows:

1. For gas:

   a. Within one hundred twenty-three days of the last day of the month in which initial production occurs, royalty payment and reporting are due for the first, second, and third months of production.

   b. Successive royalty payments and reporting are due within sixty-one days of the last day of the month in which production occurs.

2. For oil:

   a. Within ninety-two days of the last day of the month in which initial production occurs, royalty payment and reporting are due for the first, second, and third months of production.

   b. Successive royalty payments and reporting are due within thirty days of the last day of the month in which production occurs.

3. The royalty payment and reporting deadline may be extended by the commissioner upon written request. An extension, if granted, only applies to future royalty payments and reporting.

4. Any sum, other than delay rentals, not paid when due is delinquent and is subject to a delinquency penalty of one percent of the sum for each thirty-day period of delinquency or fraction of delinquency period, unless a waiver or board review is requested under subsection 6. For leases issued after July 31, 2021, any penalty must be calculated pursuant to subsection 3 of North Dakota Century Code section 15-05-10.

5. Unpaid royalties bear interest under subsection 2 of North Dakota Century Code section 15-05-10 and the interest is due for each thirty-day period of delinquency or fraction of delinquency period, unless a waiver or board review is requested under subsection 6.

6. A lessee has thirty days from the date of the receipt of a notice of a penalty and interest assessment to pay the penalty and interest, request a waiver or reduction, or to request board review.

~~a.~~ A request for a waiver or reduction of the penalty or interest or a request for board review must be in writing and provide the grounds for the request.

~~b.~~ The following factors may be considered when deciding to waive or reduce the penalty or interest: the reason for the late payment; the degree of control the payor had over the late payment; any unusual or mitigating circumstances involved; the loss of interest earnings to the trust involved; and any other relevant factors.

~~c.~~ A waiver or reduction of penalty and interest does not constitute a waiver of the right to seek the full amount of both penalty and interest if the initial claim for royalty payment is not paid. If a claim for unpaid royalties, penalties, and interest is settled and payment received, the amount of penalties and interest not collected is deemed waived.

History: Effective January 1, 2020; amended effective April 1, 2022; April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06
Law Implemented: NDCC 15-05-09, 15-05-10, 47-16-39.2

85-06-01-14. Request for shut-in status for oil or gas.

1. A lessee requesting shut-in status of an oil or gas well, without canceling the lease, shall submit a written ~~request~~application to the department utilizing the form available on the department's website. The ~~request~~application must contain the following information:

   a. The name and well file number assigned by the North Dakota department of mineral resources oil and gas division;

   b. The township, range, and section of the surface location of the well;

   c. The board's oil and gas lease number for the subject lease, the date of the oil and gas lease, the acreage covered by the oil and gas lease, and the current lessee;

   d. The name and address of the operator of the well;

   e. The cumulative production and the number of days of production for the three months immediately preceding the request;

   ~~f. The written approval of the request from the operator;~~

   ~~g.~~ The grounds for the request and the anticipated length of time the well will be shut-in; and

~~h.~~g. Any additional information requested by the department.

2. An application fee, in an amount set by the department, must be submitted with the application. Upon approval of the shut-in ~~request~~application, the applicant shall promptly submit to the department a shut-in well payment. The shut-in well payment must be the same amount for oil or gas wells and must be calculated on a per-lease, per-well basis.

3. An application is deemed filed when the department receives the application form, application fee, shut-in well payment, and any additional information requested by the department.

4. Within fifteen days of receipt of an application, the commissioner shall notify the applicant in writing~~, as follows~~ if:

   a. The application is approved and the terms of the shut-in approval;

   b. The application is denied;

   c. An additional fifteen day period is necessary to consider the application; or

   d. The application requires board approval.

5. If an application is denied, a lessee may file with the department a written request for commissioner review, specifying the grounds for the request.

6. A shut-in approval is effective for one year from the date of approval unless the commissioner determines a shorter amount of time is appropriate.

7. The commissioner may revoke a shut-in approval if the commissioner determines the action is in the best interests of the trusts. If a shut-in approval is revoked prior to its expiration, the department shall provide notice to the lessee by certified mail. Within sixty days from the date of receipt of the notice, the lessee shall re-establish production. If the lessee fails to re-establish production, the oil and gas lease is subject to cancellation under section 85-06-01-10.

History: Effective January 1, 2020; amended effective April 1, 2024; April 1, 2026.
General Authority: NDCC 15-01-02, 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06
Law Implemented: N.D. Constitution article IX, § 5; NDCC 15-01-02, 15-02-05, 15-05-09, 15-05-10

TITLE 87

VETERINARY MEDICAL EXAMINERS, BOARD OF

APRIL 2026

CHAPTER 87-01-01

87-01-01-01. Organization of board of veterinary medical examiners.

1. **History.** The 1895 legislative assembly passed a law entitled "Qualifications of Veterinarians" which requires the governor to appoint a board of veterinary examiners, known as the state board of veterinary medical examiners.

2. **Board membership.** The board consists of five members (three veterinarians, one veterinary technician, and one public member) who serve three-year terms, with no more than two terms expiring each year.

3. **Compensation of members of board.** A member of the board may receive for each day during which that member is actually engaged in the performance of the duties of office a per diem in the amount of one hundred ~~twenty-five~~fifty dollars.

4. **Executive ~~secretary~~director.** The board employs an executive ~~secretary~~director and such other persons necessary to carry out administration of the board's activities.

5. **Inquiries.** Inquiries regarding the board may be directed to the executive ~~secretary~~director.

History: Amended effective November 1, 1981; April 1, 1988; November 1, 1991; March 1, 1999; August 1, 2004; January 1, 2014; April 1, 2022; April 1, 2026.
General Authority: NDCC 28-32-02, 43-29-03
Law Implemented: NDCC 28-32-02, 43-29-02, 43-29-05, 43-29-05.1

ARTICLE 87-01.1
VETERINARIAN LICENSURE ~~EXAMINATION~~

Chapter
87-01.1-01 ~~Examination and Waiver~~Procedures for Licensure of Veterinarians

CHAPTER 87-01.1-01
~~EXAMINATION AND WAIVER~~PROCEDURES FOR LICENSURE OF VETERINARIANS

Section
87-01.1-01-01 ~~Examination - Waiver~~Requirements for Licensure as a Veterinarian - Application - State Board Examination
87-01.1-01-02 Examination Application Fee [Repealed]
87-01.1-01-03 Temporary ~~Permit~~License
87-01.1-01-03.1 Military Member and Military Spouse Licensure
87-01.1-01-04 ~~Veterinarians From~~Prerequisites for Taking the National Examination - Graduates from Nonaccredited Institutions
87-01.1-01-05 Veterinarian License Renewal
87-01.1-01-06 Discipline Reporting
87-01.1-01-07 Name Change
87-01.1-01-08 Change of Address

87-01.1-01-01. ~~Examination - Waiver~~Requirements for licensure as a veterinarian - Application - State board examination.

1. ~~To qualify for a North Dakota license, each applicant must take and~~An individual desiring a license to practice veterinary medicine in this state must meet the following requirements:

   a. The individual must be a graduate of an approved college of veterinary medicine or fulfill the requirements as set forth in section 87-01.1-01-04 for a graduate of a college that is not an approved college of veterinary medicine. An approved college of veterinary medicine must be accredited by the American veterinary medical association council on education;

   b. The individual shall pass ~~a North Dakota examination, and~~ the national board examination and the clinical competency test or the North American veterinary licensing examination. ~~The North Dakota examination is a jurisprudence examination that may be administered by written or electronic methods. At the board's discretion, an oral interview may be required.~~

~~2.~~ The board adopts the passing score on the national examination recommended by the international council for veterinary assessment. Applicants ~~must~~shall request that their examination scores be sent to the board.

~~3. The North American veterinary licensing examination is required of all applicants for licensure in North Dakota who have been in practice less than five years. For an applicant who has been in practice more than five years, the applicant may petition the board to waive this requirement if the applicant meets the requirements of North Dakota Century Code section 43-29-07.2.~~

~~4. The North Dakota examination may not be waived~~ North Dakota candidates may apply for and take the North American veterinary licensing examination according to eligibility criteria, deadlines, and fees specified in the annual agreement between the board and the international council for veterinary assessment. An individual who fails the North American veterinary licensing examination may retake the examination in keeping with the retake policy of the international council for veterinary assessment;

c. The individual shall:

(1) Complete the application form provided by the board;

(2) Pay the nonrefundable application fee of eighty dollars;

(3) Pay the initial license fee of one hundred ten dollars;

(4) Provide a copy of the individual's diploma or other official proof of graduation;

(5) Provide verification of any license to practice veterinary medicine issued by a another jurisdiction; and

(6) Sign a statement attesting the applicant has read, understands, and shall abide by the statutes and regulations governing the practice of veterinary medicine in this state; and

d. The individual shall receive a passing score of eighty percent on the state board examination. The individual must be approved to take the state board examination upon submission of a completed application and all necessary documents. The state board examination is a jurisprudence examination that may be administered by written or electronic methods. An individual who fails the state board examination may be allowed to retake the examination after a period of thirty days upon repayment of the application fee. An individual who fails the state board examination twice shall have approval by the board to take the state board examination a third time. An individual who fails the state board examination a third time shall petition the board for reconsideration of eligibility to further take the state board examination.

2. The individual may be required to complete an oral interview at the request of the board.

3. The board shall issue a license to each applicant who meets the requirements to practice veterinary medicine in this state. The license may be issued by the executive director and approved by the board at one of its regular meetings if there is no previous discipline, criminal conviction, or other concern related to the individual's ability to practice veterinary medicine.

~~5.~~4. A senior veterinary student may submit an application and take the ~~North Dakota~~state board examination if the student has taken and passed the North American veterinary licensing examination and submits a letter from the dean of ~~a veterinary~~an approved college of veterinary medicine indicating the student's anticipated graduation date.

~~6. North Dakota candidates may apply for and take the North American veterinary licensing examination according to eligibility criteria, deadlines, and fees specified in the annual agreement between the board and the international council for veterinary assessment.~~

~~7. Beginning with the fall 2007 administration of the North American veterinary licensing examination, a candidate may not take the examination more than five times, and may not take the examination at a date that is later than five years after a candidate's initial attempt. Each of the final two attempts must be at least one year from the previous attempt.~~

5. An applicant found unqualified may request a hearing on the question of the applicant's qualifications.

6. If the application for licensure has not been successfully completed within one year from the date of initial submission, a new application and fee are required.

History: Effective January 1, 1999; amended effective November 1, 2000; June 1, 2002; August 1, 2004; April 1, 2009; January 1, 2014; April 1, 2022; April 1, 2026.

General Authority: NDCC 43-29-03, ~~43-29-07.2~~43-29-07
Law Implemented: NDCC ~~43-29-07.2~~43-29-07

87-01.1-01-02. Examination application fee.

Repealed effective April 1, 2026.

~~An applicant for the North Dakota examination must file with the board a completed application, a copy of the applicant's diploma or other official proof of graduation, and an examination fee of seventy-five dollars. The examination fee will not be refunded. All required material and money must be submitted thirty days prior to the examination date.~~

~~**History:** Effective January 1, 1999; amended effective November 1, 2000; December 1, 2004; January 1, 2014; April 1, 2022.~~
~~**General Authority:** NDCC 43-29-07.2~~
~~**Law Implemented:** NDCC 43-29-07.2~~

87-01.1-01-03. Temporary ~~permit~~license.

1. The board may issue a temporary license to practice veterinary medicine in this state to:

   a. An approved applicant who ~~has taken and passed the national board examination and clinical competency test or the North American veterinary licensing examination and~~ has not ~~taken~~passed the ~~North Dakota~~state board examination~~ for good cause, may obtain a permit to practice in North Dakota until the next examination is given. The fee for the permit is forty dollars. A permit expires on the date the next North Dakota examination is given~~. The temporary license given is valid until the individual has passed the state board examination and a license is issued, or, if the individual has not passed the state board examination, after a period of one year;

   b. A foreign practitioner, if the temporary license is issued for a period of no more than sixty days and no more than one temporary license is issued during each calendar year; or

   c. A qualified individual as approved by the board.

2. The fee for a temporary license is forty-five dollars.

History: Effective January 1, 1999; amended effective November 1, 2000; April 1, 2022; April 1, 2026.
General Authority: NDCC 43-29-07.2, 43-29-03
Law Implemented: NDCC 43-29-07.2

87-01.1-01-03.1. Military member and military spouse licensure.

The board shall adhere to the process for licensure of military members and military spouses set forth in North Dakota Century Code section 43-51-11.1.

History: Effective April 1, 2022; amended effective April 1, 2026.
General Authority: NDCC ~~43-29-07.2~~43-29-03, 43-29-07
Law Implemented: NDCC ~~43-29-07.2~~43-29-07

87-01.1-01-04. ~~Veterinarians~~Prerequisites for taking the national examination - Graduates from nonaccredited institutions.

1. ~~For a graduate of a nonaccredited veterinary college to qualify to write the North Dakota examination, the graduate must have a certificate issued by the educational commission for foreign veterinary graduates or the educational equivalence program of the American association of veterinary state boards.~~

~~2. All credentials from foreign institutions must be translated into English over the signature and seal of the consul of the country in which such documents may have been issued and said consul must certify that said institution is recognized and approved by the authorities as a veterinary college in the country where it is located.~~

~~3. Candidates from nonaccredited colleges~~A graduate of a college that is not an approved college of veterinary medicine must be enrolled in the educational commission for foreign veterinary graduates program of the American veterinary medical association or the educational equivalence program of the American association of veterinary state boards ~~in order~~ to be approved to take the North American veterinary licensing examination.

2. For a graduate of a college that is not an approved college of veterinary medicine to qualify to take the state board examination, the individual shall have a certificate issued by the American veterinary medical association educational commission for foreign veterinary graduates, the American association of veterinary state boards educational equivalence program, or the Canadian veterinary medical association certificate of qualification.

History: Effective January 1, 1999; amended effective November 1, 2000; June 1, 2002; April 1, 2026.
General Authority: NDCC 43-29-03, ~~43-29-07.2~~43-29-07
Law Implemented: NDCC ~~43-29-07.2~~43-29-07

87-01.1-01-05. Veterinarian license renewal.

1. Annual renewal notice must be provided to all veterinarians on or before June first and completed license renewal forms must be received by June thirtieth.

2. The annual license renewal fee for veterinarians is one hundred ten dollars and must be received by June thirtieth each year.

3. Renewals not received by the due date must be assessed a late fee of fifty percent of the renewal fee.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-03, 43-29-07.3
Law Implemented: NDCC 43-29-07.3

87-01.1-01-06. Discipline reporting.

A veterinarian is required to report affirmatively any initiated disciplinary action from any other regulatory body to the board within thirty days of the other regulatory body's initiation of the disciplinary action.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-03
Law Implemented: NDCC 43-29-03

87-01.1-01-07. Name change.

A veterinarian shall report a personal name change to the board within thirty days. Proper documentation must be provided upon request.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-03
Law Implemented: NDCC 43-29-03

87-01.1-01-08. Change of address.

A veterinarian shall report a change in address, employer, and contact information to the board within thirty days after the change has taken place.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-03
Law Implemented: NDCC 43-29-03

ARTICLE 87-02
VETERINARIAN ~~LICENSURE~~CONTINUING EDUCATION

Chapter
87-02-01 Veterinarian Continuing Education Requirements

CHAPTER 87-02-01
VETERINARIAN CONTINUING EDUCATION REQUIREMENTS

Section
87-02-01-01 License Renewal [Repealed]
87-02-01-02 Educational Program Attendance Required
87-02-01-03 Educational Program Requirement Waiver
87-02-01-04 Educational Program Requirements
87-02-01-05 Notice of Failure to Comply
87-02-01-06 Discipline Reporting [Repealed]
87-02-01-07 Name Change [Repealed]

87-02-01-01. License renewal.

Repealed effective April 1, 2026.

~~1. Annual license renewal notice will be provided to all licensed veterinarians on or before June first and completed license renewal must be received by June thirtieth.~~

~~2. The annual license renewal fee for veterinarians is ninety dollars and must be received by June thirtieth of each year.~~

~~3. Renewals not received by the due date will be assessed a late fee of fifty percent of the license fee.~~

~~4. A license may be renewed for two years after it expires by payment of all past-due renewal registration fees and late fees and completion of continuing education requirements. If more than two years have passed since expiration, a new application for licensure must be made and the North Dakota examination must be completed.~~

~~**History:** Amended effective January 1, 1999; December 1, 2004; April 1, 2009; January 1, 2014; April 1, 2022.~~
~~**General Authority:** NDCC 43-29-03~~
~~**Law Implemented:** NDCC 43-29-07.3~~

87-02-01-02. Educational program attendance required.

Each ~~licensed~~ veterinarian~~, except as otherwise provided, shall be~~ is required to receive twenty-four hours of veterinary continuing education, approved by the board, in the twenty-four months preceding each even-year renewal date, unless the veterinarian has have been approved by the board for a continuing education waiver. Veterinary continuing education is defined as an educational program which ~~will enhance~~enhances the licenseholder's professional ability to serve the public and which has the prior approval of the board. For a veterinarian who is issued a license fewer than twenty-four months prior to the even-year renewal date, the required continuing education must be adjusted accordingly.

History: Amended effective November 1, 1991; January 1, 1999; April 1, 2022; April 1, 2026.
General Authority: NDCC 43-29-03, 43-29-07.3
Law Implemented: NDCC 43-29-03, 43-29-07.3

87-02-01-03. Educational program requirement waiver.

The board may waive the continuing education requirements for an individual, upon the individual's request, for any of the following reasons:

1. Impaired health.

2. For individuals who ~~have reached the age of sixty-five and~~ are no longer actively engaged in practice and have so indicated on their license renewal form. The license of ~~such an~~the individual ~~will~~must be placed on inactive status and the individual subsequently may not practice veterinary medicine in North Dakota until the individual ~~becomes current as to~~satisfies the continuing education requirements for the years the license was on inactive status.

3. For other legitimate reasons as presented and verified to the board at one of its regular meetings.

History: Amended effective November 1, 1991; January 1, 1999; April 1, 2009; April 1, 2022; April 1, 2026.
General Authority: NDCC 43-29-03, 43-29-07.3
Law Implemented: NDCC 43-29-07.3

87-02-01-04. Educational program requirements.

1. Veterinary continuing education may consist of the following:

~~1.~~ a. Programs sponsored by local, state, regional, or national veterinary associations.

~~2.~~ b. Seminars or training approved by the North Dakota veterinary medical examining board. The seminars or training may be approved ~~only~~ if they relate to the practice of veterinary medicine, as defined by subsection ~~8~~18 of North Dakota Century Code section 43-29-01.1, and consist of evidence-based scientific material.

~~3.~~ c. Programs approved by the registry of approved continuing education of the American association of veterinary state boards.

~~4.~~ d. Wet labs or instructions, or both, taken at a college or university, the subject material of which must pertain to veterinary medicine.

~~5.~~ e. Programs presented by pharmaceutical companies and other commercial groups may be approved, ~~as long as~~if they consist of objective presentations of scientific information and are not designed principally to sell products to the veterinarian or ~~the animal owner~~client.

~~6. A maximum of eight hours~~

f. United States department of agriculture modules, which may be approved if completed for the purpose of initial accreditation or accreditation renewal. Each self-study accreditation module is eligible for one-half credit of continuing education.

g. In-person attendance at a regular board meeting. This does not apply to an individual who is serving as a board member or who is the subject of a complaint or board investigation being discussed at the meeting.

2. Continuing education must be categorized by the following type of education or method of delivery:

a. In-person continuing education is defined as a presentation for which the presenter is in the same room as the attendee.

b. Live virtual continuing education is defined as a presentation for which the presenter is utilizing technology to deliver a presentation to an attendee in real time and communication between the speaker and attendee is available.

c. Prerecorded virtual continuing education is defined as a presentation for which the presenter is utilizing technology to deliver a presentation that is not in real time and communication between the speaker and attendee is not available.

d. The veterinary exchange program consists of participation in a clinical setting at another veterinary practice ~~and completion~~with the purpose of learning new skills or techniques. Completion of ~~the~~a written report is required ~~by the board's veterinary exchange program~~.

~~7.~~3. One hour of continuing education credit must be given for each period of not less than fifty minutes of attendance at an approved continuing education program.

4. The following limits on continuing education apply:

a. A maximum of eight hours of veterinary continuing education may relate to practice management. Programs designed to enhance the veterinarian's ability to earn money or invest money~~,~~ or that relate to personal financial planning do not meet continuing education requirements.

~~8. A maximum of twelve hours of approved veterinary continuing education may be obtained through professional written journals or technology-based methods relevant to the practice of veterinary medicine.~~

b. A maximum of eight hours of veterinary continuing education may be done through the veterinary exchange program.

c. A maximum of four hours of veterinary continuing education may be done through in-person board meeting attendance.

d. Eighteen of the twenty-four hours of approved veterinary continuing education must be completed through in-person or live virtual methods of delivery.

5. Proof of attendance and verification ~~will be necessary~~must be provided on request. Verification may include a ~~printed~~ program, certificate, brochure, handout, or syllabus that lists the topics presented, the ~~persons doing the instruction and their~~individual instructing, the individual's qualifications, and the time for each presentation. Verification may be completed through a third-party database at the discretion of the board.

History: Amended effective November 1, 1991; January 1, 1999; April 1, 2009; January 1, 2014; April 1, 2022; April 1, 2026.
General Authority: NDCC 43-29-03, 43-29-07.3
Law Implemented: NDCC 43-29-07.3

87-02-01-05. Notice of failure to comply.

If a ~~licensed~~ veterinarian fails to complete the continuing education requirements, ~~a written~~ notice ~~shall~~must be sent to the licenseholder. At the discretion of the board, a six-month grace period may be allowed to make up the requirement. If~~,~~ after six months~~,~~ the requirements have not been met, the license ~~will~~must be revoked, suspended, or placed on probationary status.

History: Amended effective November 1, 1991; January 1, 1999; April 1, 2022; April 1, 2026.
General Authority: NDCC 43-29-03, 43-29-07.3
Law Implemented: NDCC 43-29-07.3

87-02-01-06. Discipline reporting.

