NORTH DAKOTA ADMINISTRATIVE CODE

Supplements 42 through 46

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TITLE 13

Banking and Financial Institutions, Department of

MARCH 1982

13-02-01-05. INDIVIDUAL RETIREMENT ACCOUNT AND KEOGH (H.R. 10) PLAN DEPOSITS OF LESS THAN ONE HUNDRED THOUSAND DOLLARS. Except as provided in sections 13-02-01-01 and 13-02-01-07, a state banking association may pay interest on any time deposit with a maturity of ~~three~~ one and one-half years or more that consists of funds deposited to the credit of, or in which the entire beneficial interest is held by, an individual pursuant to an Individual Retirement Account agreement or Keogh (H.R. 10) Plan established pursuant to 26 U.S.C. (I.R.C. 1954) sections 219, 401, 404, and 408, ~~at--a-rate-not-in-excess-of-eight percent~~ with no regulated interest rate ceiling.

History: Amended effective July 1, 1979; amended effective March 1, 1982.

General Authority
NDCC 6-01-04

Law Implemented
NDCC 6-03-02,
6-03-63

13-02-01-12. TAX-EXEMPT SAVINGS CERTIFICATES. Except as provided in sections 13-02-01-01, 13-02-01-02, 13-02-01-04, 13-02-01-05, 13-02-01-06, 13-02-01-07, 13-02-01-10, and 13-02-01-11, state banking associations may pay interest on a nonnegotiable tax-exempt savings certificate (ASC) provided that the time deposit has an original maturity of exactly one year, is available in denominations of five hundred dollars and any other denomination at the discretion of the banking association, and has an annual investment yield to maturity equal to seventy percent of the average annual investment yield on the most recent auction of fifty-two week United States treasury bills prior to the calendar week in which the tax-exempt savings certificate is issued. The certificates may be issued only from October 1, 1981,

through December 31, 1982, and are to be issued in accordance with the Economic Recovery Tax Act of 1981 and provisions of 12 CFR Part 1204.116.

History: Effective March 1, 1982.

General Authority
NDCC 6-01-04

Law Implemented
NDCC 6-03-02,
6-03-63

13-03-02-02. REQUIREMENTS FOR ADVANCEMENT OF MONEY ON SECURITY OF REAL PROPERTY. No credit union organized and operating under the laws of North Dakota, except the North Dakota central credit union, Bismarck, North Dakota, which is specifically exempted from the provisions of this section, shall advance money on security of real property until all of the following requirements have been fulfilled:

1. The first mortgage deed, signed by the record owner and wife or husband, if any, as the case may be, has been properly recorded in the office of the register of deeds of the county in which such real property is located.

2. An abstract of title of the real property involved, continued to include the first mortgage deed as mentioned in subsection 1 ~~of-section-13-03-02-02~~, has been furnished to the credit union, at the expense of the borrower.

3. A written opinion by a competent attorney is obtained, certifying that the mortgagor is the owner of the real property in fee simple, and that the first mortgage as mentioned in subsection 1 ~~of-section-13-03-02-02~~ is a first lien thereon.

4. In lieu of abstract of title and written opinion required in subsections 2 and 3, a title insurance policy equal to at least the original amount of the mortgage will be satisfactory. The policy shall show the credit union as the insured.

~~4.~~ 5. A written appraisal has been obtained and filed with the loan papers, which shall appraise the land and structures separately, and which appraisal shall be made by the credit committee or a designated appraiser who shall appraise the real property and structures at their actual cash value in their opinion; provided, that no relative of a borrower or applicant may act in making the appraisal. In such case, it shall be the duty of the credit committee of the credit union considering the loan to appoint another member of the credit union to serve on the appraisal committee.

5. 6. Proper fire and tornado insurance has been secured with a mortgage clause for the benefit of the credit union in case of loss, which insurance shall be in an amount equal to at least seventy-five percent of the appraised value of the structures or the amount of the loan, whichever is the lesser.

6. 7. A proper note for the amount of the loan has been signed by the mortgagor or mortgagors coinciding in all particulars with the note described in the mortgage required under subsection 1 of-section-13-03-02-02.

7.--The--credit--union--shall-annually-ascertain-the-status-of-the taxes-levied-and-assessed-against-the-property-mortgaged,--and shall-place-in-the-files-of-the-credit-union-such-information. The-credit-union-shall-exercise-vigilance-that--each--borrower on--real-estate-security-pays-all-taxes-and-assessments-levied against-the-real-property-before-the-same-become-delinquent.

History: Amended effective May 1, 1982.

General Authority
NDCC 6-01-04

Law Implemented
NDCC 6-06-06

TITLE 17

Chiropractic Examiners, Board of

APRIL 1982

17-01-02-03. BOARD EXPENSES. Each member of the board of chiropractic examiners shall be reimbursed for the member's expenses for each day the member is actually engaged in performing the duties of the member's office as provided for in North Dakota Century Code section 44-08-04, and such mileage and travel expenses as are provided for in North Dakota Century Code section 54-06-09 and additional allowance for other necessary expenses incurred.

History: Effective April 1, 1982.

General Authority
NDCC 43-06-05

Law Implemented
NDCC 43-06-05,
44-08-04,
54-06-09

JULY 1982

17-02-01-01. EDUCATIONAL REQUIREMENTS. ~~Any--person--shall--be eligible-for-examination-who-is-a-graduate-of-a-recognized--incorporated school--or-college-of-chiropractic-giving-an-adequate-course-of-study-in compliance-with-the-requirements-of-North-Dakota--Century--Code--section 43-06-09.---Applicants--shall--have--in--addition--to--the--chiropractic education-such-other-educational-requirements--as--set--forth--in--North Dakota-Century-Code-chapter-43-06.~~ To qualify for a license to practice chiropractic, the applicant shall comply with all of the following educational requirements:

1. Furnish evidence of successful completion of an accredited four-year high school course of study of not less than sixteen credits.

2. Furnish evidence of satisfactory completion of at least two years of accredited college or university course study (one year means a minimum of thirty semester hours or a minimum of forty-five quarter hours). The following is the minimum course of study in the basic sciences as adopted by the board of chiropractic examiners:

	Semester Hours	Quarter Hours
Chemistry	3	4
Physics	3	4
Hygiene*	2	3
Anatomy	3	4
Psychology	3	4
Pathology*	2	3
Diagnosis*	2	3

*An applicant may choose to substitute biology courses that concentrate on pathology, diagnosis, and hygiene for a total of six semester or nine quarter hours of biology.

3. Furnish evidence of satisfactory completion of a course of instruction of not less than four years of eight months each for four thousand hours from an accredited school or college of chiropractic.

It shall be the object of the board to foster higher professional standards as rapidly as is consistent with the best interests of the profession. In this it shall not be swayed or influenced by any school interests or the interests of those chiropractors graduated from any particular school or college of chiropractic.

History: Amended effective July 1, 1982.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 43-06-08,
43-06-09

TITLE 33

Health, Department of

MARCH 1982

STAFF COMMENT: Chapter 33-09-02 contains all new material but is not underscored so as to improve readability.

ARTICLE 33-09

CERTIFICATE OF NEED FOR EXPANSION OF HOSPITAL FACILITIES

Chapter	
33-09-01	Certification of Need [Superseded]
33-09-02	Certificate of Need Reviews

CHAPTER 33-09-01
CERTIFICATION OF NEED
[Superseded by Chapter 33-09-02]

CHAPTER 33-09-02
CERTIFICATE OF NEED REVIEWS

Section	
33-09-02-01	Definitions
33-09-02-02	Notification of Intent
33-09-02-03	Types of Reviews - Procedures - Schedules
33-09-02-04	Criteria for State Agency Review
33-09-02-05	Certificate of Need Expiration
33-09-02-06	Cost Calculations
33-09-02-07	Special Circumstances

33-09-02-01. DEFINITIONS. The terms defined in the North Dakota Century Code shall have the same meaning as in the North Dakota Century Code. Other terms defined are:

1. "Health maintenance organization" means a public or private organization organized under North Dakota Century Code chapter 26-38.

2. "Home health agency" means a program licensed pursuant to North Dakota Century Code chapter 23-17.3.

3. "Hospital" means an institution which primarily provides to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. This term also includes psychiatric and tuberculosis hospitals.

4. "Incremental operating costs" means the addition of expenditures that have not been incurred previously nor would they be incurred if the new institutional service was not added.

5. "Inpatient addiction hospital" means a facility licensed to operate pursuant to article 33-08.

6. "Intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility provides, but who because of their mental or physical condition require health-related care and services above the level of room and board.

7. "Mental retardation residential facility" means a facility licensed to operate pursuant to article 33-14.

8. "Rehabilitation facility" means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other health services which are provided under competent professional supervision.

9. "Skilled nursing facility" means an institution or a distinct part of an institution which primarily provides to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

History: Effective March 1, 1982.

General Authority
NDCC 23-01-03

Law Implemented
NDCC 23-17.2-02(8),
23-17.2-02(9)

33-09-02-02. NOTIFICATION OF INTENT.

1. An applicant shall submit a notification of intent on forms prescribed by the department. The notification of intent should be submitted as early as possible in the course of planning the project.

2. The notification of intent shall be filed with the department and with the health systems agency in which the project is located.

3. The department of consultation with the health systems agency will determine purview.

4. The applicant and the health systems agency will be notified of the purview determination and type of review (if any). The department will provide application forms to the applicant.

5. At least thirty days before any person enters into a contract to acquire major medical equipment which will not be owned by or located in a health care facility, the person shall notify the state health council and the appropriate health systems agency of the person's intent to acquire the equipment and of the use that will be made of the equipment. The notice must be in the form of notification of intent and contain all information the state health council needs to make its determination.

6. At least thirty days before any person acquires or enters into a contract to acquire an existing health care facility, the person shall notify the state health council and the appropriate health systems agency of the person's intent to acquire the facility and of the services to be offered in the facility and its bed capacity. The notice must be made in writing on a notification of intent form and must contain all information the state health council needs to make its determination as required on the notification of intent form.

7. If application forms sent to the applicant pursuant to notification of intent purview determination are not completed and returned to the department by the applicant within one year from date of mailing, the notification of intent will be considered null and void.

History: Effective March 1, 1982.

General Authority
NDCC 23-01-03

Law Implemented
NDCC 23-17.2-09

33-09-02-03. TYPES OF REVIEWS - PROCEDURES - SCHEDULES.

1. Full review. A full review shall be conducted where the proposal is a capital expenditure, acquisition of major medical equipment, or when operating costs for a new services exceeds the expenditure minimum.

   a. The application shall not be submitted until ninety days have elapsed from the date of receipt of the notification of intent. This waiting period is to facilitate the health systems agency's involvement in the planning process.

   b. The application shall be submitted to the department and to the health systems agency.

   c. Upon receipt of the application, the department with consultation from the health systems agency will determine the completeness of the application.

   d. Applications or additional requested information received by the first day of the month shall be reviewed for completeness by the twentieth of that month. Applications received after the first of the month shall be considered for completeness in the following month. No information will be required of a person subject to review which is not prescribed and published as being required nor shall any information be required which is not necessary to perform the review.

   e. Written notification at the beginning of a review shall be made to affected persons or public bodies and any person who has asked to be placed on a mailing list established by the state, of the beginning of a review, and shall include:

      (1) Notification of proposed schedule for the review.

      (2) The period in which a public hearing during the course of a review may be requested by persons or public bodies directly affected by the review including time and place of a public hearing, if requested.

      (3) The date of "notification" is the date on which the notice is distributed to the applicant, affected persons, or public bodies.

(4) Written notification to members of the public will be provided through newspapers of general circulation.

f. The ninety-day review period will begin on the date of the notification to applicant of receipt of a completed application.

g. The health systems agency will take no longer than the first sixty days of the review period to complete its review and to submit its recommendations to the department.

h. Any part of the ninety-day review period may be extended with the concurrence of the applicant, the health systems agency, and the department.

i. The review will be based on certificate of need criteria in section 33-09-02-04.

j. The determination of the state health council shall be made no later than the next scheduled meeting after the department's review is completed and shall be communicated in writing within five working days to the applicant, the health systems agency and other persons who have filed an appearance and in the case of a project proposed by a health maintenance organization, to the appropriate health and human services regional office at the time the finding is sent to the applicant.

k. The health systems agency or the department shall provide for holding a public hearing without charge if one is requested by an affected person. If a public hearing is requested, notice of such hearing will be sent to: (1) the person requesting the hearing, (2) the person proposing the project, (3) the appropriate health systems agency, and (4) others upon request.

2. Expedited review. An expedited review will be conducted for any of the following proposals:

a. Acquisition by any person of major medical equipment not owned or located in a health care facility who has not given proper notice or with proper notice the department finds within thirty days that such equipment will be used for inpatient use other than on a temporary basis.

b. Acquisition by donation, lease, transfer, or comparable arrangement if such acquisition would have been subject to review if purchased.

c. Acquistion of existing health care facility if proper notice was not given or if bed capacity or services are changed within a year of acquisition. Bed capacity or

service changes occurring after one year of acquisition will require a notification of intent for a purview determination.

d. Home health agencies - new or expansion.

e. The application shall be submitted to the department and to the health systems agency.

f. Upon receipt of the application, the department with consultation from the health systems agency will determine the completeness of the application.

g. Applications or additional requested information received by the first day of the month shall be reviewed for completeness by the twentieth of that month. Applications received after the first of the month shall be considered for completeness in the following month.

h. The ninety-day review period will begin on the date the application is considered complete by the department.

i. The health systems agency will take no more than the first sixty days of the review period to complete its review and to submit its recommendations to the department.

j. Any part of the ninety-day review period may be extended with the concurrence of the applicant, the health systems agency, and the department.

k. The review will be based on certificate of need criteria in section 33-09-02-04.

l. The determination of the state health council shall be made no later than the next scheduled meeting after the department's review is completed and shall be communicated within five working days to the applicant, the health systems agency, and other persons who have filed an appearance.

m. The health systems agency or the department shall provide for holding a public hearing without charge if one is requested by an affected person. Notice of such hearing will go to same persons listed under subdivision k of subsection 1.

3. Special review. The department may issue but not deny certificate of need for proposals which qualify for a special review. Special reviews may be conducted upon receipt of a recommendation of the health systems agency with concurrence by the department for proposals which qualify under any of the following circumstances:

a. An emergency or act of God.

b. Elimination or prevention of imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes or regulations.

c. Compliance with state licensure standards.

d. Compliance with accreditation or certification standards which must be met to continue to meet requirements for reimbursement under title XVIII of the Social Security Act or payments under a state plan for medical assistance approved under title XIX of that Act.

e. Cost overruns experienced in implementation of proposal which exceeds by twenty percent the dollar amounts approved and specified in the certificate of need.

The review will be based on information obtained through the notification of intent form and such supplemental information as may be required by the department.

A certificate of need shall be issued for projects which have received legislative appropriated moneys for state-owned facilities. The legislative need determined through the legislative process shall be the basis upon which a certificate of need will be issued. Proposals which because of special circumstances, such as the legislative intermediate care facilities for the mentally retarded program implementation, may also qualify for a special review.

Land acquisition, in any dollar amount, is not subject to certificate of need review.

History: Effective March 1, 1982.

General Authority
NDCC 23-01-03

Law Implemented
NDCC 23-17.2-03(3),
23-17.2-05(5),
23-17.2-05(7)

33-09-02-04. CRITERIA FOR STATE AGENCY REVIEW. Each decision to issue or not to issue a certificate of need or to withdraw a certificate of need must be based on the review conducted in accordance with procedures and criteria the state health council has adopted under this chapter, and on the record of the administrative proceedings held on the application for the certificate. The review criteria for full or expedited reviews includes the following:

1. The relationship of the health services being reviewed to the applicable health systems plan, annual implementation plan, and state health plan.

2. The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing the services.

3. The availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated, or eliminated.

4. The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the service.

5. The need that the population served or to be served has for the services proposed to be offered or expanded.

6. The contribution of the proposed service in meeting the health-related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services.

7. The relationship of the services proposed to be provided to the existing health care system in the area.

8. The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the availability of alternative uses of these resources for the provision of other health services.

9. The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.

10. The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.

11. If proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.

12. Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. These entities may include medical and other

health professions schools, multidisciplinary clinics, and specialty centers.

13. The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

14. In the case of a construction project:

    a. The costs and methods of the proposed construction, including the costs and methods of energy provision; and

    b. The probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons.

15. The special circumstances of health care facilities with respect to the need for conserving energy.

16. The factors which affect the effect of competition on the supply of the health services being reviewed.

17. Improvements or innovations in the financing and delivery of health services which foster competition, and serve to promote quality assurance and cost effectiveness.

18. In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.

19. In the case of existing services or facilities, the quality of care provided by those facilities in the past.

20. The special needs and circumstances of health maintenance organizations shall be considered.

History: Effective March 1, 1982.

General Authority
NDCC 23-01-03

Law Implemented
NDCC 23-17.2-05(3),
23-17.2-09

33-09-02-05. CERTIFICATE OF NEED EXPIRATION. The certificate of need for each approved proposal shall be valid for a period of twelve months from the date of determination with the provision for a six-month time extension, if requested by the applicant. If no obligation within the designated time period has been made, this shall constitute cause

for the certificate of need to become null and void. If an appeal is filed from the determinaion of the state health council, or a district court appeal, the time period from the date of a request for an appeal until a final judgment is handed down shall not be counted toward the twelve-month period.

History: Effective March 1, 1982.

General Authority
NDCC 23-01-03

Law Implemented
NDCC 23-17.2-05

33-09-02-06. COST CALCULATIONS. Cost calculations shall include the following:

1. Project capital expenditures:

   a. Construction.

   b. Interest expense (less interest earned during construction).

   c. Architectural, engineering, and inspection fees.

   d. Site preparation.

   e. Equipment.

   f. Finance costs.

   g. Other.*

   *Costs involved in engaging construction crews without contract or engaging facility employees for the purpose of effectuating a capital expenditure shall be calculated and included in the project costs.

2. Incremental operating costs:

   a. Direct costs:

      (1) Salaries and wages (including fringe benefits).

      (2) Supplies.

      (3) Other.

   b. Indirect costs:

      (1) Plant.

(2) Housekeeping and laundry.

(3) Administration.

(4) Interest.

(5) Depreciation.

(6) Other.

History: Effective March 1, 1982.

General Authority	Law Implemented
NDCC 23-01-03	NDCC 23-17.2-02(4), 23-17.2-02(7), 23-17.2-02(13)

33-09-02-07. SPECIAL CIRCUMSTANCES. In the case of proposals which are determined not subject to North Dakota Century Code chapter 23-17.2 but the proposals nevertheless are determined by the department to have a significant impact on existing facilities or services, with respect to the intent of North Dakota Century Code chapter 23-17.2, subsections 1 and 2 of section 23-17.2-01, the department will work with all interested parties in such proposals to best effectuate the purposes and the intent of the certificate of need law.

History: Effective March 1, 1982.

General Authority	Law Implemented
NDCC 23-01-03	NDCC 23-17.2-05

STAFF COMMENT: Chapter 33-27-01 contains all new material but is not underscored so as to improve readability.

ARTICLE 33-27

LAKE RESTORATION PROGRAM

Chapter
33-27-01 North Dakota Lake Restoration Program

CHAPTER 33-27-01
NORTH DAKOTA LAKE RESTORATION PROGRAM

Section
33-27-01-01 Authority
33-27-01-02 Definitions
33-27-01-03 Eligibility
33-27-01-04 Prioritization
33-27-01-05 Application Procedures
33-27-01-06 Application Review Criteria
33-27-01-07 Variances
33-27-01-08 Distribution of Funds
33-27-01-09 Reports

33-27-01-01. AUTHORITY. The North Dakota state department of health has been authorized to administer this article under the provisions of North Dakota Century Code section 61-30-02.

History: Effective May 1, 1982.

General Authority
NDCC 61-30-02

Law Implemented
NDCC 61-30-02

33-27-01-02. DEFINITIONS.

1. "Department" means the North Dakota state department of health.

2. "Eligible project cost" means costs under construction contracts, supervision of construction work, administration, materials and equipment acquired, consumed, or expended specifically for the project, and preparation of construction

drawings, specifications, estimates, and construction contract documents.

3. "Lake protection and rehabilitation projects" means projects which are designed to reduce eutrophication of lakes through watershed or in-lake treatments, or both.

4. "Unit of government" means political subdivisions of the state or state agencies with responsibilities for public lake development and control.

History: Effective May 1, 1982.

General Authority	Law Implemented
NDCC 61-30-02	NDCC 61-30-02

33-27-01-03. ELIGIBILITY. All units of government are eligible for lake restoration program assistance. For a project to be eligible, the lake concerned must have recreational value, and must be accessible to the public.

History: Effective May 1, 1982.

General Authority	Law Implemented
NDCC 61-30-02	NDCC 61-30-02, 61-30-04

33-27-01-04. PRIORITIZATION. Each request for a lake ranking will be subject to the following criteria. The numerical score assigned will dictate the individual lake's priority rating. The priority ranking list of candidate lakes will be updated every two years, or when a lake can increase twenty or more points.

Criteria	Points
1. The percent of shoreline accessible to the public	
a. Less than 10 percent	2
b. 10 percent - 25 percent	4
c. 25 percent - 50 percent	10
d. Greater than 50 percent	15
2. Public recreational facilities	

a. Picnic tables 2

b. Toilets 2

c. Garbage collection 2

d. Camping area 2

e. Boat launching ramp 2

f. City or county park 5

g. State park 10

3. Lake user population within twenty-mile radius (each cabin represents a population of five)

a. Less than 3,000 2

b. 3,000 - 8,000 4

c. 8,000 - 20,000 6

d. Greater than 20,000 10

4. Lake size, type, and depth

a. Less than 100 acres 2

b. 100 - 250 4

c. 250 - 500 6

d. Greater than 500 10

a. Man-made 5

b. Natural lake 20

a. Maximum depth less than 20 feet 5

b. Maximum depth 20-30 feet 10

c. Maximum depth greater than 30 feet 20

a. Watershed/lake size ratio greater than 10 5

b. Watershed/lake size ratio 5-10 10

c. Watershed/lake size ratio less than 5 20

5. Baseline water quality data

   a. No water quality data 0

   b. Less than 5 water quality sampling dates 5

   c. One year comprehensive limnological data 25

6. Numerical lake classification (Standards of water quality for state of North Dakota)

   a. Class 1 and 2 cool and cold water fishery 10

   b. Class 3 warm water fishery 8

   c. Class 4 marginal fishery 6

   d. Class 5 not capable of supporting a fishery 2

7. Proximity of lake to other lakes having similar size and recreational facilities

   a. Less than 10 miles 0

   b. 10 - 30 miles 5

   c. Greater than 30 miles 10

   A minimum of five lakes with the highest priority ranking will undergo a baseline limnological survey and a public meeting will be held near the lake to provide an assessment of the local financial commitment necessary to proceed with a project.

   In the event tentative financial arrangements cannot be made, the individual lake will maintain its rating for four years.

History: Effective May 1, 1982.

General Authority
NDCC 61-30-02

Law Implemented
NDCC 61-30-02

33-27-01-05. APPLICATION PROCEDURES. All applications for assistance must be made to the department and contain written assurance from any affected soil conservation district that the plan has been approved by the district to control point and nonpoint pollution which comes under their jurisdiction. Other information needed:

1. The name of the lake or reservoir.

2. Location of the lake, county, and distance from nearest town.

3. A description of the physical characteristics of the lake including major hydrologic inflows and outflows.

4. A description of the type and amount of public access, and the public benefits that would be derived by implementation of a project.

5. A description of any recreational uses of the lake that are impaired due to degraded water quality.

6. A description of the local interests and monetary resources committed to restoring the lake.

7. A map of the lake watershed, including size, general topography, soil types, and land use.

8. Identification of any point sources of pollution.

9. A discussion and analysis of historical baseline limnological data, and one year of current limnological data.

10. Describe alternatives for restoring the lake, including costs, environmental impacts, and probable success.

11. A milestone schedule identifying major work outputs, and expenditure of funds.

History: Effective May 1, 1982.

General Authority
NDCC 61-30-02

Law Implemented
NDCC 61-30-02,
61-30-05

33-27-01-06. APPLICATION REVIEW CRITERIA. The department staff will review all applications within sixty days. Each application review will be based on the following criteria, after which the applicant will have sixty days to satisfy deficiencies.

1. State priority ranking/score.

2. Technical feasibility.

3. Lake ecosystem improvements anticipated.

4. Extent of public benefits.

5. Reasonableness of costs.

6. Recreation improvements anticipated.

7. Fish and wildlife improvements anticipated.

8. Mitigation of adverse environmental impacts.

9. Proposed operation and maintenance plan.

10. The ability of the applicant unit of government to implement the project.

History: Effective May 1, 1982.

