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NORTH DAKOTA ADMINISTRATIVE CODE

Supplements 63 through 67

March 1984
April 1984
May 1984
June 1984
July 1984

Prepared by the Legislative Council staff
for the
Administrative Rules Committee

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TITLE 4
Management and Budget, Office of

APRIL 1984

STAFF COMMENT: Chapter 4-04-01 contains all new material but is not underscored so as to improve readability.

ARTICLE 4-04

PURCHASING DIVISION - SURPLUS PROPERTY

Chapter
4-04-01 Surplus Property Plan

CHAPTER 4-04-01
SURPLUS PROPERTY PLAN

Section	
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4-04-01-05	Designation of State Agency
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4-04-01-01. State plan objective. This article sets forth the operating procedure and practices to be carried out by the office of management and budget, purchasing division, surplus property, in effecting fair and equitable distribution of federal surplus personal property to public agencies, nonprofit, tax-exempt, educational and health institutions, and any nonprofit tax-exempt activity funded, in part, under the Older Americans Act of 1965, as amended, which are determined to be eligible to receive such personal property under section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended.

Operating procedures and practices described in this article are in accordance with the regulations as set forth in Federal Property Management Regulation 101-44 [41 CFR 101-44] as revised to conform to the provisions of Public Law 94-519.

History: Effective April 1, 1984.
General Authority: NDCC 54-44-04.5
Law Implemented: NDCC 54-44-04.5

4-04-01-02. Definitions. For the purpose of this article the following definitions apply:

1. "Acquisition cost" means the original cost to the federal government.
2. "Cannibalization" means dismantling or stripping property of equipment parts for use in repairing or rebuilding other property equipment.
3. "Director" means director of surplus property.
4. "Division" means office of management and budget, purchasing division, surplus property.
5. "Donee" means eligible recipient of personal federal surplus property.
6. "Secondary utilization" means use of property or equipment in a manner other than intended, i.e., using special instrument cases to store or transport emergency equipment or supplies.

History: Effective April 1, 1984.
General Authority: NDCC 54-44-04.5
Law Implemented: NDCC 54-44-04.5

4-04-01-03. State statutes. Authority to accept, receive, warehouse, and distribute federal surplus property in accordance with the Federal Property and Administrative Services Act of 1949, as amended, is vested in the office of management and budget.

History: Effective April 1, 1984.
General Authority: NDCC 54-44-04.5
Law Implemented: NDCC 54-44-04.5

4-04-01-04. Standards for a merit system of personnel administration. The division shall administer the state plan in conformity with the Standards for a Merit System of Personnel Administration, 45 CFR part 70; laws, rules, regulations, and policy statements effectuating methods of personnel administration as provided by the statutes and rules of the North Dakota merit system council (North Dakota Century Code chapter 54-42 and North Dakota Administrative Code article 4-02); the statutes, rules, and policies of the North Dakota state personnel board and central personnel system (North Dakota Century Code chapter 54-44.3 and North Dakota Administrative Code article 4-02 and policies of the central personnel division).

History: Effective April 1, 1984.
General Authority: NDCC 54-44-04.5
Law Implemented: NDCC 54-44-04.5

4-04-01-05. Designation of state agency. The division is the stage agency which administers the federal surplus property program in conformance with provisions of the Federal Property and Administrative Services Act of 1949, as amended.

History: Effective April 1, 1984.
General Authority: NDCC 54-44-04.5
Law Implemented: NDCC 54-44-04.5

4-04-01-06. Eligibility. Eligibility determinations will be made in accordance with Federal Property Management Regulation 101-44.207. The donee shall submit an application for eligibility which identifies the applicant and establishes status as a public agency, a nonprofit education or public health organization or institution, or a nonprofit tax-exempt activity funded, in part, under the Older Americans Act of 1965, as amended. If nonprofit, evidence of tax-exempt status under section 501(c) of the Internal Revenue Code of 1954 must be included.

The applicant shall provide details concerning the programs, a description of each program and facilities as well as evidence of any necessary regulatory approval, accreditation, or licensing for operation. The applicant shall also provide a copy of a resolution or authorization form which authorizes the applicant to participate in the surplus property program and which has been duly adopted by the governing board of the donee agency. The chief executive official of a

state department or agency which is not governed by a board may execute the resolution or authorization.

The applicant shall complete an authorization card which contains the name of the administrative official named in the governing board resolution and name of any other donee personnel authorized to select property and sign distribution documents. The completed authorization card must be kept on file at the distribution center.

Name on the authorization card will be compared with the name on the distribution document to determine if the donee is eligible to select property and sign for property.

The applicant shall complete a civil rights assurance form which complies with title VI and the federal regulations promulgated under title VI of the Civil Rights Act of 1964, section 606 of the Federal Property and Administrative Services Act of 1949, as amended, and section 504 of the Rehabilitation Act of 1973, as amended, and section 303 of the Age Discrimination Act of 1975.