Repealed effective April 1, 2026.

~~A licensed veterinarian is required to affirmatively report any initiated disciplinary action from any other regulatory body to the board within thirty days of that other regulatory body's initiation of the disciplinary action.~~

~~**History:** Effective April 1, 2022.~~
~~**General Authority:** NDCC 43-29-03~~
~~**Law Implemented:** NDCC 43-29-03~~

87-02-01-07. Name change.

Repealed effective April 1, 2026.

~~A licensed veterinarian must report any personal name change to the board within thirty days. Proper documentation must be provided upon request.~~

~~**History:** Effective April 1, 2022.~~
~~**General Authority:** NDCC 43-29-03~~
~~**Law Implemented:** NDCC 43-29-03~~

ARTICLE 87-03
VETERINARY TECHNICIAN LICENSURE

Chapter

87-03-01 Procedures for Licensure of Veterinary Technicians
87-03-02 Veterinary Technician Continuing Education Requirements

CHAPTER 87-03-01
PROCEDURES FOR LICENSURE OF VETERINARY TECHNICIANS

Section

87-03-01-01 Definition of a Veterinary Technician [Repealed]
87-03-01-02 Requirements for Licensure as a Veterinary Technician
87-03-01-02.1 Military Member and Military Spouse Licensure
87-03-01-03 Prerequisites for Taking the National Examination - Graduates from Nonaccredited Institutions
87-03-01-04 ~~Application for Licensure - Fees~~Veterinary Technician - License Renewal
87-03-01-05 Educational Program Attendance Required [Repealed]
87-03-01-06 Educational Program Requirement Waiver [Repealed]
87-03-01-07 Educational Program Requirements [Repealed]
87-03-01-08 Notice of Failure to Comply [Repealed]
87-03-01-09 Discipline Reporting
87-03-01-10 Name Change
87-03-01-11 Change of Address

87-03-01-01. Definition of a veterinary technician.

Repealed effective April 1, 2026.

~~As used in this chapter, "veterinary technician" has the same meaning as "licensed veterinary technician" as defined in North Dakota Century Code section 43-29-01.1.~~

~~**History:** Effective October 1, 1981; amended effective November 1, 1991; January 1, 1999.~~
~~**General Authority:** NDCC 43-29-09~~
~~**Law Implemented:** NDCC 43-29-07.1, 43-29-09~~

87-03-01-02. Requirements for licensure as a veterinary technician.

~~Licensure as a veterinary technician requires a passing score on the veterinary technician national examination.~~

1. An individual desiring a license to practice veterinary technology in the state shall meet the following requirements:

   a. The individual must be a graduate of an approved program in veterinary technology or fulfill the requirements as set forth in section 87-03-01-03 for a graduate of a program that is not an approved program in veterinary technology. An approved program in veterinary technology is accredited by the American veterinary medical association committee on veterinary technician education and activities or the Canadian veterinary medical association;

   b. The individual shall pass the veterinary technician national examination. The board adopts the passing score on the national examination recommended by the American association of veterinary state boards. Applicants shall request that their examination scores be sent to the board. North Dakota candidates may apply for and take the veterinary technician national examination according to eligibility criteria, deadlines, and

fees specified in the annual agreement between the board and the American association of veterinary state boards. An individual who fails the veterinary technician national examination may retake the examination in keeping with the retake policy of the American association of veterinary state boards;

c. The individual shall:

(1) Complete the application form provided by the board;

(2) Pay the nonrefundable application fee of forty dollars;

(3) Pay the initial license fee of thirty dollars;

(4) Provide a copy of the individual's diploma or other official proof of graduation;

(5) Provide verification of any license to practice veterinary technology issued by another jurisdiction; and

(6) Sign a statement attesting that the applicant has read, understands, and shall abide by the statutes and regulations governing the practice of veterinary technology in this state; and

d. The individual shall receive a passing score of eighty percent on the state board examination. The individual must be approved to take the state board examination upon submission of a completed application and all necessary documents. The state board examination is a jurisprudence examination that may be administered by written or electronic methods. An individual who fails the state board examination may be allowed to retake the examination after a period of thirty days upon repayment of the application fee. An individual who fails the state board examination twice must have approval by the board to take the state board examination a third time. An individual who fails the state board examination a third time must petition the board for reconsideration of eligibility to further take the state board examination.

2. The individual may be required to complete an oral interview at the request of the board.

3. The board shall issue a license to each applicant who meets the requirements to practice veterinary technology in the state. The license may be issued by the executive director and approved by the board at one of its regular meetings if there is no previous discipline, criminal conviction, or other concern related to the individual's ability to practice veterinary technology.

4. An applicant found unqualified may request a hearing on the question of the applicant's qualifications.

5. If the application for licensure has not been successfully completed within one year from the date of initial submission, a new application and fee is required.

History: Effective October 1, 1981; amended effective November 1, 1991; January 1, 1999; April 1, 2009; April 1, 2022; April 1, 2026.
General Authority: NDCC ~~43-29-09~~43-29-03, 43-29-07.1
Law Implemented: NDCC 43-29-07.1

87-03-01-02.1. Military member and military spouse licensure.

The board shall adhere to the process for licensure of military members and military spouses set forth in North Dakota Century Code section 43-51-11.1.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-03, 43-29-07.1

Law Implemented: NDCC 43-29-07.1

87-03-01-03. Prerequisites for taking the national examination - Graduates from nonaccredited institutions.

~~The minimum prerequisite for taking the veterinary technician national examination is graduation from an accredited program in veterinary technology or equivalent program. Candidates who are students in good standing at an accredited program in veterinary technology may be approved by the board to take the national examination for the first time no earlier than six months prior to their expected graduation date.~~

A graduate of a veterinary technology program that is not an approved program in veterinary technology must be approved by the board to take the veterinary technician national examination and the state board examination.

History: Effective October 1, 1981; amended effective April 1, 1986; November 1, 1991; April 1, 2009; April 1, 2022; April 1, 2026.
General Authority: NDCC ~~43-29-09~~43-29-03, 43-29-07.1
Law Implemented: NDCC 43-29-07.1

87-03-01-04. ~~Application for licensure - Fees~~Veterinary technician - License renewal.

1. ~~Any person desiring licensure as a veterinary technician shall make written application for licensure to the executive secretary on forms provided for that purpose and shall pay in advance to the North Dakota board of veterinary medical examiners a fee of thirty dollars plus, if applicable, the cost of the veterinary technician national examination. Fees are not returned, except by action of the board.~~

~~2.~~ Annual ~~license~~ renewal notice ~~shall~~must be provided to all ~~licensed~~ veterinary technicians on or before December first~~, either by regular mail or electronic mail~~, and completed license renewal forms must be received by December thirty-first.

~~3.~~2. The annual license renewal fee for veterinary technicians is ~~twenty~~thirty dollars and must be received by December thirty-first ~~of~~ each year.

~~4.~~3. Renewals not received by the due date ~~will~~must be assessed a late fee of fifty percent of the ~~license~~renewal fee.

~~5. A license may be renewed for two years after it expires by payment of all past-due renewal registration fees and late fees and completion of continuing education requirements. If more than two years have passed since expiration, a new application for licensure must be made.~~

History: Effective October 1, 1981; amended effective November 1, 1991; January 1, 1999; August 1, 2004; April 1, 2009; April 1, 2022; April 1, 2026.
General Authority: NDCC 43-29-03, ~~43-29-09~~43-29-08.1
Law Implemented: NDCC ~~43-29-07.1,~~ 43-29-08.1

87-03-01-05. Educational program attendance required.

Repealed effective April 1, 2026.

~~Each licensed veterinary technician, except as otherwise provided, shall be required to receive eight hours of veterinary technician continuing education, approved by the board, in the twenty-four months preceding each even-year renewal date. Veterinary technician continuing education is defined as an educational program that will enhance the licenseholder's professional ability to serve the public and which has the prior approval of the board.~~

~~**History:** Effective January 1, 1999; amended effective August 1, 2004; April 1, 2022.~~
~~**General Authority:** NDCC 43-29-03, 43-29-07.3, 43-29-09~~
~~**Law Implemented:** NDCC 43-29-07.3, 43-29-08.1~~

87-03-01-06. Educational program requirement waiver.

Repealed effective April 1, 2026.

~~The board may waive the continuing education requirements for an individual, upon the individual's request, for any of the following reasons:~~

~~1. Impaired health.~~

~~2. For individuals who have reached the age of sixty-five and are no longer actively engaged in practice and have so indicated on their license renewal form. The license of such individual must be placed on inactive status and the individual subsequently may not practice in North Dakota until the individual becomes current as to continuing education requirements.~~

~~3. For other legitimate reasons as presented and verified to the board at one of its regular meetings.~~

~~**History:** Effective April 1, 2022.~~
~~**General Authority:** NDCC 43-29-03, 43-29-07.3~~
~~**Law Implemented:** NDCC 43-29-07.3~~

87-03-01-07. Educational program requirements.

Repealed effective April 1, 2026.

~~Veterinary technician continuing education may consist of the following:~~

~~1. Programs sponsored by local, state, regional, or national veterinary or veterinary technician associations.~~

~~2. Seminars or training approved by the North Dakota veterinary medical examining board. The seminars or training may be approved only if they relate to the practice of veterinary medicine, as defined by subsection 8 of North Dakota Century Code section 43-29-01.1, and consist of evidence-based scientific material.~~

~~3. Programs approved by the registry of approved continuing education of the American association of veterinary state boards.~~

~~4. Wet labs or instructions, or both, taken at a college or university, the subject material of which must pertain to veterinary medicine.~~

~~5. Programs presented by pharmaceutical companies and other commercial groups may be approved, as long as they consist of objective presentations of scientific information and are not designed principally to sell products to the veterinarian or the animal owner.~~

~~6. A maximum of two hours of participation in a clinical setting at another veterinary practice and completion of the written report required by the board's veterinary exchange program.~~

~~7. A maximum of two hours of veterinary technician continuing education may relate to practice management. Programs designed to enhance the veterinary technician's ability to earn money or invest money, or that relate to personal financial planning do not meet the continuing education requirements.~~

8. A maximum of four hours of approved veterinary technician continuing education may be obtained through professional written journals or technology-based methods relevant to the practice of veterinary medicine.

Proof of attendance and verification will be necessary on request. Verification may include a printed program, certificate, brochure, handout, or syllabus that lists the topics presented, the persons doing the instruction and their qualifications, and the time for each presentation. Verification may be completed through a third-party database at the discretion of the board.

History: Effective April 1, 2022.
General Authority: NDCC 43-29-03, 43-29-07.3
Law Implemented: NDCC 43-29-07.3

87-03-01-08. Notice of failure to comply.

Repealed effective April 1, 2026.

If a licensed veterinary technician fails to complete the continuing education requirements, a written notice shall be sent to the licenseholder. At the discretion of the board, a six-month grace period may be allowed to make up the requirements.

History: Effective April 1, 2022.
General Authority: NDCC 43-29-03, 43-29-07.3
Law Implemented: NDCC 43-29-07.3

87-03-01-09. Discipline reporting.

A licensed veterinary technician is required to report affirmatively report any initiated disciplinary action from any other regulatory body to the board within thirty days of that other regulatory body's initiation of the disciplinary action.

History: Effective April 1, 2022; amended effective April 1, 2026.
General Authority: NDCC 43-29-03
Law Implemented: NDCC 43-29-03

87-03-01-10. Name change.

A licensed veterinary technician shall report anya personal name change to the board within thirty days. Proper documentation must be provided upon request.

History: Effective April 1, 2022; amended effective April 1, 2026.
General Authority: NDCC 43-29-03
Law Implemented: NDCC 43-29-03

87-03-01-11. Change of address.

A veterinary technician shall report a change in address, employer, and contact information to the board within thirty days after the change has taken place.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-03
Law Implemented: NDCC 43-29-03

CHAPTER 87-03-02
VETERINARY TECHNICIAN CONTINUING EDUCATION REQUIREMENTS

Section
87-03-02-01 Educational Program Attendance Required
87-03-02-02 Educational Program Requirement Waiver
87-03-02-03 Educational Program Requirements
87-03-02-04 Notice of Failure to Comply

87-03-02-01. Educational program attendance required.

A veterinary technician is required to receive twelve hours of veterinary technician continuing education, approved by the board, in the twenty-four months preceding each even-year renewal date unless the veterinary technician has been approved by the board for a continuing education waiver. Veterinary technician continuing education is defined as an educational program that enhances the licenseholder's professional ability to serve the public and which has the prior approval of the board. For a veterinary technician that is issued a license less than twenty-four months prior to the even-year renewal date, the required continuing education must be adjusted accordingly.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-03, 43-29-08.1
Law Implemented: NDCC 43-29-08.1

87-03-02-02. Educational program requirement waiver.

The board may waive the continuing education requirements for an individual, upon the individual's request, for any of the following reasons:

1. Impaired health.

2. For individuals who are no longer actively engaged in practice and have so indicated on their license renewal form. The license of the individual must be placed on inactive status and the individual subsequently may not practice veterinary technology in North Dakota until the individual satisfies the continuing education requirements for the years the license was on inactive status.

3. For other legitimate reasons as presented and verified to the board at one of its regular meetings.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-03, 43-29-08.1
Law Implemented: NDCC 43-29-08.1

87-03-02-03. Educational program requirements.

1. Veterinary technician continuing education may consist of the following:

   a. Programs sponsored by local, state, regional, or national veterinary or veterinary technician associations.

   b. Seminars or training approved by the North Dakota veterinary medical examining board. The seminars or training may be approved if they relate to the practice of veterinary medicine or veterinary technology, as defined by subsections 18 and 19 of North Dakota Century Code section 43-29-01.1 and consist of evidence-based scientific material.

c. Programs approved by the registry of approved continuing education of the American association of veterinary state boards.

d. Wet labs or instructions, or both, taken at a college or university, the subject material of which must pertain to veterinary medicine or veterinary technology.

e. Programs presented by pharmaceutical companies and other commercial groups may be approved, if they consist of objective presentations of scientific information and are not designed principally to sell products to the veterinary technician or client.

f. In-person attendance at a regular board meeting. This does not apply to an individual who is serving as a board member or who is the subject of a complaint or board investigation being discussed at the meeting.

2. Continuing education must be categorized by the following type of education or method of delivery:

a. In-person continuing education is defined as a presentation for which the presenter is in the same room as the attendee.

b. Live virtual continuing education is defined as a presentation for which the presenter is utilizing technology to deliver a presentation to an attendee in real time and communication between the speaker and attendee is available.

c. Prerecorded virtual continuing education is defined as a presentation for which the presenter is utilizing technology to deliver a presentation that is not in real time and communication between the speaker and attendee is not available.

d. The veterinary exchange program consists of participation in a clinical setting at another veterinary practice with the purpose of learning new skills or techniques. Completion of a written report is required.

3. One hour of continuing education credit must be given for each period of not less than fifty minutes of attendance at an approved continuing education program.

4. The following limits on continuing education must apply:

a. A maximum of four hours of veterinary technician continuing education may relate to practice management. Programs designed to enhance the veterinary technician's ability to earn money or invest money, or that relate to personal financial planning do not meet continuing education requirements.

b. A maximum of four hours of veterinary technician continuing education may be done through the veterinary exchange program.

c. A maximum of four hours of veterinary technician continuing education may be done through in-person board meeting attendance.

d. Nine of the twelve hours of approved veterinary technician continuing education must be completed through in-person or live virtual methods of delivery.

5. Proof of attendance and verification must be provided on request. Verification may include a program, certificate, brochure, handout, or syllabus that lists the topics presented, the individual instructing, the individual's qualifications, and the time for each presentation. Verification may be completed through a third-party database at the discretion of the board.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-03, 43-29-08.1

Law Implemented: NDCC 43-29-08.1

87-03-02-04. Notice of failure to comply.

If a veterinary technician fails to complete the continuing education requirements, notice must be sent to the licenseholder. At the discretion of the board, a six-month grace period may be allowed to make up the requirement. If after six months the requirements have not been met, the license must be revoked, suspended, or placed on probationary status.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-03, 43-29-08.1
Law Implemented: NDCC 43-29-08.1

87-04-01-04. Storage of prescription drugs.

1. Veterinary prescription drugs must be stored ~~separately from over-the-counter drugs. Drugs must be stored under conditions recommended by the manufacturer~~in designated areas within the practice which are sufficient to ensure proper sanitation, temperature, light, ventilation, moisture control, segregation, and security.

~~The drug enforcement administration registrant under which the drugs were purchased is responsible for the effective security of the drug stock. Opioids and other controlled substances must be stored in a securely locked cabinet of substantial construction as per drug enforcement administration requirements.~~

2. Controlled substances must be purchased, stored, and monitored in compliance with drug enforcement agency requirements.

History: Effective January 1, 1999; amended effective April 1, 2022; April 1, 2026.
General Authority: NDCC 43-29-03
Law Implemented: NDCC 43-29-03

CHAPTER 87-04-02

87-04-02-01. Companion animal records.

Patient records must contain the following information in electronic or written legible form:

1. Client name, address, and phone numbers.
2. Patient name, breed, description, sex, and age.
3. Results of any patient physical examinations, plans for diagnostic procedures and treatment ~~plans~~, and results of diagnostic procedures and treatment ~~procedures~~.
4. ~~Any medications~~Medications used, including route of administration and dosage.
5. Evidence of the client's consent for all surgical procedures and euthanasias. ~~Although it is preferred that a~~A signed consent form ~~be~~ obtained from each client is preferred, ~~such is~~but not required ~~as long as~~if the records reflect oral consent was received.
6. Identity of the veterinarian or authorized representative making entry of record.

History: Effective January 1, 1999; amended effective April 1, 2022; April 1, 2026.
General Authority: NDCC 43-29-03
Law Implemented: NDCC 43-29-03

ARTICLE 87-05
VETERINARIAN DISCIPLINARY PROCEEDINGS

Chapter
87-05-01 Complaints and Peer Review
87-05-02 Unprofessional Conduct
87-05-03 Administration of Professional Health Program

CHAPTER 87-05-01

87-05-01-01. Complaint.

1. A person may file a written complaint with the board setting forth the specific charges upon which the complaint is made. Upon receiving a complaint, the board shall notify the veterinarian or veterinary technician of the complaint and request the veterinarian or veterinary technician provide a written response to the complaint within twenty days of receipt of the board's ~~letter~~notice. The ~~veterinarian's~~ response ~~will~~from the veterinarian or veterinary technician must be made available to the complainant.

2. After receiving the response, the board ~~will~~shall review the complaint and response and determine whether, on its face, the complaint warrants further action by the board.

   a. If the board determines the complaint does not warrant further action, the complaint is dismissed and the complainant and the veterinarian ~~will~~must be notified ~~in writing~~ of the decision by the board ~~action.~~;

   b. If the board determines the complaint warrants additional investigation, the board ~~will~~shall determine whether the complaint ~~should~~ be referred to a peer review committee for investigation or whether the investigation ~~should~~ be conducted by other means~~.~~; or

   c. If the board determines sufficient information exists to warrant initiating formal disciplinary action, ~~a formal complaint will be filed~~the board may attempt to resolve the matter through informal disposition or may initiate a formal disciplinary action pursuant to North Dakota Century Code chapter 28-32.

3. The board may initiate its own investigation and file an administrative complaint upon receiving information that indicates a violation of the practice act or board rules has occurred.

History: Effective January 1, 1999; amended effective April 1, 2022; April 1, 2026.
General Authority: NDCC 43-29-03
Law Implemented: NDCC 43-29-15

87-05-01-02. Peer review committee.

1. The board, after reviewing the complaint and response to the complaint, may appoint a peer review committee for the purpose of investigating the complaint and rendering a recommendation to the board. The board may seek input from the North Dakota veterinary medical association ~~on~~or North Dakota veterinary technician association regarding potential members of the peer review committee.

2. The peer review committee must be appointed by the board and consist of three ~~licensed~~ veterinarians or veterinary technicians. Board members may not serve as peer review committee members. If, after reviewing the complaint and response, the committee believes additional expertise is needed to render a recommendation, the board may appoint an additional member to the peer review committee who has the training, experience, and expertise necessary to assist in making a recommendation.

3. At the time the peer review committee members are appointed and prior to the review process, the board shall notify the complainant and respondent as to the identity of the members of the peer review committee. The complainant and respondent may submit a documented request that the board excuse a committee member for due cause. The board may excuse the committee member and appoint another committee member to replace the excused member.

4. The peer review committee shall investigate the complaint to determine whether a reasonable basis exists to believe the respondent violated the laws or rules regulating the practice of veterinary medicine or veterinary technology. The peer review committee is an agent of the board and has the same investigatory powers ~~that~~ the board has. The board's legal counsel may provide advice and assistance to the peer review committee.

5. After completing its investigation, the peer review committee shall make a recommendation to the board. The peer review committee shall recommend whether a reasonable basis exists to believe the respondent violated any laws or rules regulating the practice of veterinary medicine or veterinary technology and whether disciplinary action should be commenced. If the committee recommends disciplinary action be commenced, the committee shall identify the factual basis of the recommendation and the law or regulation allegedly violated. A copy of the peer review committee's recommendation must be provided to the complainant and respondent.

6. After receiving the peer review committee's recommendation, the board shall review the recommendation and determine whether to dismiss the complaint, conduct additional investigation, or initiate formal disciplinary action.

History: Effective January 1, 1999; amended effective April 1, 2026.
General Authority: NDCC 43-29-15
Law Implemented: NDCC 43-29-15

CHAPTER 87-05-02
UNPROFESSIONAL CONDUCT

Section
87-05-02-01 Unprofessional Conduct
87-05-02-02 Minimum Standards of Practice
87-05-02-03 Code of Ethics

87-05-02-01. Unprofessional conduct.