General Authority
NDCC 61-30-02

Law Implemented
NDCC 61-30-02

33-27-01-07. VARIANCES. The department may waive portions of the application procedures and review criteria for projects that are limited in scope of work and cost.

History: Effective May 1, 1982.

General Authority
NDCC 61-30-02

Law Implemented
NDCC 61-30-02

33-27-01-08. DISTRIBUTION OF FUNDS.

1. Types of assistance. The department will make grants to units of government for eligible project costs at a sum not to exceed twenty-five percent when federal funding is available. No grants shall be made for studies to determine the necessity or feasibility of eligible projects.

2. Contracts. Grants may be awarded to units of government, which may in turn subcontract for all or any portion of the specific project, subject to approval of the department.

3. Payments. All eligible project costs will be paid by the department on a cost reimbursement basis. The unit of government responsible for implementing the project must submit signed vouchers for reimbursement.

History: Effective May 1, 1982.

General Authority
NDCC 61-30-02

Law Implemented
NDCC 61-30-02,
61-30-03

33-27-01-09. REPORTS. The department shall require that all successful applicants file quarterly reports containing progress to date, and funds expended.

History: Effective May 1, 1982.

General Authority
NDCC 61-30-02

Law Implemented
NDCC 61-30-02

JULY 1982

STAFF COMMENT: Chapter 33-15-15 is substantially revised but does not contain underscore and overstrike.

CHAPTER 33-15-15
PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

Section
33-15-15-01 General Provisions
33-15-15-02 Reclassification

33-15-15-01. GENERAL PROVISIONS.

1. Definitions. For the purposes of this chapter:

a. "Actual emissions" means the actual rate of emissions of a contaminant from an emission unit, as determined in accordance with paragraphs 1 through 3.

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the contaminant during a two-year period which precedes the particular date and which is representative of normal source operation. The department may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's

actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

b. "Allowable emissions" means the emission rate calculated using the maximum rated capacity of the source and the most stringent of the following:

(1) Applicable standards of performance or emission limitations as set forth in this article.

(2) The emission rate specified as a permit condition. Annual allowable emissions shall be based on the maximum annual rated capacity of the source, unless the source is subject to enforceable permit conditions which limit the operating rate or hours of operation, or both. Enforceable permit conditions on the type or amount of materials combusted or processed may be used in determining the allowable emission rate of a source.

c. "Baseline area" means any intrastate area (any every part thereof) designated as attainment or unclassifiable under section 107 (d)(1)(D) or (E) of the Federal Clean Air Act [Pub. L. 95-95] in which the major source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than one ug/m^3 (annual average) of the contaminant for which the baseline date is established. North Dakota is divided into two intrastate areas under section 107 (d)(1)(D) or (E) of the Federal Clean Air Act [Pub. L. 95-95]: the Cass County portion of Region No. 130, the Metropolitan Fargo-Moorhead Interstate Air Quality Control Region; and Region No. 172, the North Dakota Intrastate Air Quality Control Region (the remaining fifty-two counties).

d. (1) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable baseline date. A baseline concentration is determined for each contaminant for which a baseline date is established and includes:

(a) The actual emissions representative of sources in existence on the applicable baseline date, except as provided in paragraph 2;

(b) The allowable emissions of major stationary sources which commenced construction before January 6, 1975, but were not in operation by the applicable baseline date.

(2) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increases:

(a) Actual emissions from any major stationary source on which construction commenced after January 6, 1975; and

(b) Actual emissions increases and decreases at any stationary source occurring after the baseline date.

e. (1) "Baseline date" means the earliest date after August 7, 1977, on which the first complete application under this chapter is submitted by a major stationary source or major modification subject to the requirements of this chapter.

(2) The baseline date is established for each contaminant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107 (d)(1)(D) or (E) of the Federal Clean Air Act [Pub. L. 95-95] for the contaminant on the date of its complete application under this chapter; and

(b) In the case of a major stationary source, the contaminant would be emitted in significant amounts or, in the case of a major modification, there would be a significant net emissions increase of the contaminant.

(3) The department shall provide a list of baseline dates for each contaminant for each baseline area.

f. "Begin actual construction" means, in general, initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework,

and construction of permanent storage structures. With respect to a change in method of operation this term refers to those onsite activities, other than preparatory activities, which mark the initiation of the change.

g. "Best available control technology" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction of each contaminant subject to regulation under North Dakota Century Code chapter 23-25 emitted from or which results from any major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques including fuel cleaning or treatment or innovative fuel combustion techniques for control of such contaminant. In no event shall application of "best available control technology" result in emissions of any contaminant which would exceed the emissions allowed by any applicable standards of performance under chapters 33-15-12 and 33-15-13. If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, the department may instead prescribe a design, equipment, work practice or operational standard, or combination thereof, requiring the application of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

h. "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has obtained all necessary preconstruction approvals or permits required by federal, state, or local air pollution emissions and air quality laws or regulations and either has (1) begun, or caused to begin, a continuous program of physical onsite construction of the source, to be completed within a reasonable time; or (2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed within a reasonable time.

i. "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit

processing does not preclude the reviewing authority from requesting or accepting any additional information.

j. "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emission unit) which would result in a change in actual emissions.

k. "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any air contaminant regulated under North Dakota Century Code chapter 23-25.

l. "Facility, building, structure, or installation" means all of the air contaminant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Air contaminant emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

m. "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

n. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

o. "High terrain" means any area having an elevation that exceeds the plume centerline (effective stack height) or is nine hundred feet [271.32 meters] or more above the base of the stack of a facility, whichever is less.

p. "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

q. "Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or Act of Congress.

r. "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or

of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

s. "Low terrain" means any area other than high terrain.

t. "Major modification" means any physical change in, or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any air contaminant subject to regulation under North Dakota Century Code chapter 23-25.

   (1) Any net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone.

   (2) A physical change or change in the method of operation shall not include:

      (a) Routine maintenance, repair, and replacement;

      (b) Use of an alternate fuel or raw material by reason of any order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

      (c) Use of an alternate fuel or raw material by a stationary source which:

         [1] The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any state enforceable permit condition which was established after January 6, 1975, pursuant to this chapter or under regulations approved pursuant to North Dakota Century Code chapter 23-25.

         [2] The source is approved to use under any permit issued under regulations approved pursuant to North Dakota Century Code chapter 23-25.

      (d) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any enforceable permit condition which was established after January 6, 1975, pursuant to this chapter under regulations approved pursuant to North Dakota Century Code chapter 23-25.

(e) Any change in ownership of a stationary source.

(f) Use of an alternative fuel by reason of an order or rule under section 125 of the Federal Clean Air Act [Pub. L. 95-95].

(g) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

u. "Major stationary source" means any of the following stationary sources of air contaminants which emit, or have the potential to emit, one hundred tons [90,718.17 kilograms] per year or more of any air contaminant regulated under North Dakota Century Code chapter 23-25 from the following types of stationary sources: Fossil-fuel fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mills, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than two hundred fifty tons [226,796.19 kilograms] of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers (or combinations thereof) of more than two hundred fifty million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding three hundred thousand barrels, taconite ore processing facilities, glass fiber processing plants, and charcoal production facilities. Notwithstanding the source sizes specified above, such term also includes any source which emits, or has the potential to emit, two hundred fifty tons [226,796.19 kilograms] per year or more of any air contaminant regulated under North Dakota Century Code chapter 23-25. A major source that is major for volatile organic compounds shall be considered major for ozone.

v. "Necessary preconstruction approvals or permits" means those permits or approvals required by the department as a precondition to undertaking any activity under (1) or (2) of subdivision h.

w. "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(1) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(2) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within a reasonable period (to be specified by the department) before the date that the increase from the particular change occurs.

(b) An increase or decrease in actual emissions is creditable only if the department has not relied on it in issuing a permit for the source under this article, which permit is in effect when the increase in actual emissions from the particular change occurs.

(c) An increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

[1] The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

[2] It is enforceable at and after the time that actual construction on the particular change begins; and

[3] It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational

and beings to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

x. "Potential to emit" means the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

y. "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well-defined, quantifiable, and impact the same general areas as the major stationary source or major modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(1) Emissions from trains coming to or from the new or modified stationary source; and

(2) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

z. "Significant" means,

(1) In reference to a net emissions increase or the potential of a source to emit any of the following air contaminants, a rate of emissions that would equal or exceed any of the following rates:

Air Contaminant and Emissions Rate

Carbon monoxide: 100 tons per year
Nitrogen oxides: 40 tons per year
Sulfur dioxide: 40 tons per year
Particulate matter: 25 tons per year
Ozone: 40 tons per year of volatile organic compounds
Lead: 0.6 ton per year
Asbestos: 0.007 ton per year
Beryllium: 0.0004 ton per year
Mercury: 0.1 ton per year
Vinyl chloride: 1 ton per year
Fluorides: 3 tons per year
Sulfuric acid mist: 7 tons per year
Hydrogen sulfide (H^2S): 10 tons per year
Total reduced sulfur (including H^2S): 10 tons per year
Reduced sulfur compounds (including H^2S): 10 tons per year

(2) In reference to a net emissions increase or the potential of a source to emit an air contaminant subject to regulation under the North Dakota Century Code chapter 23-25 that paragraph 1 does not list, any emissions rate.

(3) Notwithstanding paragraph 1, "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers of a Class I area, and have an impact on such area equal to or greater than one ug/m^3 (24-hour average).

aa. "Stationary source" means any building, structure, facility, or installation which emits or may emit any air contaminant regulated under North Dakota Century Code chapter 23-25.

2. Significant deterioration of air quality - area designation and deterioration increment.

a. The provisions of this chapter do not apply to those counties or other functionally equivalent areas on a contaminant specific basis that exceed any ambient air quality standard for sulfur dioxide or particulate matter.

b. For purposes of this chapter, areas designated as Class I, II, or III shall be limited to the following increases in contaminant concentration over the baseline concentration:

Area Designations

Pollutant	Class I (ug/m^3)	Class II (ug/m^3)	Class III (ug/m^3)
Particulate matter:			
Annual geometric mean	5	19	37
24-hour maximum	10	30	75
Sulfur dioxide:			
Annual arithmetic mean	2	15	40
24-hour maximum	5	91	182
3-hour maximum	25	512	700

Provided that for any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any receptor site.

Any conflict between an applicable increment and an applicable ambient air quality standard shall be resolved in favor of the more stringent limitation and the source shall be limited to such more stringent limitation.

c. All of the following areas which were in existence on August 7, 1977, are hereby designated Class I areas and may not be redesignated:

(1) The Theodore Roosevelt National Park - north and south units in Billings and McKenzie Counties, and the Theodore Roosevelt Elkhorn Ranch Site in Billings County.

(2) The Lostwood National Wilderness Area in Burke County.

All other areas of the state are hereby designated Class II areas.

d. The following areas may be designated only as Class I or II:

(1) An area which as of August 7, 1977, exceeds ten thousand acres [4,046.86 hectares] in size and is a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore.

(2) A national park or national wilderness area established after August 7, 1977, which exceeds ten thousand acres [4,046.86 hectares] in size.

e. Exclusions from increment consumption:

(1) The following concentrations shall be excluded in determining compliance with a maximum allowable increase in contaminant concentration:

(a) Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such order.

(b) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan.

(c) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission related activities of new or modified sources.

(d) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration.

(e) Concentrations attributable to the temporary increase in emissions of sulfur dioxide or particulate matter from stationary sources which increases have been approved in advance by the department.

(2) No exclusion of such concentrations shall apply more than five years after the effective date of the order to which subparagraph a of paragraph 1 refers or the plan to which subparagraph b of paragraph 1 refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(3) For purposes of excluding concentrations pursuant to subparagraph e of paragraph 1:

(a) The time over which the temporary emissions increase of sulfur dioxide or particulate matter would occur must be specified. Such times shall not exceed two years in duration unless a longer time is approved by the administrator of the United States environmental protection agency.

(b) The time period for excluding certain contributions in accordance with subparagraph a shall not be renewable.

(c) No emissions increase from a stationary source shall:

[1] Impact a Class I area or an area where an applicable increment is known to be violated; or

[2] Cause or contribute to the violation of any ambient air quality standards.

(d) The emission levels from the stationary sources effected at the end of the time period specified in accordance with subparagraph a shall not exceed those levels occurring from such sources before the temporary increases in emissions were approved.

f. The Class I area increment limitations of the Theodore Roosevelt Elkhorn Ranch Site of the Theodore Roosevelt National Park shall apply only to sources or modifications for which complete applications have not been filed as of the effective date of this section. The impact of emissions from sources or modifications for which permits under this chapter have been issued or complete applications have already been filed as of the effective date of this paragraph will be counted against the increments after the effective date of this section.

g. Any applicant whose emissions will consume more than one-half of the available increment in another state shall not be granted a permit in accordance with this chapter, unless approved by the department after consultation with the other state.

3. Stack heights.

a. The degree of emission limitation required for control of any air contaminant under this chapter shall not be affected in any manner by:

(1) So much of the stack height of any source as exceeds good engineering practice; or

(2) Any other dispersion technique.

b. For the purpose of this subsection, good engineering practice means, with respect to stack heights, the height necessary to ensure that emissions from the stack do not result in excessive concentrations of any air contaminant in the immediate vicinity of the sources as a result of atmospheric downwash, eddies, and wakes which may be created by the source itself, nearby structures or nearby terrain obstacles (as determined by the department). The stack height shall not exceed good engineering practice stack height unless the owner or operator of the source demonstrates to the satisfaction of the department that a greater height is necessary as provided under the preceding sentence. Good engineering practice (GEP) stack height shall mean the greater of:

(1) 65 meters.

(2) $HG = H + 1.5 L$

Where: HG = Good engineering practice stack height
H = Height of the structure or nearby structures
L = Lesser dimension (height or width) of the structure or nearby structures. Both the height and width of the structure are determined from the frontal area of the structure, projected onto a plane perpendicular to the direction of the wind.

(3) The height demonstrated by a fluid model or a field study approved by the department, which ensures that the emissions from a stack do not result in excessive concentrations of any air contaminant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures, or terrain obstacles.

c. For the purpose of this subsection:

(1) "Dispersion technique" means any technique which attempts to affect the concentration of a contaminant in the ambient air by:

(a) Using that portion of a stack which exceeds good engineering practice stack height, except to avoid plume impaction on elevated terrain;

(b) Varying the rate of emission of a contaminant according to atmospheric conditions or ambient concentrations of that contaminant; or

(c) Manipulating source design and source process parameters, exhaust gas parameters, or stack parameters, or any other selective handling of exhaust gas streams for the purpose of increasing exhaust gas plume rise, but not including the following:

[1] The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

[2] The use of smoke management in agricultural or silvicultural programs; or

[3] Recombining the exhaust gases from several stacks into one stack as long as there is no manipulation of exhaust flow rates or temperatures for the purpose of enhancing plume rise.

(2) "Elevated terrain" means terrain which exceeds the elevation of the good engineering practice stack as calculated under subdivision b.

(3) "Excessive concentrations" for the purpose of determining good engineering practice stack height in a fluid model or field study means a maximum concentration due to downwash, wakes, or eddy effects produced by structures or terrain features which is at least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(4) "Nearby" means that distance up to five times the lesser of the height or width dimension of a structure but not greater than eight-tenths of a kilometer [one-half mile].

(5) "Plume impaction" means concentrations in excess of national and state ambient air quality standards or prevention of significant deterioration increments which result when a plume comes into contact with elevated terrain.

(6) "Stack" means any point in a source designed to emit solids, liquids, or gases into the air including a

pipe or duct. Stack height is the distance from the ground-level elevation of the plant to the elevation of the stack outlet.

4. Review of new major stationary sources and major modifications.

    a. Applicability. The requirements of this chapter shall apply to any major new stationary source or modification which:

        (1) Has not been issued a permit to construct or modify prior to March 1, 1978;

        (2) Has not commenced construction prior to March 1, 1979; or

        (3) Has discontinued construction for a period of eighteen months or more and has not completed construction within a reasonable time.

    Review of these sources or modifications shall be conducted in conjunction with the issuance of permits to construct pursuant to section 33-15-14-02.

    b. Permits - general.

        (1) No source subject to this chapter shall be constructed in any area unless:

            (a) A permit has been issued for such proposed source in accordance with this chapter setting forth emission limitations or equipment standards for such source which conform to the requirements of this chapter and any conditions necessary to ensure that the proposed source will meet such limits or standards;

            (b) The requirements of subdivisions c through k, as applicable, have been met; and

            (c) The proposed permit has been subject to a review in accordance with this chapter, the required analysis has been conducted in accordance with the requirements of this chapter, and the procedures for public participation as defined in subsection 5 have been followed.

        (2) Provided that all necessary requirements of this article have been met, permits will be issued on a first-come, first-served basis as determined by the completion date of the applications.

c. Control technology review.

(1) A major stationary source or major modification shall meet all applicable emission limitations under the state implementation plan and all applicable emission standards and standards of performance of this article.

(2) A new major stationary source shall apply best available control technology for each air contaminant subject to regulation under the North Dakota Century Code chapter 23-25 that it would have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each air contaminant subject to regulation under the North Dakota Century Code chapter 23-25 for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the air contaminant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than eighteen months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

d. Exemptions from impact analysis.

(1) The requirements of subdivisions e, g, and i shall not apply to a major stationary source or major modification with respect to a particular air contaminant, if the allowable emissions from the source, or the net emissions increase of that contaminant from the modification:

(a) Would impact no Class I area and no area where an applicable increment is known to be violated; and

(b) Would be temporary.

(2) The requirements of subdivisions e, g, and i as they relate to any maximum allowable increase for a

Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each air contaminant regulated under North Dakota Century Code chapter 23-25 from the modification after the application of best available control technology would be less than fifty tons [45,359.24 kilograms] per year.

(3) The department may exempt a stationary source or modification from the requirements of subdivision g with respect to monitoring for a particular air contaminant if either of the following apply:

(a) The emissions increase of the air contaminant from the new source or the net emissions increase of the air contaminant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide - 575 ug/m^3, 8-hour average
Nitrogen dioxide - 14 ug/m^3, annual average
Total suspended particulate - 10 ug/m^3, 24-hour average
Sulfur dioxide - 13 ug/m^3, 24-hour average
Ozone - No de minimus level
Lead - 0.1 ug/m^3, 24-hour average
Mercury - 0.25 ug/m^3, 24-hour average
Beryllium - 0.0005 ug/m^3, 24-hour average
Fluorides - 0.25 ug/m^3, 24-hour average
Vinyl chloride - 15 ug/m^3, 24-hour average
Total reduced sulfur - 10 ug/m^3, 1-hour average
Hydrogen sulfide - 0.04 ug/m^3, 1-hour average
Reduced sulfur compounds - 10 ug/m^3, 1-hour average

(b) The concentrations of the air contaminant in the area that the source or modification would effect are less than the concentrations listed in subparagraph a or the air contaminant is not listed in subparagraph a.

(4) The requirements for best available control technology in subdivision c and the requirements for air quality analyses in paragraph 1 of subdivision g shall not apply to a particular stationary source or modification that was subject to this chapter if the owner or operator of the source or modification submitted an application for a permit before May 7, 1981, and the department subsequently determines the application as submitted before that date was

complete. Instead, the requirements of this chapter as in effect prior to May 7, 1981, apply to any such source or modification.

(5) The requirements for air quality monitoring in subparagraphs b, c, and d of paragraph 1 of subdivision g shall not apply to:

(a) A particular source of modification that was subject to this chapter as in effect prior to May 7, 1981, if the owner or operator of the source or modification submits an application for a permit under this chapter on or before June 8, 1981, and the department subsequently determines that the application as submitted before that date was complete with respect to the requirements of this chapter other than those in subparagraphs b, c, and d of paragraph 1 of subdivision g and with respect to the requirements for such analyses as in effect prior to May 7, 1981. Instead, the requirements of this chapter prior to May 7, 1981, shall apply to any source or modification.

(b) A particular source or modification that was not subject to this chapter as in effect prior to May 7, 1981, if the owner or operator of the source or modification submits an application for a permit under this chapter on or before June 8, 1981, and the department subsequently determines that the application as submitted before that date was complete, except with respect to the requirements in subparagraph b, c, and d of paragraph 1 of subdivision g.

(6) The requirements of subdivisions c, e, f, g, h, i, and j and subsections 5 and 6 in their entirety shall not apply to a particular major stationary source or major modification, if:

(a) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the stationary sources of air contaminants listed in subdivision u of subsection 1 and any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Federal Clean Air Act [Pub. L. 95-95].

(b) The source is a portable stationary source which has previously received a permit under this chapter and:

[1] The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary.

[2] The emissions from the source would not exceed its allowable emissions.

[3] The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated.

[4] Reasonable notice is given to the department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the department not less than fifteen days in advance of the proposed relocation unless a different time duration is previously approved by the department.

(c) With respect to a particular air contaminant, the owner or operator domonstrates that the source or modification is located in an area designated as nonattainment, as to that air contaminant, under this article.

(d) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor requests that it be exempt from such requirements.

e. Source impact analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions) from any other sources, will not cause or contribute to air pollution in violation of:

(1) Any ambient air quality standard in any area; or

(2) Any applicable maximum allowable increase over the baseline concentration in any area.

f. Air quality models.

(1) All estimates of ambient concentrations required under this section shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guidelines on Air Quality Models" (OAQPS 1.2-080 (Revised), United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27711) and the "North Dakota Guideline for Air Quality Modeling Analyses" (North Dakota state department of health, division of environmental engineering). These documents are incorporated by reference.

(2) Where an air quality impact model specified in the documents incorporated by reference in paragraph 1 is inappropriate, the model may be modified or another model substituted provided:

(a) Any modified or nonguideline model must be subjected to notice and opportunity for public comment under subsection 5.

(b) The applicant must provide to the department adequate information to evaluate the applicability of the modified or nonguideline model. Such information shall include, but not be limited to, methods like those outlined in the "Workbook for the Comparison of Air Quality Models" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27711).

(c) Written approval from the department must be obtained for any modification or substitution prior to an application being designated complete by the department.

(d) Written approval from the United States environmental protection agency must be obtained for any modification or substitution prior to the granting of a permit under this chapter.

g. Air quality analysis.

(1) Preapplication analysis.

(a) Any application for a permit under this section shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would effect for each of the following air contaminants:

[1] For the source, each air contaminant that it would have the potential to emit in a significant amount;

[2] For the modification, each air contaminant for which it would result in a significant net emissions increase.

(b) With respect to any such air contaminant for which no ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the department determines is necessary to assess ambient air quality for that air contaminant in any area that the emissions of that air contaminant would affect.

(c) With respect to any such air contaminant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that air contaminant would cause or contribute to a violation of the standard or any maximum allowable increase.

(d) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application except that if the department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

(e) For any application which becomes complete, except as to the requirements of subparagraphs c and d, between June 8, 1981, and February 9, 1982, the data that subparagraph c requires shall have been gathered over at least the period from February 9, 1981, to the date the application becomes otherwise complete, except that:

[1] If the source or modification would have been major for that air contaminant under this chapter as in effect prior to May 7, 1981, any monitoring data shall have been gathered over at least the period required by those regulations.

[2] If the department determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that subparagraph c requires shall have been gathered over at least that shorter period.

[3] If the monitoring data would relate exclusively to ozone and would not have been required under this chapter as in effect prior to May 7, 1981, the department may waive the otherwise applicable requirements of this subparagraph to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

(f) The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 40 CFR, part 51, appendix S, section IV may provide postapproved monitoring data for ozone in lieu of providing preconstruction data as required under paragraph 1.

(2) Postconstruction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

(3) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR, part 58, appendix B during the operation of monitoring stations for purposes of satisfying subdivision g.

h. Source information. The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to perform any analysis to make any determination required under this article. Such information shall include:

(1) A description of the nature, location, design capacity, and typical operating schedule of the proposed source or modification, including specifications and drawings showing the design and plant layout of the source or modification.

(2) A detailed schedule for construction of the source or modification.

(3) A detailed description as to what system of continuous emission reduction is planned by the source or modification, emission estimates, and any other information necessary to determine that best available control technology as specified in the "North Dakota Guidelines for Determining Best Available Technology" (North Dakota state department of health, division of environmental engineering). This document is incorporated by reference.

(4) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact.

(5) Information on the air quality impacts and the nature and extent of general commercial, residential, industrial, and other growth which has occurred since the baseline date in the area the source or modification would affect.

i. Additional impact analyses.

(1) The owner or operator shall provide an analysis of the impairment to visibility that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. An assessment of an anticipated adverse impact on soils and vegetation in the vicinity of the source or modification shall also be included. Of particular concern are effects that would have significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

j. Sources impacting federal Class I areas - additional requirements.