An eligibility file will be maintained for each donee and the division shall update a donee's eligibility once every three years, to ensure continuing eligibility. When an eligible donee ceases to operate or when it loses its license, accreditation, or approval or otherwise fails to maintain its eligibility status, the division shall terminate its distribution of property to the donee.

Conditional eligibility may be granted to a recently organized activity which meets all requirements except that of being in full operation. Accreditation, approval, or licensing may also be waived if evidence indicates such accrediting, approving, or licensing will be granted within sixty days after the activity is in operation.

History: Effective April 1, 1984.

General Authority: NDCC 54-44-04.5

Law Implemented: NDCC 54-44-04.5

4-04-01-07. Fair and equitable distribution. The division shall make a fair and equitable distribution of donable property based on donee's relative needs, relative resources, and ability to utilize property. Factors which must be considered are:

1. **Relative needs.** In considering request of potential recipients, the criteria for determining the relative need are:
 - a. Size and type of program conducted.
 - b. Contemplated use and frequency of use.
 - c. Economic condition of agency, activity, or institution.

- d. Critical or urgent need.
 - e. Geographical location (urban, suburban, or rural).
 - f. Interest and expression of need on the part of the donee in the property available.
2. **Relative resources.** In considering request of potential recipients, the criteria for determining relative resources are:
- a. Funding source and availability (grants, donations, taxes, etc.).
 - b. Equipment availability.
3. **Ability to utilize.** In considering request of potential recipients, the criteria for evaluating ability to utilize property will be:
- a. Length of time in contemplated usage.
 - b. When item can be put in use.
 - c. Availability of funds to repair or maintain property in use.
 - d. Ability of donee to select and remove property from the distribution center or federal activity on a timely basis.
4. **Type and quantity of property received by the donee to date.** Donees may file requests with the division for vehicles and major items of machinery and equipment. Where special needs exist, a letter of justification may accompany the request. The request list and letter of justification will be reviewed by the director and staff when allocable items are ready for distribution. If two or more donees submit justifications which indicate equal relative needs, resources and the ability to utilize, the item will be allocated to the donee whose request bears the earliest postmark.

The division shall operate a distribution center to serve eligible donees. Miscellaneous items will be available on a supermarket plan. A quantity limitation will be established on nonallocable common-use items. Bulletins listing selected items currently in stock will be mailed to donees on a regular basis.

Donees which suffer or experience a local disaster or loss of property due to fire, flood, tornado, etc., will be given a thirty-day temporary priority for all requested items of property. Special efforts will be made to locate and distribute needed property to them.

A public or nonprofit agency that wishes to perform direct screening for needed property shall make a request to the director. The screening is at the expense of the donee. The request should include qualifications and experience of the screener, the holding agencies to be visited, the dates of screening, and a listing of the items needed. Based upon personal knowledge of property available and the holding agencies involved, the director may approve or disapprove the request. If approved, the director shall forward a request for a donee identification card to the regional general services administration office, along with the list of holding agencies to be covered.

Insofar as practical, the division will request property items at holding agencies for which a donee screener has a specific request. A donee may pick up property directly from the holding agency or property may be shipped directly to the donee at the donee's expense.

To ensure fair and equitable distribution, a record will be maintained listing donee institutions which have received vehicles and major items of equipment.

History: Effective April 1, 1984.
General Authority: NDCC 54-44-04.5
Law Implemented: NDCC 54-44-04.5

4-04-01-08. Terms and conditions on donable property. All donated surplus property is subject to the terms, conditions, reservations, and restrictions cited on the face and reverse side of the Distribution Document, the Noncombat-Type Aircraft Conditional Transfer Document, the Combat-Type Aircraft Conditional Transfer Document, and the Vessel Conditional Transfer Document. The donee personnel authorized to select property shall certify in writing, to the terms, conditions, reservations, and restrictions contained in the Distribution Document, the Noncombat-Type Aircraft Conditional Transfer Document or the Combat-Type Aircraft Conditional Transfer Document when the applicable document is signed.

The division shall impose on the donation of a surplus item or items, regardless of unit acquisition cost, such conditions involving special handling or use limitations as general services administration may determine necessary because of the characteristics of the property.

The division may amend or grant releases during the period of restriction from the terms, conditions, reservations, or restrictions it has imposed on donated property when conditions warrant such action. The division shall review the conditions and reasons and will make the decision in writing. The following statement of the standards will be used in amending or granting these releases during the period of restriction.