Unprofessional conduct ~~manifestly disqualifying a licensee from practicing veterinary medicine~~ includes:

1. Failing to meet the minimum standards of practice.
2. Engaging in conduct likely to deceive, defraud, or harm the public or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient, in which case, proof of actual injury need not be established.
3. Claiming to have performed or charging for an act or treatment that was, in fact, not performed or given.
4. Promoting, aiding, abetting, or permitting the practice of veterinary medicine or veterinary technology by an unlicensed person.
5. Prescribing or dispensing, delivering, or ordering delivered a controlled substance without first ~~having established~~establishing a veterinarian-client-patient relationship ~~by having personally examined the individual animal, herd, or a representative segment or a consignment lot~~as defined in North Dakota Century Code chapter 43-29 and determining ~~that~~ treatment with the controlled substance is therapeutically indicated. Use of euthanizing drugs in recognized animal shelters or government animal control facilities is exempt from this requirement.
6. Willful continuation of prescribing a controlled substance to a patient ~~when~~if reasonably on notice that the substance negligently or willfully has been diverted or is being diverted by the client to human use.
7. Performing surgery to conceal genetic or congenital defects, in any species, with ~~the~~ knowledge ~~that~~ the surgery has been requested to deceive a third party.
8. Promoting, selling, prescribing, or using a product for which the ingredient formula is unknown to the veterinarian or veterinary technician.
9. Failing to report to law enforcement or humane officers inhumane treatment to animals, including staged animal fights or training events for fights, the veterinarian or veterinary technician reasonably believed occurred.
10. Fraudulently issuing or using a certificate of veterinary inspection, test chart, vaccination report, or other official form used in the practice of veterinary medicine to prevent the dissemination of animal disease, transportation of diseased animals, or the sale of inedible products of animal origin for human consumption.
11. ~~Willfully harassing~~Harassing, abusing, or intimidating a client ~~or animal owner~~. Taking legal action to collect for services rendered ~~cannot be~~is not considered harassment.
12. Engaging in conduct ~~which~~that willingly and knowingly leads to the spread of contagious disease from one ~~herd or~~ animal to another.

13. Advertising, stating, or implying ~~that~~ the veterinarian or veterinary technician is a certified or recognized specialist in any given field unless ~~the~~:

    a. The veterinarian is a diplomate of a specialty board recognized by the American veterinary medical association; or

    b. The veterinary technician has achieved certification from a North American veterinary technician association-approved academy.

14. Failure to provide referral to a specialist ~~when~~if medically indicated ~~and~~or requested by the client.

History: Effective August 1, 2004; amended effective January 1, 2014; April 1, 2022; April 1, 2026.
General Authority: NDCC 43-29-03
Law Implemented: NDCC 43-29-14

87-05-02-02. Minimum standards of practice.

Minimum standards of practice include:

1. The delivery of veterinary care must be provided in a competent and humane manner consistent with prevailing standards of practice for the species of animal and the professed area of expertise of the veterinarian or veterinary technician. ~~For a veterinarian to exercise properly the rights granted by the veterinary license, a veterinarian-client-patient relationship must exist.~~

2. Medical records and radiographs are the physical property of the ~~hospital~~practice or the proprietor of the practice that prepared them. Records must be maintained for a minimum of three years after the last visit. Radiographs must be maintained for a minimum of three years.

3. Medical records, or an accurate summary of them, must be released to the ~~animal owner or the owner's authorized agent, including~~client or the board~~,~~ in the case of a board investigation within a reasonable time of a request. A reasonable charge for copying or preparation of a summary may be made, except in the case of a board investigation, in which case no charges are authorized.

4. Contents of medical records must be kept private and not be released to third parties unless authorized by the client or required by law. Medical records may be released without consent of the client under the following circumstances:

    a. For statistical and scientific research, if the information is abstracted in a way as to protect the identity of the patient and client;

    b. To verify a rabies vaccination of an animal;

    c. To investigate a threat to human or animal health;

    d. For the protection of individual animal, human, or public health or welfare; or

    e. If requested by another veterinarian for the purpose of continuity of care.

History: Effective August 1, 2004; amended effective April 1, 2022; April 1, 2026.
General Authority: NDCC 43-29-03
Law Implemented: NDCC 43-29-14

87-05-02-03. Code of ethics.

1. The board shall reference the 2024 principles of veterinary medical ethics from the American veterinary medical association as the standard code of ethics for the practice of veterinary medicine.

2. The board shall reference the 2025 national association of veterinary technicians in America code of ethics policy as the standard code of ethics for the practice of veterinary technology.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-03, 43-29-14
Law Implemented: NDCC 43-29-14

CHAPTER 87-05-03
ADMINISTRATION OF PROFESSIONAL HEALTH PROGRAM

Section
87-05-03-01 Definitions
87-05-03-02 Agreement
87-05-03-03 Requirements and Procedures
87-05-03-04 Evaluation
87-05-03-05 Mandated Reporting
87-05-03-06 Confidentiality of Records
87-05-03-07 Liability

87-05-03-01. Definitions.

As used in this chapter:

1. "Administrator" means the professional health program designated through the agreement.
2. "Participant" means an individual referred to or enrolled in the program.
3. "Program" means the agreement set forth in North Dakota Century Code section 43-29-15.1.
4. "Treatment plan" means a plan of care, rehabilitation, monitoring and maintenance, followup or aftercare services, or a combination of these services provided by an organization or an individual authorized by the board or administrator to provide such services for a participant.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-15, 43-29-15.1
Law Implemented: NDCC 43-29-15, 43-29-15.1

87-05-03-02. Agreement.

The board may enter an agreement with the administrator to undertake the functions and responsibilities specified in the agreement. The functions and responsibilities of the agreement may include the following:

1. Contracting with agencies or providers for diagnostic, monitoring, or treatment services;
2. Receiving and evaluating reports of veterinarians, veterinary technicians, or applicants who are experiencing impairment or who are at risk for impairment;
3. Intervening in cases in which a veterinarian, veterinary technician, or applicant is determined to need treatment;
4. Referring veterinarians, veterinary technicians, or applicants to appropriate services;
5. Monitoring the treatment and aftercare services provided to veterinarians, veterinary technicians, or applicants;
6. Educating veterinarians, veterinary technicians, or applicants and the public about the functions of the administrator and the professional health program, and their relationship with the board; and
7. Performing other activities as agreed upon by the board and the administrator.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-15, 43-29-15.1

Law Implemented: NDCC 43-29-15, 43-29-15.1

87-05-03-03. Requirements and procedures.

In consultation with the board, the administrator shall develop procedures for:

1. Periodic reporting of statistical information regarding program activity;

2. Periodic disclosure and joint review of information the board deems appropriate regarding reports received, contacts of investigations made, and the disposition of each case;

3. Immediate reporting to the board the identity of any contact and results or results of any investigation concerning an impaired veterinarian or impaired veterinary technician who is believed to constitute an imminent danger to the public or to the individual;

4. Reporting to the board, in a timely fashion, the identity of any contact or the results of any investigation concerning a potentially impaired participant:

   a. Who refuses to cooperate with the administrator;

   b. Who refuses to submit to an evaluation or treatment;

   c. Who is not in compliance with a contractual treatment plan; or

   d. Whose possible impairment is not alleviated substantially through treatment and:

      (1) Who the administrator determines is unable to practice veterinary medicine or veterinary technology with reasonable skill and safety by reason of illness related to the abuse of alcohol or other substances or as a result of any physical or mental condition; or

      (2) Who may pose a threat to the health or safety of a patient or individual;

5. Reporting to the board, in a timely fashion, the identity of any participant for whom the administrator learns of the filing of any disciplinary charges or actions or violations of North Dakota Century Code chapter 43-29;

6. Entering contractual agreements with each participant in the program which make clear the administrator and program procedures, the responsibilities of the participants, and the consequences of noncompliance with the program or with contractual agreements, including the administrator's reporting obligations to the board; and

7. A policy by which a participant may obtain a second opinion review of recommendations by the administrator regarding assessment, monitoring, or treatment.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-15, 43-29-15.1
Law Implemented: NDCC 43-29-15, 43-29-15.1

87-05-03-04. Evaluation.

If the board determines a veterinarian or veterinary technician currently exhibits possible impairment, the board may direct that an evaluation of the veterinarian or veterinary technician be facilitated by the administrator for the purpose of determining whether there is a current need for treatment or monitoring of the veterinarian or veterinary technician and to ensure the veterinarian or veterinary technician is able to practice safely. The administrator shall report the findings of the evaluation to the board.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-15, 43-29-15.1
Law Implemented: NDCC 43-29-15, 43-29-15.1

87-05-03-05. Mandated reporting.

A report by a veterinarian or veterinary technician, including a self-report or self-referral to the administrator, must be deemed to be a report to the board for purposes of mandated reporting of impairment.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-15, 43-29-15.1
Law Implemented: NDCC 43-29-15, 43-29-15.1

87-05-03-06. Confidentiality of records.

Except as expressly provided under this article and North Dakota Century Code section 43-29-15, the administrator may not disclose personally identifiable information about participants other than board-ordered participants.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-15, 43-29-15.1
Law Implemented: NDCC 43-29-15, 43-29-15.1

87-05-03-07. Liability.

Notwithstanding any other provision of law, the administrator, or delegated individuals and members the administrator are not liable to any person for any acts, omissions, or recommendations made in good faith within the scope of responsibilities pursuant to this chapter.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-15, 43-29-15.1
Law Implemented: NDCC 43-29-15, 43-29-15.1

ARTICLE 87-06
PRACTICE OF VETERINARY MEDICINE

[Repealed effective April 1, 2026]

~~Chapter~~
~~87-06-01 Veterinarian-Client-Patient Relationship~~
~~87-06-02 Veterinary Medicine~~

ARTICLE 87-07
VETERINARY TELEMEDICINE

Chapter
87-07-01 Veterinary Telemedicine Guidelines

CHAPTER 87-07-01
VETERINARY TELEMEDICINE GUIDELINES

Section
87-07-01-01 Veterinary Telemedicine Guidelines

87-07-01-01. Veterinary telemedicine guidelines.

If utilizing veterinary telemedicine:

1. A veterinarian shall establish a veterinarian-client-patient relationship in compliance with North Dakota Century Code section 43-29-12.2 before the provision of veterinary telemedicine services;
2. A veterinarian shall employ sound professional judgment to determine whether the use of veterinary telemedicine is medically appropriate;
3. A veterinarian shall obtain appropriate consent from the client;
4. A veterinarian shall conduct all necessary patient evaluations consistent with currently acceptable standards of care;
5. A veterinarian shall maintain patient records according to rules promulgated by the board; and
6. A veterinarian shall ensure the client is aware of the veterinarian's identity, location, license number, and license status.

History: Effective April 1, 2026.
General Authority: NDCC 43-29-20
Law Implemented: NDCC 43-29-20

TITLE 89

WATER COMMISSION

APRIL 2026

CHAPTER 89-01-01

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~~resource 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; amended effective April 1, 2026.
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. a. **~~Department functions.~~** The department consists of several divisions~~, with the division directors reporting to the department's director~~. ~~Several~~Some 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.

b. 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~~licensing water well contractors, water well pump and pitless unit installers, monitoring well contractors, and geothermal system drillers; 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~~; licensing weather modification contractors~~ and permits~~; permitting cloud seeding operations and research activities; ~~conducts~~conducting research into atmospheric research and cloud seeding technology; and ~~monitors, collects, and disseminates~~monitoring, collecting, and disseminating precipitation and climate data.

History: Effective January 1, 2023; amended effective April 1, 2026.
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 - Application Completeness
89-02-01-07.1 Application Amendments
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89-02-01-07.3 Extension of Department Review
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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~~Department Information-Gathering Meeting
89-02-01-09.2 ~~Evaluation of Applications~~Department Review - Factors Considered - Drains of Statewide or Interdistrict Significance
89-02-01-09.3 Time for Determination by Board [Repealed]
89-02-01-09.4 Evaluation of Applications by the Director of Statewide or Interdistrict Significance - Information to Be Used [Repealed]
89-02-01-09.5 Procedure, Availability, and Contents of Notice of Director's Decision to ~~Grant~~Approve or Deny Application of Statewide or Interdistrict Significance
89-02-01-09.6 Request for Department's Hearing [Repealed]
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89-02-01-09.9 Time for Determination by the Director - Copies of Decision [Repealed]
89-02-01-09.10 Consideration of Evidence Not Contained in the Department's Record [Repealed]
89-02-01-09.11 Conditions to Permits
89-02-01-09.12 Extending Time to Complete Drain 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 Department [Repealed]

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~~61-16.1-02.
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. ~~4.~~ "Director" is defined in North Dakota Century Code section 61-03-01.2.
5. "District" is defined in North Dakota Century Code section 61-16.1-02.
6. "Drain" is defined in North Dakota Century Code section 61-16.1-02.
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.
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.
9. "Lateral drain" is defined in North Dakota Century Code section ~~61-21-01~~61-16.1-02.
10. "Maintenance" means removal of silt and vegetation from a drain. Maintenance does not include deepening or widening a drain.
11. "Parties of record" means each person named or admitted as a party or properly seeking and entitled to be admitted as a party.
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.
13. "Pond, slough, lake, sheetwater, or any series thereof" means ponds, sloughs, lakes, or sheetwater that are hydrologically linked.
14. "Sheetwater" is defined in North Dakota Century Code section 61-32-03.
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 reflood 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 refloods during heavy summer or fall rains.

16. ~~"Supplemental hearing" means a hearing held to review evidence not contained in the record of the department's public hearing.~~

~~17.~~ "Watercourse" is defined in North Dakota Century Code section 61-01-06.

~~18.~~17. "Watershed area" means the area that drains into a pond, slough, lake, sheetwater, 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; April 1, 2026.
General Authority: NDCC 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~~As a part of a drainage permit application, applicants shall report to the department the watershed area proposed to be drained by the project and how it was determined. This information must be verified by the department through best publicly available information from relevant local, state, or federal agencies. This information may be supplemented by ~~aerial photographs of the watershed or by~~any information obtained from an onsite investigation ~~requested by the applicant or board or~~ if the department determines it is necessary.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; January 1, 2015; January 1, 2023; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-07. Filing application - Application completeness.

1. Any person desiring a drainage permit ~~must~~shall file ~~an~~a complete application form with the department on a form provided by the department. ~~If requested by the 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 director or board to make an informed decision on the application, it will be returned to the applicant for correction.~~

2. The department shall notify the applicant within fifteen days of application receipt, in writing, whether the application is deemed complete or incomplete.

3. If the application is deemed complete, the department shall begin its review of the application for statewide or interdistrict significance under section 89-02-01-07.4.

4. If the application is deemed incomplete, the department shall detail what information is missing in its notification to the applicant. Applicants are not restricted from submitting a new application for department consideration under this section.

5. Applications are subject to department requirements at the time the application is submitted to the department.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; January 1, 2015; January 1, 2023; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-07.1. Application amendments.

1. If an applicant wishes to make a change to the applicant's application after the application contents have been submitted to the department and without an identified deficiency by the department, the applicant shall withdraw the application and submit a new application.

2. The applicant may amend the application to address deficiencies identified by the department as a part of the department review under section 89-02-01-09.2. The department shall notify the applicant of the deficiency in writing, and the department shall cease its review of the application upon notification to the applicant that a deficiency has been identified. The applicant has up to ninety days from the notification to make any necessary amendments to the application to address the deficiency. This timeline may be extended in consultation with the department. If the department does not receive an application amendment or extension request within ninety days, the application must be denied. The department has up to ninety days to review and approve or deny the application from the receipt of the most recent amendment. All amended applications are subject to department review under section 89-02-01-09.2.

History: Effective April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-07.2. Department and applicant coordination.

1. If the department needs further information or support materials from the applicant during the department review, the department review shall cease and the applicant must be notified, in writing, of the department's need for information or additional support materials.

2. The applicant has up to ninety days from the notification by the department to provide the requested information or materials. This timeline may be extended in consultation with the department.

3. If the department does not receive the requested information, materials, or extension request within ninety days, the application must be denied.

4. The department has up to ninety days to review and approve or deny the application from the receipt of the most recently requested information or materials from the applicant.

History: Effective April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-07.3. Extension of department review.

In unique or complex situations, the department and applicant may agree to suspend the ninety-day timeline requirements detailed in this chapter.

History: Effective April 1, 2026.
General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-07.4. Review for statewide or interdistrict significance - Determination.

1. The department may not begin its review of the application for statewide or interdistrict significance until the application is deemed complete under section 89-02-01-07. The department shall consider the criteria in section 89-02-01-09 in making its determination on whether the drain is of statewide or interdistrict significance.

2. Upon completion of the department's determination, or within ninety days, the department shall refer the application to the district within which is found a majority of the watershed or drainage area of the pond, slough, lake, sheetwater, or any series thereof for consideration, along with any application comments, recommendations, or engineering data.

3. The department shall require applications proposing drainage of statewide or interdistrict significance to be returned to the department if approved by the board. The district is responsible for returning the application to the department for the department's final review and approval.

History: Effective April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-32-03

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

Repealed effective April 1, 2026.

~~Upon receipt of a properly completed application, the department must determine whether the application involves drainage of statewide or interdistrict significance under section 89-02-01-09. The 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 61-03-13~~
~~**Law Implemented:** NDCC 61-32-03~~

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

1. In determining whether the proposed drainage is of statewide or interdistrict significance, the department ~~must~~shall consider the following criteria:

~~1.~~ a. Drainage affecting property owned by the state or its political subdivisions.

~~2.~~ b. Drainage of sloughs, ponds, or lakes having recognized fish and wildlife values.

~~3.~~ c. Drainage having a substantial effect on another district.

~~4.~~ d. 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.~~2. The review may include a solicitation of comments. For good cause, the department may ~~classify or refuse to classify~~determine or refuse to determine 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; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-09.1. ~~Board procedure for processing applications to drain~~Department information-gathering meeting.

~~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 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 department. The board must provide a meeting transcript at the request of the 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 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 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 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 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 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 department.~~

1. Upon receipt of the board's approval of a drainage application for drains determined to have statewide or interdistrict significance under section 89-02-01-07.4 and any information received or considered by the board as a part of that permit application, the department shall hold an information-gathering public meeting.

2. The procedure for notice and meeting must be as follows:

   a. The department shall publish a notice of meeting thirty days prior to holding the meeting.

   b. The meeting must be conducted by the department.

   c. The meeting may be held in Bismarck. The meeting may be virtual.

   d. The meeting is not an adjudicative proceeding hearing under North Dakota Century Code chapter 28-32.

History: Effective February 1, 1997; amended effective January 1, 2015; January 1, 2023; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-09.2. ~~Evaluation of applications~~Department review - Factors considered - Drains of statewide or interdistrict significance.

~~All applications to drain, must consider the following factors:~~

1. The department has up to ninety days to review and approve or deny drainage applications for drains determined to have statewide or interdistrict significance under section 89-02-01-07.4 from the time the most recent application amendment detailed under section 89-02-01-07.1 is received and subject to department and applicant coordination detailed under section 89-02-01-07.2. The ninety-day review period begins the day after the information-gathering meeting in section 89-02-01-09.1.

2. The department shall review the board's approval of the application, any information received or considered by the board as a part of the board's review, and information gathered from the department's information-gathering meeting under section 89-02-01-09.1. The department may request additional information, such as plans and specifications of the drain, an operation and maintenance manual, proof of flowage easements, or additional engineering analysis of the downstream impacts as a part of the review.

3. As a part of the department review of applications proposing drainage of statewide or interdistrict significance, the department shall consider the following factors:

~~1.~~ a. The water volume proposed to be drained and its impact upon the watercourse into which it will be drained~~.~~;

~~2.~~ b. Adverse effects that may occur to downstream landowners. This factor is limited to the project's hydrologic effects, such as erosion, flood duration, sustained flows impacts, and downstream water control device operation impacts~~.~~;

~~3.~~ c. The engineering design and other physical aspects of the drain~~.~~;

~~4.~~ d. The project's impact on flooding problems in the project watershed~~.~~;

~~5.~~ e. The project's impact on ponds, sloughs, streams, or lakes having recognized fish and wildlife values~~.~~;

~~6.~~ f. The project's impact on agricultural lands~~.~~;

~~7.~~ g. Whether required easements ~~are required.~~have been obtained; and

~~8.~~ h. Other factors unique to the project.

History: Effective February 1, 1997; amended effective April 1, 2000; January 1, 2015; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-01-26, 61-16.1-10(3), 61-32-03

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

Repealed effective April 1,2026.

~~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 director. A request for a time extension must be in writing to the department and must set forth the reason for the request. If no determination has been made and no extension has been requested, unless the 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 61-03-13~~
~~**Law Implemented:** NDCC 61-32-03~~

89-02-01-09.4. Evaluation of applications by the director of statewide or interdistrict significance - Information to be used.

Repealed effective April 1, 2026.

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

~~The 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 61-03-13~~

~~**Law Implemented:** NDCC 61-32-03~~

89-02-01-09.5. Procedure, availability, and contents of notice of director's decision to ~~grant~~approve or deny application of statewide or interdistrict significance.

1. The department ~~must~~shall provide a copy of the ~~determination~~decision to the parties of record.
2. 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; and
   f. That ~~a~~an adjudicative hearing may be requested on the project ~~within thirty days of the date of service of the director's decision; and~~under North Dakota Century Code 61-03-22
   ~~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 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; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-03-22, 61-32-03

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

Repealed effective April 1, 2026.

~~All requests for a formal hearing on a project must be made in writing to the department within thirty days of the date of service of the director's decision. The request must specifically state facts from which it is evident the person requesting the hearing is factually aggrieved by the 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 61-03-13~~
~~**Law Implemented:** NDCC 61-03-22, 61-32-03~~

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

Repealed effective April 1, 2026.

~~If the director determines that a request for a hearing on an application of statewide or interdistrict significance is valid and well-founded, the 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 61-03-13~~
~~**Law Implemented:** NDCC 61-03-22~~

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

Repealed effective April 1, 2026.

~~Evidence at the 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 61-03-13~~
~~**Law Implemented:** NDCC 61-03-22, 61-32-03~~

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

Repealed effective April 1, 2026.

~~Unless the director determines the hearing raises complex or unique issues, the 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 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 61-03-13~~
~~**Law Implemented:** NDCC 61-03-22~~

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

Repealed effective April 1, 2026.