(1) Notice to the environmental protection agency. The department shall transmit to the administrator of the United States environmental protection agency through the United States environmental protection agency region VIII regional administrator a copy of each permit application relating to a major stationary source or major modification received by the department and provide notice to the administrator of

every action related to the consideration of such permit.

(2) Notice to federal land managers. The department shall provide notice of the permit application, a copy of the preliminary determination required under subsection 5, and any materials used in making that determination to the federal land manager and the federal official charged with direct responsibility for management of any lands within a Class I area which may be affected by emissions from the proposed source. The department shall provide such notice promptly after receiving the application.

(3) Denial - impact on air quality-related values. A federal land manager may present to the department, after reviewing the department's preliminary determination required under subsection 5, a demonstration that the emission from an applicable source will have an adverse impact on the air quality-related values (including visibility) of federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification will not cause or contribute to concentrations which exceed the maximum allowable increases for a Class I area. If the department concurs with such demonstration, the permit shall not be issued.

(4) Class I variances.

(a) The owner or operator of a proposed source may demonstrate to the federal land manager that the emissions from such source or modification will have no adverse impact on the air quality-related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification will cause or contribute to concentrations which exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with such demonstration and the manager so certifies to the department, the department may issue the permit pursuant to the requirements of subparagraph b; provided, that the applicable requirements of this chapter are otherwise met.

(b) In the case of a permit issued pursuant to subparagraph a, such source or modification shall comply with such emission limitations under such permit as may be necessary to assure that emissions of sulfur dioxide and particulate

matter will not exceed the following maximum allowable increases over the baseline concentration for such contaminants:

	Maximum allowable increase (micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	19
24-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	15
24-hour maximum	91
3-hour maximum	325

(5) Sulfur dioxide variance by governor with federal land manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under paragraph 4 may demonstrate to the governor, that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of twenty-four hours or less applicable to any Class I area and, in the case of federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality-related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if any) and subject to the federal land manager's concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the department shall issue a permit to such source or modification pursuant to the requirements of paragraph 7; provided, that the applicable requirements of this chapter are otherwise met.

(6) Variance by the governor with the president's concurrence. In any case where the governor recommends a variance under this subdivision in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the president. The president may approve the governor's recommendation if the president finds that such variance is in the national interest. If such a variance is approved, the department shall issue a permit pursuant to the requirements of paragraph 7; provided, that the applicable requirements of this chapter are otherwise met.

(7) Emission limitations for presidential or gubernatorial variance. In the case of a permit

issued pursuant to paragraph 5 or 6, the source or modification shall comply with emission limitations under such permit as may be necessary to assure that emissions of sulfur dioxide from such source or modification will not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions will not cause or otherwise contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four hours or less for more than eighteen days, not necessarily consecutive, during any annual period:

Maximum allowable increase

(micrograms per cubic meter)

Period of exposure	Low Terrain areas	High Terrain areas
24-hour maximum	36	62
3-hour maximum	130	221

k. Proposed redesignations. Where an owner or operator applies for permission to construct pursuant to this chapter and the proposed source or modification would impact on an area which has previously been proposed for redesignation to a more stringent class by the department, an Indian governing body, or another state (or the state or Indian governing body has announced such consideration), approval shall not be granted until the proposed redesignation has been acted upon. However, approval shall be granted if, in the department's judgment, the proposed source would not violate the increments that would be applicable if the redesignation is approved. The department shall withhold approval under this subdivision only so long as another state or Indian governing body is actively and expeditiously proceeding toward redesignation.

Where an owner or operator has applied for permission to construct pursuant to this chapter and whose application has been deemed complete by the department prior to the public announcement of a proposed redesignation of an area to a more stringent class and where such facility would impact on the area proposed for redesignation, the

application shall be processed considering the classification of the area which existed at the time the application was deemed complete.

5. Public participation.

   a. Within thirty days after receipt of an application to construct a source or modification subject to this chapter, or any addition to such application, the department shall advise the applicant as to the completeness of the application or of any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application, for the purpose of this chapter, shall be the date on which all required information to form a complete application is received by the department.

   b. Within one year after receipt of a completed application, the department shall:

      (1) Make a preliminary determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.

      (2) Make available in at least one location in each region in which the proposed source or modification would be constructed, a copy of all materials submitted by the applicant, a copy of the department's preliminary determination and a copy or summary of other materials, if any, considered by the department in making a preliminary determination.

      (3) Notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment on the information submitted by the owner or operator and the department's preliminary determination on the approvability of the source.

      (4) Send a copy of the notice required in paragraph 3 to the applicant, the United States environmental protection agency administrator, and to officials and agencies having cognizance over the locations where the source or modification will be situated as follows: local air pollution control agencies, the chief executive of the city and county where the source or modification would be located; any

comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be significantly affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing, to be held during the public comment period, for interested persons (including representatives of the United States environmental protection agency administrator) to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required and other appropriate considerations.

(6) Consider all public comments submitted in writing within a time specified in the public notice required in paragraph 3 and all comments received at any public hearing conducted pursuant to paragraph 5 in making its final decision on the approvability of the application. No later than ten days after the close of the public comment period the applicant may submit a written response to any comments submitted by the public. The department shall consider the applicant's response in making its final decision. All comments shall be made available for public inspection in the same locations where the department made available preconstruction information relating to the source or modification.

(7) Make a final determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.

(8) Notify the applicant in writing of the department's final determination. The notification shall be made available for public inspection in the same locations where the department made available preconstruction information and public comments relating to the source or modification.

6. Source obligation.

a. Any owner or operator who constructs or operates a stationary source or modification not in accordance with the application, submitted pursuant to subsection 4 or with the terms of any permit to construct; or any owner or operator of a stationary source or modification subject to this chapter who commences construction after the effective date of this chapter without applying for and receiving a permit to construct hereunder, shall be subject to enforcement action under North Dakota Century Code section 23-25-10.

b. A permit to construct shall become invalid if construction is not commenced within eighteen months after receipt of such permit, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The department may extend the eighteen-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date. In cases of major construction projects involving long lead times and substantial financial commitments, the department may provide by a condition to the permit, a time period greater than eighteen months when such time extension is supported by sufficient documentation by the applicant.

c. A permit to construct shall not relieve any owner or operator of the responsibility to comply fully with the applicable provisions of the state implementation plan and any other requirements under local, state, or federal law.

d. At such time that a particular source or modification becomes a major stationary source or modification solely by virtue of a relaxation in any enforceable limit which was established after May 7, 1980, on the capacity of the source or modification otherwise to emit an air contaminant, such as a restriction on hours of operation, then the requirements of subdivisions c, e, f, g, h, i, j, and k of subsection 4; the requirements of subsection 5; and the requirements of subsection 6 shall apply to the source or modification as though construction had not yet commenced on the source or modification.

7. Innovative control technology.

a. An owner or operator of a proposed major stationary source or major modification may request the department in writing to approve a system of innovative control technology.

b. The department shall, with the consent of the governor, determine that the source or modification may employ a system of innovative control technology, if:

(1) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(2) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph 2 of subdivision c of subsection 4 by a date specified by

the department. Such date shall not be later than four years from the time of startup or seven years from permit issuance.

(3) The source or modification would meet the requirements of subdivisions c and e of subsection 4 based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the department.

(4) The source or modification would not before the date specified by the department:

(a) Cause or contribute to a violation of an applicable ambient air quality standard; or

(b) Impact any Class I area; or

(c) Impact any area where an applicable increment is known to be violated.

(5) All other applicable requirements including those for public participation have been met.

c. The department shall withdraw any approval to employ a system of innovative control technology made under this section, if:

(1) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

(2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(3) The department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

d. If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subdivision c, the department may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

History: Amended effective July 1, 1982.

General Authority
NDCC 23-25-03

Law Implemented
NDCC 23-25-03

33-15-15-02. RECLASSIFICATION.

1. Reclassification of areas. All areas (except as otherwise provided under subdivision d of subsection 2 of section 33-15-15-01) shall be designated either Class I, Class II, or Class III. Any designation other than Class II shall be subject to the redesignation procedures of this section. Redesignation (except as otherwise precluded by subdivision d or e of subsection 2 of section 33-15-15-01) is subject to approval by the administrator of the United States environmental protection agency.

   a. Reclassification by petition.

      (1) Filing of petition. After twenty percent of the qualified electors in any county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, shall petition the department to reclassify any area within such county to Class I, Class II, or Class III, the department shall hold a hearing and take such other action as specified in subsection 3. The department shall reclassify the area proposed in the petition for reclassification only if such reclassification is substantially supported by the hearing record.

      (2) Contents of petition. The petition for petitioning the department to reclassify any area to either Class I, Class II, or Class III as specified in subdivision b of subsection 2 of section 33-15-15-01 shall contain a legal description of the area which the petition is to affect; an explanation of the meaning and purpose of the petition and reclassification; a statement to the effect that those persons signing the petition desire the described area to be reclassified to either Class I, Class II, or Class III and such statement shall specify which class; a list of those persons or person circulating such petition, which persons shall be designated "Committee of Petitioners"; an affidavit to be attached to each petition and sworn to under oath before a notary public by the person circulating each petition attesting to the fact that the person circulated such petition and that each of the signatures to such petition is the genuine signature of the person whose name it purports to be, and that each such person is a qualified elector in

the county in which the petition was circulated; all petitions' signatures shall be numbered and dated by month, day, and year, and the name shall be written with residence address and post-office address including the county of residence followed by state of North Dakota.

b. Reclassification upon department's own motion. At such time as the department may determine, it may hold a public hearing and take such other action as specified in subsection 2 in order to reclassify any area of this state to Class I, Class II, or Class III. The department shall reclassify the area proposed for reclassification only if such reclassification is substantially supported by the hearing record.

2. Procedures for reclassification.

a. The department may reclassify any area of this state, including any federally owned lands, but excluding lands within the exterior boundaries of any Indian reservations, to either Class I or Class II pursuant to subdivisions a and b of subsection 1, provided that:

(1) At least one public hearing is held in or near the area affected and this public hearing is held in accordance with the procedures established in subsection 3.

(2) Other states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation are notified at least thirty days prior to the public hearing.

(3) A discussion of the reasons for the proposed redesignation including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation is prepared and made available for public inspection at least thirty days prior to the hearing and the notice announcing the hearing contains appropriate notification of the availability of such discussion.

(4) Prior to the issuance of notice respecting the redesignation of any area that includes any federal lands, the state shall provide written notice to the appropriate federal land manager and afford adequate opportunity (but not in excess of sixty days) to confer with the state respecting the redesignation and to submit written comments and recommendations with respect to such redesignation. In redesignating any area with respect to which any federal land

manager has submitted written comments and recommendations, the state shall publish a list of any inconsistency between such redesignation and such comments and recommendations and an explanation of such inconsistency (together with the reasons for making such redesignation against the recommendation of the federal land manager).

(5) The proposed redesignation is based on the record of the state's hearing, which must reflect the basis for the proposed redesignation, including consideration of:

(a) Growth anticipated in the area.

(b) The social, environmental, health, energy, and economic effects of such redesignation upon the area being proposed for redesignation and upon other areas and states.

(c) Any impacts of such proposed redesignation upon regional or national interests. Anticipated growth shall include growth resulting both directly and indirectly from proposed development.

(6) The redesignation is proposed after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

b. The department may reclassify any area of this state, including any federally owned lands but excluding lands within the exterior boundaries of any Indian reservations, other than an area referred to in subdivision e of subsection 2 of section 33-15-15-01 or an area established as Class I under subdivision d of subsection 2 of section 33-15-15-01 to Class III if:

(1) Such redesignation would meet the requirements of subdivision a.

(2) Such redesignation has been specifically approved by the governor of the state, after consultation with the appropriate committees of the legislative assembly if it is in session or with the leadership of the legislative assembly if it is not in session and if general purpose units of local government representing a majority of the residents of the area so redesignated enact legislation or pass resolutions concurring the state's redesignation.

(3) Such redesignation will not cause, or contribute to, a concentration of any air contaminant which would exceed any maximum allowable increase permitted under the classification of any other area, or any applicable ambient air quality standard.

(4) Prior to any public hearing on redesignation of any area, there shall be available insofar as is practicable for public inspection, any specific plans for any new major stationary source or major modification which may be permitted to be constructed and operated only if the area in question is redesignated as Class III.

3. Reclassification hearings.

a. Any hearing required by subsection 2 shall be held only after reasonable notice, which shall be considered to include, at least thirty days prior to the date of such hearing:

(1) Notice given to the public by prominent advertisement in the region affected announcing the date, time, and place of such hearing.

(2) Availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply, and the availability of each compliance schedule for public inspection in at least one location in the region in which the affected source is located.

(3) Notification to the administrator of the United States environmental protection agency (through the appropriate regional office).

(4) Notification to each local air pollution control agency in each region to which the plan, schedule, or revision will apply.

(5) In the case of an interstate region, notification to any other states included, in whole or in part, in the region.

(6) Notification to any states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation.

b. The department shall prepare and retain for inspection a record of each hearing. The record shall contain, as a minimum, a list of witnesses together with the text of each presentation.

c. Any hearing held pursuant to the provisions of this subsection shall be held only for the purpose of considering such reclassification as has been noticed under the provisions of subsection 2, and consideration of reclassification to other classes not so noticed shall not be allowed.

d. Any hearing held pursuant to these provisions may be continued for such purposes and for such periods of time as the department may determine.

4. Time limitation. Notwithstanding any other regulation herein, the department shall rule upon any proposed reclassification within eighteen months of the official public notification of such proposed redesignation by the department.

History: Amended effective July 1, 1982.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 23-25-03

TITLE 36

Highway Corridor Board

JULY 1982

36-02-01-03. PERMIT PERIOD AND FEE. There is herewith imposed upon each advertising structure a fee in the sum of ~~five~~ twenty-five dollars for a license period of five years. Only signs in conforming areas need be licensed. All other signs may be tagged for identification by the highway commissioner.

History: Amended effective July 1, 1982.

General Authority
NDCC 24-17-09

Law Implemented
NDCC 24-17-09

36-02-01-05. PERMIT ~~PERIOD~~ RENEWAL. Permits to erect and maintain signs shall ~~come-due-October-1,-1973,-and-shall~~ be renewed ~~each five-year--period--thereafter~~ as of the fifth anniversary date of the permit.

History: Amended effective July 1, 1982.

General Authority
NDCC 24-17-09

Law Implemented
NDCC 24-17-09

TITLE 40

Historical Board

STAFF COMMENT: Article 40-02 contains all new material but is not underscored so as to improve readability.

ARTICLE 40-02

ARCHAEOLOGY AND HISTORIC PRESERVATION

Chapter
40-02-01 State Historic Sites Registry

CHAPTER 40-02-01
STATE HISTORIC SITES REGISTRY

Section
40-02-01-01 Definitions
40-02-01-02 Relationship Between Registry and National Register of Historic Places
40-02-01-03 Criteria for Listing Properties
40-02-01-04 Documentation of Significance
40-02-01-05 Notification of Pending Review
40-02-01-06 Procedures for Reviewing Nominated Properties
40-02-01-07 Notification of Action Taken
40-02-01-08 Publication and Distribution
40-02-01-09 Removal of Properties from Registry

40-02-01-01. DEFINITIONS. The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 55-10, except:

1. "Board" means the state historical board as defined in North Dakota Century Code section 55-01-01.

2. "Criteria" means the written standards used by the board to determine that a site possesses historical value as defined in North Dakota Century Code section 55-10-02.

3. "Division" means the division of archaeology and historic preservation of the state historical society as defined in North Dakota Century Code section 55-01-01.

4. "Meeting" means an officially called meeting of the board as defined in North Dakota Century Code section 55-01-03.

5. "Nomination" means a written statement describing the physical condition and historical value of a property.

6. "Originator" means the individual who prepared the nomination.

7. "Petition" means a written statement describing a property's loss of historical value.

8. "Registry" means the state historic sites registry as defined in subsection 4 of North Dakota Century Code section 55-10-02.

9. "Committee" means the committee on archaeology and historic preservation of the board as defined in North Dakota Century Code section 55-01-01.

10. "Superintendent" means the superintendent of the state historical society of North Dakota as defined in North Dakota Century Code section 55-02-01.

History: Effective July 1, 1982.

General Authority
NDCC 28-32-01,
28-32-02

Law Implemented
NDCC 55-10-02(4),
55-10-10

40-02-01-02. RELATIONSHIP BETWEEN REGISTRY AND NATIONAL REGISTER OF HISTORIC PLACES. The registry should not be confused with the National Register of Historic Places. A property listed in the registry may also, but will not necessarily, be listed or determined eligible for listing in the National Register of Historic Places. Only when registry properties are also listed or determined eligible for listing in the

National Register of Historic Places do the federal programs or regulations related to such listing apply to registry properties.

History: Effective July 1, 1982.

General Authority
NDCC 28-32-01,
28-32-02

Law Implemented
NDCC 55-10-02(4)

40-02-01-03. CRITERIA FOR LISTING PROPERTIES. Copies of criteria established by the board for listing properties in the registry are available on request from:

Superintendent
State Historical Society of North Dakota
North Dakota Heritage Center
Bismarck, North Dakota 58505

History: Effective July 1, 1982.

General Authority
NDCC 28-32-01,
28-32-02

Law Implemented
NDCC 55-10-02(4)

40-02-01-04. DOCUMENTATION OF SIGNIFICANCE. Any state agency, department, municipality, county, school district, or other governmental subdivision or private organization or individual may prepare and submit nominations of properties to the registry. All nominations prepared shall be submitted to the division. It is the division's responsibility to review all nominations to assure that they contain adequate documentation upon which the board makes decisions. Nominations which are not adequately documented are returned within fifteen days of receipt with an explanation of deficiencies, and no further action is taken until adequate documentation is provided. Adequate documentation includes:

1. Name and address of the originator and the organization, institution, or governmental entity, if any, which requested or directed the nomination to be prepared.

2. Legal boundary description of the property.

3. Physical description of the property.

4. Explanation of the physical changes made to the property and when such changes occurred.

5. Statement of historic, architectural, archaeological, cultural, or other significance which indicates the property meets the criteria.

6. Eight-inch by ten-inch [20.32-centimeter by 25.4-centimeter] black and white photographs of the property, both interior and exterior if the property is a building, as necessary and appropriate to provide accurate evidence of its existing condition. In the case of properties covering an extremely large area, an aerial photo series, composite aerial photographs, or other method of photo documentation necessary to illustrate existing conditions are acceptable in lieu of, or in addition to, eight-inch by ten-inch [20.32-centimeter by 25.4-centimeter] black and white photographs.

7. Names and addresses of property owners of record.

History: Effective July 1, 1982.

General Authority
NDCC 28-32-01,
28-32-02

Law Implemented
NDCC 55-10-02(4)

40-02-01-05. NOTIFICATION OF PENDING REVIEW. The division provides notification not less than sixty days prior to the meeting at which the property is reviewed. The board will not review nominations submitted unless the notification procedures outlined in this section have been followed.

1. Notification is made as follows:

   a. Written notification by registered mail to the private property owners.

   b. For state-owned properties, written notification by registered mail to the state agency head having jurisdiction over the property.

   c. For properties occupied but not owned by the state, written notification to the state agency head occupying the property.

   d. Written notification to the chief elected official of the political jurisdiction in which the property is located.

   e. News releases sent to a wire service in the state and to at least one newspaper of general circulation in the area in which the property is located.

2. Notification information includes:

a. Name of the property.

b. Legal boundary description of the property except that archaeological properties will be located only by range, township, and section.

c. A summary statement of the property's significance.

d. Invitation to attend the meeting at which the property is reviewed.

e. Invitation to provide written comments in support of or opposition to the nomination.

f. The place, date, and time of the meeting.

g. A concise statement of the legal implications of state historic sites registry listing.

h. Name and address of the originator and the organization, institution or governmental entity, if any, which requested or directed the nomination to be prepared.

History: Effective July 1, 1982.

General Authority	Law Implemented
NDCC 28-32-01, 28-32-02	NDCC 44-04-19, 44-04-20

40-02-01-06. PROCEDURES FOR REVIEWING NOMINATED PROPERTIES. Procedures include:

1. Mailing by the division to the board of the nomination not less than ten days prior to each meeting.

2. Review of the nomination by the committee prior to the meeting.

3. Recommendations by the committee to the board regarding each property being nominated. Recommendations fall into one of the following categories:

    a. Recommend for inclusion in the registry.

    b. Not recommended for inclusion in the registry.

    c. Return nomination to the originator for further research or additional information.

d. Recommend for inclusion with qualifications. Qualifications will ordinarily be limited to changes in boundary definition.

4. The board provides any person in attendance at the meeting an opportunity to comment upon the nominations under consideration.

5. At the request of the committee, members of the division staff attend the meeting to answer questions.

6. The board may accept, reject, or amend committee recommendations, but shall vote on each nomination presented during the meeting, except that any nominations presented but not voted upon due to the lack of a quorum of voting members shall be presented to the board at its next scheduled meeting and reviewed and acted upon prior to any more recently received nomination.

7. Nominations of properties returned by board action to the originator for further research, additional information, or changes in boundary definition shall, if resubmitted, be considered new nominations and subject to all procedures outlined in this chapter.

History: Effective July 1, 1982.

General Authority
NDCC 28-32-01,
28-32-02,
44-04-19

Law Implemented
NDCC 55-10-02(4),
55-10-10

40-02-01-07. NOTIFICATION OF ACTION TAKEN. Not less than fifteen days following board action on a nomination, the division provides written notification of action taken to those property owners, governmental officials, and to the general public as outlined in subsection 1 of section 40-02-01-05.

History: Effective July 1, 1982.

General Authority
NDCC 55-02-01

Law Implemented
NDCC 55-10-02(4)

40-02-01-08. PUBLICATION AND DISTRIBUTION. No later than January thirty-first of each year the society publishes and distributes, in accordance with state law dealing with publications, The North Dakota State Historic Sites Registry which includes:

1. A list of all properties in the registry as of the last day of the November preceding.

2. A brief statement of the significance of each property listed.

3. The location of each property, except that archaeological properties will be located only by range, township, and section.

4. The portions of the North Dakota Century Code and of the board's policies and procedures relating to the registry.

History: Effective July 1, 1982.

General Authority
NDCC 55-10-02

Law Implemented
NDCC 54-24-09,
55-10-02(4)

40-02-01-09. REMOVAL OF PROPERTIES FROM REGISTRY. The board removes properties from registry listing when the features or characteristics for which the property was determined significant have been substantially lost or destroyed. Petition for removal can be made by any state agency, department, municipality, county, school district, or other governmental subdivision or private organization or individual by submitting an adequately documented petition to the division. Petitions which are not adequately documented are returned within fifteen days of receipt with an explanation of deficiencies, and no further action is taken until adequate documentation is provided.

1. Adequate documentation includes:

   a. Names and addresses of the petitioners.

   b. Name of the property and its legal boundary description as listed in the registry.

   c. Description of any physical changes made to the property after its listing in the registry.

   d. Eight-inch by ten-inch [20.32-centimeter by 25.4-centimeter] black and white photographs of the property, both interior and exterior if the property is a building, sufficient to illustrate physical changes made after its listing in the registry. In the case of properties covering an extremely large area an aerial photo series, composite aerial photographs, or other method of photo documentation necessary to illustrate changes are acceptable in lieu of, or in addition to, eight-inch by ten-inch [20.32-centimeter by 25.4-centimeter] black and white photographs.

e. Names and addresses of property owners of record.

f. Statement of why the property no longer meets the criteria upon which its listing in the registry was based.

2. Procedures following receipt by the division of an adequately documented petition include:

   a. Review of the petition by the board at its first meeting held not less than ninety days following receipt of the petition by the division.

   b. Not less than sixty days prior to the meeting at which the board reviews the petition the division notifies in writing the petitioner, originator, property owner, and the chief elected official of the political jurisdiction in which the property is located of the substance of the petition, the place, date, and time of the meeting, and invites their written comment and attendance at the meeting.

   c. Not less than sixty days prior to the meeting at which the board reviews the petition the division submits a news release outlining the substance of the petition to a wire service in the state and to at least one newspaper of general circulation in the area in which the property is located.

   d. Not less than ten days prior to the meeting at which the board reviews the petition the division mails the petition to the board.

   e. The committee makes recommendations to the board regarding action to be taken on the petition.

      Recommendations fall into one of the following categories:

      (1) Removal of the property from the registry.

      (2) Continued listing of the property on the registry.