- 1. Secondary utilization or cannibalization.**

- a. When secondary utilization or cannibalization is requested it must be approved by the division.
 - b. Secondary utilization or cannibalization may not be authorized when items have greater use potential in their existing form.
 - c. When property is requested by the donee for secondary utilization or cannibalization it must be indicated on the face of the distribution document.
 - d. All property that is approved for the purpose of secondary use or cannibalization is subject to the terms, conditions, reservations, and restrictions as required in this section.
 - e. Any property requested by the donee for secondary utilization or cannibalization within one year of the receipt must be approved by the division.
 - f. Cannibalization may continue until the requirement for support of parts resulting from cannibalization no longer exists, e.g., as parts are needed they may be removed.
 - g. When cannibalization actions are completed prior to the end of the applicable period of restriction and unneeded residue remains, the donee may:
 - (1) Retain the residue for use in other eligible programs;
 - (2) Dispose of residue when the estimated fair market value for all the residue is five hundred dollars or less if the proceeds are applied to the program area for which the item was originally acquired. Residue with an estimated fair market value over five hundred dollars must be reported by the donee to the division. The division may redonate or if unable to donate the division shall report such residue to the general services administration for disposal instructions; or
 - (3) The division may authorize the donee to return all unneeded residue to the division.
2. **Trade-in of an item on a similar replacement.** An item of donated personal property may be traded in or used as whole or part payment for another like item of property provided:
- a. The item being traded in is not, when the request is made, in compliance status for violation of section 4-04-01-08;

- b. The item being traded in has been used by the donee for eligible purposes for at least twelve months from the date of being placed in use, and it has been demonstrated that the trade-in will result in increased utilization value to the donee;
 - c. The trade-in is on a one-for-one basis only, i.e., one donated item being traded for one like item having similar use potential;
 - d. The item being acquired has an estimated market value at least equal to the estimated market value of the item being traded in; and
 - e. The item acquired is made subject to the period of restriction remaining on the item traded in.
3. **Abrogation.** Except in cases involving the failure to use or the misuse of donated property, abrogation of restrictions imposed by the division in the transfer instrument may be authorized upon payment to the state agency of an amount representing the fair market value at the time of donation less a credit for the time the property was used for the purpose for which donated, during the period of restriction, and provided that the division determines that such action will not result in a windfall revenue to the donee, and provided further that the property has been used for at least twelve months from the date of being placed in use.
4. **Revision of the acquisition cost.** The acquisition cost of an item may be revised provided that the request therefor is made in writing by the donee, and it is determined by the division that the listed acquisition cost is unrealistic in view of its research and development costs, its incompleteness due to missing parts, or its generally deteriorated condition.
5. **Destruction and abandonment.** A donated item of personal property may be destroyed or abandoned by a donee when it is determined that the item has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. The determination shall be based on a finding made in writing by the state agency and the division shall prescribe the means and methods whereby the property shall be destroyed or abandoned.
6. **Enforcement of compliance.** The enforcement of the terms, conditions, reservations, and restrictions imposed by the division of donated property, or the remedy of breaches of such terms and conditions, may be satisfied:
- a. When payment is made to the division of any and all fair rental values due and payable for any unauthorized use of donated property;

- b. When payment is made to the division of either the fair market value or gross proceeds of sale, whichever is in the best interest of the state, for the unauthorized disposal or destruction of donated property; or
 - c. When donated property is recovered by the division. Custody accountability and distribution of such reverted property are the responsibilities of the division.
7. **Reduction in the period of restriction.** Provided an item of donated property is not in compliance status, a reduction in the period of restriction may be authorized when a revised standard covering the period of restriction is promulgated by the division.
8. **Limitations.** These provisions are not applicable to:
- a. Donated military-type aircraft, or other items of property on which general services administration has imposed special handling condition or use limitations.
 - b. Property which was not placed in use for the purposes for which it was donated within one year of donation or ceases to be used by the donee for those purposes within one year being placed in use, except with respect to secondary use or cannibalization as provided in FPMR 101-44.208(h).

History: Effective April 1, 1984.
General Authority: NDCC 54-44-04.5
Law Implemented: NDCC 54-44-04.5

4-04-01-09. Compliance and utilization. The division shall make compliance reviews and utilization surveys to ensure that donated property is being used by the donee for the purpose it was acquired and utilized in accordance with the regulations, certifications, and agreements indicated on the reverse side of a distribution document.

The division will review a minimum of five percent of all eligible active donees each fiscal year. A review shall be made by an onsite visit or by a review form which will be sent to a donee thirty days preceding expiration of utilization. The review must be certified by the donee and returned to the division. The review must include all passenger vehicles and all items with an acquisition cost of three thousand dollars or more which have been transferred during the preceding year. Any other items transferred during the preceding year may be reviewed at the discretion of the director.

A report will be prepared indicating the donee, property reviewed, comments and any corrective action taken. All reports will be placed in a donee review file.

Two property utilization survey forms will be mailed to a donee during the eighteen-month restricted period which applies to passenger vehicles and all items having an acquisition cost of three thousand dollars or more. The property utilization survey form solicits information concerning the date the property was placed in use and how the property is being utilized. The first property utilization survey form will be mailed approximately three months after issuance of the item and the second property utilization survey form approximately fifteen months after the item was placed in use. Additional property utilization survey forms will be required if an item is not placed in use. The second property utilization survey form will be waived if an onsite review is made during the last six months of the restricted period.

All review and survey forms must be returned to the division fifteen days after receipt of the form. Failure to respond to the reviews and survey forms will be a cause to terminate issuing of property. If the situation cannot be resolved, the division shall request that the property in question be returned to the distribution center.