~~The record of the department's hearing must be closed at the conclusion of the department's formal hearing. It is in the director's discretion to receive testimony and evidence not contained in the record. However, before considering any evidence not contained in the record, the 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 department within ten days after transmittal of the additional evidence. Any request for a supplemental hearing must provide sufficient information to allow the 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 61-03-13~~
~~**Law Implemented:** NDCC 61-03-22~~

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

Unless otherwise specifically stated~~:~~, the department may attach conditions to permits of statewide or interdistrict significance.

~~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 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; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-32-03

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

~~If the two-year period expires before construction is complete, the~~The permit recipient may make a written request to the board for a one-year extension to the time to complete the drain's construction. 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 director and the board.

History: Effective February 1, 1997; amended effective April 1, 2004; January 1, 2015; January 1, 2023; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-28. Landowner assessment appeal to department.

Repealed effective April 1, 2026.

~~A landowner's appeal to the 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 61-03-13~~
~~**Law Implemented:** NDCC 61-03-22, 61-21-22~~

CHAPTER 89-02-04
DRAINAGE COMPLAINT APPEALS

Section
89-02-04-01 Scope of Chapter [Repealed]
89-02-04-02 Definitions [Repealed]
89-02-04-03 Filing of Complaint [Repealed]
89-02-04-04 Complaint to Department - Director's Action When Board Fails to Act [Repealed]
89-02-04-05 Form and Acceptance of Appeal
89-02-04-05.1 Form and Acceptance of Complaint
89-02-04-06 Department's Review of Board's Decision [Repealed]
89-02-04-07 Sufficiency of Information on Appeal [Repealed]
89-02-04-08 Department's Independent Investigation
89-02-04-09 Demand for Hearing by Affected Landowner [Repealed]
89-02-04-10 Request for Hearing by Others than Affected Landowners [Repealed]
89-02-04-11 Appointment of Hearing Officer [Repealed]
89-02-04-12 Purpose of Hearing [Repealed]
89-02-04-13 Qualifications of Witnesses at Department's Hearings [Repealed]
89-02-04-14 Notice of Hearing [Repealed]
89-02-04-15 Issues Limited to those Contained in Notice [Repealed]
89-02-04-16 Notice of Witnesses at Hearing - Time Frame [Repealed]
89-02-04-17 Subpoena of Witnesses [Repealed]
89-02-04-18 Prehearing Conference [Repealed]
89-02-04-19 Order of Presentation at Hearing [Repealed]
89-02-04-20 Cross-examination [Repealed]
89-02-04-21 Record of Hearing - Consideration by Hearing Officer [Repealed]
89-02-04-22 Recommendation of Hearing Officer [Repealed]
89-02-04-23 Decision of Director on Record of Hearing [Repealed]

89-02-04-01. Scope of chapter.

Repealed effective April 1, 2026.

~~This chapter contains the procedure for appealing the decision of a water resource board on a complaint of drainage constructed without proper approval.~~

~~**History:** Effective October 1, 1988; amended effective January 1, 2015.~~
~~**General Authority:** NDCC 61-03-13~~
~~**Law Implemented:** NDCC 61-32-08~~

89-02-04-02. Definitions.

Repealed effective April 1, 2026.

~~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 department's or board's consideration of an appeal and who is actually damaged by the board's or 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 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 department or the decision of the 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 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 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 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 61-03-13
Law Implemented: NDCC 61-32-08

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

Repealed effective April 1, 2026.

All complaints are filed with the water resource board in the county where the drainage is located. Complaints filed with the 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 61-03-13
Law Implemented: NDCC 61-32-08

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

Repealed effective April 1, 2026.

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 director action with the department. The request must include a copy of the complaint filed with the board and any documentation the landowner wishes the department to consider. The 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 61-03-13
Law Implemented: NDCC 61-32-08

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

1. If a board makes a decision on a drainage complaint, any appeal to the 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 department, and must include:Any aggrieved party under subsection 1 of North Dakota Century Code section 61-32-08 may appeal the board's decision to the department of water resources. The following information is

required by the department to be considered a complete appeal. Only the information below may be accepted as a part of an appeal.

~~1.~~ a. ~~The identity of all parties to the complaint.~~A completed appeal form including the location of the alleged unauthorized drainage and the ownership information of the land on which the alleged drainage is located;

~~2.~~ b. ~~Petitioner's interest in the water resource board's decision, including a statement of the impact the decision will have upon the petitioner.~~A copy of the original complaint to the board and all the materials required as a part of that complaint under North Dakota Century Code section 61-32-07;

~~3.~~ c. ~~The relief petitioner seeks.~~The board's decision; and

~~4.~~ d. A statement ~~identifying the errors in the water resource board's decision that entitle the petitioner to the relief sought~~specifying the reason why the board's position is erroneous.

~~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.~~

2. The department may not begin evaluating the appeal until all necessary documentation is provided to the department by the aggrieved party. If all required documentation is not provided to the department within the statutory submission timeline, the appeal is deemed incomplete and void.

History: Effective October 1, 1988; amended effective January 1, 2015; January 1, 2023; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-32-08

89-02-04-05.1. Form and acceptance of complaint.

1. A person may file a complaint with the department if the board fails to investigate and make a determination concerning the complaint within a reasonable time as outlined in subsection 2 of North Dakota Century Code section 61-32-08. The following information is required by the department to be considered a complete complaint. Only the information below may be accepted as a part of a complaint.

   a. A copy of the original complaint to the board and all the materials required as a part of that complaint under North Dakota Century Code section 61-32-07; and

   b. Proof the complaint was submitted to the board, including the date the complaint was submitted to the board.

2. The department may not begin evaluating the complaint until all necessary documentation is provided to the department by the aggrieved party. If all required documentation is not provided to the department within the statutory submission timeline, the complaint is deemed incomplete and void.

History: Effective April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-32-08

89-02-04-06. Department's review of board's decision.

Repealed effective April 1, 2026.

~~Upon receipt of 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 department must review the board's decision. In the review, the 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 61-03-13~~
~~**Law Implemented:** NDCC 61-32-08~~

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

Repealed effective April 1, 2026.

~~1. Once the department's review under section 89-02-04-06 is complete, the department will determine whether the information reviewed is sufficient to make a sound decision.~~

~~2. If the information is not sufficient, the department will either conduct further investigations or return the record to the board for its further investigation.~~

~~3. If the information is sufficient, the 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 department or the board. If so, the 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 department will notify all parties of the director's decision. 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 61-03-13~~
~~**Law Implemented:** NDCC 61-32-08~~

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

1. ~~After reviewing the board's decision and the items identified in section 89-02-04-06, the 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 department. Any investigation the department undertakes in response to a complaint filed with the department because a board has not acted will be conducted under this rule.~~In addition to the information required in section 89-02-04-05 or 89-02-04-05.1, the department may review the following information as a part of its independent investigation of appeals to the department regarding the board's decision and complaints to the department as a result of board inaction:

a. Topographic information and aerial photographs of the area;

b. Any existing surveys of the area;

c. Department records;

d. Laws, rules, and department policies in effect at the time of the alleged unauthorized drainage; or

e. Publicly available information from relevant local, state, or federal agencies.

2. The department may choose to conduct a site visit under North Dakota Century Code section 61-32-08 to obtain additional information.

History: Effective October 1, 1988; amended effective January 1, 2015; January 1, 2023; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-32-08

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

Repealed effective April 1, 2026.

~~Hearings demanded under North Dakota Century Code section 61-32-08 by an affected landowner must be made within fifteen days of notice of the director's decision. The affected landowner must also notify all parties of the landowner's demand for hearing within fifteen days of the 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 61-03-13~~
~~**Law Implemented:** NDCC 61-32-08~~

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

Repealed effective April 1, 2026.

~~Any aggrieved party may request a hearing on the 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 to the department and to each party within fifteen days after notice of the 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 61-03-13~~
~~**Law Implemented:** NDCC 61-03-22, 61-32-08~~

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

Repealed effective April 1, 2026.

~~Upon receipt of an appeal or demand for a hearing, the 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.~~

~~4. Prepare a recommended decision.~~

~~**History:** Effective October 1, 1988; amended effective January 1, 2023.~~
~~**General Authority:** NDCC 61-03-13~~
~~**Law Implemented:** NDCC 61-03-22, 61-32-08~~

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

Repealed effective April 1, 2026.

~~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 department to examine other witnesses and evidence.~~

~~3. Provide the parties with an opportunity to cross-examine witnesses called by the 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 61-03-13~~
~~**Law Implemented:** NDCC 61-03-22, 61-32-08~~

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

Repealed effective April 1, 2026.

~~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 department may call witnesses on the department's own motion without the agreement of any party if the 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 61-03-13~~
~~**Law Implemented:** NDCC 61-03-22, 61-32-08~~

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

Repealed effective April 1, 2026.

~~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 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 director to adopt. Those urging the director's decision should be affirmed must be designated respondents. Those urging reversal or modification of the 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 61-03-13~~
~~**Law Implemented:** NDCC 61-03-22, 61-32-08~~

89-02-04-15. Issues limited to those contained in notice.

Repealed effective April 1, 2026.

~~The notice of hearing will identify the issues to be addressed and identified in the demand or the request for a hearing. Evidence and testimony at the hearing will be limited to the issues set forth in the notice of hearing.~~

~~**History:** Effective October 1, 1988.~~
~~**General Authority:** NDCC 61-03-13~~
~~**Law Implemented:** NDCC 61-03-22, 61-32-08~~

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

Repealed Effective April 1, 2026.

~~At least thirty days before the date set for the hearing, the petitioner must notify other parties, the board, the department, and the hearing officer 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 department, and the hearing officer 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 department, and the hearing officer 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 department must notify the parties, the board, and the hearing officer of any witnesses the department intends to call in the notice of hearing. However, if testimony or evidence not provided to the board and not considered in the director's determination will be presented by others, the failure of the department to identify a witness should not preclude the department 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 61-03-13~~
~~**Law Implemented:** NDCC 61-03-22, 61-32-08~~

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

Repealed effective April 1, 2026.

~~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 department's staff, the salary for that individual.~~

~~**History:** Effective October 1, 1988; amended effective January 1, 2015; January 1, 2023.~~
~~**General Authority:** NDCC 61-03-05(13), 61-03-13~~
~~**Law Implemented:** NDCC 61-03-05, 61-32-08~~

89-02-04-18. Prehearing conference.

Repealed effective April 1, 2026.

~~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 department, 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 department, 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 61-03-13~~
~~**Law Implemented:** NDCC 61-03-22, 61-32-08~~

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

Repealed effective April 1, 2026.

~~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 department. 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 61-03-13~~
~~**Law Implemented:** NDCC 61-03-22, 61-32-08~~

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

Repealed effective April 1, 2026.

~~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 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 61-03-13~~
~~**Law Implemented:** NDCC 61-03-22, 61-32-08~~

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

Repealed effective April 1, 2026.

~~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 director in making the 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 61-03-13~~
~~**Law Implemented:** NDCC 61-32-08~~

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

Repealed effective April 1, 2026.

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

~~**History:** Effective October 1, 1988; amended effective January 1, 2023.~~
~~**General Authority:** NDCC 61-03-13~~
~~**Law Implemented:** NDCC 61-32-08~~

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

Repealed effective April 1, 2026.

~~The 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 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 61-03-13~~
~~**Law Implemented:** NDCC 61-32-08~~

89-03-01-06.3. Record - Official notice.

Unless specifically excluded by the department or the hearing officer, the record in each water permit application proceeding includes, ~~when~~if 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 department streamflow records.
3. United States geological survey and department water quality data.
4. National oceanic and atmospheric administration climatological data.
5. United States geological survey topographic maps.
6. Department water permit files.
7. Department annual water use reports.
8. Department and United States geological survey ground water level data.
9. ~~North Dakota board of water~~Water well contractors well completion reports.
10. Department test hole records.
11. Department water resource investigations reports and ground water study reports.
12. Department and United States geological survey county ground water study reports.
13. Information in 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; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-04-05.1

89-03-01-13. Report of water use.

The form for reporting annual water use under North Dakota Century Code section 61-04-27 must include the permit number, water usage amount, pumping rate, if applicable, and any other information the 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; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-04-27

89-03-01-13.1. Fines - Water use reporting.

A permitholder who fails to timely submit a complete and accurate annual water use report under North Dakota Century Code section 61-04-27 ~~will~~must be assessed a fine of two hundred fifty dollars for each water permit.

History: Effective July 1, 2014; amended effective January 1, 2023; April 1, 2026.

General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-03-23, 61-04-27

CHAPTER 89-03-02

89-03-02-01. Submission of an application to add a point of diversion or for a change in purpose of use.

An application to add a point of diversion or for a change in purpose of use must be submitted to the department on the form provided by the department. The department may require additional 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~~61-04-15.4.

History: Amended effective April 1, 1989; July 1, 2014; January 1, 2023; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-04-04, 61-04-06.1, 61-04-15.2, 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 to add a point of diversion must be published in accordance with ~~section~~sections 89-03-01-04 and 89-03-01-05.

History: Amended effective April 1, 1989; April 1, 2000; July 1, 2014; January 1, 2023; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-04-05, 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 department in writing. ~~Either the~~The transferee or the permitholder may request assignment of the water permit. The application must describe the transferee's interest in the water permit. The 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; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-04-15

CHAPTER 89-07-02
WEATHER MODIFICATION OPERATIONS

Section
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89-07-02-02 Definitions
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89-07-02-05 Approval of Exempt Activities
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89-07-02-07 Criteria for Issuance of License
89-07-02-08 Application Procedure
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89-07-02-13 Restoration of License
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89-07-02-01. General provisions.

This chapter applies to any weather modification operations conducted in North Dakota. This chapter must be applied in conjunction with North Dakota Century Code chapter 61-04.1.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08
Law Implemented: NDCC 61-04.1-02, ~~61-04.1-08(3)~~61-04.1-08

89-07-02-02. Definitions.

The following definitions apply to this chapter and North Dakota Century Code chapter 61-04.1:

1. "Applicant" means any person who applies for a professional weather modification license or permit.

2. ~~"Director" means the executive director of the atmospheric resource board.~~"Department" is defined in North Dakota Century Code section 61-03-01.2.

3. "License" means a weather modification license.

4. "Licensee" means a person to whom a weather modification license has been issued.

5. "Operations area" means a geographic area where weather modification operations are conducted.

6. "Permit" means a weather modification permit.

7. "Permittee" means a person to whom a weather modification permit has been issued.

8. "Target area" means an area where the effects of weather modification are desired.

9. "Weather modification apparatus" means any device used to dispense any chemical material used to modify any weather condition.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08
Law Implemented: NDCC 61-04.1-03

89-07-02-03. Administration.

Repealed effective April 1, 2026.

~~Except as otherwise provided, the powers and duties of the board must be exercised by the director or the director's designee.~~

~~**History:** Effective November 1, 1988; amended effective July 1, 2014.~~
~~**General Authority:** NDCC 28-32-02, 61-04.1-08(3)~~
~~**Law Implemented:** NDCC 61-04.1-08(3)~~

89-07-02-04. Exempt activities.

~~Any~~A person intending to conduct ~~any~~ exempt activities under North Dakota Century Code section 61-04.1-12 ~~must~~shall furnish notice of such intention to the ~~board~~department at least thirty days before the time such activities are to begin. Notice must consist of the following information and such other information as the ~~board~~department deems necessary:

1. The name and address of the person giving notice.

2. The name and address of the person who will conduct the activity.

3. A description of the procedures to be used in the operation or the research and development.

4. A description of the object of the activity.

5. The legal description and a map showing the operations area and target area, if any.

6. The approximate starting date of the activity and its anticipated duration.

7. A description of the equipment to be used in conducting the activity.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08, 61-04.1-12
Law Implemented: NDCC 61-04.1-12

89-07-02-05. Approval of exempt activities.

~~No weather~~Weather modification activity intended to be conducted under North Dakota Century Code section 61-04.1-12 may not begin without approval of the ~~board~~department, if ~~such~~the activity is to be conducted outside with weather modification apparatus. The ~~board~~department may only approve ~~those~~ activities that provide for the protection of the health, safety, and welfare of ~~those~~ people who may be affected by such activities and that otherwise comply with North Dakota Century Code section 61-04.1-12.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.

General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08
Law Implemented: NDCC 61-04.1-12~~, 61-04.1-16~~

89-07-02-06. Field presence required.

~~Every~~A person intending to conduct operations in ~~this~~the state ~~must~~shall designate to the ~~board~~department, on forms furnished by the ~~board~~department, at least one natural person who must at all times be physically present during all operations for which a permit is required and who ~~will be~~is the contractor's immediate point of contact in the field. The designated individual ~~will~~must be fully apprised of the status of the contractor's project equipment and personnel at all times and ~~will~~must coordinate the contractor's field activities.

History: Effective November 1, 1988; amended effective February 1, 1999; July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3), 61-04.1-14~~61-03-13, 61-04.1-08
Law Implemented: NDCC ~~61-04.1-11,~~ 61-04.1-14

89-07-02-07. Criteria for issuance of license.

1. The competence of any applicant to engage in weather modification operations must be demonstrated to the ~~board~~department under North Dakota Century Code section 61-04.1-14. Applicants ~~must~~shall show that any natural person designated by the applicant who will be in the full-time employment ~~solely~~ of the applicant during the project period and who will oversee the applicant's actions during the project has:

~~1.~~ a. A minimum of one year of field experience in the management and control of weather modification operations or research; and

~~2.~~ b. One of the following requirements:

~~a.~~ (1) Four additional years' experience in weather modification operations or research;

~~b.~~ (2) A degree in mathematics, engineering, or the physical sciences, plus two years' additional experience in weather modification operations or research;

~~c.~~ (3) A degree in meteorology; or

~~d.~~ (4) A degree in mathematics, engineering, or the physical sciences ~~that~~, which includes at least twenty-five semester hours of coursework in meteorology.

2. In determining competency, the ~~board~~department may also consider any other items set forth in a license application under section 89-07-02-08.

3. At least one such natural person designated by the applicant and licensed by the ~~board~~department must be available for immediate consultation by the ~~board~~department, at a location made known to the ~~board~~department by the ~~contractor~~applicant, at all times while the project is ongoing.

History: Effective November 1, 1988; amended effective February 1, 1999; July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3), 61-04.1-14~~61-03-13, 61-04.1-08
Law Implemented: NDCC 61-04.1-14

89-07-02-08. Application procedure.

An applicant for a license ~~must~~shall apply to the ~~board~~department on forms furnished by the ~~board~~department. The forms may require relevant information about the knowledge and experience of the applicant and the natural person designated under section 89-07-02-06 and must include:

1. Educational background, at the college and graduate level, of both the natural person designated by the applicant and the other employees of the applicant~~. This includes~~, including the dates of attendance and graduation; the major and minor subjects studied, including the number of semester hours of meteorological coursework; the degrees received; and the titles of any thesis or dissertation.

2. Experience in weather modification or related activities of both the natural person designated by the applicant and the other employees of the applicant. Attention ~~should~~must be given to experience with reference to meteorological conditions typical of North Dakota. The applicant ~~should~~shall list the dates of each position held by the natural person designated under section 89-07-02-06, the title of position (indicate whether it was of subprofessional or professional level), the name and address of the employer, a description of the work done (indicate both the magnitude and complexity of the work and the duties and degree of responsibility for the work), and the name and address of the supervisor.

3. Scientific or engineering society affiliations of the natural person designated by the applicant and the grade of membership in and certification by each society.

4. Publications, patents, and reports of the natural person designated by the applicant.

5. Three references who will attest to the natural person's character, knowledge, and experience.

6. A list of all jurisdictions where the applicant has previously filed an application for a professional weather modification license. The result of the applications ~~should~~must be indicated.

7. Indication whether a professional weather modification license issued to the applicant in any jurisdiction has ever been suspended or revoked or whether there has been refusal to renew such a license by any jurisdiction. ~~Such~~The circumstances must be explained in detail.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3), 61-04.1-14~~61-03-13, 61-04.1-08
Law Implemented: NDCC 61-04.1-14

89-07-02-09. Procedure for issuance.

The ~~board must~~department shall evaluate the applications, including responses from any references given by the applicant. On the basis of all ~~such~~ information the ~~board~~department, within thirty days of receipt of an application, ~~must~~shall determine whether the natural person designated by the license applicant under section 89-07-02-06 meets the education and experience criteria established by section 89-07-02-07 and whether the natural person and the applicant possess the knowledge and experience necessary to engage in weather modification operations. The ~~board must~~department shall issue a license to the applicant who satisfies the requirements of this chapter and North Dakota Century Code section 61-04.1-14. If an applicant for a license or the natural person designated by the applicant does not satisfy the requirements, the ~~board must~~department shall deny the license.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3), 61-04.1-14~~61-03-13, 61-04.1-08
Law Implemented: NDCC 61-04.1-14

89-07-02-10. Renewal of license.

Forty-five days before expiration of licenses, the ~~board must~~department shall provide license application forms to all licensees and request each licensee to complete the form and file the original with the ~~board~~department. The ~~board must~~department shall evaluate the available data about the licensee and the natural person, designated by the license applicant under section 89-07-02-06, and

~~must~~shall issue a renewal license within thirty days of receipt of the application to each applicant who pays the license fee established by subsection 1 of North Dakota Century Code section 61-04.1-14 and who has the qualifications necessary for issuance of an original license. The ~~board must~~department shall deny a renewal license within thirty days of receipt of the application of each applicant who does not pay the renewal fee, who does not possess the qualifications necessary for issuance of an original license, or who does not designate a natural person, under section 89-07-02-06, who satisfies the requirements of section 89-07-02-07.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3), 61-04.1-14~~61-03-13, 61-04.1-08
Law Implemented: NDCC 61-04.1-14

89-07-02-11. Responsibility of controller.

The natural person designated by the license applicant under section 89-07-02-06 is deemed by the ~~board~~department to be in control of and primarily responsible for operations conducted under the terms of any permit. However, nothing in this section may be construed to prevent appropriate enforcement of any regulation, limitation, permit condition, or order against either the permittee or licensee, whether or not such licensee is a natural person.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08
Law Implemented: NDCC 61-04.1-18, 61-04.1-37

89-07-02-12. Suspension, revocation, refusal to renew a license.