      (3) Return petition to the petitioner for additional information.

   f. The board allows any person in attendance at the meeting an opportunity to comment upon the petition under consideration.

   g. The board shall vote on each petition presented during the meeting, except that any petition presented but not voted upon due to the lack of a quorum of voting members shall be presented to the board at its next scheduled meeting

and reviewed and acted upon before taking action on any more recently received petition.

h. Petitions returned by board action to the petitioner for additional information shall, if resubmitted, be considered new petitions and subject to all procedures set forth in section 40-02-01-09.

i. Not less than fifteen days following board action on a petition the division provides written notification of action taken to the petitioner, originator, property owner, chief elected official, a wire service in the state, and one newspaper of general circulation in the area in which the property is located.

History: Effective July 1, 1982.

General Authority
NDCC 55-10-10

Law Implemented
NDCC 55-10-10,
55-10-02(4)

TITLE 43

Industrial Commission

MARCH 1982

43-02-03-07. UNITED STATES GOVERNMENT LEASES. The commission recognizes that all persons drilling on United States government land shall comply with the United States government regulations. Such persons shall also comply with all applicable state rules and regulations which are not in conflict therewith, except that no fee shall be required for a permit to drill. Copies of the sundry notices and reports on wells and the well log of the wells on United States government land shall be furnished to the commission and the state geologist at no expense to the commission or the state geologist.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-11. ORGANIZATION REPORTS. Every person acting as principal or agent for another or independently engaged in the drilling of oil or gas wells, or in the production, storage, transportation, refining, reclaiming, treating, marketing, or processing of crude oil or natural gas in North Dakota shall immediately file with the commission and the state geologist the name under which such business is being conducted or operated; and name and post-office address of such person, the business or businesses in which the person is engaged; the plan of organization, and in case of a corporation, the law under which it is chartered; and the names and post-office addresses of any person acting as trustee, together with the names and post-office addresses of any officials thereof. In each case where such business is conducted under an assumed name, such report shall show the names and post-office addresses of all owners in addition to the other information required.

A new report shall be filed when and if there is a change in any of the information contained in the original report.

History: Amended effective April 30, 1981.

General Authority	Law Implemented
NDCC 38-08-04	NDCC 38-08-04

43-02-03-12. RESERVOIR SURVEYS. By special order of the commission, periodic surveys may be made of the reservoirs in this state containing oil and gas. These surveys will be thorough and complete and shall be made under the supervision of the ~~state--geologist--or--the geologist's--agents-representing-the-commission~~ commission acting by and through the chief enforcement officer. The condition of the reservoirs containing oil and gas and the practices and methods employed by the operators shall be investigated. The produced volume and source of crude oil and natural gas, the reservoir pressure of the reservoir as an average, the areas of regional or differential pressure, stabilized gas-oil ratios, and the producing characteristics of the field as a whole and the individual wells within the field shall be specifically included.

All operators of oil wells are required to permit and assist the agents of the commission ~~and-the-state-geologist~~ in making any and all special tests that may be required by the commission ~~or-state-geologist~~ on any or all wells.

History: Amended effective April 30, 1981.

General Authority	Law Implemented
NDCC 38-08-04	NDCC 38-08-04

43-02-03-13. RECORD OF WELLS. The ~~state-geologist~~ commission acting by and through the chief enforcement officer shall maintain a record of official well names, to be known as the well-name register, in which shall be entered: (1) the name and location of each well; (2) the well permit number; (3) the name of the operator, or the operator's agent; (4) any subsequent name or names assigned to the well and approved by the ~~state--geologist~~ commission acting by and through the chief enforcement officer.

The last name assigned to a well in the well-name register shall be the official name of the well, and the one by which it shall be known and referred to.

The ~~state--geologist~~ commission acting by and through the chief enforcement officer may, at ~~the-geologist's~~ its discretion, grant or

refuse an application to change the official name. The application shall be accompanied by a fee of twenty-five dollars, which fee is established to cover the expense of recording the change. If the application is refused, the fee shall be refunded.

In any event the number assigned to the well, and shown in the well-name register, shall not be changed, and this number shall be shown on all records, forms, reports, notices, and correspondence regarding the well.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-14. ACCESS TO RECORDS. The ~~state-geologist~~ commission acting by and through the chief enforcement officer and ~~the--geologist's~~ its authorized agents shall have access to all well records wherever located. All owners, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, producing, or servicing wells shall permit the ~~state-geologist~~ commission acting by and through the chief enforcement officer, or authorized agents, to come upon any lease, property, well, or drilling rig operated or controlled by them, complying with all safety rules, and to inspect the records and operation of such wells, and to have access at all times to any and all records of wells; provided that information so obtained shall be kept confidential, when requested by the operator, and shall be reported to and only to the commission or its authorized agents.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-15. BOND. Any person who is drilling or proposes to drill for oil or gas shall submit to the commission and obtain its approval of a bond, in a form approved by the commission, conditioned as provided by law. The bond shall be in the amount of five thousand dollars when applicable to one well only. Each such bond shall be executed by a responsible surety company, authorized to transact business in North Dakota. In cases where the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, such principal may submit a blanket bond conditioned as above provided, covering all wells which such person may at any time before such bond is released, drill or operate within this state but coverage shall be limited to ten dry holes that have not been properly plugged

and the sites restored. The amount of any such blanket bond shall be twenty-five thousand dollars.

For the purposes of the commission the bond required is a plugging bond, as well as a drilling bond, and is to endure up to and including approved plugging when the well is dry or abandoned, even though the well may have been a producer. Approved plugging shall also include practical restoration of the well site; and appurtenances thereto. Transfer of property does not release the bond. In case of transfer of property or other interest in the well and the principal desires to be released from the bond covering a well or wells, such as producers, not ready for plugging, the principal should proceed as follows:

> The holder of the approved permit to drill, the principal on the bond, shall notify the commission in writing on a form to be provided by the commission reciting that a certain well, if it be only one well, or all wells, if there are several wells, describing each well by its location within the section, township, and range, has or have been transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. Such transfer must be dated and signed by a party duly authorized so to sign.
>
> Beneath said transfer the transferee should recite that the transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such well under this one-well bond tendered with corporate surety or such wells as the case may be, under the transferee's blanket bond being tendered to or on file with the commission. Such acceptance must likewise be signed by a party authorized so to sign.

When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond the transferor is immediately released of the plugging responsibility of the well or wells as the case may be, and if such well or wells include all the wells within the responsibility of the transferor's bond, such bond will be released upon written notice by the commission to that effect.

The transferee of any oil or gas well or the operation of any such well shall be responsible for the plugging of any such well and for that purpose shall submit a new bond or produce the written consent of the surety of the original or prior plugging bond that the latter's responsibility shall continue. Noncompliance with the provisions hereof shall be grounds for closing down any such well and stopping production therefrom. This section shall apply to transfers of any such wells made prior to the effective date of this section as well as thereafter. The original or prior bond shall not be released as to the plugging responsibility of any such transferor until the transferee shall submit to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging of such well or wells is completed and approved.

The commission will, in writing, advise the principal and sureties on any bond as to whether the plugging is approved, in order that, if the plugging is approved, liability under such bond may be formally terminated.

The ~~state--geologist~~ chief enforcement officer is vested with the power to act for the commission as to all matters within this section.

History: Amended effective April 30, 1981; amended effective March 1, 1982.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-16. APPLICATION FOR PERMIT TO DRILL. Before any person shall begin the drilling of any well for oil and gas, such person shall file an application for permit to drill (form 1) with the commission and the state geologist and pay a fee of one hundred dollars for a permit. No drilling activity shall commence until such application is approved and a permit to drill is issued by the ~~state-geologist~~ commission acting by and through the chief enforcement officer.

The application for permit to drill shall be accompanied by an accurate plat showing the location of the proposed well with reference to the nearest lines of a governmental section. Information to be included in such application shall be the proposed depth to which the well will be drilled, estimated depth to the top of important markers, estimated depth to the top of objective horizons, the proposed casing program, including size and weight thereof, the depth at which each casing string is to be set, and the proposed amount of cement to be used. The ~~state--geologist~~ commission acting by and through the chief enforcement officer may request additional information, if deemed necessary.

Prior to the commencement of recompletion operations, an application for permit shall likewise be filed with the commission and the state geologist. Included in such application shall be the notice of intention to reenter an abandoned well, or to develop by deepening or plugging back to any source of supply other than the producing horizon in an existing well. Such notice to recomplete any well shall include the name and permit number and exact location of the well, the approximate date operations will begin, the estimated completed total depth, the casing program to be followed, and the original total depth and the total depth at which the well is to be recompleted.

The ~~state--geologist~~ commission acting by and through the chief enforcement officer shall deny an application for permit to drill if a well drilled in the location applied for would cause, or tend to cause, waste or violate correlative rights. The ~~state--geologist~~ chief enforcement officer shall state in writing to the applicant the reason

for the denial of the permit. The applicant may appeal the decision of the ~~state-geologist~~ chief enforcement officer to the commission.

Unless a well is drilling, or has been drilled, below surface casing on the first anniversary of the date of issuance of the permit for the well, the permit shall in all things terminate and be of no further force and effect.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-05

Law Implemented
NDCC 38-08-05

43-02-03-18. WELL SPACING. In the absence of an order by the commission setting spacing units for a pool:

1. No well drilled for oil shall be drilled upon any tract of land other than a governmental quarter-quarter section or governmental lot corresponding thereto nor shall it be located closer than five hundred feet [152.4 meters] to any boundary line of a governmental quarter-quarter section or governmental lot corresponding thereto, nor closer than one thousand feet [304.8 meters] to the nearest well drilling to or capable of producing from the same pool. No more than one well shall be drilled to the same pool on any such quarter-quarter section or governmental lot corresponding thereto, except by order of the commission, nor shall any well be drilled on any such quarter-quarter section or governmental lot corresponding thereto containing less than thirty-six acres [14.57 hectares] except by such order.

2. No well shall be drilled for gas on a tract of land consisting of less than one hundred sixty surface contiguous acres [64.75 hectares] and which is not substantially in the form of a square, in accordance with legal subdivisions of the United States public land surveys or on a governmental quarter section containing less than one hundred forty-five acres [58.68 hectares] and no well shall be drilled closer than one thousand feet [304.8 meters] to any boundary line of the tract or closer than fifteen hundred feet [457.2 meters] to the nearest well drilling to or capable of producing from the same pool. Provided, that in presently producing gas pools accessible to established gas transportation facilities and not controlled by orders heretofore or hereafter made, no well shall be drilled for gas on a tract consisting of less than one hundred sixty surface contiguous acres [64.75 hectares] and which is not substantially in the form of a square, in accordance with the legal subdivisions of the United States public land surveys or a square equivalent to a tract of one hundred sixty acres [64.75 hectares] and no well shall be

drilled closer than one thousand feet [304.8 meters] to any boundary line of the tract or closer than fifteen hundred feet [457.2 meters] to a well drilling to or capable of producing from the same pool.

3. Within thirty days after the discovery of oil or gas in a pool not then covered by an order of the commission, a hearing shall be held and the commission shall issue an order prescribing a temporary spacing pattern for the development of the pool. This order shall continue in force for a period of not more than eighteen months at the expiration of which time a hearing shall be held at which the commission may require the presentation of such evidence as will enable the commission to determine the proper spacing for the pool.

   During the interim period between the discovery and the issuance of the temporary order no permits shall be issued for the drilling of direct offsets to the discovery well.

   The ~~state-geologist~~ commission acting by and through the chief enforcement officer shall have the discretion to determine the pattern location of wells adjacent to an area spaced by the commission, or under consideration for spacing, where there is sufficient evidence to indicate that the pool or reservoir spaced or about to be spaced may extend beyond the boundary of the spaced area or the area anticipated to be spaced, and the uniformity of spacing patterns is necessary to ensure orderly development of the pool or reservoir.

4. If upon application, the ~~state-geologist~~ commission acting by and through the chief enforcement officer shall find that a well drilled at the location prescribed by any applicable rule of the commission would not produce in paying quantities or that surface conditions would substantially add to the burden or hazard of such well, the ~~state-geologist~~ commission acting by and through the chief enforcement officer may enter an order permitting the well to be drilled at a location other than that prescribed and shall include in such order suitable provisions to prevent the production from that well of more than its just and equitable share of the oil and gas in the pool. Application for an exception shall set forth the names of the lessees of adjoining properties and shall be accompanied by a plat or sketch drawn to the scale of not smaller than two inches [5.08 centimeters] equaling one mile [1.61 kilometers], accurately showing to scale the property for which the exception is sought and accurately showing to scale all other completed and drilling wells on this property and accurately showing to scale all adjoining surrounding properties and wells. The application shall be verified by some person acquainted with the facts, swearing under oath that all facts therein are within the knowledge of the affiant true and that the accompanying plat is accurately drawn to scale and correctly reflects pertinent and required data. The

applicant shall state in the affidavit that a copy of the application has been sent by certified or registered mail to all owners or lessees of properties adjoining the tract on which the exception is sought. The ~~state-geologist~~ commission acting by and through the chief enforcement officer shall issue no order on such application for at least fifteen days after its filing. If the affidavit shows that the applicant owns all leases adjoining the tract on which the exception is sought, the ~~state-geologist~~ commission acting by and through the chief enforcement officer may issue an order immediately approving the application.

5. In filing an application for permit, the surface distance must be shown between the proposed location and other wells within a radius of one thousand nine hundred eighty feet [603.50 meters] for oil tests, and two thousand six hundred forty feet [804.67 meters] for gas tests.

6. If the ~~state--geologist~~ chief enforcement officer denies an application for permit, the ~~geologist~~ officer shall advise the applicant immediately of the reasons for denial. The decision of the ~~state--geologist~~ officer may be appealed to the commission.

History: Amended effective April 30, 1981.

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

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

43-02-03-19. PIT FOR DRILLING MUD AND DRILL CUTTINGS - RESTORATION OF SURFACE. In order to assure a supply of proper material or mud-laden fluid to confine oil, gas, or water to their native strata during the drilling of any well, each operator shall provide, before drilling is commenced, a container or pit of sufficient size to contain said material or fluid, and the accumulation of drill cuttings. The pit shall be leveled and the surface restored within a reasonable time after the well has been completed. ~~No-pit-shall-be-constructed-so-as-to-allow surface-or-subsurface-contamination-by-seepage-or-flowage-from-said-pit.~~

Pits shall not be located in, or hazardously near, stream courses, nor shall they block natural drainages. Pits shall be constructed in such manner so as to prevent contamination of surface or subsurface waters by seepage or flowage therefrom.

In the construction of a drill site or production facility, the topsoil shall be removed, stockpiled, and stabilized for later redistribution on the surface of the location when it is reclaimed. "Topsoil" means the suitable plant growth material on the surface;

however, in no event shall this be deemed to be more than the top eight inches [20.32 centimeters] of soil.

Within a reasonable time, normally no more than one year, after the completion of a well, pits shall be pushed in and leveled, or in the case of abandonment, the site shall be restored. Prior to the commencement of such operations, the operator or the operator's agent shall file a notice of intention (form 4) to level pits or restore site with the commission acting by and through the chief enforcement officer and obtain approval from the commission acting by and through the chief enforcement officer or other representative. Verbal approval to commence operations may be given, in which case the operator shall file a subsequent notice with the commission acting by and through the chief enforcement officer reporting the work performed. Any operator who obtains verbal approval may be required by the commission acting by and through the chief enforcement officer to perform additional work if the commission acting by and through the chief enforcement officer determines that the work performed does not constitute proper restoration, or does not comport with the subsequent notice of intention submitted. The notice shall state the name and location of the well, the name of the operator, and the method of restoration, and shall include a statement of proposed work. Such work shall include, but not be limited to:

1. The location or unused portion shall be restored as close as possible to original condition. This work will be done within a reasonable time after plugging or setting production casing.

2. The stockpiled topsoil will be evenly distributed over the location, and revegetation will be native species or to the specifications of the appropriate government representative and the landowner.

3. If required by the commission acting by and through the chief enforcement officer, the reserve pit will have fencing on three sides during drilling operations, and prior to rig release the fourth side will be fenced. The pit fence will be maintained until the pit is dry.

4. If there is any oil on the pits when drilling is completed, it will be removed immediately or the pits will be flagged overhead.

History: Amended effective March 1, 1982.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-21. CASING AND TUBING REQUIREMENTS. All wells drilled for oil and natural gas shall be completed with strings of casing which

shall be properly cemented at sufficient depths adequately to protect the water, oil, or natural gas-bearing strata to be produced.

Sufficient cement shall be used on surface to fill the annular space back of the casing to the bottom of the cellar or to the surface of the ground. All strings of casing shall stand cemented under pressure for at least twelve hours before drilling plug or initiating tests. The term "under pressure" as used herein will be complied with if one float valve is used or if pressure is otherwise held. Cementing shall be by the pump and plug method, or other method approved by the commission.

All flowing wells shall be tubed, the tubing shall be set as near the bottom as practicable, but tubing perforations shall not be above the top of pay, unless authorized by the ~~state-geologist~~ commission acting by and through the chief enforcement officer.

History: Amended effective April 30, 1981.

General Authority	Law Implemented
NDCC 38-08-04	NDCC 38-08-04

43-02-03-24. PULLING OUTSIDE STRING OF CASING. In pulling outside strings of casing from any oil or gas well, the space outside the casing left in the hole shall be kept and left full of mud-laden fluid or cement of adequate specific gravity to seal off all freshwater and saltwater strata and any strata bearing oil or gas not producing. No casing shall be removed without the prior approval of the ~~state geologist~~ commission acting by and through the chief enforcement officer or ~~the-geologist's~~ other agent.

History: Amended effective April 30, 1981.

General Authority	Law Implemented
NDCC 38-08-04	NDCC 38-08-04

43-02-03-25. DEVIATION TESTS. When any well is drilled or deepened, tests to determine the deviation from the vertical shall be taken. When the deviation from the vertical averages more than four degrees the ~~state-geologist~~ commission acting by and through the chief enforcement officer may require that the hole be straightened. Directional surveys may be required by the ~~state--geologist~~ commission acting by and through the chief enforcement officer, whenever, in the ~~state-geologist's~~ chief enforcement officer's judgment, the location of the bottom of the well is in doubt.

A deviational and directional survey shall be made and filed with the commission and the state geologist on any well utilizing a whipstock or any method of deviating the well bore in a predetermined direction except to sidetrack junk in the hole, straighten a crooked hole, or to control a blowout. Special permits may be obtained to drill directionally in a predetermined direction as provided above, from the ~~state--geologist~~ commission acting by and through the chief enforcement officer.

If the ~~state-geologist~~ chief enforcement officer denies a request for a permit to directionally drill, the ~~state-geologist~~ officer shall advise the applicant immediately of the reasons for denial. The decision of the ~~state--geologist~~ officer may be appealed to the commission.

Each person, company, partnership, or organization furnishing well deviation equipment or service in North Dakota shall report to the commission and the state geologist, on the first day of each calendar quarter, the location, name of operator, and date for each well for which deviation equipment or services were supplied during the previous period.

History: Amended effective April 1, 1980; amended effective April 30, 1981.

General Authority	Law Implemented
NDCC 38-08-04	NDCC 38-08-04

43-02-03-30. NOTIFICATION OF FIRES, BREAKS, LEAKS, OR BLOWOUTS. All persons controlling or operating any oil or gas well or pipeline, or receiving tank, storage tank, or receiving and storage receptacle into which crude oil is produced, received, or stored, or through which oil is piped or transported, shall immediately notify the ~~state-geologist~~ commission acting by and through the chief enforcement officer by letter giving full details concerning all fires which occur at such oil or gas well, or tank, or receptacle on their property, and all such persons shall immediately report all tanks or receptacles struck by lightning and any other fire which destroys oil or gas, and shall immediately report any leaks or breaks in or from tanks or receptacles and pipelines from which oil or gas is escaping or has escaped. In all such reports of fires, breaks, leaks, or escapes, or other accidents of this nature, the location of the well, tank, receptacle, or line break shall be given by section, township, range, and property, so that the exact location thereof can be readily located on the ground. The report shall likewise specify what steps have been taken or are in progress to remedy the situation reported, and shall detail the quantity of oil or gas lost, destroyed, or permitted to escape. In case any tank or receptacle is permitted to run over, the amount running over shall be reported as in the case of a leak. The report hereby required as to oil leaks shall be necessary only in case such oil loss exceeds one hundred barrels in the

aggregate, or when such gas loss exceeds three million cubic feet in the aggregate.

If any other state or federal agency requires the reporting of oil spills or other types of oilfield fluids of less than one hundred barrels, copies of such reports shall also be sent to the commission and the state geologist.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-31. WELL LOG, COMPLETION, AND WORKOVER REPORTS. Within thirty days after the plugging or completion of a well drilled for oil or gas, or the recompletion of a well into a different source of supply, a plugging record (form 7) or a completion report (form 6) shall be filed with the commission and the state geologist, except a completion report shall be filed immediately after the completion of a well in a pool or reservoir not then covered by an order of the commission. The operator shall cause to be run an electrical, radioactivity, or other similar log, or combination of logs, of the operator's choice, from which formation tops and porosity zones can be determined. The obligation to log may be waived by the ~~state-geologist~~ commission acting by and through the chief enforcement officer or ~~the--geologist's~~ other representative if hole conditions preclude the feasibility of such logging operation. Such logs shall be available to the ~~state--geologist~~ commission acting by and through the chief enforcement officer or ~~the geologist's~~ other representative at the wellsite prior to proceeding with plugging or completion operations. Three copies of all logs run shall be submitted to the commission and state geologist free of cost to the commission or geologist. In addition, operators shall file three copies of drill stem test reports and charts, formation water analyses, porosity, permeability or fluid saturations, core analyses, and noninterpretive lithologic logs or sample descriptions if compiled by the operator.

All information furnished to the commission and the state geologist shall be confidential for six months after the date such information is required by these rules to be filed, if requested by the operator in writing.

Upon the completion or recompletion of a well, or the completion of any remedial work such as plugging back or drilling deeper, acidizing, shooting, formation fracturing, squeezing operations, setting liner, gun perforating, or other similar operations not specifically covered herein, a report on the operation shall be filed on form 4 with the commission and the state geologist. The report shall present a detailed account of the work done; the daily production of oil, gas, and water both prior to and after the operation, the size and depth of

perforations; the quantity of sand, crude, chemical, or other materials employed in the operation; and any other pertinent information or operations which affect the original status of the well and are not specifically covered herein.

Upon the initial installation of pumping equipment, or change in type of pumping equipment designed to increase productivity in a well, the operator shall submit a report (form 4) of such installation. The notice shall include all pertinent information on the pump and the operation thereof; the daily production of the well prior to and after the pump has been installed, shall also be included.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-32. STRATIGRAPHIC TEST OR CORE HOLE. Before any person shall begin the drilling of a stratigraphic test or core hole, such person shall file an application for permit to drill with the commission and with the state geologist and pay a fee of one hundred dollars for a permit. A permit shall be required for each hole. The application shall be accompanied by an accurate plat showing the location of the proposed testhole with reference to the nearest lines of a governmental section.

A stratigraphic test or core hole shall not exceed five inches [12.7 centimeters] in diameter, nor shall drill stem, flow, or production testing be permitted.

A drilling bond must be filed with the commission in a form approved by the commission conditioned on compliance with this chapter. Each bond shall be executed by a responsible surety company authorized to do business in North Dakota. Compliance with the blanket bond requirement of section 43-02-03-15 shall satisfy the bond requirement herein.

All stratigraphic test wells must take lithologic samples in accordance with the provisions of section 43-02-03-38, and all such holes shall be plugged in accordance with section 43-02-03-34.

The operator shall cause to be run on each stratigraphic testhole drilled, an electrical, radioactivity, or other similar log, or combination of logs, of the operator's choice, from which formation tops and porosity zones can be determined. The obligation to log may be waived by the ~~state-geologist~~ commission acting by and through the chief enforcement officer or ~~the--geologist's~~ other representative if hole conditions preclude the feasibility of such logging operation. All cores and three copies of all logs run shall be submitted to the state geologist without cost to the geologist within six months after the

completion of each testhole. If requested, records and samples shall also be submitted to the state geologist without cost to the geologist within that time period. If the operator so requests in writing, all data submitted shall be kept confidential for a period of six months after the date such data is required to be submitted.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-33. NOTICE OF INTENTION TO ABANDON WELL. The operator or the operator's agent shall file a notice of intention (form 4) to plug with the commission and the state geologist, and obtain the ~~geologist's~~ approval of the commission acting by and through the chief enforcement officer, prior to the commencement of plugging operations. The notice shall state the name and location of the well, the name of the operator, and the method of abandonment, which must include a detailed statement of proposed work. In the case of a recently completed test well that has not had production casing in the hole, the operator may commence plugging by giving reasonable notice to, and securing oral approval of, the ~~state geologist~~ commission acting by and through the chief enforcement officer or ~~the geologist's~~ other agent as to the method of plugging, and the time plugging operations are to begin. Within thirty days after the plugging of any well has been accomplished, the owner or operator thereof shall file a plugging record (form 7), and a copy of the cementer's trip ticket or job receipt, with the commission and the state geologist setting forth in detail the method used in plugging the well.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-34. METHOD OF PLUGGING. Before any well is abandoned, it shall be plugged in a manner which will confine permanently all oil, gas, and water in the separate strata originally containing them. This operation shall be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in combination as may be approved by the commission. Casing shall be cut off below plow depth. Seismic, core, or other exploratory holes drilled to or below sands containing fresh water shall be plugged and abandoned in accordance with the applicable provisions recited above.