In cases where alleged fraud or misuse of donated property is indicated, the director shall investigate the situation. If alleged fraud is suspected, the division shall notify the federal bureau of investigation, the appropriate regional office of the general services administration and the state attorney general who then can notify the state crime bureau.

The division staff will emphasize utilization regulations at the time property is transferred, at meetings, when issuing bulletins, notices, and letters, and when conducting utilization reviews.

History: Effective April 1, 1984.

General Authority: NDCC 54-44-04.5

Law Implemented: NDCC 54-44-04.5

4-04-01-10. Nonutilized donable property. Property in the possession of the division which cannot be utilized by the donees of the state will be disposed of by one of the following methods:

1. Subject to the disapproval by the general services administration within thirty days after notice to the general services administration, the property shall be made available for transfer to another state agency for distribution.
2. If the property is considered to be nondonable and the cost of continued care would exceed the estimated proceeds from sale, disposal may be accomplished through destruction or abandonment. A list of property destroyed or abandoned will be made a matter of record.

3. Property not included in subsection 1 or 2 will be disposed of under such terms and conditions and in such a manner as may be prescribed by the general services administration pursuant to the provisions of Federal Property Management Regulation 101-44.205.

History: Effective April 1, 1984.
General Authority: NDCC 54-44-04.5
Law Implemented: NDCC 54-44-04.5

4-04-01-11. Return of donated property. All items of property transferred to a donee shall be placed in use for the purposes for which donated within one year of receipt. In the event the property is not so placed in use, or ceases to be used by the donee for such purposes within one year of being placed in use the donee shall immediately notify the division and, at the donee's expense, return such property to the division, or otherwise make the property available for transfer or other disposal by the division, provided the property is still usable as determined by the division.

All property is received on an "as is", "where is" basis, without warranty of any kind. Property acquired must be returned within thirty days of acquisition to qualify for a credit or a refund of the service charges.

History: Effective April 1, 1984.
General Authority: NDCC 54-44-04.5
Law Implemented: NDCC 54-44-04.5

4-04-01-12. Financing and service charges.

1. The direct and reasonable indirect costs of the operation of the division will be financed by the collection of service charges assessed on property donated pursuant to subsection 2, sales or compliance proceeds to which the division is entitled under 41 CFR 101 subpart 101-44.2, and interest on investments. Funds must be deposited with the state treasurer in a fund known as the surplus property special fund. The director may request the state treasurer to invest funds deposited which are not needed for cash flow. Disbursements from the fund must be authorized by the director and submitted to the office of management and budget for approval and payment. If a reserve in the special fund exceeds an amount equal to the previous year's operating expenses, service charges will be lowered or refunds will be made to active previous year's donees prorated on the basis of each donee's amount of previous year business until the reserve is reduced to the previous year's operating expenses.
2. Service charges will be fair and equitable for each item donated and shall be reasonable with respect to the value and

condition of the item. The factors which will be considered in determining service charges are: expenses incurred obtaining the property, agency overhead expenses, and expenses incurred in utilization surveillance. The following special or extraordinary costs will be added to the service charges when they occur:

- a. **Rehabilitation of property** - costs for rehabilitating property.
- b. **Long-haul property** - commercial transportation charges.
- c. **Out-of-state pick up and warehouse charges** - cost for property picked up and stored by other state agencies.
- d. **Screening** - extraordinary cost incurred in screening property.
- e. **Special handling** - charges for dismantling, packing, crating, shipping, delivery, and other extraordinary charges.

The service charges will vary from a minimum of one percent to a maximum of fifty percent of the original federal acquisition cost. When the original federal acquisition cost is obviously erroneous or cannot be determined, the fair market value will be used. As a general guide based on related expense factor with the exception of special or extraordinary cost the following schedule will be used to determine service charges.

<u>Percent</u>	<u>Original Acquisition Cost</u>
1-50	\$.01 - \$ 500.00
1-45	501.00 - 2,500.00
1-35	2,501.00 - 10,000.00
1-30	10,001.00 - 25,000.00
1-25	above 25,000.00

History: Effective April 1, 1984.
General Authority: NDCC 54-44-04.5
Law Implemented: NDCC 54-44-04.5

4-04-01-13. Inventory control and accounting.

- 1. A perpetual inventory system will be maintained for all federal surplus property received and transferred by the division. An inventory of property on hand will be taken at the close of each fiscal year. Discrepancies will be investigated by the director and then submitted to general services administration for approval.

2. The division must maintain a complete double entry set of books covering all financial transactions. The system must include a chart of accounts, a combined cash journal, a general ledger with accounts for all assets, liabilities, surplus income, and expense, and a subsidiary accounts receivable ledger. A profit and loss statement will be made at the close of each fiscal year.

History: Effective April 1, 1984.
General Authority: NDCC 54-44-04.5
Law Implemented: NDCC 54-44-04.5

4-04-01-14. Records. All official records of the division will be retained for a minimum of three years, except for records of vessels and aircraft which will be retained for one year after expiration of the period of restriction. Records on items in compliance status will be retained for one year following completion of the compliance action. Records on combat aircraft will be retained for one year after return of the aircraft to the federal government for disposal.