In addition to the reasons cited in North Dakota Century Code section 61-04.1-15, the ~~board~~department may suspend, revoke, or refuse to renew a license for violation of any permit.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08
Law Implemented: NDCC 61-04.1-14, 61-04.1-15

89-07-02-13. Restoration of license.

At any time after the suspension or revocation of a license or after refusal to renew a license, the ~~board~~department may restore the license to the licensee or renew it upon a finding that the licensee has met the requirements for issuance of an original license.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08
Law Implemented: NDCC 61-04.1-14

89-07-02-14. Application for permit.

Application for a weather modification permit must be made on forms furnished by the ~~board~~department. Every applicant must submit a properly executed application to the ~~board~~department. The application may contain ~~such~~ information ~~as~~ the ~~board~~department deems necessary, and must include the following information:

1. Name and address of the applicant.

2. Whether a weather modification operational permit issued to the applicant in any jurisdiction has ever been suspended or revoked or whether there has been refusal to renew a permit by any jurisdiction. ~~Such~~The circumstances must be explained in detail.

3. If the applicant is a corporation, whether it is licensed to do business in North Dakota.

4. Whether a license has been issued under North Dakota Century Code section 61-04.1-14, and if so, the names, addresses, and professional license numbers of the controllers.

5. Whether professional weather modification licenses issued to the license applicant in any jurisdiction have ever been suspended or revoked or whether there has been refusal to renew a license by any jurisdiction. ~~Such~~The circumstances must be explained in detail.

6. Whether proof of financial responsibility has been furnished under section 89-07-02-22 and North Dakota Century Code section 61-04.1-19.

7. If the operation will be conducted under a contract, the value of the contract.

8. If the operation will not be conducted under a contract, an estimate of the costs of the operation and information as to how the estimate was made.

9. Whether the applicant has paid the application fee.

10. Whether the applicant has North Dakota workforce safety and insurance coverage.

11. A copy of any promotional and advertising material used in connection with negotiations for the contract, if any.

12. Whether the applicant has furnished a performance bond, as required by subsection 3 of section 89-07-02-26.

13. Whether the applicant has furnished the bid bond.

14. Whether the applicant has registered with the North Dakota aeronautics commission all aircraft to be used in the operation for which the permit is sought.

15. A complete and detailed operational plan for the operation that includes:

    a. The nature and object of the operation.

    b. The legal description and a map showing the operations area and the target area.

    c. The approximate starting date of the operation and its anticipated duration.

    d. The kind of seeding agents intended for use and the anticipated rate of their use.

    e. A list of equipment that will be used and the methods of seeding for which they will be used.

    f. An emergency shutdown procedure that states conditions under which operations will be suspended because of possible danger to the public health, safety, and welfare or to the environment.

    g. The means by which the operation plans will be implemented and carried out such as:

        (1) The location of the main operational office and any other offices used in connection with the operation;

        (2) The location of such ground equipment as seeding generators, radar, and evaluation instrumentation;

        (3) The number and kinds of aircraft that will be used;

        (4) The extent to which weather data will be made available to the licensees; and

(5) Other personnel carrying out the project.

h. How conduct of the operation will interact with or affect other weather modification operations.

16. ~~Such additional~~Additional information that will assist the ~~board~~department in deciding whether to issue the permit.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014; July 1, 2024; April 1, 2026.
General Authority: NDCC ~~61-04.1-08(3)~~61-03-13, 61-04.1-08
Law Implemented: NDCC 61-04.1-16

89-07-02-15. Procedure for issuance.

1. ~~**Notice.**~~ The ~~board must~~department shall give notice of its consideration of an application under North Dakota Century Code section 61-04.1-17. Notice must be given once a week for two consecutive weeks. The notice must:

   a. Describe the primary target area.

   b. Describe the operations area.

   c. Specify the period of operation, including starting and ending dates.

   d. Describe the general method of operation.

   e. Describe the intended effect of the operation.

   f. State the name of the proposed permittee.

2. ~~**Hearings.**~~ The ~~board must~~department shall allow twenty days for public comment, under North Dakota Century Code section 61-04.1-17, from the date of the last publication of the notice. Any hearing held upon objection received by the ~~board or any hearing held upon the board's own motion~~department must be held upon at least ten days' notice in the county newspaper where notice of consideration of the application was published. At the hearing, the ~~board must~~department shall make a brief record of testimony received, and ~~must~~shall consider all such testimony in its decision on the permit application.

3. ~~**Director's recommendation.** At the close of the public comment period provided for in North Dakota Century Code section 61-04.1-17, the director of the board must review all applications for permits that have been received and must recommend approval or disapproval of such applications and the reasons therefor.~~

4. ~~**Final action by board.**~~ The ~~board must~~department shall take final action on all applications for permits for which notice of consideration was published~~, under North Dakota Century Code section 61-04.1-17,~~ within forty-five days of the close of the public comment period. ~~Approval of applications considered must be by majority vote. In acting on any such applications, the board must~~The department shall consider ~~any recommendations made by the director of the board and~~ all testimony received at any hearing under North Dakota Century Code section 61-04.1-17. The ~~board~~department may issue a permit only if it determines that the requirements of subsection 2 of North Dakota Century Code section 61-04.1-16 have been met.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08
Law Implemented: NDCC 61-04.1-16, 61-04.1-17

89-07-02-16. Permit form.

~~Each~~A permit must set forth the permit number, effective period of the permit, name of the permittee, name of the licensee and the license number, location of the operation, and ~~such~~ other information, terms, or conditions ~~as~~ the ~~board~~department deems appropriate.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08
Law Implemented: NDCC 61-04.1-16

89-07-02-17. Permit conditions.

The ~~board~~department may attach conditions to any permit as it deems appropriate, including any conditions concerning method and time of operation, target and operation areas, safety precautions, and recordkeeping. Permittee ~~must~~shall submit an operations plan that includes the types of seeding agents to be used, the methods and equipment to be employed in seeding operations, and the emergency shutdown procedures, including the conditions under which operations will be suspended. Violation of any permit may result in permit revocation, suspension, or other appropriate enforcement action by the ~~board~~department.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08
Law Implemented: NDCC ~~61-04.1-16(2)~~61-04.1-16

89-07-02-18. Permit expiration.

~~All permits~~Permits that have expired under North Dakota Century Code section 61-04.1-16 are nonrenewable.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08
Law Implemented: NDCC 61-04.1-11, 61-04.1-16

89-07-02-19. Suspension - Revocation - Modification.

In addition to the reasons cited in North Dakota Century Code section 61-04.1-18, the ~~board~~department may suspend, revoke, or modify any permit or any provision or condition of a permit if it appears to the ~~board that~~department the permittee has violated the North Dakota Century Code or the terms or conditions of any permit held by the permittee.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08
Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-20. Automatic suspension of permit.

~~Any~~A permit issued under this chapter is automatically suspended if the person's weather modification license expires or is suspended, revoked, or not renewed by the ~~board~~department. In the case of a permit issued to a corporation, partnership, or other business association, if the natural person designated as being in control of the operation in ~~such~~the business association's application for a weather modification license becomes incapacitated, leaves the business association's employment, or is in any way unable to continue in control of the operation, automatic suspension of the permit ~~will~~must result. A permit of a business association suspended under such circumstances may be reinstated by the nomination of replacement personnel under section 89-07-02-08.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08

Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-21. Restoration of permit.

At any time after the suspension, revocation, or modification of a permit, the ~~board~~department may restore it to the permittee or delete any modification ~~thereof~~of the permit upon a finding that the requirements for issuance of an original permit have been met by the permittee or that the conditions requiring modification no longer exist.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08
Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-22. Proof of financial responsibility.

Proof of financial responsibility is made by showing to the satisfaction of the ~~board~~department that the permittee has the ability to respond to liability that might reasonably result from the operation for which the permit is sought. ~~Such proof~~Proof of financial responsibility may be shown by any of the following:

1. Presentation to the ~~board~~department or proof of purchase of a prepaid noncancelable insurance policy or a corporate surety bond, issued by a company against whom service of legal process may be made in North Dakota, against liabilities in an amount five times the value of an operation conducted under contract or in an amount five times the estimated costs of an operation not conducted under contract.

2. Depositing with the ~~board~~department cash or negotiable securities in an amount five times the value of an operation conducted under contract or in an amount five times the estimated costs of an operation not conducted under contract.

3. Any other manner approved by the ~~board~~department.

History: Effective November 1, 1988; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08
Law Implemented: NDCC 61-04.1-16, 61-04.1-19

89-07-02-23. Records.

1. ~~**Daily log.** Each~~A permittee ~~must~~shall retain a daily log of weather modification activities for each unit of weather modification apparatus used during an operation ~~that includes~~, including:

   a. Date of the weather modification activity.

   b. Each aircraft flight track and location of each radar unit during each modification mission. Maps may be used.

   c. Local time when modification activity began and ended. For intermittent operations, the beginning and ending time of the total sequence are acceptable.

   d. Duration of operation of each unit of weather modification apparatus, in hours and minutes.

   e. Description of type of modification agents used.

   f. Rate of dispersal of agent during the period of actual operation of weather modification apparatus, by hour or other appropriate time period.

g. Total amount of modification agent used. If more than one agent was used, report total for each type separately.

h. Local time when any radar monitoring operations were turned on and turned off.

i. Type of clouds modified, that is, whether they were stratiform, isolated cumuliform, organized cumuliform, or other types of clouds.

j. Remarks indicating operational problems, including equipment failure, weather conditions not conducive to successful performance of the operation, or personnel problems.

2. **~~Monthly totals.~~** Monthly totals must be kept on the basis of the daily logs, listing the total:

a. Days during month in which operation conducted.

b. Time of operation.

c. Amount of each kind of agent used.

d. Average rate of dispersal of each kind of agent used.

e. Days of each type of operation.

f. Duration of operation of each unit of weather modification apparatus, in hours and minutes.

3. **~~Addresses of participants.~~** ~~Each~~A permittee ~~must~~shall keep a roster of the names and North Dakota addresses of all employees participating in the state on an operation.

4. **~~Inspection.~~** Duly authorized agents of the ~~board~~department have the authority to enter and inspect any equipment and to inspect or copy any records required by this section.

5. **~~Exempted weather modification activities.~~** ~~All people~~People conducting weather modification activities exempted by the ~~board~~department under North Dakota Century Code section 61-04.1-12 ~~must~~shall record and maintain all of the records required of any permittee by this section.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08
Law Implemented: NDCC ~~61-04.1-08(3)~~61-04.1-08, 61-04.1-16

89-07-02-24. Reports.

1. **~~Final.~~** Within sixty days after final completion of any operation, each permittee ~~must~~shall file with the ~~board~~department a final report on the operation that must include:

a. Copies of the daily logs prepared under subsection 1 of section 89-07-02-23, copies of the monthly totals for the entire operational period from the monthly summary records prepared under subsection 2 of section 89-07-02-23, and a narrative summary of permittee activities during the operational period.

b. A copy of the federal final activity report form filed with the national oceanic and atmospheric administration under the rules adopted under Public Law 92-205 [85 Stat. 735].

c. A narrative account of the manner in which the operation did not conform to the operational plan filed under subsections 1 through 16 of section 89-07-02-14.

2. **~~Exempted weather modification activities.~~** The ~~board~~department may require people operating weather modification activities exempted under sections 89-07-02-04 and 89-07-02-05, ~~but~~ who have been required to keep records under subsection 5 of section 89-07-02-23, to file any part of ~~such~~the records with the ~~board~~department.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08
Law Implemented: NDCC ~~61-04.1-08(3)~~61-04.1-12, 61-04.1-16

89-07-02-26. Award of contracts.

1. **~~Deviation from technical requirements.~~** ~~Any or all bids~~A bid may be rejected by the ~~board~~department on the basis of technical inadequacy or other failure to comply with the specifications included in the request for bids.

2. **~~Contractor's bond.~~** Before the ~~board~~department awards any contract, it ~~must~~shall require the contractor to furnish a surety bond for the faithful performance of the contract in an amount up to twenty-five percent of the contract price, conditioned that the contractor and the contractor's agents ~~will~~shall in all respects faithfully perform all weather modification contracts undertaken with the ~~board~~department and ~~will~~shall comply with North Dakota Century Code chapter 61-04.1, this chapter, and the contract between the ~~board~~department and the contractor. If the contract involves the erection, repair, or alteration of any public improvement, the surety bond must be in the full amount of the contract price.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014; April 1, 2026.
General Authority: NDCC ~~28-32-02, 61-04.1-08(3)~~61-03-13, 61-04.1-08
Law Implemented: NDCC 44-08-01, 61-04.1-33, 61-04.1-34~~, 61-04.1-35~~

ARTICLE 89-08
DAMS, DIKES, AND OTHER DEVICES

Chapter
89-08-01 Definitions
89-08-02 Construction Permits
89-08-03 Inspections
89-08-04 Operation and Maintenance [Repealed]

CHAPTER 89-08-02
CONSTRUCTION PERMITS

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89-08-02-01 Determining if a Permit is Required
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89-08-02-02 Initial Review - Contents of Application
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89-08-02-03 Permit Does Not Absolve Liability for Damages
89-08-02-03.1 Time to Complete Construction of Structure
89-08-02-03.2 Extending Time to Complete Construction of Structure
89-08-02-04 Emergency Construction Permits
89-08-02-05 Extension of Emergency Construction Permits
89-08-02-06 Removal of Emergency Structures
89-08-02-07 As Built Plans
89-08-02-08 Operation and Maintenance Manual

89-08-02-02. Initial review - Contents of application.

1. The department has up to forty-five days to complete an initial review of the application and its contents. The initial review must determine what type of construction permit is required and if the application is complete.

2. The following information is required by the department in order for a construction permit application to be deemed complete:

   a. A completed ~~construction permit~~ application ~~must include: plans~~form;

   b. Plans and specifications as stipulated by the department;~~ evidence~~

   c. Evidence establishing a property right or easement for the ~~property~~properties that will be affected by the construction of the dam, dike, or other device; and~~ any~~

   d. Any additional information required by the department.

3. If the application is deemed complete, the department shall forward the application to the water resource district's board within which the contemplated project is located within the forty-five day initial review period. If the water resource district is the applicant, the application must be processed under section 89-08-02-02.1 without soliciting water resource board changes, conditions, or modifications. If the applicant submits a statement of support of the project design from the board to the department with its application, the requirement to receive approval from the water resource board is considered met, and the department shall begin its review under section 89-08-02-02.1.

4. If the application is deemed incomplete, the department shall notify the applicant in writing that the application is deemed incomplete and detail what information is missing. Applicants are not restricted from submitting a new application for department consideration under this section.

5. Applications are subject to department requirements at the time the application is submitted to the department.

History: Effective November 1, 1989; amended effective June 1, 1998; April 1, 2004; January 1, 2015; January 1, 2023; July 1, 2024; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-16.1-38

89-08-02-02.1. Department review.

1. The department shall begin its department review upon receipt of the board's suggested changes, conditions, or modifications to the application. If the board fails to send suggested changes, conditions, or modifications to the department within forty-five days, the board is deemed to have no changes, conditions, or modifications to make, and the department shall begin its department review.

2. The department has up to ninety days to review and approve or deny the application from the time the most recent application amendment detailed under section 89-08-02-02.2 is received and subject to department and applicant coordination detailed in section 89-08-02-02.3.

History: Effective April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-16.1-38

89-08-02-02.2. Application amendments.

1. If an applicant wishes to make a change to the applicant's application after the application has been submitted to the department and without an identified deficiency by the department, the applicant shall withdraw the application and submit a new application.

2. The applicant may amend the application to address deficiencies identified by the department as a part of the department review under section 89-08-02-02.1. The department shall notify the applicant of the deficiency in writing, and the department shall cease its review of the application upon notification to the applicant that a deficiency has been identified. The applicant has up to ninety days from the notification to make any necessary amendments to the application to address the deficiency. This timeline may be extended in consultation with the department. If the department does not receive an application amendment or extension request within ninety days, the application is denied. The department has up to ninety days to review and approve or deny the application from the receipt of the most recent amendment. All amended applications are subject to department review under section 89-08-02-02.1.

History: Effective April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-16.1-38

89-08-02-02.3. Department and applicant coordination.

1. If the department needs further information or support materials from the applicant during the department review, the department review shall cease and the applicant must be notified in writing of the department's need for information or additional support materials.

2. The applicant has up to ninety days from the notification by the department to provide the requested information or materials. This timeline may be extended in consultation with the department.

3. If the department does not receive the requested information, materials, or extension request within ninety days, the application is denied.

4. The department has up to ninety days to review and approve or deny the application from the receipt of the most recently requested information or materials from the applicant.

History: Effective April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-16.1-38

89-08-02-02.4. Extension of department review.

In unique or complex situations, the department and applicant may agree to suspend the ninety-day timeline requirements detailed in this chapter.

History: Effective April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-16.1-38

89-08-02-08. Operation and maintenance manual.

A medium-hazard or high-hazard dam owner shall submit an operation and maintenance manual for the dam and the appurtenant works to the department. The manual must be maintained and updated on a regular basis, and copies of all updates must be submitted to the department. Dam owners shall maintain their structures in an adequate manner.

History: Effective April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-03-21.2

CHAPTER 89-08-04
OPERATION AND MAINTENANCE

[Repealed effective April 1, 2026]

~~Section~~
~~89-08-04-01 Operation and Maintenance Manual~~
~~89-08-04-02 Maintenance Plan [Repealed]~~
~~89-08-04-03 Emergency Action Plan~~

CHAPTER 89-10-01
SOVEREIGN LANDS

Section
89-10-01-01 Authority
89-10-01-02 Prohibition on Permanent Relinquishment
89-10-01-03 Definitions
89-10-01-04 Authorization
89-10-01-05 Application for Permit, Easement, Lease, or Management Agreement
89-10-01-06 Application Review
89-10-01-06.1 Record - Official Notice
89-10-01-07 Public Meeting
89-10-01-08 General Permit Standards
89-10-01-08.1 Temporary Sovereign Lands Permits - Removal
89-10-01-09 Specific Project Requirements [Repealed]
89-10-01-10 Projects Not Requiring a Permit
89-10-01-10.1 Boat Docks and Water Intakes
89-10-01-10.2 Boat Dock Registration
89-10-01-11 Structures
89-10-01-12 Public Recreational Use
89-10-01-13 Vehicular Access
89-10-01-14 Cancellation by the Director
89-10-01-15 Termination by Applicant
89-10-01-16 Assignments
89-10-01-17 Inspections
89-10-01-18 Reclamation
89-10-01-19 Maintenance and Repair
89-10-01-20 Areas of Special Interest
89-10-01-21 Organized Group Activities
89-10-01-22 Pets
89-10-01-23 Camping
89-10-01-24 Hunting, Fishing, and Trapping
89-10-01-25 Unattended Watercraft
89-10-01-26 Removal or Destruction of Public Property
89-10-01-27 Cultural or Historical Resources
89-10-01-28 Disposal of Waste
89-10-01-29 Glass Containers
89-10-01-30 Abandoned Property
89-10-01-31 Firearms
89-10-01-32 Tree Stands
89-10-01-33 Baiting
89-10-01-34 Dredging or Filling

89-10-01-06. Application review.

Upon receipt of a completed application, the department ~~must~~shall 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~~shall submit all comments in writing to the department. The department is not bound by any comment submitted. The department ~~must~~shall receive comments ~~within thirty days of the date requests for comments were mailed~~by the deadline stated in the comment request in subsection 1.

3. Upon completion of the review and any public meeting held under section 89-10-01-07, the 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; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-08. General permit standards.

The department may grant, deny, or condition any permit application. In deciding what action to take on a permit application, the department ~~must~~shall consider the potential effects of the proposed project on the following:

1. Riparian owner's correlative rights of use;

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; July 1, 2024; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-08.1. Temporary sovereign lands permits - Removal.

1. The department may issue temporary sovereign lands permits for proposed projects less than twelve months in duration, which do not include permanent ground disturbing activities. Temporary sovereign lands permits may not be subject to section 89-10-01-06 or 89-10-01-07. Temporary sovereign lands permits are subject to section 89-10-01-08.

2. A completed application for temporary sovereign lands permit must be submitted to the department on a form prescribed by the department along with any additional information required by the department.

3. Upon temporary sovereign lands permit expiration, all permitted works under this section must be removed in their entirety and the disturbed area restored to preproject conditions within thirty days. The applicant shall notify the department in writing when the temporary use has been completely removed.

History: Effective April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-10. Projects not requiring a permit.

The following projects do not require a permit:

1. Boat docks, if all of the following conditions are satisfied:

   a. They are constructed, operated, and maintained by the riparian owner for personal use;

   b. The dock is used only for embarkation, debarkation, moorage of watercraft, water intakes, or recreation;

   c. Only clean, nonpolluting materials are used;

   d. The total length of the dock over the surface of the water does not exceed twenty-five feet [7.6 meters] on a river or fifty feet [15.24 meters] on a lake, and there is no unreasonable interference with navigation or access to an adjacent riparian owner's property;

   e. The dock is connected to a point above the ordinary high watermark by a boardwalk that does not exceed twenty-five feet [7.6 meters] in length and is removed from below the ordinary high watermark each fall; and

   f. Upon abandonment, the grantee ~~restores~~dock owner shall restore the bank as closely as practicable to its original condition.

2. Water intakes, if all of the following conditions are satisfied:

   a. They are constructed, operated, and maintained by the riparian owner for domestic use; and

   b. The intake is removed from below the ordinary high watermark each fall.

3. Watercraft that are temporarily moored.

4. Snagging and clearing, ~~when~~if performed by a federal or state entity or political subdivision.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2009; April 1, 2010; July 1, 2014; April 1, 2026.

General Authority: NDCC 61-03-13
Law Implemented: NDCC 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 department. Any person who violates this section ~~must~~shall pay a ~~two hundred fifty dollar~~ fee not to exceed three hundred fifty dollars per day. The dock ~~will be~~is 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; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 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 department before placement of any such dock. The department ~~must~~shall provide registration forms. ~~Any~~A person who violates this section ~~must~~shall pay a ~~two hundred fifty dollar~~ fee not to exceed three hundred fifty dollars per occurrence. The dock ~~will be~~is subject to removal at the dock owner's expense.