If a well is to be abandoned temporarily and no casing pulled, then a plug shall be placed at the top of the casing, in such manner as to prevent the intrusion of any foreign matter into the well.

When drilling operations have been suspended for six months, wells shall be plugged and abandoned in accordance with regulations of the commission or a permit for temporary abandonment shall be obtained from the ~~state--geologist~~ commission acting by and through the chief enforcement officer.

History: Amended effective April 30, 1981.

General Authority	Law Implemented
NDCC 38-08-04	NDCC 38-08-04

43-02-03-35. WELLS TO BE USED FOR FRESHWATER. When the well to be plugged may safely be used as a freshwater well and such utilization is desired by the landowner, the well need not be filled above a sealing plug set below the freshwater formation; provided, that if written authority and assumption of liability for such use and plugging shall be secured from the landowner and filed with the commission and the state geologist the operator shall be relieved of the operator's responsibility under this chapter.

History: Amended effective April 30, 1981.

General Authority	Law Implemented
NDCC 38-08-04	NDCC 38-08-04

43-02-03-39. LIMITING GAS-OIL RATIO. In the event the commission has not set a limiting gas-oil ratio for a particular oil pool, the operator of any well in such pool whose gas-oil ratio exceeds two thousand, shall demonstrate to the ~~state-geologist~~ commission acting by and through the chief enforcement officer that production from such well should not be restricted pending a hearing before the commission to establish a limiting gas-oil ratio. The ~~state--geologist~~ chief enforcement officer may restrict production of any well with a gas-oil ratio exceeding two thousand, until the commission can determine, after notice and hearing, that restrictions are necessary to conserve reservoir energy.

History: Amended effective April 30, 1981.

General Authority	Law Implemented
NDCC 38-08-04	NDCC 38-08-04

43-02-03-40. GAS-OIL RATIO TEST. Each operator shall take a gas-oil ratio test within thirty days following the completion or recompletion of an oil well. Each test shall be conducted under the method and conditions as prescribed by the ~~state--geologist~~ commission acting by and through the chief enforcement officer. After the discovery of a new pool, each operator shall make additional gas-oil ratio tests as directed by the ~~state-geologist~~ commission acting by and through the chief enforcement officer or provided for in field rules. During tests, each well shall be produced at a rate equal to or not exceeding its allowable by more than twenty-five percent. No well shall be given an allowable greater than the amount of oil produced on official test during a twenty-four-hour period. The commission will drop from the proration schedule any proration unit for failure to make such test as herein above described until such time as a satisfactory test has been made, or satisfactory explanation given. In the absence of proration, each well shall be produced at a maximum efficient rate during tests. The state geologist will shut in any well for failure to make such test until such time as a satisfactory test can be made, or satisfactory explanation given. The results of all gas-oil ratio tests shall be submitted to the state geologist on form 9, which shall be accompanied by a statement, made under oath, from the person actually performing such tests, that the data on the form 9 is true and correct.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-41. SUBSURFACE PRESSURE TESTS. The operator shall make a subsurface pressure test on the discovery well of any new pool hereafter discovered, and shall report the results thereof to the commission and the state geologist within thirty days after the completion of such discovery well. In the absence of field rules, after the discovery of a new pool, each operator shall make additional reservoir pressure tests as directed by the ~~state-geologist~~ commission acting by and through the chief enforcement officer. All tests shall be made by a person qualified by both training and experience to make such tests, and with an approved subsurface pressure instrument which shall have been calibrated both prior and subsequent to each pressure survey against an approved deadweight tester. Provided the prior and subsequent calibrations agree within one percent, the accuracy of the instrument shall be considered acceptable. All wells shall remain completely shut in for at least twenty-four hours prior to the test. The subsurface determination shall be obtained as close as possible to the midpoint of the productive interval of the reservoir. The report of the subsurface pressure test shall state the name of the pool, the name of the operator and lease, the well number, the permit number, the subsea depth in feet [meters] of the reservoir datum plane, and wellhead elevation above sea level, the depth in feet [meters] to the top of the

producing formation or top of perforations, whichever is the lower, the date of the tests, the total number of hours the well was shut in prior to the test, the subsurface temperature in degrees Fahrenheit [Celsius] at the test depth, the depth in feet [meters] at which the subsurface pressure test was made, the observed pressure in pounds [kilograms] per square inch [square centimeters] gauge at the test depth, and the corrected pressure computed from applying to the observed pressure the appropriate corrections for calibration, temperature, and difference in depth between test depth and reservoir datum plane.

The ~~state--geologist~~ commission acting by and through the chief enforcement officer may shut in any well for failure to make such test as herein above described until such time as a satisfactory test has been made, or satisfactory explanation given.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-42. COMMINGLING OF OIL FROM POOLS. Except as directed by the commission after hearing, each pool shall be produced as a single common reservoir without commingling in the well bore of fluids from different pools. After fluids from different pools have been brought to surface, such fluids may be commingled provided that the amount of production from each pool is determined by a method approved by the ~~state--geologist~~ commission acting by and through the chief enforcement officer.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-43. CONTROL OF MULTIPLY COMPLETED WELLS. Multiply completed wells which have been authorized by the ~~state--geologist~~ commission acting by and through the chief enforcement officer shall at all times be operated, produced, and maintained in a manner to ensure the complete segregation of the various common sources of supply. The ~~state-geologist~~ commission acting by and through the chief enforcement officer may require such tests as ~~the-geologist~~ it deems necessary to determine the effectiveness of the segregation of the different sources of supply.

History: Amended effective April 30, 1981.

General Authority

Law Implemented

NDCC 38-08-04 NDCC 38-08-04

43-02-03-44. METERED CASINGHEAD GAS. The owner of a well shall not be required to measure the exact amount of casinghead gas produced and used by the owner for fuel purposes in the development and normal operation of the well; however, an estimate of the volume used and the amount of any gas flared shall be reported monthly to the commission and the state geologist at the same time oil production reports are filed. All casinghead gas produced and sold or transported away from a lease shall be metered and reported monthly to the commission and the state geologist in cubic feet computed at a pressure of fourteen and seventy-three hundredths pounds per square inch [1,034.19 grams per square centimeter] absolute at a base temperature of sixty degrees Fahrenheit [14.44 degrees Celsius]. The amount of casinghead gas sold in small quantities for use in the field may be calculated upon a basis generally acceptable in the industry, or upon a basis approved by the ~~state geologist~~ commission acting by and through the chief enforcement officer in lieu of meter measurements.

History: Amended effective April 30, 1981.

General Authority NDCC 38-08-04

Law Implemented NDCC 38-08-04

43-02-03-45. VENTED CASINGHEAD GAS. Pending arrangements for disposition for some useful purpose, all vented casinghead gas shall be burned. Each flare shall be equipped with an automatic ignitor or a continuous burning pilot, unless waived by the ~~state geologist~~ commission acting by and through the chief enforcement officer for good reason. The estimated volume of gas used and flared shall be reported to the commission and the state geologist monthly at the same time oil production reports are filed.

History: Amended effective April 30, 1981.

General Authority NDCC 38-08-04

Law Implemented NDCC 38-08-04

43-02-03-48. CENTRAL TANK BATTERIES. Oil shall not be transported from a tank battery or a central collection point until its volume has been determined in barrels of oil through use of properly calibrated meter measurements or tank measurements. Central collection may be used, provided the production from each well can be accurately determined at reasonable intervals.

Upon the installation of metering equipment, the operator shall transmit to the commission and the state geologist a schematic drawing of the facilities for measuring, testing, sampling, routing, and transferring production. The required information shall include the name of the manufacturer, size, and type of equipment installed. After metering equipment has been installed, the meters shall be checked against actual tank measurements or against a master meter that has been calibrated against actual volume measurements at three-month intervals and the results of the tests reported to the commission and the state geologist on form 4.

If the ~~state-geologist~~ commission acting by and through the chief enforcement officer shall determine that the volumes reported by the meter are not within industry acceptance of accuracy, the ~~geologist~~ commission acting by and through the chief enforcement officer shall require the operator to repair and recalibrate said meter and repair it to record within accepted limits before further use.

History: Amended effective April 30, 1981; amended effective March 1, 1982.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-49. OIL TANKS AND FIREWALLS. Oil shall not be stored or retained in earthen reservoirs or in open receptacles. Dikes or firewalls must be erected and kept around all oil tanks or battery of tanks when deemed necessary by the ~~state-geologist~~ commission acting by and through the chief enforcement officer.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-50. TANK CLEANING PERMIT. No tank bottom shall be removed from any tank used for the storage of crude petroleum oil unless and until application for tank cleaning permit is approved by the ~~state geologist~~ commission acting by and through the chief enforcement officer. To obtain approval, owner shall submit a report showing an accurate gauge of the contents of the tank and the amount of merchantable oil determinable from a representative sample of the tank bottom by the standard centrifugal test as prescribed by the American petroleum institute's code, number 25, section 5, for measuring, sampling, and testing crude oil. The amount of merchantable oil shall be shown as a separate item on the report, and shall be charged against the allowable of the unit or units producing into such tank or pit where

such merchantable oil accumulated. Nothing contained in this section shall apply to the use of tank bottoms on the originating lease where owner retains custody and control of the tank bottom or to the treating of tank bottoms by operator where the merchantable oil recovered is disposed of through a duly authorized transporter and is reported to the commission and the state geologist. Nothing contained in this section shall apply to reclaiming of pipeline, break oil or the treating of tank bottoms at a pipeline station, crude oil storage terminal, or refinery or to the treating by a gasoline plant operator of oil and other catchings collected in traps and drips in the gas gathering lines connected to gasoline plants and in scrubbers at such plants.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-52. REPORT OF PRODUCTION. The producer and operator of each and every well in all pools shall, on or before the fifth day of the second month succeeding the month in which production occurs, file with the commission and the state geologist a sworn statement showing the amount of production made by each such well upon forms furnished therefor, or computer sheets no larger than eight and one-half by fourteen inches [21.59 by 35.56 centimeters]. Wells for which reports of production are not received by the close of business on said fifth day of the month shall be shut in for a period not to exceed thirty days. The ~~state geologist~~ commission acting by and through the chief enforcement officer shall notify, by certified mail, the operator and authorized transporter of the shut-in period for such wells. Any oil produced during such shut-in period shall be deemed illegal oil and subject to the provisions of North Dakota Century Code section 38-08-15.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-53. SALTWATER HANDLING FACILITIES. All saltwater liquids or brines produced with oil and natural gas shall be disposed of without pollution of freshwater supplies. At no time shall saltwater liquids or brines be allowed to flow over the surface of the land or into streams.

Underground disposal of saltwater liquids and brines shall be in accordance with an order of the commission, after notice and hearing.

On October 1, 1978, only those saltwater handling facilities meeting the specifications stated herein and inspected and approved by the ~~state--geologist~~ commission acting by and through the chief enforcement officer shall be allowed. All surface pits or containers which do not meet these specifications shall be emptied and leveled or removed, regardless of proposed use.

Upon receipt of form 14 (application for approval of saltwater handling facility), a representative of the ~~state--geologist~~ commission will inspect the facility and if the facility is approved, will issue a permit number which must be prominently displayed on a weatherproof sign, together with the name of the operator, name of the lease, and location of the well or wells, the facility will serve. The sign shall be located not farther than ten feet [3.05 meters] from the facility on the side from which the facility is most easily approached.

Only those facilities meeting the following specifications will be issued a permit number.

1. A saltwater handling facility shall not be located within a natural surface drainage channel.

2. If a surface pit is to be used, it must be lined with an impermeable material. The material and method of application must be approved by the ~~state-geologist~~ commission acting by and through the chief enforcement officer before installation.

3. The sides of the facility shall, at all times, extend at least one foot [30.48 centimeters] above the surface of the fluid contained therein.

4. The facility must be surrounded by a continuous embankment at least two feet [60.96 centimeters] high and the embankment shall have no siphons or openings that would permit the passage of fluids.

5. If a tank is to be used, it must be constructed of materials resistant to the effects of produced saltwater liquids, brines, or chemicals that may be disposed of into it. This may be waived by the ~~state-geologist~~ commission acting by and through the chief enforcement officer for tanks presently in service and in good condition.

6. Provisions must be made to prevent sheep, cattle, or horses from gaining access to the stored substances.

7. The facility shall be large enough to contain not less than three times the average daily influx of fluids into the facility.

8. A monitoring system, approved by the ~~state--geologist~~ commission acting by and through the chief enforcement

officer, to ascertain the integrity of the impermeability of the sides and bottom of the facility must be provided.

9. All lines discharging into open saltwater handling facilities shall be constructed in such a manner as to allow observation of fluids being discharged at all times.

Subsequent to the initial approval, if an inspection indicates that the facility no longer meets the requirements of this section, the permit for the facility shall be revoked and use of the facility shall cease. The operators of the facility may, after repairing or replacing the facility, apply for a new permit.

This section shall not apply to: (1) mud pits or reserve pits used in drilling, deepening, testing, reworking, or plugging of a well; (2) pits used solely for the purpose of burning vented casinghead gas as provided in section 43-02-03-45.

No permit shall be required for facilities constructed in accordance with an order of the commission as provided for in section 43-02-03-73. Temporary earthen pits constructed for the purpose of handling an emergency are allowed. Construction and use of temporary earthen pits and the nature of the emergency involved shall be reported immediately to the commission and the state geologist and shall be emptied and leveled at the expiration of the emergency.

Exceptions to this section may only be authorized by the commission after notice and hearing.

History: Amended effective April 30, 1981.

General Authority	Law Implemented
NDCC 38-08-04	NDCC 38-08-04

43-02-03-54. INVESTIGATIVE POWERS. Upon receipt of a complaint from any landowner, royalty owner, mineral owner, local or federal official, in the official's official capacity, or any member of the state legislative assembly, in the legislator's official representative capacity, or any other interested party, alleging oil well drilling or production operations which are in violation of the oil and gas conservation statutes or any rule, regulation, or order of the commission, the ~~state geologist~~ chief enforcement officer shall immediately cause an investigation of such complaint to be made. The ~~state geologist~~ officer may also conduct such investigations on the ~~geologist's~~ officer's own initiative or at the direction of the commission. If, after such investigation, the ~~state geologist~~ officer affirms that cause for complaint exists, the ~~geologist~~ officer shall cause written notice of the results of the investigation to be mailed to the operator of the oil well drilling or production operation and shall forthwith notify the commission, in writing, of the investigation. The

commission shall institute such legal proceedings as, in its discretion, it believes necessary to enjoin further activities resulting in the violation complained of.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04,
38-08-12

Law Implemented
NDCC 38-08-04,
38-08-12

43-02-03-55. DESERTION OF WELLS. The removal of production equipment or the failure to produce oil is prima facie evidence of desertion of a well after a lapse of one year and such well shall be plugged in accordance with the rules and regulations of the commission, and the site restored. The ~~state-geologist~~ commission acting by and through the chief enforcement officer may grant exceptions to this section if it can be shown to ~~the-geologist's~~ its satisfaction that the well is to be utilized for saltwater disposal or enhanced recovery operations.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-59. NATURAL GAS FROM GAS WELLS TO BE MEASURED. All natural gas produced shall be accounted for by metering, or other methods approved by the commission and reported to the commission and the state geologist by common purchaser of the gas. Gas produced from a gas well and delivered to a gas transportation facility, shall be reported by the owner or operator of the gas transportation facility. Gas produced from a gas well, and required to be reported under this section, which is not delivered to and reported by a gas transportation facility, shall be reported by the operator of the well.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-65. AUTHORIZATION FOR PRODUCTION, PURCHASE AND TRANSPORTATION. The commission or its representatives shall meet between the fifteenth and twenty-fifth of each month for the purpose of

holding a hearing to set the normal unit allowable for the state for the following calendar month.

On, or before, the tenth of January each year the commission shall establish a tentative schedule for such hearings for the current year and shall direct the ~~state--geologist~~ chief enforcement officer to publicize such schedule. The tentative dates may be changed by motion of the commission prior to publication of notice of hearing.

The commission will consider all evidence of market demand for oil, including sworn statements of individual demand as submitted by each purchaser or buyer of crude petroleum oil in the state, and determine the amount of oil to be produced from all oil pools during the following month. The amount so determined will be allocated among the various pools in accordance with existing regulations and in each pool in accordance with regulations governing each pool. In allocated pools, effective the first day of each proration period, the commission will issue a proration schedule which will authorize the production of oil from the various units in strict accordance with the schedule, and the purchase and transportation of the oil so produced. Allowable for wells completed after the first day of the proration period will become effective from the date of well completion. A supplementary order will be issued by the commission to the operator of a newly completed or recompleted well, and to the purchaser or transporter of the oil or of the natural gas from a newly completed or recompleted well, establishing the effective date of completion, the amount of production permitted during the remainder of the proration period, and the authority to purchase and transport same from said proration units and fractional proration units.

When it appears that a single normal unit allowable will not supply the amounts of oil required by the markets available, the commission may designate separate marketing districts within the state and prescribe separate normal unit allowables for each district.

A marginal unit shall be permitted to produce any amount of oil which it is capable of producing up to and including the top unit allowable for that particular pool for the particular proration period; provided the operator of such unit shall file with the commission for a supplemental order covering the difference between the amount shown on the proration schedule and the top unit allowable for the pool. The commission shall issue such supplemental order setting forth the daily amount of oil which such unit shall be permitted to produce for the particular proration period and shall furnish such supplemental order to the operator of the unit and a copy thereof to the transporter authorized to transport oil from the unit.

Underages may be made up or unavoidable and lawful overages compensated for during the second proration period next following the proration period in which such underages or overages occurred.

All back allowable authorized for purchase will be published in the monthly proration schedule. No back allowable, except as provided

in section 43-02-03-64, will be placed on the proration schedule unless requested by the producer. In requesting back allowable, the producer shall indicate the reason for the underage and the ~~state geologist~~ commission acting by and through the chief enforcement officer may, at ~~the geologist's~~ its discretion, approve any portion of the request which the ~~geologist~~ commission acting by and through the chief enforcement officer may consider justified. The usual grounds for back allowable which may be considered are (1) failure of purchaser to transport assigned allowable, (2) mechanical failure or repairs to well equipment during the proration period, and (3) testing or gathering engineering data.

In order to preclude premature abandonment, a common purchaser within its purchasing area is authorized and directed to make one hundred percent purchases from units of settled production producing ten barrels or less daily of oil in lieu of ratable purchases or takings. Provided such purchaser's takings are curtailed below ten barrels per unit of oil daily, then such purchaser is authorized and directed to purchase equally from all such units within its purchasing area regardless of their producing ability insofar as they are capable of producing.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04,
38-08-06

Law Implemented
NDCC 38-08-04,
38-08-06

43-02-03-66. APPLICATION FOR ALLOWABLE ON NEW WELLS. No well shall be placed on the proration schedule until notice of completion has been executed and filed with the commission and the state geologist.

The first four wells in any field or pool hereafter discovered shall be allowed to produce any amount of oil it is capable of producing but in no case to exceed a maximum of two hundred barrels of oil per day if the same can be done without waste and provided further, that a market can be obtained for such oil produced.

The allowable production provided for above shall continue in effect for a period of not more than eighteen months from the date of completion of the first well in the field or pool, or until the completion of the fifth well in the pool, whichever shall occur first, and shall produce thereafter, only pursuant to the general rules and regulations of the state industrial commission.

The producer or operator of any well claiming a discovery allowable under this section shall report to the state geologist, not later than the tenth of each month, the results of a potential test, made on or about the first day of the month, in accordance with the provisions of section 43-02-03-40.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04,
38-08-06

Law Implemented
NDCC 38-08-04,
38-08-06

43-02-03-76. RECORDS. The operator of an injection project shall keep accurate records and report monthly to the commission and the state geologist the amount of fluid produced, the volumes of fluid injected, and the injection pressures.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-09

Law Implemented
NDCC 38-08-09

43-02-03-80. REPORTS OF PURCHASERS OR TRANSPORTERS. On, or before, the fifth day of the second month succeeding that in which takings occur, purchasers or transporters, including truckers, shall file with the commission and the state geologist a report (form 10A) showing the amount of all crude oil taken by them from each lease during the reported month and the disposition (form 10B) of such crude oil.

Prior to removing any oil from a lease, purchasers or transporters shall obtain an approved copy of a producers certificate of compliance and authorization to transport oil from lease (form 8) from either the producer or the commission and the state geologist.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-81. AUTHORIZATION TO TRANSPORT OIL FROM LEASE. Before any crude oil is transported from a lease the operator of the lease shall file with the commission and the state geologist, and obtain the ~~geologist's~~ chief enforcement officer's approval, a producers certificate of compliance and authorization to transport oil from lease (form 8).

Oil transported from a lease before the authorization is obtained or if such has been revoked shall be considered illegal oil.

The ~~state--geologist~~ commission acting by and through the chief enforcement officer shall revoke the producers certificate of compliance and authorization to transport oil from lease for failure to comply with any rule, regulation, or order of the commission.

History: Amended effective April 30, 1981.

General Authority	Law Implemented
NDCC 38-08-04	NDCC 38-08-04

43-02-03-82. REFINERY REPORTS. Each refiner of oil within North Dakota shall furnish for each calendar month a report containing information and data respecting crude oil and products involved in such refiner's operations during each month. The report for each month shall be prepared and filed, on, or before, the fifteenth of the next succeeding month with the commission and the state geologist.

History: Amended effective April 30, 1981.

General Authority	Law Implemented
NDCC 38-08-04	NDCC 38-08-04

43-02-03-83. GASOLINE PLANT REPORTS. Each operator of a gasoline plant, cycling plant, or any other plant at which gasoline, butane, propane, condensate, kerosene, oil, or other products are extracted from natural gas within North Dakota shall furnish to the commission and the state geologist a report containing information respecting crude oil and products involved in such operations.

Crude oil recovered shall be reported to the commission and the state geologist, on form 5, on, or before, the close of business on the fifteenth day of each month. Other operations shall be reported to the commission and the state geologist, on form 12, on, or before, the close of business on the twenty-fifth day of each month.

The information contained on form twelve shall be treated as confidential except as said information may be required in public hearings before the commission, or in judicial proceedings.

In releasing reports of production, only the totals for the state shall be shown.

History: Amended effective April 30, 1981.

General Authority	Law Implemented
NDCC 38-08-04	NDCC 38-08-04

43-02-03-90. NOTICE OF HEARING. Upon the institution of a proceedings by application, the commission shall give at least ten days (except in emergency) notice of the time and place of hearing thereon by one publication of such notice in newspapers of general circulation published at Bismarck, North Dakota, and in the county where the land affected or some part thereof is situated, unless in some particular proceeding a longer period of time or a different method of publication is required by law, in which event such period of time and method of publication shall prevail. The notice shall issue in the name of the state and shall be signed by the chairman or secretary of the commission, and shall conform to the other requirements provided by law. In case an emergency is found to exist by the commission which in its judgment requires the making of a rule, regulation, or order without first having a hearing, the emergency rule, regulation, or order shall have the same validity as if a hearing with respect to the same had been held after notice. The emergency rule, regulation, or order permitted by this section shall remain in force no longer than ~~fifteen~~ forty-five days from its effective date, and in any event, it shall expire when the rule, regulation, or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation, or order becomes effective.

History: Amended effective March 1, 1982.

General Authority
NDCC 38-08-11

Law Implemented
NDCC 38-08-11

43-02-03-91. REHEARING. Within thirty days after the entry of any order or decision of the commission or the ~~state--geologist~~ chief enforcement officer, any person affected thereby may file with the commission an application for rehearing in respect of any matter determined by such order or decision, setting forth the respect in which such order or decision is believed to be erroneous. The commission shall grant or refuse any such application in whole or in part within fifteen days after the same is filed. In the event the rehearing is granted, the commission may enter such new order or decision after rehearing as may be required under the circumstances.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-13

Law Implemented
NDCC 38-08-13

43-02-03-93. DESIGNATION OF EXAMINERS. The commission shall by motion designate and appoint not more than four individuals to be examiners. Each examiner so appointed shall be a member of the staff of

the ~~North-Dakota-geological-survey-or-of-the~~ industrial commission. The commission may, by motion, designate and appoint a successor to any person whose status as an examiner is terminated for any reason. Each individual designated and appointed as an examiner must be a geologist, petroleum engineer, or licensed lawyer, with at least two years of such experience and a college degree in geology, engineering, or law, provided that nothing therein contained shall prevent any member of the commission from being designated as, or serving as, an examiner.