History: Effective April 1, 1984.
General Authority: NDCC 54-44-04.5
Law Implemented: NDCC 54-44-04.5

4-04-01-15. Audit. The state auditor shall audit the division every two years in accordance with generally accepted audit standards. The audit must include a review of division compliance with the provisions of this article and the requirements of Federal Property Management Regulation 101-44-202(12). A copy of the audit report will be furnished to the appropriate general services administration regional office along with a resume of corrective actions taken.

History: Effective April 1, 1984.
General Authority: NDCC 54-44-04.5
Law Implemented: NDCC 54-44-04.5

4-04-01-16. Forms.

1. Application for Eligibility.
2. Donee Authorization, Certification; Authorization Card.
3. Agreement.
4. Civil Rights Assurance.
5. Distribution Document.
6. Property Utilization Survey.

7. Noncombat-Type Conditional Transfer Document and Vessel Conditional Transfer Document.

If not included, forms mentioned in this article may be obtained from the division.

History: Effective April 1, 1984.
General Authority: NDCC 54-44-04.5
Law Implemented: NDCC 54-44-04.5

4-04-01-17. Cooperative agreements. The division may enter into such cooperative agreements with federal agencies and other state agencies for surplus property as may be necessary to further the surplus property program. The cooperative agreements may include agreements to use donable property in the operations of the division, agreements to use federal facilities, interstate cooperative agreements, and overseas property agreements.

In accordance with Federal Property Management Regulation 101-44.206(c), title for property withdrawn under the cooperative agreement for state agency use vests in the division unless disapproved within thirty days by the general services administration. When property so withdrawn is no longer needed to support the division's operations, it will be disposed of in the following manner: If still usable, it will be returned to the inventory and made available for donation to eligible recipients; if no longer usable, it will be sold in accordance with North Dakota Century Code section 54-44-04.6 for state-owned property and the proceeds of the sale will be deposited to the account of the division.

The division will maintain a separate record of inventory of all surplus property which is being used by the division.

History: Effective April 1, 1984.
General Authority: NDCC 54-44-04.5
Law Implemented: NDCC 54-44-04.5

4-04-01-18. Liquidation. Prior to any action to liquidate the division, a liquidation plan will be submitted to the general services administration regional office for approval. The plan will be in accordance with Federal Property Management Regulation 101-44.202(c)(14) and will include all of the following:

1. Reasons for liquidation.
2. A schedule for liquidating the agency and an estimated termination date.
3. A method of disposing of surplus property on hand.

4. The method of disposing of the division's physical and financial assets.
5. Provision for the retention of all books and records for a period of two years after the liquidation date.

History: Effective April 1, 1984.

General Authority: NDCC 54-44-04.5

Law Implemented: NDCC 54-44-04.5

4-04-01-19. Advisory committee. A committee consisting of five members must be appointed to serve as an advisory committee. The committee must consist of members of active public and nonpublic donees. All appointments are for a term of two years.

The advisory committee has the following responsibilities and duties:

1. To select from among its own membership a chairman to facilitate the work of the committee.
2. To meet whenever requested to do so by the director.
3. To keep itself informed concerning the activities and operations of the division.
4. To act in an advisory capacity to the director.
5. To foster public awareness and understanding of the objectives and functions of the division.
6. To stimulate participation and interest in the objectives and functions of the division.
7. To make donee property surveillance and utilization reviews on behalf of the director.

History: Effective April 1, 1984.

General Authority: NDCC 54-44-04.5

Law Implemented: NDCC 54-44-04.5

TITLE 10
Attorney General

MARCH 1984

STAFF COMMENT: Article 10-09 contains all new material but is not underscored so as to improve readability.

ARTICLE 10-09

AMUSEMENT GAMES OR DEVICES

Chapter
10-09-01 General Provisions

CHAPTER 10-09-01
GENERAL PROVISIONS

Section
10-09-01-01 Definitions
10-09-01-02 Prohibited Machines

10-09-01-01. Definitions.

1. "Business office" means the office or location where the licensee can be contacted and where the financial transactions, bookkeeping, etc., for the business are carried on.
2. "Person" means person as defined by North Dakota Century Code section 1-01-28.

History: Effective March 1, 1984.
General Authority: NDCC 53-04-05
Law Implemented: NDCC 53-04-02, 53-04-05

10-09-01-02. Prohibited machines. A coin-operated machine or device which pays cash or gives credits redeemable for cash or prizes is illegal and therefore is prohibited within this state.

History: Effective March 1, 1984.
General Authority: NDCC 53-04-05
Law Implemented: NDCC 53-04-05

JULY 1984

STAFF COMMENT: Article 10-11 contains all new material but is not underscored so as to improve readability.

ARTICLE 10-11

DETECTION OF DECEPTION EXAMINERS

Chapter	
10-11-01	Definitions
10-11-02	Application for License Process and Procedure for Issuance
10-11-03	Detection of Deception Examinations
10-11-04	Internship, License, and Procedures
10-11-05	Professional Conduct

CHAPTER 10-11-01 DEFINITIONS

Section	
10-11-01-01	Definitions

10-11-01-01. Definitions. As used in this article:

1. "Board" means six licensed detection of deception examiners appointed by the attorney general to serve as an advisory board.