History: Effective April 1, 2010; amended effective July 1, 2014; January 1, 2023; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-13. Vehicular access.

1. The use of motorized vehicles on sovereign lands is prohibited, except:

~~1.~~ a. ~~When~~If on government-established trails that have been permitted by the department;

~~2.~~ b. ~~When~~If 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.~~ c. ~~When~~If 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 department, and the managing government entity has obtained a sovereign lands permit for off-road use in the designated area;

~~4.~~ d. 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.~~ e. To launch or load watercraft in the most direct manner possible;

~~6.~~ f. 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.~~ g. 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.~~ h. 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.~~ i. ~~When~~If operation is necessary as part of a permitted activity or project;

~~10.~~ j. 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.~~ k. ~~When~~If being used by government personnel in the performance of their duties.

~~Any~~

2. A person who violates this section ~~must~~shall pay a ~~one hundred dollar~~ fee not to exceed two hundred fifty dollars per occurrence.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014; January 1, 2023; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-21. Organized group activities.

Organized group activities that are publicly advertised or are attended by more than twenty-five people are prohibited on sovereign lands without a permit. ~~Any~~A person who violates this section is guilty of a noncriminal offense and ~~must~~shall pay a ~~two hundred fifty dollar~~ fee not to exceed three hundred fifty dollars per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-22. Pets.

Pets are not allowed to run unattended on sovereign lands. ~~Any~~A person who violates this section is guilty of a noncriminal offense and ~~must~~shall pay a ~~fifty dollar~~ fee not to exceed seventy five dollars per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-23. Camping.

Camping for longer than ten consecutive days within a thirty-day period in the same vicinity or leaving a campsite unattended for more than twenty-four hours is prohibited on sovereign lands. ~~Any~~A person who violates this section is guilty of a noncriminal offense and ~~must~~shall pay a ~~one hundred dollar~~ fee not to exceed one hundred dollars per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-24. Hunting, fishing, and trapping.

~~All sovereign~~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 department is prohibited without a sovereign lands permit. ~~Any~~A

person who violates this section ~~must~~shall pay a ~~one hundred dollar~~ fee not to exceed one hundred fifty dollars per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014; January 1, 2023; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-25. Unattended watercraft.

1. Watercraft may not be left unattended on or moored to sovereign lands for more than twenty-four hours except:

~~1.~~ a. ~~When~~If moored to authorized docks; or

~~2.~~ b. ~~When~~If moored to private property above the ordinary high watermark with a restraint that does not cause unreasonable interference with navigation or the public's use of land below the ordinary high watermark.

~~Any~~

2. A person who violates this section is guilty of a noncriminal offense and ~~must~~shall pay a ~~fifty dollar~~ fee not to exceed seventy five dollars per day.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-26. Removal or destruction of public property.

Public property, including archaeological artifacts or cultural resources, trees, shrubs, vines, plants, soil, gravel, fill, rocks, fossils, sod, firewood, posts, ~~or~~ poles or other property, may not be mowed, clipped, cut, or 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 department. Berries and fruit may be picked for noncommercial use, unless prohibited by posted notice. Property may not be destroyed or defaced. ~~Any~~A person who violates this section ~~must~~shall pay a ~~two hundred fifty dollar~~ fee not to exceed three hundred fifty dollars per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014; January 1, 2023; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-28. Disposal of waste.

The disposal of refuse, rubbish, bottles, cans, or other waste materials is prohibited on sovereign lands except in garbage containers where provided. Holding tanks of campers or watercraft may not be dumped on sovereign lands. ~~Any~~A person who violates this section is guilty of a noncriminal offense and ~~must~~shall pay a ~~two hundred fifty dollar~~ fee not to exceed three hundred fifty dollars per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-29. Glass containers.

Glass containers are prohibited on sovereign lands. ~~Any~~A person who violates this section is guilty of a noncriminal offense and ~~must~~shall pay a ~~one hundred dollar~~ fee not to exceed one hundred fifty dollars per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-30. Abandoned property.

Abandonment of vehicles or other personal property is prohibited on sovereign lands. If applicable, the department shall facilitate removal of any such property. The property owner shall pay a fee not to exceed three hundred fifty dollars, and the department may assess removal costs to the property owner.

History: Effective April 1, 2009; amended effective April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-31. Firearms.

Use of firearms on sovereign lands is allowed except in a reckless and indiscriminate manner or as otherwise posted by the state at public entry points. Tracer rounds or exploding targets are prohibited. ~~Any~~A person who violates this section is guilty of a noncriminal offense and ~~must~~shall pay a ~~one hundred dollar~~ fee not to exceed one hundred fifty dollars per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

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, and portable ground blinds may be used. Portable tree stands, blinds, game cameras, or traps are required to have the owner's name, city, and phone number on the items and be visible at all times while present on state sovereign lands. 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 department. ~~Any~~A person who violates this section ~~must~~is guilty of a noncriminal offense and shall pay a ~~one hundred dollar~~ fee not to exceed one hundred fifty dollars per tree stand.

History: Effective April 1, 2009; amended effective July 1, 2014; January 1, 2023; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 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 department. Bait may be used to lure and take furbearers ~~when~~if engaged in lawful trapping activities. ~~Any~~A person who violates this section ~~must~~is guilty of a noncriminal offense and shall pay a ~~one hundred dollar~~ fee not to exceed one hundred fifty dollars per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014; January 1, 2023; April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

CHAPTER 89-11-01

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; April 1, 2026.
General Authority: NDCC 61-02-11, 61-03-13
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~~must 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~~licensed water well contractor ~~as defined by~~licensed under title 90 and North Dakota Century Code section ~~43-35-02~~61-03-01.3.

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.

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; April 1, 2026.
General Authority: NDCC 61-02-11, 61-03-13
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.~~b. A proposed water supply project cost estimate.

   ~~d.~~c. Verification the applicant is a livestock producer.

2. The department ~~must~~shall review applications and acknowledge their receipt. The department ~~must~~shall, within available funding limits, provide assistance to those livestock producers whose applications are approved. The applicant ~~must~~shall agree to:

a. Complete the project within one hundred eighty days of receiving funding approval notification. The department may grant a time extension if a written request providing just cause is submitted.

b. Provide actual expenditure receipts.

c. Grant the 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 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; April 1, 2026.
General Authority: NDCC 61-02-11, 61-03-13
Law Implemented: NDCC 61-34-02, 61-34-03, 61-34-04

ARTICLE 89-15
WATERCOURSES

Chapter
89-15-01 Watercourse ~~Determinations~~Determination Review

CHAPTER 89-15-01
WATERCOURSE ~~DETERMINATIONS~~DETERMINATION REVIEW

Section
89-15-01-01 Definitions
89-15-01-02 Identifying a Watercourse
89-15-01-03 Information to Use ~~in Making~~if Reviewing a Watercourse Determination
89-15-01-04 ~~Making a~~ Watercourse Determination Review Request

89-15-01-01. Definitions.

Unless the context otherwise requires, the following definitions apply:

1. "Artificial watercourse" means a watercourse that was formed by artificial construction but maintained by natural causes, such as a natural watercourse that is straightened but still receives the same contributing runoff prior to its straightening.

2. ~~"District" means water resource district.~~

~~3.~~ "Natural watercourse", except as used in North Dakota Century Code section 61-32-03.1, means a watercourse that was formed and maintained by natural causes.

~~4.~~3 "Watercourse" is defined in North Dakota Century Code section 61-01-06. Other terms that are synonymous with watercourse are river, stream, creek, or channel. Watercourses may be natural or artificial.

History: Effective July 1, 2024; amended effective April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-01-06

89-15-01-02. Identifying a watercourse.

~~For a watercourse to be constituted,~~The department shall use the following criteria ~~must be considered~~if reviewing a watercourse determination. No one criteria alone ~~will~~may constitute a watercourse, but rather a comprehensive review of the criteria provides the information necessary for a watercourse determination.

1. Sufficient natural and accustomed flow must be present or possible. This means the flow must be from a natural source, such as precipitation, snowmelt, or a natural spring, and must regularly or frequently occur during normal hydrology years.

2. A distinct and defined channel must be maintained by natural and accustomed flows. It is not necessary that the channel be natural or created by natural causes, but the flow in the channel must be sufficient enough to maintain the channel without routine artificial maintenance, including removal of silt, sediment, and vegetation.

3. A distinct and defined channel must have a definite bed and banks. It is not necessary that the banks be well defined or sharply cut, but they must be easily discernable in times of little vegetative cover and have some capacity to carry flowing water.

4. A plainly defined channel must be present and easily discernable.

5. A channel of permanent character must be present and evident upon site inspection and review of aerial photography. The channel must have existed in that location for several years or have the high likelihood of existing there for several years in the case of a recently constructed artificial watercourse.

6. The land use of the site in question may play a role, including whether the land is routinely used for agricultural purposes and if agricultural crops would be injured by any received waters.

History: Effective July 1, 2024; amended effective April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-01-06

89-15-01-03. Information to use ~~in making~~if reviewing a watercourse determination.

~~1.~~ Data or information to be utilized includes the following:

~~a.~~1. Relevant and readily available aerial photography.

~~b.~~2. Mapping products including United States geological survey quads, LiDAR data, general land office notes, and existing surveys.

~~2.~~3. Information collected or observed during a site visit, including notes, photos, and simple surveying exercises, if warranted.

~~3.~~4. Any other information that may assist in a determination, including:

a. A hydrology analysis of the watershed that provides the watershed area contributing to the site and flow quantity and flow frequency to expect at the site.

b. Any court case history involving watercourse determinations.

c. Any further scientific justification necessary, including analyzing channel forming velocities, soil types, sediment transport, and geomorphology.

History: Effective July 1, 2024; amended effective April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-01-06

89-15-01-04. ~~Making a watercourse~~Watercourse determination review request.

~~Other than the department, only water resource districts may determine if a watercourse is constituted by definition if the district needs to identify a watercourse as part of its powers, authority, or responsibilities under North Dakota Century Code title 61. If a district requests a watercourse determination from the department according to section 61-01-06, the~~Requests to review a watercourse determination must be received by the department within thirty days after the determination was made by the state agency or political subdivision of the state. The department's decision is final and subject to appeal under North Dakota Century Code section 61-03-22. ~~Watercourse determinations need not be formally made if they are made in conjunction with a permitting or complaint or appeal decision under North Dakota Century Code title 61, unless requested by a district under section 61-01-06. Only the department must provide a formal determination if requested by a district under section 61-01-06.~~

History: Effective July 1, 2024; amended effective April 1, 2026.
General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-01-06

TITLE 90

STATE BOARD OF WATER WELL CONTRACTORS

APRIL 2026

ARTICLE 90-01
GENERAL ADMINISTRATION

Chapter
90-01-01 Board Organization [Repealed]
90-01-02 Definitions
90-01-03 Continuing Education

CHAPTER 90-01-01
BOARD ORGANIZATION

[Repealed effective April 1, 2026]

~~Section~~
~~90-01-01-01 State Board of Water Well Contractors Organization~~
~~90-01-01-02 Certification Purpose~~

CHAPTER 90-01-02

90-01-02-01. Definitions.

Unless the context otherwise requires, the following definitions apply to this article:

1. ~~"Certificate holder" means a certified water well contractor, pump and pitless unit installer, geothermal system installer, or monitoring well contractor.~~

~~2.~~ "Continuing education" means accredited educational experience derived from participation in approved lectures, seminars, or correspondence courses.

2. "Department" is defined in North Dakota Century Code section 61-03-01.2.

3. "Hour" means a minimum of fifty continuing education instruction minutes.

4. "In charge" means a ~~certificate holder~~licenseholder has actual supervisory power over the work and makes onsite work and progress inspections.

5. "Licenseholder" means a licensed water well contractor, pump and pitless unit installer, geothermal system installer, or monitoring well contractor.

6. "One-year apprenticeship or experience" means twelve months of full-time employment in constructing water wells or monitoring wells or installing pump and pitless units or geothermal systems under the direct supervision of a ~~certificate holder~~licenseholder in the same area of expertise as they are acquiring experience.

~~6.~~7. "Wells" is defined in ~~subsection 5 of North Dakota Century Code~~ section ~~43-35-02~~33.1-18-01-02.

History: Effective March 1, 1984; amended effective October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-02, 43-35-13, 45-35-19, 45-35-23~~61-03-01.3

CHAPTER 90-01-03
CONTINUING EDUCATION

Section
90-01-03-01 Continuing Education - Defined [Repealed]
90-01-03-02 Coursework
90-01-03-03 Preapproval by ~~Board~~Department
90-01-03-04 Request Preapproval
90-01-03-05 Request Approval After Course
90-01-03-06 Hours
90-01-03-07 Hour Defined [Repealed]
90-01-03-08 Noncompliance

90-01-03-02. Coursework.

Coursework may be provided by:

1. The national ground water association;
2. The North Dakota well drillers association;
3. The department of environmental quality;
4. The department of water resources; or
5. Any ~~board-approved~~department-approved course provider.

History: Effective May 1, 2002; amended effective October 1, 2024, April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-23~~61-03-01.3

90-01-03-03. Preapproval by ~~board~~department.

A continuing education course must be preapproved by the ~~board~~department unless otherwise provided by law.

History: Effective May 1, 2002; amended effective October 1, 2024;April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-23~~61-03-01.3

90-01-03-04. Request preapproval.

The continuing education course provider or ~~certificate holder~~licenseholder shall request continuing education coursework preapproval by submitting to the ~~board~~department a course outline~~,~~; the instructor's name~~,~~; the training duration~~,~~; and an explanation of how the training relates to water well, pump and pitless unit, geothermal system, or monitoring well construction or service.

History: Effective May 1, 2002; amended effective October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-23~~61-03-01.3

90-01-03-05. Request approval after course.

A ~~certificate holder~~licenseholder may request continuing education approval that was not preapproved by submitting to the ~~board~~department attendance verification~~,~~; a course outline~~,~~; the instructor's name~~,~~; the training duration~~,~~; an explanation of how the training relates to water well, pump and pitless unit, geothermal system, or monitoring well construction or service~~,~~; and an explanation of

why preapproval was not obtained. The ~~board~~department shall determine on a case-by-case basis whether to approve continuing education that was not preapproved.

History: Effective May 1, 2002; amended effective October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-23~~61-03-01.3

90-01-03-06. Hours.

Each ~~certificate holder~~licenseholder shall earn ~~board-approved~~department-approved continuing education hours every two-year reporting cycle to qualify for ~~certificate~~license renewal. A water well contractor, geothermal system installer, or monitoring well contractor shall earn at least six hours and a pump and pitless unit installer shall earn at least two hours of ~~board-approved~~department-approved continuing education every reporting cycle. A new ~~certificate holder is required to~~licenseholder shall earn the ~~board-approved~~department-approved continuing education credits during the two years following the initial ~~certification~~ year of licensure. An hour may not be used for more than one reporting period.

History: Effective May 1, 2002; amended effective October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-17, 43-35-23~~61-03-01.3

90-01-03-08. Noncompliance.

A ~~certificate holder~~licenseholder who fails to complete the required ~~board-approved~~department-approved continuing education hours during the reporting period is not eligible for ~~certificate~~license renewal. ~~Such~~The individual may complete the required hours by March thirty-first of the following year and be eligible for ~~certificate~~license renewal. After March thirty-first, the ~~certificate holder~~licenseholder shall reapply and pass the examination required to initially obtain a ~~certificate~~license.

History: Effective May 1, 2002; amended effective October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-17~~61-03-01.3

ARTICLE 90-02
OPERATIONS

Chapter	
90-02-01	Examination
90-02-02	~~Certification~~Licensure
90-02-03	Reporting and Operations
90-02-04	Action Before Board [Repealed]

CHAPTER 90-02-01

90-02-01-01. Examination preparation.

The ~~board~~department shall arrange for an examination to be prepared for~~ board approval~~. If ~~a majority of~~ the ~~board~~department finds ~~that~~ the proposed examination fairly tests the skills and knowledge needed to be a ~~certificate holder~~licenseholder, it shall approve such examination and order its use. The examination may be modified from time to time at the ~~board~~department's discretion.

History: Amended effective May 1, 2002; October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-12~~61-03-01.3

90-02-01-02. Supervision and correction.

The examination ~~shall~~must be given, supervised, and corrected by a ~~board-appointed~~department-appointed representative~~, who shall report the results to the board~~.

History: Amended effective May 1, 2002; October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-12~~61-03-01.3

90-02-01-02.1. Examination - When held - Notice.

The ~~board shall hold meetings at such times and such places as the board designates to~~department shall administer an examination to persons desiring to become ~~certified~~licensed as ~~certificate holders~~licenseholders or geothermal system drillers. The ~~board~~department shall give no less than ten days' written notice to each applicant of the time and place of such examination. The ~~board~~department shall develop separate examinations for the ~~certification~~licensure of water well contractors, water well pump and pitless unit installers, monitoring well contractors, and geothermal system drillers.

History: Effective October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-12~~61-03-01.3

90-02-01-03. Examination dates.

The examination to become a ~~certificate holder~~licenseholder must be given four times each year, during February, May, August, and November. The exact date must be announced ~~by the appointed examination representative~~ at least thirty days before the examination.

History: Amended effective May 1, 2002; October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-12~~61-03-01.3

90-02-01-04. Examination location.

The examination must be given in the office of the department ~~of water resources~~ or in Bismarck, North Dakota.

History: Amended effective May 1, 2002; October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-12~~61-03-01.3

90-02-01-05. Examination procedure.

~~Each~~An applicant may spend up to four hours writing the examination. No books, charts, tables, notes, or other guidance may be used. A minimum score of seventy percent is required to pass the examination.

History: Amended effective October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-12~~61-03-01.3

90-02-01-06. Waiting period.

~~Any~~A person ~~failing~~that fails to pass the examination may not take the examination for a period of one year immediately following the failure.

History: Amended effective October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-12~~61-03-01.3

CHAPTER 90-02-02
~~CERTIFICATION~~LICENSURE

Section
90-02-02-01 ~~Certification~~Licensure - How Obtained
90-02-02-01.1 Purpose of Certification [Repealed]
90-02-02-01.2 ~~Certificate~~License - How Obtained - Fee - Bond
90-02-02-01.3 Bond Required
90-02-02-02 Qualified Applicants - How Determined - Initial ~~Certification~~Licensure
90-02-02-02.1 One-year Apprenticeship or Experience Requirements
90-02-02-02.2 ~~Certification~~Licensure by Examination - Time Limit
90-02-02-02.3 Conviction Not Bar to ~~Certification~~Licensure - Exceptions
90-02-02-02.4 Renewal of ~~Certificate~~License - Continuing Education
90-02-02-03 Qualified Applicants - How Determined - Renewal
90-02-02-04 Renewal Application - Time Limit
90-02-02-05 Willful Violation - Penalty [Repealed]
90-02-02-06 Expiration of Grandfather Clause [Repealed]
90-02-02-07 Certification by Reciprocity - How Obtained [Repealed]

90-02-02-01. ~~Certification~~Licensure - How obtained.

The ~~board secretary-treasurer~~department shall furnish ~~certificates~~licenses and decals to qualified applicants who have passed the examination upon receipt of a ~~board-approved~~department-approved application and submission of the proper fee and bond.

History: Amended effective October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-13, 43-35-16, 43-35-17~~61-03-01.3

90-02-02-01.2. ~~Certificate~~License - How obtained - Fee - Bond.

1. A person ~~who~~that takes the examination to become a ~~certified~~licensed water well contractor first shall complete a minimum of one-year apprenticeship or experience in water well drilling and construction under the direct supervision of a ~~certified~~licensed water well contractor or have completed a career and technical education program of at least one year in water well construction and shall make application to the ~~board~~department.

2. A person ~~who~~that takes the examination to become a ~~certified~~licensed water well pump and pitless unit installer first shall complete a minimum of one-year apprenticeship or experience in water well pump and pitless unit installation under the direct supervision of a ~~certified~~licensed water well pump and pitless unit installer or have completed a career and technical education program of at least one year in water well pump and pitless unit installation.

3. A person ~~who~~that takes the examination to become a ~~certified~~licensed monitoring well contractor first shall complete a minimum of one-year apprenticeship or experience in monitoring well construction under the direct supervision of a ~~certified~~licensed water well contractor or a ~~certified~~licensed monitoring well contractor or have completed a career and technical education program of at least one year in water well construction or hold a bachelor's degree in engineering or geology from an approved school and shall make application to the ~~board~~department.

4. A person ~~who~~that takes the examination to become a ~~certified~~licensed geothermal system driller first shall complete a minimum of one year of apprenticeship under the direct supervision of a ~~certified~~licensed geothermal system driller or have a minimum of two thousand forty installation hours of experience in geothermal system drilling working under the

direct supervision of a ~~certified~~licensed geothermal system driller or, first shall complete career and technical education relating to geothermal system drilling lasting at least one school year.

5. A person applying to take a ~~certification~~licensure examination shall pay to the ~~board~~department treasurer a nonrefundable examination fee in the amount of one hundred dollars. If upon examination the applicant is found to be qualified as a water well contractor, a water well pump and pitless unit installer, a monitoring well contractor, or a geothermal system driller, the ~~board~~department shall issue to that person an appropriate ~~certificate~~license upon the applicant's executing and filing with the ~~board~~department a bond as required in this chapter. The ~~board~~department may offer a combined examination for ~~certification~~licensure of a person as a water well contractor and a water well pump and pitless unit installer and may issue a single ~~certificate~~license for successful completion of the combined examination. ~~Certificates~~Licenses issued under this chapter are not transferable.

History: Effective October 1, 2024; amended effective April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-13~~61-03-01.3

90-02-02-01.3. Bond required.

Before receiving a ~~certificate~~license under North Dakota Century ~~Cody~~Code chapter ~~43-35~~61-03, a qualified applicant shall execute and deposit with the ~~board~~department a surety bond conditioned for the faithful performance of all water well, monitoring well, pump and pitless unit, or geothermal system installation contracts undertaken by the applicant and the strict compliance with North Dakota Century Code chapter ~~43-35~~61-03. The required amount of a surety bond is fifteen thousand dollars for a water well contractor and is two thousand dollars for a monitoring well, pump and pitless unit, or geothermal system installation contractor.