History: Amended effective April 30, 1981.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

TITLE 48

Livestock Sanitary Board

JULY 1982

48-06-01-03. BRUCELLOSIS VACCINATION OF CALVES. Licensed veterinarians are permitted to contract with owners to vaccinate female calves. Female bovine animals ~~of-a-dairy-breed-may-be-vaccinated-while from-two-to-six-months-of-age-and-female-bovine-animals-of-a-beef--breed while--from--two--to--ten-months-of-age~~ may be vaccinated while from two months (sixty days) to ten months (two hundred ninety-nine days) of age with a vaccine approved by the state veterinarian. Vaccinated animals shall be tattooed and tagged in the right ear. The veterinarian must submit reports of vaccination on form 18V to the board within thirty days.

History: Amended effective July 1, 1982.

General Authority
NDCC 36-01-08

Law Implemented
NDCC 36-15-21

48-09-01-02. BRAND INSPECTION. For the purpose of complying with North Dakota Century Code chapter 36-22:

1. The owner is required to pay a fee on all cattle, horses, and mules subject to brand inspection.

2. Recorded brands determine ownership.

3. Proof of ownership must be established, or proceeds will be held.

4. ~~Proof--of--ownership--must--be--established-on-freshly-branded livestock.~~ If any animal inspected bears the recorded brand of the shipper or seller and also bears a recorded brand or

brands other than the recorded brand of the shipper or seller, then the shipper or seller may be required, at the discretion of the brand inspector, to establish ownership of the animal by bills of sale, market clearance, local inspection certificate or any other satisfactory evidence of ownership.

5. No claims for feed or pasture are allowed at markets.

6. Selling establishments must furnish assistance to brand inspectors.

7. Livestock consigned for sale must be kept separate from other livestock until inspected.

8. No inspections shall be conducted after dark, except by appropriate lighting.

9. The North Dakota stockmen's association is responsible for providing inspection service.

10. Brand inspectors may not inspect their own cattle or trade at a market where they conduct inspections.

11. A buying station is a point where cattle, horses, or mules are gathered for sale or other purposes.

12. A bill of lading is required by railroads or motor carriers when livestock is going to out-of-state markets where inspection is maintained.

13. Butcher shops, buying stations, or custom meat plants may be examined when deemed necessary by chief brand inspector.

14. A fee of fifty cents per head on all cattle, horses, or mules subject to brand inspection at points where such inspection is maintained shall be paid by the owner of the cattle, horses, or mules, and when sold by a commission firm, sales agency, or when purchased by a buying station operator or packing plant, it shall be the obligation of the commission firm, sales agency, buying station operator, or packing plant company to collect and withhold from the proceeds of such sale the inspection fee and to pay over to the association upon demand the amounts so collected without any deductions whatsoever. Whenever a brand inspector is required to travel to points other than the inspector's official stations to perform local brand inspection, the inspector shall be paid by the shipper, owner, or consignor mileage at the same rate per mile [1.61 kilometers] paid state officials in addition to the regular brand inspection fee.

15. The following terminal markets and auction markets outside the state of North Dakota are designated official brand inspection markets for North Dakota cattle, horses, and mules by the

North Dakota Stockmen's association: Sioux City Stockyards, Sioux City, Iowa; Mobridge Livestock Auction, Mobridge, South Dakota; McLaughlin Sales, Inc., McLaughlin, South Dakota; Lemmon Livestock Market, Inc., Lemmon, South Dakota; Sisseton Livestock Sale Co., Sisseton, South Dakota; Britton Livestock Sale Co., Britton, South Dakota; Hub City Livestock Sale Co., Aberdeen, South Dakota; Leola Livestock Sale Co., Leola, South Dakota; Herreid Livestock Sale Co., Herreid, South Dakota; Baker Livestock Auction, Inc., Baker, Montana; Glendive Livestock Auction, Glendive, Montana; Sidney Livestock Market Center, Sidney, Montana.

History: Amended effective April 1, 1980; amended effective July 1, 1982.

General Authority
NDCC 36-22-03

Law Implemented
NDCC 36-05-10,
36-09-15,
36-09-23,
36-22-02,
36-22-03

TITLE 54

Nursing, Board of

~~54-01-02-01.--PROFESSIONAL-NURSE-ORGANIZATIONS-RECOGNIZED-BY-BOARD OF-NURSING.---The--board--of--nursing--recognizes--professional--nursing organizations--whose--statewide--membership-is-composed-of-a-majority-of nurses.--This-would-include-but-not-be-limited-to-such-organizations--as the--North--Dakota--State--Nurses'--Association,--North-Dakota-Citizens' League-for-Nursing-and--the--North--Dakota--Certified--Registered--Nurse Anesthetists.~~

History: Repealed effective June 1, 1982.

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

Law Implemented ~~NDCC-43-12.1-05~~

54-02-01-01. OFFICIAL LICENSING EXAMINATION. Each year the board of nursing shall contract to use the following examinations as the official North Dakota licensing examinations for nurses:

~~State--board--test-pool~~ National council licensure examination for registered nurses.

~~State--board--test-pool~~ National council licensure examination for practical nurses.

History: Amended effective June 1, 1982.

General Authority NDCC 43-12.1-08

Law Implemented NDCC 43-12.1-10

54-02-01-02. PASSING SCORE. The passing score ~~will~~ shall be a standard score of ~~three-hundred-fifty-in-each-of-the-five--tests,--which comprises~~ one thousand six hundred for the registered nurse licensing examination.

The passing score will be an average standard score of three hundred fifty for the licensed practical nurse examination which is comprised of two tests.

History: Amended effective June 1, 1982.

General Authority
NDCC 43-12.1-08

Law Implemented
NDCC 43-12.1-10

54-02-01-03. TESTING DATES. The examination dates shall coincide with the national testing dates set by the national council of state boards of nursing for the use of the ~~state-board-test-pool~~ national council licensure examination. Notice of the examination dates and the deadline for filing the application shall be sent to all board-approved nursing education programs in North Dakota at least three months before each examination.

History: Amended effective June 1, 1982.

General Authority
NDCC 43-12.1-08

Law Implemented
NDCC 43-12.1-08(9)

54-02-01-04. ~~ANSWER--SHEETS~~ EXAMINATION MATERIAL. ~~Answer-sheets~~ Examination material for each candidate shall be sent for scoring, as provided by the contract. In the event that ~~answer-sheets-are~~ the material is lost or destroyed through circumstances beyond control of the board, the candidate will be required to rewrite the ~~test-or-tests lost-or-destroyed,~~ entire examination in order to meet requirements for licensure. The candidate must assume the cost of rewriting the examination.

History: Amended effective June 1, 1982.

General Authority
NDCC 43-12.1-08

Law Implemented
NDCC 43-12.1-08(10)

54-02-01-07. TRANSCRIPT. An official completed transcript, sent directly from the nursing education program to the board office, will be

required to provide the board with proof of satisfactory completion of the appropriate nursing education program. An English translated certified copy of the transcript, providing evidence of instruction and experience in medical nursing, surgical nursing, obstetric nursing, nursing of children, and psychiatric nursing, will be required from nursing education programs in another country. A copy of the transcript submitted to the commission on graduates of foreign nursing schools will be accepted if sent directly from the commission.

History: Amended effective June 1, 1982.

General Authority
NDCC 43-12.1-08

Law Implemented
NDCC ~~43-12.1-10~~
43-12.1-08(3)

54-02-01-09. FOREIGN GRADUATES. The certificate issued by the commission on graduates of foreign nursing schools shall be required of any graduate from a foreign country ~~except-Canada~~ for admission to the ~~state-board-test-pool-licensing~~ national council licensure examination. ~~Graduates--of--Canadian-schools-who-have-not-written-the-English-version of-the-Canadian-nurses-association--testing--service--examination--shall also--be--required--to--present--the--commission-on-graduates-of-foreign nursing-schools-certificate-to-qualify-for-the-licensing-examination.~~

History: Effective November 1, 1979; amended effective June 1, 1982.

General Authority
NDCC 43-12.1-08

Law Implemented
NDCC 43-12.1-10

54-02-01-10. EMPLOYMENT OF UNSUCCESSFUL CANDIDATES. A candidate who fails the ~~state--board--test--pool~~ licensing examination ~~may--be employed--as--a--nurse--aid--or--nursing--assistant--from--the--time--of notification-of-failing-until-subsequent--notification--of--passing--the examination.----An--unsuccessful--candidate~~ may not be employed in a position with functions that are usually assigned to licensed nurses.

History: Effective November 1, 1979; amended effective June 1, 1982.

General Authority
NDCC 43-12.1-08

Law Implemented
NDCC 43-12.1-03

54-02-02-02. REWRITING THE REGISTERED NURSE LICENSING EXAMINATION. Candidates who fail the registered nurse licensing examination must rewrite ~~all--tests--failed-when-rewriting~~ the entire examination.

History: Amended effective June 1, 1982.

General Authority
NDCC 43-12.1-08

Law Implemented
NDCC 43-12.1-10

54-02-02-04. TIME LIMIT ON REWRITING PARTS OF THE REGISTERED NURSE EXAMINATION. ~~Candidates-who-have-not-passed-the-entire-registered nurse--licensing--examination--within--three-years-following-the-initial writing-after-completion-of-the-nursing-program--shall--be--required--to rewrite-the-entire-examination.~~ Repealed effective June 1, 1982.

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

Law Implemented
~~NDCC-43-12.1-10~~

54-02-02-06. FEE TO REWRITE THE REGISTERED NURSE EXAMINATION. The fee to rewrite ~~any--one--part--of~~ the registered nurse licensing examination shall be ~~eighteen-dollars,-not-to-exceed-sixty-five-dollars for-all-five-parts~~ sixty-five dollars.

History: Amended effective November 1, 1979; amended effective June 1, 1982.

General Authority
NDCC 43-12.1-08

Law Implemented
NDCC 43-12.1-08(3)

54-02-02-07. FAILURE OF ~~PRACTICAL-NURSE~~ LICENSING EXAMINATION IN ANOTHER STATE. Any qualified applicant for license by examination, who has written the practical nurse licensing examination or the registered nurse licensing examination in another state of the United States or its territories and failed, must meet North Dakota requirements for rewriting that examination before being admitted to the North Dakota licensing examination.

History: Amended effective June 1, 1982.

General Authority
NDCC 43-12.1-08

Law Implemented
NDCC 43-12.1-10

54-02-02-08. FAILURE OF REGISTERED NURSE LICENSING EXAMINATION IN ANOTHER STATE. ~~Candidates-who-fail-one-or-more-parts-of-the--registered nurse--licensing--examination--in-another-state-or-territory-must-attain~~

~~licensure--in--the--state--of--initial--writing--or--meet--North--Dakota requirements--and--rewrite--the--entire-examination.~~ Repealed effective June 1, 1982.

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

Law Implemented ~~NDCC-43-12.1-10~~

54-02-03-04. NORTH DAKOTA CANDIDATES PROCTORED IN ANOTHER STATE. Candidates for license by examination in North Dakota who have failed the licensing examination, may upon written permission from the board rewrite the examination ~~or-examinations~~ in another state, provided the other board of nursing will consent to proctor and is a member board of the ~~state-board-test-pool-examination~~ national council of state boards of nursing.

History: Amended effective June 1, 1982.

General Authority NDCC 43-12.1-08

Law Implemented NDCC 43-12.1-10

~~54-02-04-01.---NURSES--ON--INACTIVE--ROSTER--PRECEDING-FOUR-YEARS. Nurses-who-voluntarily-placed-their--name--on--the--roster--of--inactive nurses--in-the-preceding-four-years-must-meet-the-following-requirements to-activate-their-license:~~

~~1.--Complete-the-renewal-application.~~

~~2.--Pay-the-current-renewal-fee.~~

History: Repealed effective June 1, 1982.

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

Law Implemented ~~NDCC-43-12.1-13~~

~~54-02-04-02.---NURSES--ON--INACTIVE--ROSTER--FIVE--OR--MORE-YEARS. Nurses-who-have-had-their-name-on-the-roster-of-inactive-nurses-for-five or--more--years--must--meet-the-following-requirements-to-activate-their license:~~

~~1.--Complete-the-renewal-application.~~

~~2.--Pay-the-current-renewal-fee.~~

~~3.--Provide-the-board-with-evidence-of-one-of-the-following:~~

~~a.--Practice-as-a-registered-nurse-or-licensed-practical-nurse within--the--preceding--five--years--in---another---state, territory--or--country.---References--addressing--clinical competency-are-to-be-submitted.~~

~~b.--Completion-of-a-refresher-course-in-nursing,-in-accordance with-board-guidelines,-within-the-preceding-year.~~

~~c.--Enrollment--in--a--board--recognized--nursing--program--to further-their-education-in-nursing.~~

~~d.--Other--evidence--the-licensee-wishes-to-submit-which-would provide-proof-of-nursing-competence.~~

History: Repealed effective June 1, 1982.

General Authority	Law Implemented
~~NDCC-43-12.1-08~~	~~NDCC-43-12.1-13~~

54-02-05-04. INCREASED RENEWAL FEE. ~~Beginning-January-1,-1980, the~~ The relicensure fee for any practicing nurse will be doubled for any renewal application received in the board office postmarked after December thirty-first. The registered nurse shall pay forty dollars and the licensed practical nurse shall pay thirty dollars.

History: Amended effective November 1, 1979; amended effective June 1, 1982.

General Authority	Law Implemented
NDCC 43-12.1-08	NDCC 43-12.1-08(3)

54-02-05-05. NONPRACTICING NURSES. Any nurse who has not actively practiced nursing in North Dakota for five years or more must meet the following requirements before a license to practice is ~~renewed~~ issued:

1. Complete the relicensure application.

2. Pay the current renewal fee.

3. Provide the board with proof of one of the following:

   a. ~~Completion-of-a-refresher-course-in-nursing,-in-accordance with--board--guidelines,--within---the---preceding---year.~~ Practice as a registered nurse or licensed practical nurse within the preceding five years in another state,

territory or county. Verification of employment is to be submitted.

b. ~~Enrollment--in--a--board--recognized--nursing--program--to further-their--education--in--nursing.~~ Completion of a refresher course in nursing, in accordance with board guidelines, within the preceding year.

c. Enrollment in a board-recognized nursing program to further their education in nursing.

d. Other evidence the licensee wishes to submit which would provide proof of nursing competence.

History: Amended effective June 1, 1982.

General Authority
NDCC 43-12.1-08

Law Implemented
NDCC 43-12.1-08(13)

54-02-05-06. ACTIVATING A LICENSE. ~~Nurses~~ A nurse previously licensed in North Dakota who ~~apply~~ applies for relicensure must meet board requirements and pay the renewal fee.

History: Amended effective June 1, 1982.

General Authority
NDCC 43-12.1-08

Law Implemented
NDCC 43-12.1-13

54-02-06-03. ~~NURSE---LICENSURE---FOR--STUDENTS~~ EXCEPTIONS FOR STUDENTS. North Dakota nurse licensure is not a legal requirement for students enrolled in a board-approved program of nursing education which involves nursing practice such as a program leading to licensure at another level of nursing or to a higher degree, a program to enhance skills in a clinical field, or a program leading to certification in a nursing specialty. This shall not preclude programs of nursing or affiliating institutions from requiring licensure. A North Dakota license shall be required if the individual receives any monetary compensation for the nursing services provided or if the individual wishes to be employed as a nurse during spare hours while enrolled in an educational program of study. Previously licensed nurses enrolled in a board-approved refresher course to update skills shall be exempt from ~~a license~~ the licensing requirement for the duration of the course.

History: Effective November 1, 1979; amended effective June 1, 1982.

General Authority
NDCC 43-12.1-08

Law Implemented
NDCC 43-12.1-04(2)

54-02-07-01. DEFINITION OF UNPROFESSIONAL CONDUCT. Unprofessional conduct includes but is not limited to:

1. Intentionally falsifying information on patient's records.

2. Negligence in planning and administering therapeutic and nursing measures.

3. Aiding and abetting another person in performing an act prohibited by law.

4. Misappropriation of supplies, equipment, and drugs.

5. Misuse (betrayal) of a trust or confidence.

History: Amended effective June 1, 1982.

General Authority
NDCC 43-12.1-08

Law Implemented
NDCC 43-12.1-14

54-03-02-01. INITIAL REQUIREMENTS. An agency or institution considering establishing a new nursing program or modifying or extending an existing program shall:

1. Inform and seek counsel from the board of nursing concerning the agency's or institution's interest in establishing a nursing program or modifying or extending an existing program.

2. Secure requirements for nursing education programs from the board.

3. Conduct a feasibility study which includes the following information:

   a. Justification for the type of nursing program to be established.

   b. Willingness of community and health agencies to accept and support the program.

   c. Assurance of potential students who are qualified to complete the program to be established.

   d. Assurance of adequate education and clinical facilities.

   e. Assurance of adequate funds to finance the program.

f. Assurance of qualified faculty for teaching and supervision.

4. Present the results of the feasibility study to the board in a formal written report.

The board shall conduct a public hearing to determine the effects of the proposed nursing education program on surrounding programs or on nursing education within the state.

History: Amended effective June 1, 1982.

General Authority	Law Implemented
NDCC 43-12.1-08	NDCC 43-12.1-08(6)

54-03-09-03. NUMBER OF FACULTY. Sufficient faculty shall be employed to supervise student learning experiences in the clinical laboratory. The ratio of ~~faculty~~ students to ~~students~~ faculty at any one time shall not exceed ~~one~~ eight to ~~eight~~ one for beginning level nursing ~~experiences~~ students or a justifiable ratio for students receiving advanced learning experiences. A beginning level nursing student is a student who is enrolled in the first nursing course requiring actual patient care for a complete quarter or semester.

History: Amended effective June 1, 1982.

General Authority	Law Implemented
NDCC 43-12.1-08	NDCC 43-12.1-08(6)

TITLE 75

Department of Human Services

APRIL 1982

STAFF COMMENT: Article 75-04 contains all new material but is not underscored so as to improve readability.

AGENCY SYNOPSIS OF CHAPTER 75-04-01: The 1981 legislature, in HB 1050, enacted amendments to chapters 25-15 and 25-16 of the North Dakota Century Code. The major changes occurred in chapter 25-15. That chapter now requires the persons or associations which operate a treatment or care center for developmentally disabled persons to secure an annual license as required by rules adopted under this chapter, and further requires the division of developmental disabilities of the state department of human services to establish the requirements for such licensing, and allows the division to do so by promulgating rules. The proposed new chapter contains those rules.

The proposed new chapter contains twenty-six sections. The first section defines a number of terms used in the chapter. The second through the fourteenth section describes the procedures for securing licenses, and describes the steps the agency must take in denying licenses. The fifteenth through the twenty-fourth sections identify standards, or relate to the application of specific standards. Section 25 requires the licensed facility to open its records to the agency, and Section 26 provides that the license of a facility which denies the agency access to records may be revoked.

ARTICLE 75-04

DEVELOPMENTAL DISABILITIES

Chapter
75-04-01 Licensing of Programs and Services for Developmentally Disabled Persons
75-04-02 Purchase of Service for Developmentally Disabled Persons
75-04-03 Developmental Disabilities Loan Program

CHAPTER 75-04-01
LICENSING OF PROGRAMS AND SERVICES FOR DEVELOPMENTALLY DISABLED PERSONS

Section
75-04-01-01 Definitions
75-04-01-02 License Required
75-04-01-03 Single or Multiple License
75-04-01-04 License Denial or Revocation
75-04-01-05 Notification of Denial or Revocation of License
75-04-01-06 Disclosure of Criminal Record
75-04-01-07 Content of License
75-04-01-08 Types of Licenses
75-04-01-09 Provisional License
75-04-01-10 Special Provisional License
75-04-01-11 License Renewal
75-04-01-12 Display of License
75-04-01-13 Purchase of Service, Certification or Recognition of Unlicensed Entities
75-04-01-14 Unlicensed Entities - Notification
75-04-01-15 Standards of the Department
75-04-01-16 Imposition of the Standards
75-04-01-17 Identification of Basic Services Subject to Licensure
75-04-01-18 Identification of Ancillary Services Subject to Registration
75-04-01-19 Licensure of Intermediate Care Facilities for the Developmentally Disabled
75-04-01-20 Applicant Guarantees and Assurances
75-04-01-21 Legal Status of Applicant
75-04-01-22 Applicant's Buildings
75-04-01-23 Safety Codes
75-04-01-24 Entry and Inspection
75-04-01-25 Access to Records
75-04-01-26 Denial or Access to Facilities and Records

75-04-01-01. DEFINITIONS. In this chapter, unless the context or subject matter requires otherwise:

1. "Adult group home" means a residence designed to meet the needs of developmentally disabled individuals who can benefit from family living in a congregate setting and which provides opportunities for individuals to obtain or maintain social, behavioral, and other domestic skills.

2. "Basic services" means those services required to be provided by an entity in order to obtain and maintain a license.

3. "Case management" means a process of interconnected steps designated by the division, and implemented by a specific individual, designed to maximize delivery of the full range of services to developmentally disabled individuals.

4. "Child development" means the systematic application of an individualized program designed to prepare the handicapped child, aged three through five, for participation in the public school programs.

5. "Client" means a person accepted for or receiving services from a licensee.

6. "Department" means the department of human services.

7. "Developmental day activity" means a physically separated department or entity having an identified program and separate supervision and records in which very basic functional skills are developed through repetitive instruction. Training emphasis is stimulation exposure and reinforcement in activities of daily living which include communication skills, education skills, self-awareness, physical and emotional development, grooming, hygiene, and recreation. Skill development, when appropriate, would be preliminary to and in preparation for entry into a work activity program.

8. "Developmental disability" means a severe, chronic disability of a person which:

   a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;

   b. Is manifested before the person attains age twenty-two;

   c. Is likely to continue indefinitely;

   d. Results in substantial functional limitations in three or more of the following areas of major life activity:

      (1) Self-care;

      (2) Receptive and expressive language;

      (3) Learning;

(4) Mobility;

(5) Self-direction;

(6) Capacity for independent living; and

(7) Economic sufficiency; and

e. Reflects the persons's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

9. "Extended employment" means a work situation in a supervised environment which provides remunerative employment opportunities for indefinite periods of time and which is subject to 29 CFR 524 et seq., and 525 et seq.

10. "Governing board" means those persons designated in the articles of incorporation of a corporation or constitution of a legal entity as being authorized to act on behalf of the entity.

11. "Infant development" means a systematic application of an individual program designed to alleviate or mediate the handicapping conditions in children from birth through age two.

12. "Intermediate care facility for the developmentally disabled" means a residential health facility operated pursuant to regulation under 42 CFR 442 et seq.

13. "License" means authorization by the department to provide a service to developmentally disabled persons.

14. "Minimally supervised living arrangements" means a community complex which provides self-contained rented units, with an available client advisor, to clients.

15. "Principal officer" means the presiding member of a governing body, a chairperson or president of a board of directors.

16. "Reasonable cost" means the cost, including all necessary and proper costs, incurred in rendering the services subject to the principles related to specific items of revenue and cost. Reasonable cost takes into account both direct and indirect cost of providers of services. Implicit in the intention that actual costs be paid to the extent they are reasonable is the expectation that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost conscious buyer pays for a given item or services. Within this definition costs must be related to client care. Client

care costs would be those costs which are necessary and proper and which are common and expected occurrences in the field of the providers activity.

17. "Related organization" means an organization with which a provider is to a significant extent associated or affiliated with or has control of, or is controlled by the organization furnishing the services, facilities, or supplies. Control may be obtained either through ownership, management, or contractual arrangements.

18. "Resident" means a client receiving services provided in any licensed residential facility.

19. "Respite care" means a service, consisting of short-term placement out of the home or temporary care within the home, provided to the family of a developmentally disabled individual.

20. "Standards" means requirements which, or complied with, result in accreditation by the accreditation council for service for mentally retarded and other developmentally disabled persons.

21. "Supported living arrangements" means a program providing a variety of types of living arrangements that enable handicapped persons to enjoy choice and options comparable to those available to the general population. Clients entering this service shall have obtained those skills associated with independent living and the effects of any skill deficits shall be subject to mitigation by the provision of follow-along services.

22. "Transitional community living facility" means a residence for clients with individualized programs consisting of social and community living skills development preliminary to entry into the less restrictive setting of a minimally supervised living arrangement.

23. "Vocational development" means a program of vocational preparation preliminary to competitive or extended employment, administered through a rehabilitation facility subject to 29 CFR 525 et seq., for participants who have demonstrated productivity in excess of fifty percent of normal. The service shall be a physically separate department of a workshop, with separate supervision and records, and with a separately identifiable program. Vocational education and training may be provided in a manner or setting not subject to regulation by the department of labor.