2. "Detection of deception examination" means the use of a polygraph on an individual for the purpose of deception detection.
3. "Intern" means a person being trained in the use of a polygraph and the interpretation of the results obtained for the purpose of deception detection under the personal supervision and control of a licensed examiner.
4. "License examination" means examination by the board of applicants for licensure as a detection deception examiner.
5. "Polygraph" means an instrument or device which simultaneously combines continuous permanent recording with a means of recording the examinee's cardiovascular patterns, respiratory patterns, and galvanic skin response.

History: Effective July 1, 1984.
General Authority: NDCC 43-31-13
Law Implemented: NDCC 43-31-13

CHAPTER 10-11-02 APPLICATION FOR LICENSE PROCESS AND PROCEDURE FOR ISSUANCE

Section	
10-11-02-01	Application
10-11-02-02	Application Fee
10-11-02-03	Qualifications for License
10-11-02-04	Reciprocity
10-11-02-05	License Examinations

10-11-02-01. Application.

1. Upon receipt of a request for application, the attorney general's licensing division will prepare and furnish the applicants with a copy of North Dakota Century Code chapter 43-31 and will send a copy of the procedures and rules for licensing, pursuant to North Dakota Century Code sections 14-31-07 and 14-31-07.1.
2. When an application for detection of deception examiners license is received by the attorney general's licensing division, all requested information has been furnished, and the examination fee has been received, the application will be forwarded to the chairman of the board.
3. After a background investigation has been conducted, by the board, the chairman will return the application to the

licensing division with advice to the attorney general regarding the action to be taken on the application, i.e., issuance on reciprocity, setting an examination date, or denial.

4. Upon receipt of the application, the attorney general's licensing division will notify the applicant in regard to the appropriate action taken by the attorney general. If testing is required, the date, time, and place will be scheduled in consultation with the board chairman.

History: Effective July 1, 1984.
General Authority: NDCC 43-31-13
Law Implemented: NDCC 43-31-04

10-11-02-02. Application fee. Applicants shall pay a fifty dollar fee for examination. The fee is nonrefundable.

History: Effective July 1, 1984.
General Authority: NDCC 43-31-13
Law Implemented: NDCC 43-31-14

10-11-02-03. Qualifications for license. No detection of deception examiner license will be issued to any person, nor will any such previously issued license be renewed or retained unless the applicant shall file a sworn statement showing the following qualifications:

1. The applicant must not have been convicted within five years prior to the application for the license of any violation of any law of the United States or this state or of any local ordinance which law or ordinance relates to:
 - a. Felony offenses.
 - b. Offenses involving moral turpitude.
2. Applicant must have successfully completed a polygraph examiners course from a school that is accredited by the American polygraph association.

History: Effective July 1, 1984.
General Authority: NDCC 43-31-13
Law Implemented: NDCC 43-31-07

10-11-02-04. Reciprocity. Applicants who are licensed examiners under the laws of another state of the United States may be issued a license without examination by the attorney general if the requirements pursuant to North Dakota Century Code section 43-31-16 are met. The applicant shall provide to the attorney general a copy of such license. The applicant shall also provide to the attorney general a copy of that

state's licensing requirements at the time that said applicant was licensed. That law will then be compared to the North Dakota law which sets forth the licensing requirements by the board with the board reporting to the attorney general.

History: Effective July 1, 1984.
General Authority: NDCC 43-31-13
Law Implemented: NDCC 43-31-16

10-11-02-05. License examinations.

1. Any person who is not exempted from a license examination under North Dakota Century Code sections 43-31-15 and 43-31-26 will be required to take a state license examination administered by the board.
2. License examinations will be conducted in May and October of each calendar year.
3. This examination will be administered by not less than three members of the board.
4. The examination will include written, oral, and demonstration skills in the polygraph field as follows:

a. Phase I: Written examination, four parts.

- (1) Physiological.
- (2) Psychological.
- (3) Mechanical.
- (4) Technical.

A minimum score of seventy percent will be needed on each part for a license. Failure of any part will require retesting of that part upon reapplication after six months.

b. Phase II: Instrumentation, five parts.

- (1) Familiarity with instrument.
- (2) Familiarity with components.
- (3) Familiarity with mechanical operation.
- (4) Familiarity with attachments.
- (5) Familiarity in attaching instrument to the subject and activation.

This phase will be graded on a scale of one to five. A three is acceptable, below three is an unacceptable score and may limit licensure.

c. Phase III: Question formulation, five parts.

- (1) Applicability.
- (2) Wording.
- (3) Sequence.
- (4) Placement of controls.
- (5) Placement of irrelevant questions.

This phase will be graded on a scale of one to five. A three is acceptable, below three is an unacceptable score and may limit licensure.

d. Phase IV: Chart interpretation (must supply twenty-five recent and complete examination charts for analysis and questions, reports must also be furnished), five parts.