History: Effective October 1, 2024; amended effective April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-14~~61-03-01.3

90-02-02-02. Qualified applicants - How determined - Initial ~~certification~~licensure.

The ~~board must~~department shall approve a party's ~~certification~~licensure application if an applicant has complied with ~~North Dakota Century Code~~ sections ~~43-35-13~~90-02-02-01.2 and ~~43-35-14~~90-02-02-01.3. Upon ~~board~~department approval, the applicant ~~is to~~must be regarded as qualified and must be issued the proper ~~certificate~~license and decals.

History: Amended effective May 1, 2002; October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-13, 43-35-14, 43-35-16~~61-03-01.3

90-02-02-02.1. One-year apprenticeship or experience requirements.

The one-year apprenticeship or experience required by ~~North Dakota Century Code~~ section ~~43-35-13~~90-02-02-01.2 must have occurred during the three years immediately preceding the application date. Suitable vocational training may substitute for the one-year apprenticeship or experience requirement with ~~board~~department approval and at the ~~board's~~department's sole discretion. If the experience was obtained in another state under a ~~noncertificate holder~~nonlicenseholder water well contractor, pump and pitless unit installer, geothermal system installer, or monitoring well contractor, the ~~board~~department may approve equivalent experience if the ~~board~~department is satisfied in its sole discretion that the experience was equivalent to working under the direct supervision of a ~~certificate holder~~licenseholder in North Dakota.

History: Effective March 1, 1984; amended effective May 1, 2002; October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10, 43-35-21~~61-03-13

Law Implemented: NDCC ~~43-35-13~~61-03-01.3

90-02-02-02.2. ~~Certification~~Licensure by examination - Time limit.

~~Any~~An applicant who passes the examination shall complete the other ~~certification~~licensure requirements within six months of examination result notification or the examination score must be nullified and the applicant shall be required to initiate a new application and be reexamined to obtain a ~~certificate~~license.

History: Effective March 1, 1984; amended effective October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-13~~61-03-01.3

90-02-02-02.3. Conviction not bar to ~~certification~~licensure - Exceptions.

Conviction of an offense does not disqualify a person from ~~certification~~licensure under this chapter unless the ~~board~~department determines ~~that~~ the offense has a direct bearing upon a person's ability to serve the public as a ~~certificate holder~~licenseholder, or ~~that,~~ following the conviction of any offense, the person is not sufficiently rehabilitated under North Dakota Century ~~Cody~~Code section 12.1-33-02.1.

History: Effective October 1, 2024; amended effective April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-11.1~~61-03-01.3

90-02-02-02.4. Renewal of ~~certificate~~license - Continuing education.

1. A ~~certificate~~license issued under North Dakota Century Code chapter ~~43-35~~61-03 is valid for up to one year and expires on the thirty-first day of December in the year of issuance. To renew a ~~certificate~~license, a ~~certificate holder~~licenseholder shall submit to the ~~board~~department a completed renewal application. The completed renewal application must be:

   a. Submitted to the ~~board~~department before April first in the year following the ~~certificate's~~ expiration of the license;

   b. Accompanied by a fee in an amount set by the ~~board~~department not to exceed two hundred dollars;

   c. Accompanied by any continuing education reporting information required under this section; and

   d. Accompanied by a bond as provided in section 90-02-02-01.3.

2. Except as provided under subsection 3, every two years the renewal application must include reporting information verifying the applicant completed six hours of ~~board-approved~~department-approved continuing education during the two-year reporting cycle.

3. A renewal application for ~~certification~~licensure as a water well pump and pitless unit installer must include reporting information verifying the applicant completed two hours of ~~board-approved~~department-approved continuing education during the two-year reporting cycle.

History: Effective October 1, 2024; amended effective April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-17~~61-03-01.3

90-02-02-03. Qualified applicants - How determined - Renewal.

A ~~certificate holder~~licenseholder must be issued a renewal upon the receipt of a ~~board-approved~~department-approved renewal application and submission of the proper fee and bond. ~~The secretary-treasurer may issue the certificates and decals for a renewal without board action.~~

History: Amended effective October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-13, 43-35-17~~61-03-01.3

90-02-02-04. Renewal application - Time limit.

If a renewal application has not been received ~~prior to~~before April first following ~~certificate~~ expiration of the license, the previous ~~certificate holder~~license is no longer ~~be~~ eligible for renewal.

History: Amended effective October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-17~~61-03-01.3

CHAPTER 90-02-03

90-02-03-01. Completion reports required to be filed.

The ~~secretary-treasurer~~department shall develop and supply well completion reporting forms as required by North Dakota Century Code section ~~43-35-19~~61-03-27.

History: Amended effective October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-19~~61-03-27

90-02-03-02. Filing reports.

The ~~secretary-treasurer~~department shall maintain a systematic file of well completion reporting forms.

History: Amended effective October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-19~~61-03-27

90-02-03-04. Decal required.

Any water well equipment, pump and pitless unit equipment, geothermal equipment, or monitoring well equipment operating in North Dakota must prominently display a decal on the primary equipment that is under the charge of a ~~certificate holder~~licenseholder. Before beginning any water well equipment, pump and pitless unit equipment, geothermal equipment, or monitoring well equipment operation, the ~~certificate holder~~licenseholder in charge shall secure a decal from the ~~board~~department and place it on the primary equipment.

History: Amended effective May 1, 2002; October 1, 2024; April 1, 2026.
General Authority: NDCC ~~43-35-10~~61-03-13
Law Implemented: NDCC ~~43-35-16~~61-03-01.3

TITLE 95

AGRICULTURAL PRODUCTS UTILIZATION COMMISSION

APRIL 2026

CHAPTER 95-01-01

95-01-01-01. Organization of agricultural products utilization commission.

1. **History and function.** The agricultural products utilization commission was established by the legislative assembly in 1979. ~~Its functions include administering a fuel tax fund and a subsidy program for agriculturally derived alcohol-blended fuels.~~ The commission is authorized by North Dakota Century Code ~~chapter 4-14.1~~section 4.1-01.1-01 to provide assistance to agriculturally related industry.

2. **Purpose of commission.** The purpose of the commission is to enact the provisions of the code by supporting projects that are consistent with the code and enhance opportunities in agricultural research, development, diversification, processing, technologies, marketing, and promotion.

3. **Commission membership.** The commission consists of nine members as designated in North Dakota Century Code section ~~4-14.1-03~~4.1-01.1-01.

History: Effective June 1, 1990; amended effective April 1, 2012; April 1, 2026.
General Authority: NDCC 28-32-02
Law Implemented: NDCC ~~4-14.1-02~~4.1-01.1

CHAPTER 95-02.1-01

95-02.1-01-01. Categories of grant requests.

The commission ~~will~~shall consider grant proposals submitted in the following categories:

1. Basic and applied research.
2. Marketing and utilization.
3. ~~Cooperative marketing.~~
~~4.~~ Nature-based agritourism.
~~5.~~4. Technical assistance for value-added businesses.
~~6.~~5. Farm diversification.
~~7.~~6. Agricultural prototype development.
~~8.~~7. Agricultural technologies.
~~9. North American marketing.~~
~~10.~~8. Other agricultural-based initiatives as directed by the legislature.

History: Effective April 1, 2012; amended effective April 1, 2026.
General Authority: NDCC 28-32-02
Law Implemented: NDCC ~~4-14.1-02~~4.1-01.1

CHAPTER 95-02.1-02

95-02.1-02-01. Applicant and project eligibility for all categories.

1. Preference ~~will~~must be given to projects that:
   a. Utilize North Dakota agricultural products in their production processes.
   b. Produce food, feed, fuel, and fiber products through processes that are innovative and add to the value of agricultural products.
   c. Are submitted by an existing or prospective company that will be actively engaged in utilizing and adding value to North Dakota agricultural products.
   d. Comply with the goals and intentions of one of the grant categories.
2. Consideration ~~will~~may not be given to applications for:
   a. Projects that do not clearly meet the commissioners' stated purpose.
   b. Projects that are aimed solely at business expansion or creation without regard to enhanced agricultural products utilization.
   c. Projects that cannot reasonably be expected to result in viable commercialization.
   d. Projects that cause unwarranted duplication of efforts or processes.
   e. Projects that focus on agricultural inputs, infrastructure, or production methods that do not relate clearly to agricultural product utilization, agricultural diversification, or nature-based tourism.
   f. Projects from applicants who are not fulfilling, or have not fulfilled, the requirements of prior agricultural products utilization grants.

History: Effective April 1, 2012; amended effective April 1, 2026.
General Authority: NDCC 28-32-02
Law Implemented: NDCC ~~4-14.1-02~~4.1-01.1

CHAPTER 95-02.1-03

95-02.1-03-01. Evaluation and funding criteria.

Unless otherwise specified, proposals ~~will be~~are evaluated upon a basis of one hundred points, according to the following criteria:

1. ~~**Probability and extent of new wealth and creation.**~~ Preference ~~will be~~is given to applications that demonstrate a high probability of job and wealth creation. While the commission does not make any specific requirements for jobs created per dollar granted, a close review ~~will~~must be made of return-on-investment and job enhancement. ~~Up to thirty points may be awarded on this criterion.~~

2. ~~**Credibility and merit.**~~ The commission ~~will~~shall review each proposal as to its technical and commercial feasibility. Proposals that feature outcomes that are innovative as well as commercially plausible will receive preference. Within this criterion, the relative competence and technical qualifications of project principals ~~will be~~are assessed. Proposals or components of proposals which can be construed as subcontracts or contracts for service, and which provide information that the process by which contractors are selected has been competitive are more highly favored. ~~Up to thirty points may be awarded on these criteria.~~

3. ~~**Timeliness.**~~ Preference ~~will be~~is given to proposals demonstrating a high probability of rapid commercialization or address an imminent need, or both. ~~Up to fifteen points may be awarded on this criterion.~~

4. ~~**Matching funds.**~~ Priority ~~will be~~is given to projects that demonstrate a shared commitment for funding from other private or public sources or from the applicant, or both. Matching funds may be in the form of cash or in-kind services, or both. Approved indirect costs may qualify as matching funds. Disbursement of funds ~~will be~~is contingent upon evidence that matching funds have been allocated to the proposal. ~~Up to ten points may be awarded on this criterion.~~

5. ~~**Geographic consideration.**~~ Preference ~~will be~~is given to the proposals that center efforts on nonurban locales. When the proposal requires specific research activities that cannot possibly be carried out in rural North Dakota, consideration ~~will be~~is given to the ultimate development and commercialization of the results of the proposal, with the same rural preference. Favorable community support ~~will be~~is considered. ~~Up to five points may be awarded on this criterion.~~

6. ~~**Likelihood of success.**~~ Commissioners shall provide their judgment on the probable success and relative importance of the proposed research. ~~Up to ten points may be awarded on this criterion.~~

History: Effective April 1, 2012; amended effective April 1, 2026.
General Authority: NDCC 28-32-02
Law Implemented: NDCC ~~4-14.1-02~~4.1-01.1

CHAPTER 95-02.1-04

95-02.1-04-01. Procedure for grant requests.

1. Applications ~~are limited to fifteen (unless otherwise specified)~~must be typed, single-spaced or double-spaced eight and one-half inch by eleven-inch pages, including the application form and any attachments or supplementary materials. One signed original of the proposal must be delivered or mailed to the commission on or before the published deadlines for consideration at the next commission meeting.

2. Prescribed formats must be used~~.~~ as follows:

   a. The commission ~~will~~shall prepare application forms, instructions, or guidelines and make them available for downloading from the ~~department of commerce~~agriculture commissioner website. Hard copies of the grant applications are available at agricultural products utilization commission, ~~1600 east century avenue, suite 2, P.O. box 2057, Bismarck, ND 58502-2057~~600 E. Boulevard Ave. Dept 602, Bismarck, ND 58505-0020. Reasonable accommodations will be made to assist individuals with disabilities.

   b. While the specific information requested for each category may vary, it may include:

      (1) Applicant's name, telephone number, mailing address, and e-mail address.

      (2) Applicant adviser's name with similar contact information.

      (3) Applicant's fiscal agent with similar contact information.

      (4) Grant application amount.

      (5) Estimated total cost of the project.

      (6) Estimated time of completion of the project.

      (7) ~~Date~~Estimated date of final report.

      (8) Brief description of the project and how grant funds will be used.

      (9) Where the business is or will be located.

      (10) Amount of the applicant's personal or company matching funds.

      (11) Other matching funds, with source and amount.

      (12) Assurance that matching funds have been secured, or date of availability.

      (13) Whether the project has received public or private funding prior to this proposal, listing sources and amounts.

      (14) Whether the individual has received previous funding from the agricultural products utilization commission, listing prior projects and amounts.

      (15) Type of business structure. Sole proprietorship, corporation, partnership (listing names and contact information), cooperative (number of people), and date of structure formation.

      (16) Federal tax identification number, if any.

      (17) The business's primary financial institution.

(18) The business's gross sales for the last financial year.

(19) The business's current number of employees.

(20) Currency of the business's taxes.

(21) Three years' projection on estimated gross sales, estimated capital expenses, and estimated number of created jobs.

(22) If the grant is to provide professional services, the name of individuals preparing the business plan, the feasibility study, the accounting, and legal work.

(23) Description of the product or potential outcome.

(24) Description of the marketing plan and names or the preparers.

(25) Description of the work, research, or investigation that has been done to date.

(26) Description of intended market, potential customers, new use, etc.

(27) Verification that individuals selected to do marketing have market management experience and expertise.

(28) Prior marketing or advertising.

(29) Listing of the risks or concerns that need to be addressed to make the project a success.

(30) List of competitors.

(31) Scope of work.

(32) Research plan with objectives, milestones, and timelines.

(33) Description of marketing areas, in state and out of state.

(34) Resumes of principal applicant and key participants.

(35) Name and contact information of two references familiar with the applicant's work relevant to the application.

(36) A complete project budget attached as a supplement.

(37) Information suitable for a press release along with authorization.

c. Applicants ~~must~~shall complete the application form for the category most suitable for the project. Forms may be downloaded and adjusted to provide room for entries, but the sequence, style, and information requested on the form must be preserved.

d. Information must be succinctly summarized, complete, and accurate to the best of the applicant's knowledge. Estimates ~~should~~must be indicated with the trailing (est.). Inappropriate questions should be marked with "N/A" for not applicable or "none" to indicate that question was considered.

e. The commission reserves the right to deny any grant application, including those that fail to provide information on which commission judgments are made. Similarly, the commission reserves the rights to accept and consider applications that may vary form format but still provide requisite information.

3. Applicants are encouraged to employ services of a project adviser ~~and are required to utilize a fiscal agent~~.

4. The application must be signed by the applicant or by the representative of a company or agency with authority to approve submission of the proposal ~~and the fiscal agent~~. If utilized, the project adviser must sign the proposal indicating the project adviser has offered critical review of the proposal. The applicant's signature is a certification that the submission is complete, the information is accurate, and the proposal represents the true intent of the project. Misrepresentations may disqualify applicants from any further agricultural products utilization commission funding.

5. Promotional materials or materials not directly related to the proposal are discouraged.

6. Applicants are required to complete a press release information and authorization sheet that summarizes the important aspects of the projects. ~~This~~The release ~~should~~may not contain confidential or proprietary information.

7. Applicants ~~will also be~~are encouraged to provide information that collects demographic information that can be used to monitor compliance with applicable federal civil rights laws.

History: Effective April 1, 2012; amended effective April 1, 2026.
General Authority: NDCC 28-32-02
Law Implemented: NDCC ~~4-14.1-02~~4.1-01.1

CHAPTER 95-02.1-05

95-02.1-05-01. Supplemental program information.

1. ~~Funding level.~~

~~a.~~ Unless otherwise designated, proposals are not limited to a specific dollar amount. The commission reserves the right to increase or decrease the amount of requested funding based on its findings and on its level of available funds. The commission also reserves the right to fund in whole or in part specific portions of eligible proposals. Requests must be justified with respect to the scope of the project.

b. ~~Except when~~Unless restricted by legislative directive, or by available funding in commission-administered ancillary programs, the commission may allocate funds to projects in any of the categories.

c. The commission may elect to limit total funding during any particular quarter, and may disperse available funding over the quarters of a biennium in order to provide opportunities for meritorious projects that may submitted later in the biennium.

2. ~~Due date.~~

~~a.~~ Proposals may be submitted anytime within the biennium. ~~Deadline dates for submission are January first, April first, July first, and October first. Prototype and technical assistance grants deadlines are December first, March first, June first, and September first.~~ Only fifteen proposals ~~will~~may be considered at each commission meeting based on the date received. Eligible proposals received after the quota has been met ~~will be~~are deferred until the next commission meeting.

b. Reviews and grant awards ~~will be~~are made on a quarterly basis.

c. Generally, grants are limited to a one-year time frame.

3. ~~Multiple, concurrent, and successive proposals.~~

~~a.~~ Generally~~.~~, applicants are only allowed to apply for one grant at a time. Multiple proposals from the same applicant ~~will~~must be considered if each proposal covers distinctly different projects.

b. Proposals that have been submitted under other state, federal, or private grant programs may be considered concurrently by the commission. Proposals that contain matching funds from other grant programs must demonstrate contingent approval from appropriate sources prior to release of funds by the commission. Similarly, agricultural products utilization commission grants that are used as match for other grants may be held, with contingent approval, until the other grants have been approved.

c. Upon completion of a grant, applicants may apply for a successive grant if the subsequent grant demonstrates an important next step; however, the commission reserves the rights to limit or deny the number or amount, or both, of funding of successive grants without cause.

4. ~~Commission review.~~

~~a.~~ Acting on behalf of the commission, the staff reviews submitted proposals. Incomplete, ineligible, or inappropriate grants may be rejected by the staff or returned for amendment.

b. Eligible proposals are distributed to commission members for review prior to commission meetings. As part of the review process, commissioners or staff, or both, may contact references, experts, government agencies, and other sources to help ascertain feasibility of the project and credibility of the applicants.

c. Each proposal ~~will~~must be considered individually on its own merits, and according to the stated criteria, by the entire commission. Applicants ~~will~~must be invited to present their proposal, discuss relevant points, and clarify components at a commission meeting; however, the predominant consideration will be based on the written proposal. Generally, presentations ~~will be~~are limited to thirty minutes divided into presentation and questioning periods as determined by the commission chair.

d. A decision to accept, modify, or deny each project ~~will then~~must be made, by majority vote of at least a quorum of the commission. ~~Should~~If the process ~~produce~~produces a funding level less than the amount requested in the proposal, the commission staff ~~will~~shall confer with the applicant to determine whether the amount recommended would be acceptable to further the goals of the project.

e. The decision of the commission is final, binding, and not subject to review or appeal except as allowed by law. Projects that have been denied funding cannot be resubmitted in their original form. Revised projects may be considered as new submissions.

f. By law, no member of the commission may participate in, or vote on, a decision of the commission relating to a project or a business, or both, which would constitute a conflict of interest.

5. ~~Grant administration and reporting.~~

a. Applicants ~~will~~must be notified of the commission's decision. The commission is under no obligation to provide rationale for its decision; however, the applicant may request an advisory report that could point out some of the considerations in the decision.

b. Successful applicants shall adhere to the conditions outlined in this article and North Dakota law. Following approval of the grant award, a formal grant contract ~~will~~must be entered between the agricultural products utilization commission and the grantee. This agreement ~~will~~must specify the agreed-upon objectives, tasks to be performed, timeline and budget, fund release schedule, and any other conditions specific to the individual proposal. Under the terms of all grant contracts, the grantee ~~will be~~is required to submit to the commission periodic interim reports outlining progress and both timeline and budget compliance.

c. In most cases, the entire grant amount ~~will~~is not be released at the time of the commission's decision. In such instances, funds released ~~will be~~are tied to the grant contract, and any insufficiencies with the contract may result in withholding of further funding.

d. Grantees ~~will be required to~~must submit a final written report describing the work performed and the results obtained prior to final release of grant funds. ~~This~~The report must be supplemented by a financial report of all expenses actually incurred and income generated by the project.

6. ~~Audit and defaults.~~

a. As a state agency, the commission is subject to audits through established procedures.

b. To protect the investment of the commission and of the people of North Dakota, all financial documents, books, receipts, orders, expenditures, electronic data and

accounting procedures, and practices of the grantee are subject to examination by or for the commission at any time for three years following the completion of the project.

c. ~~When~~If a grant is in default because of inadequate reporting, inappropriate use of grant funds, or nonuse of funds, any moneys that have not yet been released ~~will~~must be withheld. ~~Should~~If such grave insufficiencies exist that the project appears to the commission in jeopardy, the contract may be canceled, and all funds previously released may be recovered through collection procedures.

d. Funds retrieved from vacated and incomplete projects ~~will~~must be returned for redistribution as grants. If the grant originated from special funding, the return and redistribution will be within that funding source.

7. ~~Eligible uses of funds.~~

a. Eligible uses of funds are detailed in each of the category descriptions and as part of the application form.

b. In general, agricultural products utilization commission grant funds are for enhancements, improvements, and new ventures and ~~should~~may not be used to defray the normal operating costs of the individual or business, including salaries of individuals in the business.

c. Projects that bring producers, processors, distributors, buyers, and other individuals important in a supply chain together in a forum that fosters contacts and information exchange supportive of marketing ventures.

8. ~~Confidentiality and disclosure.~~

a. Generally, proposals, grants awards, reports, and proceedings are open records and may be disclosed as allowed under North Dakota law.

b. An applicant may request confidentiality of all portions of a proposal to protect the applicant's intellectual property rights. Such proposals or sections of proposals must be clearly marked as "Proprietary". The commission may limit the dissemination of information regarding confidential proposals, including considering the proposal during an executive session, however, the commission is not, in any event, liable for inadvertent disclosure.

c. By accepting an agricultural products utilization commission grant, awardees agree to serve as a contract for individuals interested in pursuing a similar project.

d. Under the term of all grant contracts, the grantee may be required to submit to the commission periodic interim reports outlining progress and both timeline and budget compliance. In most cases, the entire grant amount ~~will~~is not ~~be~~ released at the time of the commission's decision. In such instances, the release of funds ~~will be~~is tied to the grant contract and any insufficiencies with the contract may result in withholding of further funding. Grantees will be required to submit a final written report describing work performed and the results obtained, prior to final release of grant funds. The report must be supplemented by a financial report of all expenses actually incurred and income generated by the project.