24. "Vocational evaluation" means a systematic and organized methodology section employed to determine an individual's vocational assets, limitation, and behavior in the context of work environments.

25. "Work activity" means those services provided in a workshop, or physically separated department of a workshop having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential as defined in 29 CFR 525 et seq.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 25-01.2-18,	NDCC 25-01.2-18,
25-15-08,	25-15-08,
25-16-06,	25-16-06
50-06-16	

75-04-01-02. LICENSE REQUIRED. No person, association of persons, or corporation shall offer or provide a service or own, manage, or operate a facility offering or providing a service to more than four developmentally disabled persons without first having obtained a license or registration certificate from the department unless the facility is exempted by subsection 1 or 2 of North Dakota Century Code section 15-59.3-02 or is a health care facility (as defined in North Dakota Century Code section 23-17.2-02) other than an intermediate care facility for the developmentally disabled.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 25-01.2-18,	NDCC 25-01.2-18,
25-15-08,	25-15-08,
25-16-06,	25-16-02
50-06-16	

75-04-01-03. SINGLE OR MULTIPLE LICENSE. A single license may be issued authorizing the conduct of multiple services by one applicant or single licenses may be issued authorizing the conduct of each discrete service, at the discretion of the department.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 25-16-06,	NDCC 25-16-03
50-06-16	

75-04-01-04. LICENSE DENIAL OR REVOCATION. The department may deny a license to an applicant or revoke an existing license upon a finding of noncompliance with the rules of the department.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 25-16-06, 50-06-16	NDCC 25-16-03, 25-16-08

75-04-01-05. NOTIFICATION OF DENIAL OR REVOCATION OF LICENSE.

1. The department shall, within sixty days from the date of the receipt of an application for a license, or upon finding a licensee in noncompliance with the rules of the department, notify the applicant or licensee's principal officer of the department's intent to grant, deny, or revoke a license.

2. Notification shall be in writing. Notification is made upon deposit with the United States postal service. The notice of denial or revocation shall identify any rule or standard alleged to have been violated and the factual basis for the allegation, the date after which the denial or revocation is final, and the procedure for appealing the action of the department.

3. The applicant or licensee may appeal the denial or revocation of a license by written request for an administrative hearing, mailed or delivered to the department within ten days of receipt of the notice of intent to deny or revoke. The hearing shall be governed by the provisions of chapter 75-01-03.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 25-16-06, 50-06-16	NDCC 25-16-08

75-04-01-06. DISCLOSURE OF CRIMINAL RECORD.

1. Each member of the governing board of the applicant, the chief executive officer, and any employees or agents who receive and disburse funds on behalf of the board, or who provide any direct care to clients, shall disclose to the department any conviction of a criminal offense.

2. Such disclosure shall not disqualify the applicant from licensure, unless the conviction is for a crime having direct bearing on the capacity of the applicant to provide a service under the provision of this chapter and the convicted person is not sufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1.

3. The department shall determine the effect of a conviction of an offense.

History: Effective April 1, 1982.

General Authority
NDCC 25-16-06,
50-06-16

Law Implemented
NDCC 25-16-03.1

75-04-01-07. CONTENT OF LICENSE. A license issued by the department shall include the legal name of the licensee, the address or location where services are provided, the occupancy or service limitations of the licensee, and the expiration date of the license.

History: Effective April 1, 1982.

General Authority
NDCC 25-16-06,
50-06-16

Law Implemented
NDCC 25-16-05

75-04-01-08. TYPES OF LICENSES.

1. A license issued pursuant to this chapter shall be denominated "license", "provisional license", or "special provisional license".

2. A "license" is unrestricted and shall be issued to any applicant which complies with the rules and regulations of the department and North Dakota Century Code section 25-16-03, and which is accredited by the accreditation council for services for mentally retarded and other developmentally disabled persons. The license shall be nontransferable, expire one year from the date of issuance, and shall be valid for only those services or facilities identified thereon.

3. A "provisional license" may be issued subject to the provision of section 75-04-01-09.

History: Effective April 1, 1982.

General Authority
NDCC 25-16-06,
50-06-16

Law Implemented
NDCC 25-16-03

75-04-01-09. PROVISIONAL LICENSE.

1. A provisional license may be issued to an applicant notwithstanding a finding of noncompliance with the rules of the department and of North Dakota Century Code section 25-16-03. A provisional license shall not be issued to an applicant whose practices or facilities pose a clear and present danger to the health and safety of developmentally disabled persons.

2. Upon a finding that the applicant is not in compliance of the rules, the department may notify the applicant in writing of its intent to issue a provisional license. This notice shall provide the reasons for the action and shall describe the corrective actions required of the applicant, which, if taken, will result in the issuance of an unrestricted license.

3. The applicant shall, within ten days of the receipt of notice under subsection 2, submit to the department, on a form provided, a plan of correction. The plan of correction shall include, but not be limited to, the elements of noncompliance, a description of the corrective action to be undertaken, and a date certain of compliance. The department may accept, modify, or reject the applicant's plan of correction. If the plan of correction is rejected, the department shall notify the applicant that the license has been denied. The department may conduct periodic inspection of the facilities and operations of the applicant to evaluate the implementation of a plan of correction.

4. A provisional license may be issued for any period not exceeding one year, and may be renewed not more than twice. A provisional license is nontransferable and valid only for the facilities or services identified thereon. Notice of the granting of a provisional license, or of a decision to modify or reject a plan of correction, may be appealed in the same manner as a notice of denial or revocation of a license.

History: Effective April 1, 1982.

General Authority
NDCC 25-16-06,
50-06-16

Law Implemented
NDCC 25-16-03

75-04-01-10. SPECIAL PROVISIONAL LICENSE.

1. A licensee may, while a valid license is in effect, submit an application, on a form provided, for a special provisional license, permitting the provision of a new service or reduction in a service, or the occupancy of a facility or the vacation of a facility provided that:

   a. The new service is in conformity with the service definitions of these rules;

   b. The alternative element is subject to licensure under the provisions of these rules;

   c. The alternative element shall substantially improve the services or facilities of the licensee;

   d. The issuance of the special provisional license is required by a natural disaster, calamity, fire, or other dire emergencies.

2. A special provisional license issued for this purpose shall remain in effect, from its issuance until the expiration of the existing license and shall include the dates of issuance and expiration, a description of the service or facility authorized, an identification of the licensee to whom the special provisional license is issued, and any conditions required by the department.

History: Effective April 1, 1982.

General Authority
NDCC 25-16-06,
50-06-16

Law Implemented
NDCC 25-16-03

75-04-01-11. LICENSE RENEWAL. The licensee shall submit to the department, on a form or forms provided, an application for a license not later than sixty days prior to the expiration date of a valid license.

History: Effective April 1, 1982.

General Authority
NDCC 25-16-06,
50-06-16

Law Implemented
NDCC 25-16-03

75-04-01-12. DISPLAY OF LICENSE. The licensee shall place any license, provisional license, or special provisional license in an area accessible to the public and where it may be readily seen. Licenses need not be placed on display in residences or residential areas of a facility, but must be available to the public or the department upon request.

History: Effective April 1, 1982.

General Authority
NDCC 25-16-06,
50-06-16

Law Implemented
NDCC 25-16-03

75-04-01-13. PURCHASE OF SERVICE, CERTIFICATION OR RECOGNITION OF UNLICENSED ENTITIES. The department shall not certify, recognize, or approve the activities of unlicensed entities in securing public funds from the United States, North Dakota, or any of its political subdivisions, nor shall it purchase any service from such entities.

History: Effective April 1, 1982.

General Authority
NDCC 25-16-06,
50-06-16

Law Implemented
NDCC 25-16-10

75-04-01-14. UNLICENSED ENTITIES - NOTIFICATION. Upon a determination that activities subject to licensure are occurring or have occurred, the department shall notify the parties thereto that such activities are subject to licensure. The notice shall include a citation of the applicable provisions of these rules, an application for a license, a date certain when such application shall be submitted, and, if applicable, a request for the parties to explain that the activities identified in the notification are not subject to licensure.

History: Effective April 1, 1982.

General Authority
NDCC 25-16-06,
50-06-16

Law Implemented
NDCC 25-16-10

75-04-01-15. STANDARDS OF THE DEPARTMENT. The department herein adopts and makes a part of the rules the standards for services for developmentally disabled individuals, accreditation council for services

for mentally retarded and other developmentally disabled persons, 1980 Edition.

History: Effective April 1, 1982.

General Authority
NDCC 25-01.2-18,
25-15-08,
25-16-06,
50-06-16

Law Implemented
NDCC 25-01.2-18,
25-15-08,
25-16-06

75-04-01-16. IMPOSITION OF THE STANDARDS. Unaccreditied applicants issued a license shall include a plan to secure accreditation in any plan of correction submitted pursuant to the provisional license requirements.

History: Effective April 1, 1982.

General Authority
NDCC 25-01.2-18,
25-15-08,
25-16-06,
50-06-16

Law Implemented
NDCC 25-01.2-18,
25-15-08,
25-16-06

75-04-01-17. IDENTIFICATION OF BASIC SERVICES SUBJECT TO LICENSURE. Services provided to more than four developmentally disabled persons in treatment or care centers shall be identified and licensed by the following titles:

1. Residential services:

    a. Intermediate care facility for the developmentally disabled;

    b. Adult group home;

    c. Transitional community living facility;

    d. Minimally supervised living arrangement;

    e. Supported living arrangement; or

    f. Out-of-home respite care.

2. Day services:

    a. Developmental day activity;

b. Work activity;

c. Vocational evaluation;

d. Vocational development;

e. Extended employment;

f. In-home respite care;

g. Infant development; or

h. Child development.

History: Effective April 1, 1982.

General Authority
NDCC 25-15-08,
25-16-06,
50-06-16

Law Implemented
NDCC 25-15-08,
25-16-06

75-04-01-18. IDENTIFICATION OF ANCILLARY SERVICES SUBJECT TO REGISTRATION.

1. A licensed provider of basic services may provide an ancillary service which must be registered with the department when:

   a. The service is provided to more than four persons;

   b. The service is subject to review for conformance with the standards;

   c. The service is included for the purpose of state financial participation as discrete and identifiable;

   d. The service is provided by a professional licensed or certified by the state; or

   e. The service functions in support of persons enrolled in a basic service.

2. A licensee offering an ancillary service, which the department determines has an adverse effect upon the delivery of a basic service or which is not registered with the department, may have its license revoked subject to section 75-04-01-03 or 75-04-01-08.

History: Effective April 1, 1982.

General Authority

Law Implemented

NDCC 25-15-08,
25-16-06,
50-06-16

NDCC 25-15-08,
25-16-06

75-04-01-19. LICENSURE OF INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED. Applicants subject to certification by the state pursuant to the provisions of 42 CFR 442 et seq., upon submission of evidence of certification, shall be issued a license.

History: Effective April 1, 1982.

General Authority
NDCC 25-16-06,
50-06-16

Law Implemented
NDCC 25-16-06

75-04-01-20. APPLICANT GUARANTEES AND ASSURANCES.

1. Applicants shall submit, in a manner prescribed by the department, evidence that policies and procedures approved by the governing body are written and implemented in a manner which:

   a. Guarantees each client an individual program plan pursuant to the provisions of North Dakota Century Code section 25-01.2-14;

   b. Guarantees that each client, parent, guardian or advocate receives written notice of their rights pursuant to North Dakota Century Code section 25-01-01;

   c. Guarantees that each client admission is subject to a multidisciplinary determination that placement is appropriate pursuant to North Dakota Century Code section 25-01.2-02;

   d. Guarantees the client the opportunity to vote, to worship, to interact socially, to freely communicate and receive guests, to own and use personal property, to unrestricted access to legal counsel, and guarantees that all rules regarding such conduct are posted or made available pursuant to North Dakota Century Code sections 25-01.2-04 and 25-01.2-05;

   e. Guarantees that such restrictions as may be imposed upon a client relate solely to capability and are imposed pursuant to the provisions of an individual program plan;

f. Guarantees the confidentiality of all client records;

g. Guarantees that the client receives adequate remuneration for compensable labor, that subminimum wages are paid only pursuant to 29 CFR 525 et seq., that restrictions upon client access to money are subject to the provisions of an individual program plan, that assets managed by the applicant on behalf of the client shall inure solely to the benefit of that client, that each client has a money management plan or documented evidence of the client's capacity to manage money, and that, in the event the applicant is a representative payee of a client, the informed consent of the client is obtained and documented;

h. Guarantees the client access to appropriate and timely medical and dental care and adequate protection from infectious and communicable diseases, and guarantees effective control and administration of medication, as well as prevention of drug use as a substitute for programming;

i. Guarantees the client freedom from corporal punishment, guarantees the client freedom from imposition of isolation, seclusion, chemical, physical, or mechanical restraint except as prescribed by law, North Dakota Century Code section 25-01.2-10, or these rules, and guarantees the client freedom from psychosurgery, sterilization, medical behavorial research, pharmacological research, electroconvulsive therapy, shock treatment except as prescribed by law, North Dakota Century Code sections 25-01.2-09 and 25-01.2-11;

j. Guarantees, where applicable, that a nutritious diet, approved by a qualified dietitian, will be provided in sufficient quantities to meet the client's dietary needs;

k. Guarantees the client the right to refuse services, the right of the client and the client's representatives to be informed of the possible consequences of the refusal, alternative services available, and specifically, the extent to which such refusal may harm the client or others; and

l. Assures the client safe and sanitary living and working arrangements and provides for emergencies or disasters and first-aid training for staff.

2. Accredited applicants shall submit evidence, satisfactory to the department, of accreditation.

3. The degree to which the unaccredited applicant's policies and procedures are in compliance with the standards shall be determined by the department.

History: Effective April 1, 1982.

General Authority
NDCC 25-01.2-18,
25-16-06,
50-06-16

Law Implemented
NDCC 25-01.2-18,
25-16-06

75-04-01-21. LEGAL STATUS OF APPLICANT. The applicant shall submit, in a form or manner prescribed by the department, the following items:

1. A correct and current statement of their articles of incorporation, bylaws, license issued by a local unit of government, partnership agreement, or any other evidence of legal registration of the entity.

2. A correct and current statement of tax exempt or taxable status under the laws of North Dakota or the United States as well as the most recent financial report to the United States internal revenue service.

3. A current list of partners or members of the board of directors with their address, phone number, and principal occupation.

4. A statement disclosing the owner of record of any buildings, facilities, or equipment used by the applicant, the relationship of the owner to the applicant, and, if any, the cost of such use to the applicant and the identity of the entity responsible for the maintenance and upkeep of the property.

5. A statement disclosing any financial benefit which may accrue to the applicant or applicants to be diverted to personal use including, but not limited to, director's fees or expenses, dividends, return on investment, rent or lease proceeds, salaries, pensions or annuities, or any other payments or gratuities.

History: Effective April 1, 1982.

General Authority
NDCC 25-15-08,
25-16-06,
25-01.2-08,
50-06-16

Law Implemented
NDCC 25-15-08,
25-16-06,
25-01.2-08

75-04-01-22. APPLICANT'S BUILDINGS. Applicants occupying buildings, whether owned or leased, must provide the department with a license or registration certificate properly issued pursuant to North Dakota Century Code chapter 15-54.3 or 50-11 or with:

1. The written report of an authorized fire inspector, following to an inspection of the buildings, which states:

   a. Rated occupancy and approval of the building for occupancy; or

   b. Existing hazards, and recommendations for correction which, if followed, would result in approval of the building for occupancy;

2. A statement prepared by a sanitarian or authorized public health officer that the building's plumbing, water supply, sewer disposal, and food storage and handling comply with the applicable rules and regulations of the department of health;

3. A written statement prepared by the appropriate county or municipal official having jurisdiction that the premises are in compliance with local laws and ordinances; and

4. For existing buildings, floor plans drawn to scale showing the use of each room or area and a site plan showing the source of utilities and waste disposal; or

5. Plans and specifications of buildings and site plans for facilities, proposed for use, but not yet constructed, showing the proposed use of each room or area and the source of utilities and waste disposal.

History: Effective April 1, 1982.

General Authority
NDCC 25-15-08,
25-16-06,
50-06-16

Law Implemented
NDCC 25-15-08,
25-16-06

75-04-01-23. SAFETY CODES.

1. Applicant's facilities which house individuals capable of following directions and taking appropriate action for self-preservation under emergency conditions shall meet the following requirements of the Life Safety Code of the national fire protection association:

a. For transitional community living facilities which house eight or fewer individuals, chapter 11, section 6, Life Safety Code, 1973 Edition.

b. For transitional community living facilities which house nine through fifteen individuals, and adult group homes which house eight or fewer individuals, chapter 11, section 5, Life Safety Code, 1973 Edition.

c. For transitional community living facilities which house sixteen or more individuals, and adult group homes which house nine through fifteen individuals, chapter 11, section 4, Life Safety Code, 1973 Edition.

d. For adult group homes which house sixteen or more individuals, applicable provisions of chapter 10, Life Safety Code, 1973 Edition.

e. For minimally supervised living arrangement, chapter 11, section 3, Life Safety Code, 1973 Edition.

f. For supported living arrangement, those provisions of the Life Safety Code determined applicable to the living arrangement by the local authority.

2. Applicant's facilities housing persons incapable of following directions and taking appropriate action for self-preservation under emergency conditions shall conform to chapter 10, Life Safety Code, 1973 Edition.

3. Applicant's facilities housing wheelchair board or multiphysically handicapped shall conform to American National Standards Institute Standard No. A117.1 (1980).

4. Applicant's buildings used to provide day services including, but not limited to, developmental day activity, work activity, vocational evaluation, vocational development, infant development, and child development shall conform to chapter 9, Life Safety Code, 1973 Edition, and be accessible to and usable by the physically handicapped.

History: Effective April 1, 1982.

General Authority
NDCC 25-15-08,
25-16-06,
50-06-16

Law Implemented
NDCC 25-15-08,
25-16-06

75-04-01-24. ENTRY AND INSPECTION. The applicant shall affirm the right of duly authorized representatives of the department to enter

any of the applicant's buildings or facilities in order to determine the extent to which the applicant is in compliance with the rules of the department, to facilitate verification of the information submitted with an application for licensure, and to investigate complaints. Inspections shall be scheduled for the mutual convenience of the department and the provider unless the effectiveness of the inspection would be substantially diminished by prearrangement.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 25-01.2-08,	NDCC 25-01.2-08,
25-15-08,	25-15-08,
25-16-06,	25-16-06
50-06-16	

75-04-01-25. ACCESS TO RECORDS. The applicant shall affirm the right of duly authorized representatives of the department to inspect the records of the applicant, to facilitate verification of the information submitted with an application for licensure, and to determine the extent to which the applicant is in compliance with the rules of the department.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 25-01.2-08,	NDCC 25-01.2-08,
25-15-08,	25-15-08,
25-16-06,	25-16-06
50-06-16	

75-04-01-26. DENIAL OF ACCESS TO FACILITIES AND RECORDS. Any applicant or licensee which denies access, by the authorized representative of the department, to a facility or records for the purpose of determining the applicant's state of compliance with the rules of the department, shall have its license revoked or application denied.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 25-01.2-08,	NDCC 25-01.2-08,
25-15-08,	25-15-08,
25-16-06,	25-16-06
50-06-16	

AGENCY SYNOPSIS OF CHAPTER 75-04-02: The 1981 Legislature, in HB 1050, enacted laws which are now codified, in part, as sections 25-16-10 and 25-16-11 of the North Dakota Century Code. The bill funded the purchase of residential care, custody, treatment, and education for developmentally disabled persons, and authorized the Developmental Disabilities Division of the State Department of Human Services to purchase, from funds appropriated for those purposes, the various authorized services.

The rules contained in proposed NDAC Chapter 75-04-02 establish the process under which such services will be purchased.

The proposed new chapter consists of eighteen sections. All but sections 9, 14, and 18 relate to the fiscal policies and practices which must be in place if any potential provider of services for developmentally disabled persons wishes to have those services purchased by the department. Section 9 requires that the facility have in place a procedure for recording and reporting abuse, neglect, and the use of restraints. Section 14 requires that the provider have in place a procedure for airing grievances and complaints brought forth by those persons in case, or the advocates of those persons. Section 18 requires the provider to deal with the North Dakota Case Management System, a procedure which should assure not only that only necessary services are purchased, but should also assure that these services are purchased at the right time, and in the proper amounts so as to enhance the disabled person's development to the maximum feasible extent.

CHAPTER 75-04-02
PURCHASE OF SERVICE
FOR DEVELOPMENTALLY DISABLED PERSONS

Section	
75-04-02-01	Purchase of Service
75-04-02-02	Fiscal Requirement
75-04-02-03	Insurance and Bond Requirements
75-04-02-04	Disclosure of Ownership and Interest
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75-04-02-06	Payments to Related Organizations Restricted
75-04-02-07	Articles and Bylaws of Provider
75-04-02-08	Providers Policies and Procedures
75-04-02-09	Recording and Reporting Abuse, Neglect, and Use of Restraint
75-04-02-10	Wages of Developmentally Disabled Persons
75-04-02-11	Access to Provider Premises and Records
75-04-02-12	Lobbying and Political Activity
75-04-02-13	Indemnification
75-04-02-14	Grievance Procedure

75-04-02-15	Property Management and Inventory
75-04-02-16	Accounting for Funds
75-04-02-17	Rate of Reimbursement
75-04-02-18	Case Management

75-04-02-01. PURCHASE OF SERVICE. The department may purchase services only from licensed providers in compliance with the requirements of this chapter.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 25-16-06, 50-06-16	NDCC 25-16-10

75-04-02-02. FISCAL REQUIREMENT. Providers shall submit, no less than annually, a full financial disclosure including, but not limited to:

1. A statement of assets and liabilities.

2. An operations statement.

3. A statement disclosing contract income and client wages.

4. A statement of client fees or payments and their distribution.

5. A statement showing the distribution of historical costs and a forecast of future costs.

6. A statement of the assets and liabilities of any related organizations.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 25-16-06, 50-06-16	NDCC 25-16-10

75-04-02-03. INSURANCE AND BOND REQUIREMENTS.

1. Providers shall secure and maintain insurance and bonds appropriate for the size of the programs including, but not limited to:

a. Blanket fidelity bond equal to not less than ten percent of the total operating costs of the program.

b. Property insurance covering all risks at replacement costs and costs of extra expense of loss of use.

c. Liability insurance covering bodily injury, property damage, personal injury, teacher liability, professional liability, and umbrella liability as applicable.

d. Automobile or vehicle insurance covering property damage, comprehensive, collision, uninsured motorist, bodily injury, and no fault.

2. The department shall determine the adequacy of the insurance coverages maintained by the applicant.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 25-16-06, 50-06-16	NDCC 25-16-10

75-04-02-04. DISCLOSURE OF OWNERSHIP AND INTEREST. Providers shall disclose to the department the identity and interest of any owners of the program and facilities of the provider including, but not limited to the requirements of section 75-04-01-20, and:

1. The names, addresses, and telephone numbers of the owners or board of directors of related organizations.

2. The amount of any payments made to any member or members of the governing board of the applicant or board of directors of a related organization exclusive of reimbursement for actual and reasonable personal expenses.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 25-16-06, 50-06-16	NDCC 25-16-10

75-04-02-05. PAYMENTS TO MEMBERS OF GOVERNING BOARDS RESTRICTED.

1. Payments to members of the governing board are prohibited except:

a. Payments for reasonable and actual expenses incurred in the conduct of applicant business.

b. Payments for a service or product unavailable from another source at a lower cost except that this subparagraph shall not be construed to permit the employment of a member of the governing board in lieu of any staff.

2. The restrictions of this section are applicable to the families of members of governing boards, including spouse and relatives within the third degree of kinship.

History: Effective April 1, 1982.

General Authority
NDCC 25-16-06,
50-06-16

Law Implemented
NDCC 25-16-10

75-04-02-06. PAYMENTS TO RELATED ORGANIZATIONS RESTRICTED.

1. Payments, to related organizations, by the provider shall be limited to the actual and reasonable cost of the service received or the product purchased.

2. Financial transactions between the provider and the related organization shall be documented by the provider. The terms of such transactions shall be those which would be obtained by a prudent buyer negotiating at arms length with a willing and knowledgeable seller.

3. Payments by the provider to members of the governing board of a related organization are subject to the restrictions of section 75-04-02-05.

History: Effective April 1, 1982.

General Authority
NDCC 25-16-06,
50-06-16

Law Implemented
NDCC 25-16-10

75-04-02-07. ARTICLES AND BYLAWS OF PROVIDER.