- (1) Knowledge of interviewing.
- (2) Observations of subject.
- (3) Knowledge of reactions on charts.
- (4) Interpretation of chart events.
- (5) Knowledge of chart marking.

This phase will be graded on a scale of one to five. A three is acceptable, below three is an unacceptable score and may limit licensure.

e. Phase V: Oral interview, five parts.

- (1) Applicant's history and schooling.
- (2) Applicant's work and professional experience.
- (3) Applicant's interviewing techniques.
- (4) Applicant's polygraph theory.
- (5) Applicant's personal feelings regarding detection of deception.

This phase is the final part of examination. It will be graded on a scale of one to three. The total examination

process will then be reviewed. A score of three is required for licensure. A score of two is required for the person to receive a qualified licensure which would require supplemental information or action. A score of two will be assigned to interns until twenty-five charts are reviewed by a board member. A score of one renders the applicant unacceptable for licensure. A score of one will be explained in writing by the board.

5. In grading the examination, a scoring sheet will be filled out and signed by each examining board member. The score will be averaged for a final score.
6. Grading of the written examination will be based on one hundred percent score. Each true and false question has a three percent value. Each multiple choice question has a four percent value. Each completion and essay question has a six percent value. There are ten true and false questions, ten multiple choice questions, and five completion/essay questions per part of the written examination. Partial credit will be given for multiple choice answers that are partially correct.

History: Effective July 1, 1984.

General Authority: NDCC 43-31-13

Law Implemented: NDCC 43-31-07

CHAPTER 10-11-03 DETECTION OF DECEPTION EXAMINATIONS

Section

10-11-03-01	Detection of Deception Examination Procedures
10-11-03-02	Detection of Deception Examination Records

10-11-03-01. Detection of deception examination procedures.

1. No person may be present during the detection of deception examination without the express consent of the examiner.
2. An examiner shall terminate a detection of deception examination in progress immediately upon request of the examinee.
3. A polygraph test may not continue for more than four minutes if a high pressure cuff is being utilized on the arm, no more than five minutes if a high pressure cuff is being utilized on the wrist.
4. No detection of deception examination may be conducted prior to a complete understanding between the examiner, the

requesting agency, and examinee as to the specific reason for the test, including all records, documents, and investigative reports necessary to conduct the examination.

5. An examiner when administering a detection of deception examination, may not attempt to determine truth or deception on manners or issues not previously discussed with the examinee at the preexamination interview or not reasonably related to the matters or issues previously discussed with the examinee.
6. The detection of deception examination of a subject and that subject's fitness for the examination is at the discretion of the examiner.

History: Effective July 1, 1984.

General Authority: NDCC 43-31-13

Law Implemented: NDCC 43-31-13

10-11-03-02. Detection of deception examination records. An examiner shall create and maintain a record of every detection of deception examination administered. Records must be maintained for five years and must contain the following:

1. All polygraph charts (polygrams) on each examinee.
2. All written reports or memoranda of verbal reports.
3. A list of all questions asked while the polygraph is recording.
4. Background information elicited during the pretest interviews.
5. A form signed by the examinee indicating that the examinee has voluntarily agreed to take the polygraph test and that the examinee has the right to leave the examining room at any time during the examination.
6. All tape recordings of the detection of deception examination if made.
7. An index either chronological or alphabetical listing the names of all persons examined, the type of detection of deception examination, the date of the examination, the name of the examiner, and the file or record number in which the records are maintained.

History: Effective July 1, 1984.

General Authority: NDCC 43-31-13

Law Implemented: NDCC 43-31-13

**CHAPTER 10-11-04
INTERNSHIP, LICENSE, AND PROCEDURES**

Section
10-11-04-01 Internship License

10-11-04-01. Internship license.

1. Every person who applies for an internship license shall, at the time of application, provide the attorney general with the name, address, qualifications, and state license number of the examiner who will be acting as the supervising examiner.
2. In the event an applicant does not have access to an immediate supervisor, the attorney general may appoint a supervising examiner to supervise the trainee.
3. The attorney general shall approve the applicant's choice of supervising examiner.
4. The minimum requirements to be fulfilled by a supervising examiner are as follows:
 - a. Inspection of twenty-five examination records selected by the supervising examiner; and
 - b. The direct observation by the supervising examiner of at least one complete examination including preparation, pretest interview, testing, post-test interrogation, where applicable, and report writing.

History: Effective July 1, 1984.

General Authority: NDCC 43-31-13

Law Implemented: NDCC 43-31-07.1

**CHAPTER 10-11-05
PROFESSIONAL CONDUCT**

Section
10-11-05-01 Advertising

10-11-05-01. Advertising.

1. An examiner may not advertise the examiner's services so as to deceive, or in any manner which tends to deceive, the public.

2. An examiner may not publish, directly or indirectly, or disseminate any fraudulent, false, or misleading statements as to the skill or method of practice of any other examiner.
3. An examiner may not claim superiority over other deception of detection examiners as to skill or method of practice.
4. An examiner may not advertise free deception detection examinations as an inducement to secure patronage.