9. ~~Ownership.~~

a. Subject to the policies, if any, of participating public programs and entities, rights to use products, processes, or services developed under this grant program ~~will~~ remain with the grantee.

b. Subject to the same policies, the ownership and all rights to project outcomes may revert to the commission if the grantee or assignee fails to market the product, process, or service in accordance with individually negotiated funding contracts. In such cases, the commission may provide notice and the opportunity to others to assume control of research projects. In these cases, priority ~~will be~~is given to any license under such property or others who benefit North Dakota commercially, with first priority being given to small firms in nonurban areas of the state.

10. ~~Royalty agreements.~~ The commission may receive royalties on the sale or lease of any product, process, or service developed under a commission grant. Royalty agreements ~~will~~must be negotiated at the time of the grant award and ~~will be~~ structured so ~~that~~ the commission may recover at least a portion of the investment of public funds. Repaid funds ~~will~~must be used to make new investments in other agricultural products utilization commission projects.

History: Effective April 1, 2012; amended effective April 1, 2026.
General Authority: NDCC 28-32-02
Law Implemented: NDCC ~~4-14.1-02~~4.1-01.1

TITLE 96

BOARD OF CLINICAL LABORATORY PRACTICE

APRIL 2026

CHAPTER 96-02-10

96-02-10-01. Exempt tests and methods.

An individual is exempt from the provisions of North Dakota Century Code chapter 43-48 if the individual is supervised by an individual licensed by the board, an advanced practice registered nurse, or a physician and the individual is performing the following food and drug administration-waived tests and using the following methods, or performing tests determined by the board to be equivalent to those listed in this section:

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

8. Hemoglobin by single analyte instrument or manual copper sulfate method.

9. Any of the following tests by immunoassay using a rapid test device that detects antibodies or antigens:

    a. Helicobacter pylori.

    b. Influenza.

    c. Mononucleosis.

    d. Streptococcus group A.

    e. Hepatitis C virus.

    f. Respiratory syncytial virus.

    g. SARS-CoV-2

10. Prothrombin time international normalized ratio by mechanical endpoint.

11. Antibodies to human immunodeficiency virus types 1 and 2 by clearview complete HIV 1/2 assay.

12. Alere cholestech analyzer, but only for the following analytes:

    a. Total cholesterol; and

    b. High-density lipoprotein (HDL) cholesterol.

13. Syphilis health check.

14. CoaguCheck XS system.

15. UltraCrit hematocrit.

16. Abaxis piccolo xpress analyzer whole blood methods, but only for the following analytes:

    a. Total cholesterol.

    b. HDL cholesterol.

    c. Triglycerides.

    d. Glucose.

    e. Blood urea nitrogen (BUN).

    f. Creatinine.

    g. Sodium.

    h. Chloride.

    i. Potassium.

    j. Bicarbonate.

    k. Total protein.

l. Total bilirubin.

m. Aspartate aminotransferase (AST).

n. Alanine aminotransferase (ALT)

o. Albumin.

p. Total calcium.

q. Alkaline phosphatase.

17. i-STAT creatinine when performed by radiology technologists or technicians.

18. Alere affinion AS100 glycosylated hemoglobin (A1C).

19. Urine drug screen, if positive results are confirmed by utilizing additional confirmation tests.

20. Any of the following tests by polymerase chain reaction using a closed system that detects DNA or RNA:

a. SARS-CoV-2.

b. Streptococcus group A.

c. Respiratory syncytial virus.

d. Influenza.

History: Effective January 1, 2006; amended effective January 1, 2008; April 1, 2012; April 1, 2013; July 1, 2017; April 1, 2020; April 1, 2022; January 1, 2026; April 1, 2026.
General Authority: NDCC 43-48-03, 43-48-04
Law Implemented: NDCC 43-48-03

TITLE 115

NORTH DAKOTA ETHICS COMMISSION

APRIL 2026

CHAPTER 115-02-01
COMPLAINT PROCESS

Section

115-02-01-01 Definitions
115-02-01-02 Jurisdiction and Limitation Period
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115-02-01-10 Rules of Evidence and Procedure
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115-02-01-13 Complaints Submitted in Bad Faith

115-02-01-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Alleged violation" means a formal written allegation issued by a majority vote of the commission, which alleges a respondent engaged in an ethical violation.

2. "Anonymous complaint" means a complaint by an individual who does not provide the individual's name or contact information and who will not be considered a complainant for any purpose.

3. "Complaint" means a verbal or written allegation to the commission ~~that a~~, which alleges:

   a. A lobbyist, public official, candidate for public office, political committee, or contributor has violated article XIV of the Constitution of North Dakota, North Dakota Century Code chapter 54-66, or another law or rule regarding transparency, corruption, elections, or lobbying; or

   b. A director, officer, commissioner, head, or other executive of an agency violated the commission's rules regarding quasi-judicial proceedings.

~~2.~~4. "Complainant" means an individual who, verbally or in writing, submits a complaint to the commission and is:

a. A North Dakota resident;

b. Subject to licensing by a state agency or other public official subject to the jurisdiction of the ethics commission; or

c. A party to a quasi-judicial proceeding before a state agency or other public official subject to the jurisdiction of the ethics commission.

~~3.~~5. "Confidential complaint" means a complaint submitted through the confidential hotline or other methods designated by the commission as confidential.

~~4. "Anonymous complaint" means a complaint by a person who does not provide their name or contact information will not be considered a complainant for any purpose.~~

6. "Ethical violation" means a violation of article XIV of the Constitution of North Dakota, North Dakota Century Code chapter 54-66, or another law or rule regarding transparency, corruption, elections, or lobbying.

~~5.~~7. "Executive director" is the individual appointed by the ethics commission as the executive director and authorized to carry out the duties and functions delegated by the ethics commission in these rules.

~~6.~~8. "Respondent" means ~~the individual or entity as defined by subsection 1 of North Dakota Century Code section 54-66-01 who is the subject of the complaint~~:

a. A lobbyist, public official, candidate for public office, political committee, or contributor who is alleged to have violated article XIV of the Constitution of North Dakota, North Dakota Century Code chapter 54-66, or another law or rule regarding transparency, corruption, elections, or lobbying; or

b. A director, officer, commissioner, head, or other executive of an agency who is alleged to have violated the commission's rules regarding quasi-judicial proceedings.

History: Effective June 17, 2020; amended effective July 28, 2021; April 1, 2024; April 1, 2026.

115-02-01-02. Jurisdiction and limitation period.

1. The commission has authority to investigate ~~complaints~~a complaint against a lobbyist, public ~~officials~~official, candidate for statewide public office, candidate for state legislative assembly, political committee, contributor, an elected or appointed official of the state's executive or legislative branch, ~~members~~member of the ethics commission, ~~members~~member of the governor's cabinet, ~~or employees~~and employee of the legislative branch. The commission also has authority to investigate a complaint against a director, officer, commissioner, head, or other executive of an agency who is alleged to have violated the commission's rules regarding quasi-judicial proceedings.

2. ~~The commission has no authority to investigate personnel matters or matters for which other remedies exist. These matters include, but are not limited to, grievances, appointments, promotions, reprimands, suspensions, dismissals, harassment, discrimination, open meetings violations, and open records violations.~~

~~3. The commission has no authority over city, county, or other political subdivision or local officials, employees of the state's executive branch, or members or employees of the state's judicial branch.~~

~~4.~~ A complaint must be filed within three years of the date of the ~~alleged violation~~allegations in the complaint. ~~Violations occurring prior to January 5, 2019, the effective date of article XIV of the Constitution of North Dakota, will not be considered.~~

3. The commission has jurisdiction over a respondent and complainant until the commission's final action on a complaint and the expiration of any appeal period.

History: Effective June 17, 2020; amended effective July 28, 2021; April 1, 2026.

115-02-01-03. Submission of a complaint.

1. Any individual may submit information to the North Dakota ethics commission alleging a violation of article XIV of the Constitution of North Dakota, related North Dakota laws, and rules or regulations adopted by the commission.

2. A complaint ~~will~~must be ~~denied~~summarily dismissed if there is not sufficient information to create a reasonable belief that a violation within the jurisdiction of the commission has occurred. Mere speculation is insufficient to proceed with a complaint.

3. The commission maintains a confidential whistleblower hotline for the submission of ~~relevant information~~a complaint. ~~Complaints and relevant information~~A complaint may be submitted to the commission through the hotline or through any other medium, ~~i.e.~~including written, oral, or electronic.

4. ~~No~~A specific format is not required for complaints ~~and relevant information~~. To ensure the commission has the necessary information to process a complaint, the commission may direct a complainant to use the designated complaint form.

5. A complaint is considered filed with the commission upon receipt of the complaint by the office of the commission.

6. To enable the commission to more effectively evaluate and investigate a complaint, it is strongly recommended ~~that~~ the ~~following information be provided~~complaint:

   a. ~~Name~~Provide the name and contact information for the individual submitting the complaint ~~or information must be provided~~;

   b. Clearly identify each person, entity, committee, or group that is alleged to have committed a violation;

   c. Clearly recite the facts that show specific violations under the commission's jurisdiction. Citations to the constitution, North Dakota law, or rules or regulations are not required but helpful. The individual submitting the complaint ~~or information~~ should be as specific as possible as it relates to dates, times, and individuals involved;

   d. Differentiate between statements based on the individual's personal knowledge and those based on information and belief. Statements not based on the individual's personal knowledge should identify the source of the information, if known; and

   e. Include any and all documentation supporting the allegations, if available.

7. The ~~executive director~~commission shall conduct an initial review of any complaint ~~or information~~ received ~~by the commission~~.

   a. If the ~~executive director~~commission determines ~~that~~ the matter falls within the jurisdiction of the commission and contains sufficient information to believe a violation has occurred, the executive director shall prepare a written summary of the complaint along with a notice to the respondent.

b. The ~~executive director~~commission may summarily dismiss the complaint if the ~~alleged violation~~commission determines the complaint:

(1) Does not fall within the commission's jurisdiction;

(2) Is insufficient to identify a possible violation; ~~or~~

(3) Fails to comply with the rules adopted by the commission; or

(4) Was submitted in bad faith.

c. ~~The complainant may appeal the decision to summarily dismiss a complaint to the commission by appealing in writing within thirty days of the notice by the executive director.~~

~~(1) A complainant may submit materials in writing in support of the complainant's appeal of the summary dismissal.~~

~~(2) The commission shall provide the respondent the materials the complainant submits in support of the appeal. The respondent may respond in writing within thirty days.~~

~~(3) The complainant shall receive any response submitted by the respondent.~~

~~(4) If the documents on appeal from a summary dismissal relate to the grounds for the summary dismissal, the commission shall consider the documents.~~

~~(5) The complainant and respondent may not orally address the commission regarding the appeal from summary dismissal.~~

~~d.~~ If the ~~executive director~~commission determines ~~that~~ the matter falls within the jurisdiction of another agency, the ~~executive director~~commission may refer the complainant to the relevant agency.

~~e.~~d. If the matter contains allegations of criminal conduct, the matter ~~shall~~may be coordinated with the appropriate law enforcement agency with jurisdiction over the offense. If the law enforcement agency agrees to accept a referral for possible criminal prosecution the commission ~~will~~may not take ~~no~~ further action on the complaint until the criminal referral is resolved, except as otherwise provided in this section. If the law enforcement agency declines a referral for prosecution, the commission ~~will~~shall proceed with the complaint process. ~~Absent rejection by the referring entity~~If the law enforcement agency takes no action on the referral for prosecution within sixty days, the commission may resume its review of the complaint. Unless the agency accepting the referral objects, the executive director shall inform the complainant and respondent as soon as reasonably possible ~~by registered mail~~ of a referral and the nature of the referred allegations.

~~f.~~e. If the commission receives an anonymous complaint that contains documentary or real evidence of possible criminal conduct, the commission may refer the matter to the appropriate law enforcement agency as provided under North Dakota Century Code section 54-66-08, and may not otherwise divulge the documentary or real evidence.

~~8. The executive director shall report all summarily dismissed or referred complaints and report to the commission at the commission's next regular meeting. The commission shall consider any appeals of a summarily dismissed complaint and vote to either reopen or deny the appeal. The commission shall ratify or direct reopening the actions of the executive director.~~

History: Effective June 17, 2020; amended effective July 28, 2021; June 23, 2022; April 1, 2024; January 1, 2025; April 1, 2026.

115-02-01-04. Notice to respondents and motion to dismiss.

1. The respondent over whom the commission has jurisdiction ~~shall~~must be informed of any complaint ~~that~~ the commission receives. The executive director shall prepare the notice which ~~shall~~must include the identity of the complainant who submitted the complaint unless the complaint ~~or information~~ was submitted confidentially. The ethics commission may not release a confidential complainant's name and address to the ~~accused individual~~respondent without the authorization of the complainant. If the confidential complainant is a witness to an alleged offense and does not authorize release of the complainant's name and address to the ~~accused individual~~respondent, the statement of the complainant may not be used as evidence of a violation. The notice ~~shall~~must include the written complaint or written summary of the complaint. The respondent ~~will~~must receive a copy of all evidence and witness statements included with the complaint.

2. Notice to the respondent ~~shall~~must be provided as soon as reasonably possible but no later than thirty days after the complaint was received by the commission.

3. The respondent may respond to the complaint within thirty days of notice of the complaint or after the commission requests a response. In the executive director's discretion, the respondent may be granted an extension of time to provide any written response to the complaint or summary of the complaint.

4. If a complaint is summarily dismissed prior to the executive director notifying the respondent of a complaint, notice to the respondent ~~shall~~must include notice of the summary dismissal.

5. At any time, the respondent may request by motion the commission dismiss the complaint asserting the complaint:

   a. Does not fall within the commission's jurisdiction;

   b. Is insufficient to identify a possible violation;

   c. Fails to comply with the rules adopted by the commission; or

   d. Was submitted in bad faith.

History: Effective June 17, 2020; amended effective July 28, 2021; April 1, 2024; January 1, 2025; April 1, 2026.

115-02-01-05. Informal resolution ~~of complaint~~or settlement with the commission.

1. Prior to any investigation of a complaint, the executive director shall afford the complainant and respondent the opportunity to informally negotiate or mediate a resolution of the complaint. The negotiation or mediation ~~shall~~must be conducted by the executive director in an informal manner with the goal of resolving the matter ~~without further investigation~~.

2. The commission may engage outside counsel or mediator to conduct the informal negotiation or mediation.

3. If the complaint is resolved through informal negotiation or mediation, the executive director shall document the resolution and report the resolution to the commission at a special or regular meeting during executive session.

4. The complainant and respondent may be accompanied by legal counsel in any informal negotiation or mediation.

5. Complaints resolved through informal negotiation or mediation ~~shall~~may not be further investigated and the complaint ~~shall~~must be deemed closed.

6. If the ~~complaint is not resolved through informal negotiation or mediation~~informal resolution process is unsuccessful, the commission may work with the respondent to settle and close the complaint matter at any time pursuant to settlement guidelines adopted by the commission or the complaint ~~shall~~may be investigated as provided in section 115-02-01-06.

History: Effective June 17, 2020; amended effective July 28, 2021; April 1, 2026.

115-02-01-06. Complaint investigation.

The executive director shall conduct the investigation of any complaint which is not summarily dismissed ~~or resolved through informal negotiation or mediation~~, informally resolved, or settled with the commission. With the approval of the commission, the executive director may refer the matter to an outside attorney or investigator in lieu of the executive director completing the investigation. The executive director shall determine the manner in which the complaint ~~will~~must be investigated. Investigations conducted by an outside attorney or investigator ~~shall~~must be supervised and under the direction of the executive director. The investigation may include the following:

1. Review of any documents provided to the commission by the complainant or respondent;
2. Review of publicly available documents or documents maintained by the state;
3. Request for documents from individuals or entities with knowledge or ~~relevant~~ information;
4. Written interrogatories submitted to individuals or entities with knowledge or ~~relevant~~ information;
5. Interviews with legislators, employees, or other appointed or elected officials;
6. Interviews with the complainant and individuals identified by the complainant as having knowledge or ~~relevant~~ information;
7. Interviews with the respondent; and
8. Any other information deemed relevant.

History: Effective June 17, 2020; amended effective April 1, 2026.

115-02-01-07. ~~Investigation report~~Reports to the commission - Complaint record.

1. Upon completion of the investigation, the executive director ~~or outside investigator~~ shall prepare a preliminary report and recommendation to the commission to close the matter or issue an alleged violation. The commission may issue an alleged violation, require additional investigation, or close the complaint matter.

2. If the commission issues an alleged violation, the executive director shall prepare a final report and recommendation. The final report and recommendation must include written findings from the investigation and the executive director's recommendation to the commission with respect to commission action on the complaint.

3. The ~~findings shall include~~investigation file, including relevant documents, interview transcripts or ~~summaries~~recordings, respondent written response to the final report and recommendation, and other ~~relevant information necessary for the commission to be fully informed on the matter. The executive director shall prepare the investigation report for presentation to the commission. The report shall include the written findings of any outside counsel or investigator who conducted the investigation. The executive director shall include the executive director's recommendation to the commission with respect to commission action on the complaint~~evidence obtained during the investigation, must become the record for the complaint.

History: Effective June 17, 2020; amended effective April 1, 2026.

115-02-01-08. Commission review and action on complaint.

1. The ~~executive director's investigation~~final report ~~shall~~and recommendation and the record for the complaint must be provided to the respondent at least ten days prior to any special or regular commission meeting at which the ~~report and recommendation will be considered by the~~ commission conducts a hearing on the complaint in executive session. The respondent may submit to the commission a written response to the ~~executive director's~~final report and recommendation no later than five days prior to the special or regular commission meeting ~~in~~at which the commission ~~will take action~~conducts a hearing on the ~~matter~~complaint. Any written response must be submitted to the executive director at the commission's office and not directly to the commissioners. The executive director ~~will~~shall provide copies to the commission and the written response must be included in the record for the complaint. ~~The commission chair may grant an extension of any time periods required by these rules.~~

2. ~~In lieu of a written response to the executive director's investigation report and recommendation,~~The respondent may provide an in-person response at the special or regular meeting of the commission at which the commission ~~will take action~~conducts a hearing on the complaint. At the ~~commission~~special or regular meeting, at least a quorum of commissioners must be present.

3. During the special or regular meeting, the commission shall conduct a hearing on the complaint in executive session. The commission's chair or the chair's designee shall act as the hearing officer. The ~~commissioner chairing the meeting~~hearing officer shall determine the order of presentations and the time allotted ~~to the respondent~~for presentations by the executive director and the respondent. The ~~commissioner chairing the meeting~~hearing officer shall ~~also~~ determine ~~any other~~all procedural matters necessary for an orderly ~~conduct of the commission meeting~~hearing. The ~~respondent shall meet separately with the commission in closed executive sessions to present their in-person responses to the executive director's report and recommendation~~hearing officer may administer an oath or affirmation to any witness providing testimony at the hearing.

4. The hearing on the complaint must be audio or video recorded or recorded by a certified court reporter. At the discretion of the hearing officer, the hearing may take place via reliable electronic means.

5. The respondent may be accompanied by legal counsel when appearing before the commission to provide an in-person response to the executive director's final report and recommendation.

~~3.~~6. Upon the completion of any in-person response to the commission, the commission shall deliberate on the complaint outside the presence of the executive director, commission staff assisting the executive director with the investigation, the respondent, and the respondent's attorney in executive session. The commission shall determine whether ~~a violation of article XIV of the Constitution of North Dakota, North Dakota Century Code chapter 54-66, or another law or rule regarding transparency, corruption, elections, or lobbying~~an ethical violation occurred. The commission shall determine what penalty, if any, authorized under North Dakota law ~~will~~may be imposed upon the respondent. In lieu of a penalty authorized under North Dakota law, the commission may refer the matter to another agency with enforcement authority over the violation.

~~4.~~7. Following the commission's deliberation, the commission shall issue an order with its decision on the complaint. The respondent ~~shall~~must be ~~informed~~provided a copy of the commission's ~~decision~~order. The complainant and others ~~shall~~must be provided information regarding the commission's decision only as permitted under applicable North Dakota law.

History: Effective June 17, 2020; amended effective January 1, 2025; April 1, 2026.

115-02-01-10. Rules of evidence and procedure.

The commission and its investigators ~~shall~~are not ~~be~~ bound by the rules of evidence or procedure under North Dakota or federal law. Any oral or documentary evidence which is relevant to the ~~case~~complaint before the commission may be admitted and considered. Effect ~~shall~~must be given to the rules of privilege recognized by North Dakota and federal law.

History: Effective June 17, 2020; amended effective April 1, 2026.

115-02-01-12. Complaint management time standards.

1. A goal of the commission is to avoid unnecessary delay and promote efficient and timely disposition of complaints. Deviation from these standards does not cause the dismissal of any complaint. A complaint may not remain open in excess of the guidelines set forth without prompt review by the commission.

2. If the commission determines it does not have jurisdiction concerning a complaint, the commission shall dismiss the complaint within sixty calendar days.

3. The executive director shall report on the status of each complaint that has been pending for more than one hundred eighty calendar days at the regular commission meetings in March, June, September, and December.

4. The executive director shall report on the status of each complaint that has been pending for more than three hundred sixty-five calendar days at each regular commission meeting.

History: Effective April 1, 2026.

115-02-01-13. Complaints submitted in bad faith.

1. If the executive director or a commissioner determines a complainant may have filed a complaint to harass or impugn the reputation of the respondent or has otherwise filed a complaint in bad faith, the executive director shall notify the commission.

2. The commission may order the complainant to show cause why the complainant has not submitted a complaint in bad faith. The complainant may respond in writing or request a hearing before the commission.

3. If after notice to the complainant and a reasonable opportunity for the complainant to respond, the commission determines the complainant has submitted a complaint in bad faith, the commission may impose an appropriate sanction on the complainant.

4. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated.

History: Effective April 1, 2026.