1. The articles, bylaws, or constitution of the provider shall identify developmentally disabled persons as eligible recipients of the provider's services and the provisions of those services as a purpose of the organization.

2. The articles, bylaws, or constitution of the provider shall authorize the governing board to enter into contracts, agreements, or any other arrangement to secure funds to provide services consistent with the provider's purpose.

3. The dissolution provisions of the articles of incorporation shall provide that the assets of the organization shall inure to the benefit of disabled persons and shall further provide that the ownership of property, equipment, and vehicles, purchased in whole or in part with state funds, shall be transferred subject to the approval of the department.

History: Effective April 1, 1982.

General Authority
NDCC 25-16-06,
50-06-16

Law Implemented
NDCC 25-16-10

75-04-02-08. PROVIDERS POLICIES AND PROCEDURES. The department may require a provider to submit a statement of policies and procedures, and evidence of the implementation of the statement, in order to facilitate a determination that the provider is in compliance with the rules of the department and with North Dakota Century Code section 25-01-01.

History: Effective April 1, 1982.

General Authority
NDCC 25-16-06,
50-06-16

Law Implemented
NDCC 25-16-10

75-04-02-09. RECORDING AND REPORTING ABUSE, NEGLECT, AND USE OF RESTRAINT.

1. Providers shall implement policies and procedures to assure that incidents of alleged abuse and neglect:

    a. Are reported to the governing board, administrator, parent, guardian, and advocate;

    b. Are thoroughly investigated, the findings reported to the governing board, parent, guardian, and advocate, and that the report and the action taken are recorded in writing and retained for three years; and

    c. Are immediately reported to the department.

2. Providers shall record and report to the governing board any and all incidents of restraint utilized to control or modify the behavior of developmentally disabled persons.

3. Incidents resulting in injury to the staff of the provider or a developmentally disabled person, requiring medical attention or hospitalization, shall be recorded and reported to the chairman of the governing board immediately, and as soon thereafter as possible to the parent, guardian, or advocate.

4. Incidents resulting in injury to the staff of the provider or a developmentally disabled person which require extended hospitalization, endanger life, or result in a permanent disability shall also be immediately reported to the department.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 25-01.2-18,	NDCC 25-01.2-18,
25-16-06,	25-16-10,
50-06-16	50-25.1-02

75-04-02-10. WAGES OF DEVELOPMENTALLY DISABLED PERSONS. Providers generating income from the direct labor of developmentally disabled persons and paying subminimum wages shall submit to the department a true, correct, and current copy of a certificate from the United States department of labor authorizing the payment of subminimum wages.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 25-01.2-18,	NDCC 25-01.2-06,
25-15-08,	25-15-08,
25-16-06,	25-16-10
50-06-16	

75-04-02-11. ACCESS TO PROVIDER PREMISES AND RECORDS. The provider shall authorize the department's entry to its facilities and access to its records, in the event the provider declares bankruptcy, transfers ownership, ceases operations, evicts residents of its facilities, or the contract with the department is terminated by either of the parties, for the purpose of facilitating the orderly transfer of clients to an alternative service or the maintenance of appropriate service until an orderly transfer can be made.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 25-01.2-18, 25-16-06, 50-06-16	NDCC 25-01.2-03, 25-16-10

75-04-02-12. LOBBYING AND POLITICAL ACTIVITY. Providers shall not utilize funds provided by or through the department to support lobbying, political candidates, or political activity.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 25-16-06, 50-06-16	NDCC 25-16-10

75-04-02-13. INDEMNIFICATION. Contracting providers may be required to indemnify and reimburse the department for any federal funds, the expenditure of which is disallowed as a consequence of the provider's failure to establish and maintain adequate records or the provider's failure to otherwise comply with written standards, rules and regulations, or statutes.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 25-16-06, 50-06-16	NDCC 25-16-10

75-04-02-14. GRIEVANCE PROCEDURE.

1. Providers shall submit to the department, for review and approval, a copy of a grievance procedure, approved by the governing board, which affords the developmentally disabled person, or that person's parents, guardian, or advocate, a fair hearing of any complaint.

2. The provider shall maintain a record of all hearings provided pursuant to its grievance procedure, and shall note therein the complaint, persons complaining, and the resolution of the grievance.

History: Effective April 1, 1982.

General Authority
NDCC 25-01.2-18,
25-16-06,
50-06-16

Law Implemented
NDCC 25-01.2-18,
25-16-10

75-04-02-15. PROPERTY MANAGEMENT AND INVENTORY.

1. The provider shall establish and maintain policies and procedures for the management and maintenance of property and equipment purchased or depreciated with state funds.

2. An inventory of property and equipment meeting the description of subsection 1 shall be separately maintained and identified by serial number and descriptions.

3. The provider shall make the records, and items identified in them, available for inspection by the department upon request to facilitate a determination of the adequacy with which the applicant is managing property and equipment.

History: Effective April 1, 1982.

General Authority
NDCC 25-16-06,
50-06-16

Law Implemented
NDCC 25-16-10

75-04-02-16. ACCOUNTING FOR FUNDS. The provider shall establish and maintain financial records consistent with generally accepted accounting principles and the financial reporting requirements of the department.

History: Effective April 1, 1982.

General Authority
NDCC 25-16-06,
50-06-16

Law Implemented
NDCC 25-16-10

75-04-02-17. RATE OF REIMBURSEMENT.

1. The provider shall be reimbursed for services to a developmentally disabled person on the basis of reasonable cost.

2. The rate of reimbursement shall be established pursuant to the applicable provisions of the manual for provider reimbursement of the department.

3. The applicant shall be subject to a financial audit pursuant to the provisions of the manual for provider reimbursement of the department.

4. The denial of access to financial records for audit purposes shall constitute a breach of a contract with the department.

History: Effective April 1, 1982.

General Authority
NDCC 25-16-06,
50-06-16

Law Implemented
NDCC 25-16-10

75-04-02-18. CASE MANAGEMENT. Providers shall establish policies and procedures regarding admission to their services and termination of services in conformance with the North Dakota case management system.

History: Effective April 1, 1982.

General Authority
NDCC 25-01.2-18,
25-16-06,
50-06-16

Law Implemented
NDCC 25-01.2-18,
25-16-10

AGENCY SYNOPSIS OF CHAPTER 75-04-03: The 1981 Legislature, in HB 1049, enacted laws which are now codified as Chapter 6-09.6 of the North Dakota Century Code. The bill created a revolving loan fund to be maintained in the Bank of North Dakota, but required that applications from that fund be made to the Department of Human Services and further required that the Department of Human Services consult with the State Department of Health in the process of approval of applications. Still further, the bill provided that the Department of Human Services might promulgate rules to carry out the provisions of the chapter.

The rules contained in proposed NDAC Chapter 75-04-03 are designed to implement the provisions of NDCC Chapter 6-09.6.

The proposed new chapter consists of eleven sections. The first section defines a number of terms used in the chapter. The second section identifies federal requirements which must be complied with by applicants, and the third section identifies the type of applicants which will be eligible for loans. The fourth through the tenth sections contain specific provisions relating to fire and safety concerns, location, and design requirements. The eleventh section permits the department to grant a variance from specific provisions of this chapter provided that the variance does not permit or authorize a danger to health or safety, or impede the normalization process of developmentally disabled persons.

CHAPTER 75-04-03
DEVELOPMENTAL DISABILITIES LOAN PROGRAM

Section
75-04-03-01 Definitions
75-04-03-02 State and Federal Requirements
75-04-03-03 Applicant Eligibility
75-04-03-04 Location of Residental Facility
75-04-03-05 Hazardous Areas
75-04-03-06 Fire Protection
75-04-03-07 Water Supply
75-04-03-08 Sewage Disposal
75-04-03-09 Residential Physical Plant
75-04-03-10 Day Service Facilities
75-04-03-11 Variance

75-04-03-01. DEFINITIONS. In this chapter, unless the context or subject matter requires otherwise:

1. "Applicant" means an entity organized pursuant to the provisions of 26 U.S.C. 501(c)(3) and under the laws of North Dakota, requesting state financial participation in the

development of intermediate care facilities for the developmentally disabled.

2. "Department" means the North Dakota department of human services.

3. "Day service facility" means a nonresidential building in which a variety of activities are designed to maximize the developmental potential of persons served.

4. "Facility" means a building to be constructed, reconstructed, or acquired to serve eligible developmentally disabled persons pursuant to 42 CFR 442, Subpart G.

History: Effective April 1, 1982.

General Authority
NDCC 6-09.6-02,
50-06-16

Law Implemented
NDCC 6-09.6

75-04-03-02. STATE AND FEDERAL REQUIREMENTS. Facilities proposed for acquisition, construction, or reconstruction financing shall comply with the requirements of 42 CFR 442, Subpart G, 29 U.S.C. 794, and this chapter.

History: Effective April 1, 1982.

General Authority
NDCC 6-09.6-02,
50-06-16

Law Implemented
NDCC 6-09.6

75-04-03-03. APPLICANT ELIGIBILITY. Application for participation in the developmental disabilities facility loan program will be considered by the department upon a showing that the applicant:

1. Proposes the acquisition, construction, or reconstruction of a facility located in a community identified by the department as a designated area of program development;

2. Is in compliance with the application and submission requirements of the Bank of North Dakota;

3. Is in compliance with the certificate of need requirements of the department of health;

4. Proposes a site approved by local zoning authorities; and

5. Proposes a facility for acquisition supported by an appraisal prepared by a certified appraiser.

History: Effective April 1, 1982.

General Authority
NDCC 6-09.6-02,
50-06-16

Law Implemented
NDCC 6-09.6

75-04-03-04. LOCATION OF RESIDENTIAL FACILITY. Facilities shall be located in residential neighborhoods reasonably accessible to shops, commercial facilities, and other community services. Facilities shall be located not less than six hundred feet [182.88 meters] from existing facilities or institutions licensed by the department, schools for the disabled, workshops, a residential complex for the disabled, nursing homes, or other institutional facilities.

History: Effective April 1, 1982.

General Authority
NDCC 6-09.6-02,
50-06-16

Law Implemented
NDCC 6-09.6

75-04-03-05. HAZARDOUS AREAS.

1. Facilities shall be located at least three hundred feet [91.44 meters] from a hazardous area such as a bulk fuel or chemical storage area, anhydrous ammonia facility, or other fire hazard, or sources of noxious or odiferous emissions.

2. Facilities shall not be located in areas subject to adverse environmental conditions such as mudslides, harmful air pollution, smoke or dust, sewage hazards, rodent or vermin infestations, excessive noise, vibration, or vehicular traffic.

3. The facility shall not be located in an area within the one hundred year base flood elevations unless:

   a. The facility is covered by flood insurance as required by 42 U.S.C. 4101 et seq.; or

   b. The finished first floor elevation is above the one hundred year base flood elevation and the facility is free from significant adverse effects of the velocity of moving water or by wave impact during a one hundred year flood.

4. Residential facilities shall not be located within six hundred feet [182.88 meters] of an active railway unless it is demonstrated to the satisfaction of the department, that the extent of resident access, noise level, vibration, and exposure to hazard is minimal in relation to the functional competency of the residents.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 6-09.6-02, 50-06-16	NDCC 6-09.6

75-04-03-06. FIRE PROTECTION. Facilities shall be located in areas served by an approved fire protection organization.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 6-09.6-02, 50-06-16	NDCC 6-09.6

75-04-03-07. WATER SUPPLY.

1. Residential facilities shall be located in areas where approved water supplies are available. Approved public or municipal water supplies shall be used where available.

2. In areas where an approved public or municipal water supply is not available, a private water supply, approved by the department of health, shall be provided for each facility.

3. Water samples shall be submitted, in a manner prescribed by the department of health, at the earliest possible date prior to occupancy and be subjected to a chemical and bacteriological analysis to determine acceptability.

4. Water samples from a private water supply system shall be submitted, in a manner prescribed by the department of health, every six months and be subjected to a bacteriological analysis to determine acceptability.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 6-09.6-02, 50-06-16	NDCC 6-09.6

75-04-03-08. SEWAGE DISPOSAL.

1. Facilities shall be located in areas where approved sewage disposal systems are available, and approved public or municipal sewage disposal systems shall be used where available.

2. If a public sewage system is not available, sewage and liquid wastes shall be collected and disposed of in private disposal facilities, the construction, maintenance, and operation of which must be approved by the department of health. Proposed sewage disposal systems or additions thereto must be approved by the department of health prior to their construction.

History: Effective April 1, 1982.

General Authority
NDCC 6-09.6-02,
50-06-16

Law Implemented
NDCC 6-09.6

75-04-03-09. RESIDENTIAL PHYSICAL PLANT.

1. Residential facilities providing developmental training shall be constructed to accommodate no more than fifteen eligible intermediate care facility for the developmentally disabled residents. However, the number of intermediate care facility for the developmentally disabled residents to be accommodated in the facility shall be subject to approval by the department.

2. At least one full bathroom shall be available for every four residents.

3. The facility shall require no more than two residents to share a bedroom other than on a temporary basis.

4. Single occupancy bedrooms shall consist of no less than one hundred square feet [9.29 square meters] exclusive of bathroom and closet space.

5. Double occupancy bedrooms shall consist of no less than eighty square feet [7.43 square meters] per occupant, exclusive of closet and bathroom space.

6. Applicants designing facilities pursuant to the provisions of section 5 of chapter 11 of the Life Safety Code, 1967 Edition,

shall secure, from the department of health, the waiver required by 42 CFR 442.508 prior to the release of construction plans and specifications for competitive bids.

7. Facilities designed for the purpose of accommodating ambulatory residents capable of following directions and taking appropriate action for self-preservation under emergency conditions shall nonetheless be accessible to wheelchair-bound visitors. At least one bathroom shall be accessible and usable by wheelchair-bound visitors and employees. Applicants designing such facilities shall secure from the department of health, waivers pursuant to 42 CFR 442.511 prior to the release of construction plans and specifications for competitive bids.

8. Facilities shall provide space to accommodate employees of the applicant, required as a condition of employment to be onsite more than sixteen consecutive hours. Such space shall be limited to a living room, efficiency kitchen, one full bathroom, a double occupancy bedroom, closets, and multipurpose space usable for sleeping to accommodate relief staff.

9. Facilities designed with a total square footage in excess of three hundred fifty square feet [32.52 square meters] per occupant inclusive of space for two employees of the applicant, shall not be approved by the department unless the applicant can demonstrate to the satisfaction of the department that the pro rata costs of construction, land, and annual operations can be paid without state or federal financial participation.

10. Facilities shall be designed to accommodate the residents privacy, with bedrooms and bathrooms designed to provide separation of male and female residents.

11. Bedrooms shall be located on outside walls and separated by walls extending from floor to ceiling.

12. Bedrooms shall be at or above grade level.

13. Facilities shall be self-contained with dining, kitchen, family, living, and recreation, utility, and bedrooms an integral part of a single normalizing structure.

14. Facilities shall provide a tempering valve, located to preclude resident access, to control the temperature of hot water supplied to plumbing fixtures. The valve shall have the ability to control the temperature of hot water to one hundred ten degrees Fahrenheit [47.22 degrees Celsius], and to control the temperature to one hundred thirty to one hundred forty degrees Fahrenheit [54.44 to 60 degrees Celsius] during scheduled resident training periods. Hot water supplied to

clothes and dishwashers shall be one hundred thirty-five to one hundred forty degrees Fahrenheit [57.22 to 60 degrees Celsius].

15. Facilities shall be equipped with a dishwasher with a sanitizing cycle which applies one hundred eighty degrees Fahrenheit [82.22 degrees Celsius] water to utensils for at least ten seconds or an equivalent system approved by the department of health.

16. Facilities shall be designed to provide sufficient storage, in addition to closet space, to accommodate the storage of out-of-season clothing, outdoor furniture, garden tools, lawnmower, and other equipment.

17. Facilities shall be designed to provide sufficient laundry space to include, in addition to a washer and a dryer, storage for laundry supplies, accommodation for ironing, and counter space for folding clothing and linens.

18. Facility kitchens shall contain a two-compartment sink of sufficient depth to immerse larger food service utensils.

19. Facility kitchens shall provide enclosed storage sufficient to contain all food service utensils, pots and pans, and dinnerware.

20. Facility kitchens shall be sufficient in size to permit the participation of residents, as well as staff, in food preparation.

21. Facilities shall be equipped with emergency lighting capable of sustained battery operation.

History: Effective April 1, 1982.

General Authority
NDCC 6-09.6-02,
50-06-16

Law Implemented
NDCC 6-09.6

75-04-03-10. DAY SERVICE FACILITIES. Facilities providing day services to eligible intermediate care facility for the developmentally disabled residents shall be constructed, reconstructed, or acquired pursuant to the provisions of North Dakota Century Code chapter 6-09.5 provided that they meet the requirements of chapter 9 of the Life Safety Code, 1967 Edition.

History: Effective April 1, 1982.

General Authority

Law Implemented

NDCC 6-09.6-02, 50-06-16	NDCC 6-09.6

75-04-03-11. VARIANCE. Upon written application, and good cause shown, the department may grant a variance from the provisions of this chapter upon such conditions as the department may prescribe, except no variance may permit or authorize a danger to health or safety, or impede the normalization process.

History: Effective April 1, 1982.

General Authority	Law Implemented
NDCC 6-09.6-02, 50-06-16	NDCC 6-09.6

JULY 1982

75-04-04-05. ELIGIBILITY FOR FAMILY SUBSIDY PROGRAM.

1. Parents applying for financial assistance under this program must:

   a. Reside within the state of North Dakota;

   b. Desire to maintain within their home, or return to their home from an institutional setting, their developmentally disabled child; and

   c. Provide the agency with the necessary medical, psychological, or educational evaluations relating to their child for agency determination of eligibility.

2. Individuals on whose behalf a subsidy will be provided must:

   a. Be developmentally disabled; and

   b. Be twenty-one years of age or under;-and

   c.--Not-be-receiving-supplemental-security-income-benefits.

3. The maximum levels of income and resources which may be earned and owned by the family unit will be established by the agency. Family resources will be evaluated in the manner provided in subdivisions c, d, e, f, g, h, i, and j of subsection 2 of section 75-02-02-07.

History: Effective January 1, 1980; amended effective December 1, 1981; amended effective July 1, 1982.

General Authority Law Implemented

S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

S.L. 1979,
Ch. 10, § 4

75-04-04-08. SUBSIDY PAYMENTS TO ELIGIBLE PARENTS. Two types of financial assistance are available through the family subsidy program:

1. Fifteen dollars per week will be paid to the parents for the basic care of their developmentally disabled child. Families receiving supplemental security income benefits for their child will not be eligible for the basic care supplement.

   a. Payments will be issued on a monthly basis.

   b. Payments will begin the week in which the director of the appropriate institution certifies the child into the program.

   c. The basic care subsidy will be available even if the family chooses not to participate in the services subsidy.

2. An amount not to exceed thirty-five dollars per week will be paid to the family for services or treatment which the child receives in accordance with the individual habilitation plan.

   a. Service costs reimbursed monthly through the services subsidy include, but are not limited to, the following:

      (1) Purchase of special equipment.

      (2) Specialized therapy, e.g., speech, occupational or physical therapy.

      (3) Special diets.

      (4) Medical or dental care not covered under the family's health insurance or a federally funded program such as medical assistance or crippled children's services.

      (5) Home health care.

      (6) Counseling for the child or family, including behavior management.

      (7) Respite care (if used in conjunction with parental employment, only extraordinary costs may be reimbursed).

      (8) Special clothing.

(9) Educational programs not provided without charge by the public schools.

(10) Child care facility.

(11) Recreational services.

(12) Related transportation.

(13) Housing rehabilitation.

(14) Excess cost of health insurance.

b. Payment will begin following the signing of a habilitation contract between the parents and the agency. Payment up to an average of thirty-five dollars per week will be based upon the case manager's receipt of a written statement from the parent itemizing the expenditures or obligations in carrying out the individual habilitation plan incurred following execution of the contract.

History: Effective January 1, 1980; amended effective December 1, 1981; amended effective July 1, 1982.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

TITLE 81

TAX COMMISSIONER

JUNE 1982

STAFF COMMENT: Article 81-09 contains all new material but is not underscored so as to improve readability.

ARTICLE 81-09

OIL AND GAS GROSS PRODUCTION AND OIL EXTRACTION TAXES

Chapter	
81-09-01	General Considerations
81-09-02	Oil and Gas Gross Production Tax
81-09-03	Oil Extraction Tax

CHAPTER 81-09-01
GENERAL CONSIDERATIONS

Section	
81-09-01-01	Source Note Not Part of Rule
81-09-01-02	Headnote, Cross-Reference, and Source Note Not Part of Rule

81-09-01-01. SOURCE NOTE NOT PART OF RULE. No source note shall be deemed a promulgation by the commissioner as to the purpose, scope, or effect of any section of this article to which such source note

relates. For this purpose "source note" includes any citation to "general authority" or "law implemented" that follows any section of this article.

History: Effective July 1, 1982.

General Authority	Law Implemented
NDCC 57-51-21	NDCC 57-51, 57-51.1

81-09-01-02. HEADNOTE, CROSS-REFERENCE, AND SOURCE NOTE NOT PART OF RULE. No headnote, cross-reference, or source note, whether designating an entire article, chapter, or section or any part thereof of this article shall constitute any part of a rule.

History: Effective July 1, 1982.

General Authority	Law Implemented
NDCC 57-51-21	NDCC 57-51, 57-51.1

CHAPTER 81-09-02
OIL AND GAS GROSS PRODUCTION TAX

Section	
81-09-02-01	Definitions
81-09-02-02	Procedure for Review of Commissioner's Determination of Tax Due

81-09-02-01. DEFINITIONS. Unless the context otherwise requires the following definitions apply:

1. "Commissioner" means the tax commissioner of the state of North Dakota.

2. "Return" means any statement, report, or return required by North Dakota Century Code chapter 57-51 to be filed with the commissioner.

History: Effective July 1, 1982.

General Authority	Law Implemented
NDCC 57-51-21	NDCC 57-51

81-09-02-02. PROCEDURE FOR REVIEW OF COMMISSIONER'S DETERMINATION OF TAX DUE. The commissioner shall audit the returns filed pursuant to North Dakota Century Code chapter 57-51. If any tax is found due, the commissioner shall notify the taxpayer of the amount of tax due and the reason for the increase. If any person fails or refuses to file a return and pay the tax, the commissioner shall determine the amount of tax due from the best information available and shall notify that person of the amount determined to be due.

Such determination of tax due shall fix the tax finally and irrevocably unless the person against whom the determination is made shall within thirty days after the date of notice of the determination apply to the commissioner pursuant to North Dakota Century Code section 57-01-11 for a hearing.

At such hearing evidence may be offered to support the amount of tax determined by the commissioner to be due or to prove that such tax is not due. The notice of hearing, the hearing procedure, and any appeal from the decision of the commissioner shall be governed by North Dakota Century Code chapter 28-32 as provided for in North Dakota Century Code section 57-01-11.

History: Effective July 1, 1982.

General Authority	Law Implemented
NDCC 57-51-21	NDCC 57-01-11, 57-51-09

CHAPTER 81-09-03
OIL EXTRACTION TAX

Section
81-09-03-01 Application of Oil and Gas Gross Production Tax Rules to the Oil Extraction Tax

81-09-03-01. APPLICATION OF OIL AND GAS GROSS PRODUCTION TAX RULES TO THE OIL EXTRACTION TAX. All rules and regulations adopted in chapter 81-09-02 for the administration of the oil and gas gross production tax law, not in conflict with the provisions of the oil extraction tax law, shall apply to and govern the administration of the oil extraction tax law.

History: Effective July 1, 1982.

General Authority
NDCC 57-51-21

Law Implemented
NDCC 57-51.1-05

TITLE 84

Treasurer, State

JUNE 1982

STAFF COMMENT: Article 84-03 contains all new material but is not underscored so as to improve readability.

ARTICLE 84-03

TOWNSHIP ROAD FUND DISTRIBUTION

Chapter
84-03-01 Distribution to Townships

CHAPTER 84-03-01
DISTRIBUTION TO TOWNSHIPS

Section
84-03-01-01 Township Road Defined

84-03-01-01. TOWNSHIP ROAD DEFINED. A township road; for purposes of the administration of North Dakota Century Code section 57-50-01, is a public road established pursuant to North Dakota Century Code chapter 24-07 which is an improved road, constructed, maintained, graded, and drained by the township, or county in the case of an unorganized township. A township road includes a street in an unincorporated townsite and does not necessarily have to be surfaced. A sodded road is not a township road. In order for a section line to be a township road it must be graded and drained and be an improved maintained road. A township road is a public road which is not

designated as part of a county, state, or federal aid road system and is not located in an incorporated city.

History: Effective June 1, 1982.

General Authority
NDCC 57-50-01

Law Implemented
NDCC 57-50-01