History: Effective July 1, 1984.

General Authority: NDCC 43-31-13

Law Implemented: NDCC 43-31-10, 43-31-13

TITLE 11

**Audiology and Speech-Language Pathology,
Board of Examiners on**

MAY 1984

11-02-01-01. **Licensure application.** An application for a license to practice audiology or ~~speech~~ speech-language pathology shall be made to the state board of examiners of audiology and ~~speech~~ speech-language pathology on forms provided by the board upon request. The application shall contain such information as the board may reasonably require.

1. Each application for a license shall be accompanied by a fee ~~which is nonrefundable~~:
 - a. A prescribed fee.
 - b. An official transcript verifying completion of graduate degrees.
2. All applications shall be signed by the applicant and notarized.
- ~~3-~~ ~~All applications shall include a recent photograph of the applicant.~~
- ~~4-~~ 3. The board may request such additional information or clarification of information provided in the application as it deems reasonably necessary.
- ~~5-~~ 4. If the board so directs, an applicant shall personally appear before the board ~~or a member thereof for a personal~~ interview concerning the application.

History: Amended effective May 1, 1984.

General Authority: NDCC 43-37-06

Law Implemented: NDCC 43-37-06, 43-37-09

11-02-01-02. Licensure without examination. Waiver of the examination requirements shall be considered by the board for those applicants who present proof of bona fide practice of audiology or speech pathology according to this section. Such proof shall include any or all of the following as requested by the board:

1. Written evidence from the applicant or the applicant's immediate superiors that the applicant was actively engaged in the practice of audiology or speech pathology on July 1, 1975.
2. Official transcripts from an educational institution recognized by the board evidencing a minimum of a master's degree in audiology or speech pathology. The transcripts shall show the required concentration of academic and clinical hours of instruction and supervision in the area in which licensure is being sought.
3. A complete and thorough description of the nature of the applicant's practice. The description shall include any and all information deemed necessary by the board to fully explain the scope and nature of the practice.
4. The applicant shall appear before the board, if requested, to present evidence and discuss the applicant's practice in audiology or speech pathology or both of them.
5. The applicant shall permit, if requested, direct observation and evaluation of the applicant's practice on site. The applicant shall permit the board to discuss the applicant's performance with any of the applicant's patients, professional supervisors, and administrative superiors.

General Authority: NDCS 43-37-06

Law Implemented: NDCS 43-37-04, 43-37-11

Repealed effective May 1, 1984.

11-02-01-03. Licensure with examination. For those applicants unable to provide adequate proof of bona fide practice as provided in section 11-02-01-02, the board may consider granting licensure providing the applicant successfully passes the examination or examinations in the area or areas in which licensure is sought.

General Authority: NDCS 43-37-06

Law Implemented: NDCS 43-37-04, 43-37-10

Repealed effective May 1, 1984.

11-02-01-04. Licensure renewal. Licenses are renewable by January first of each year. They ~~may~~ must be renewed on forms provided by the board. The renewal forms must be accompanied by the renewal fee and proof of meeting the continuing education requirements. A person who fails to renew the person's license after two years of its expiration date may not renew it, and it may not be restored, reissued, or reinstated. ~~Such a person persons~~ such persons may reapply for a new license if ~~the person meets~~ such persons meet the requirements of North Dakota Century Code chapter 43-37 and this article. An individual may be granted a second licensure only once in a five-year period.

History: Amended effective May 1, 1984.

General Authority: NDCC 43-37-06

Law Implemented: NDCC ~~43-37-14,~~ ~~43-37-17~~ 43-37-06

11-02-01-05. Fees. The following fees shall be paid in connection with audiologist and ~~speech~~ speech-language pathologist applications, examinations, renewals, and penalties:

1. Application fee for an audiologist license: fifty dollars.
2. Application fee for a ~~speech~~ speech-language pathologist license: fifty dollars.
3. Renewal fee for an audiologist license: fifteen dollars.
4. Renewal fee for a ~~speech~~ speech-language pathologist license: fifteen dollars.
5. Late renewal penalty fee per month: ~~one dollar and twenty-five cents~~ five dollars.
6. When a person applies for both audiology and ~~speech~~ speech-language pathology licenses in the same calendar year, the ~~initial application and licensure fee for one license would also apply to the other license~~ total application fee is fifty dollars.

History: Amended effective May 1, 1984.

General Authority: NDCC 43-37-06

Law Implemented: NDCC ~~43-37-15~~ 43-37-06

11-02-01-06. Continuing education. To renew a license a person must present proof of having attended at least ~~four sixty-minute~~ six clock hours of continuing education approved by the board. ~~Proof of attendance means a certificate of attendance, canceled check, etc.~~ Continuing education for licensure renewal must be completed in the calendar year prior to the year for which licensure is sought. Under extraordinary circumstances the board may consider a

request for continuing education hours accrued in the same calendar year.

History: Amended effective May 1, 1984.

General Authority: NDCC 43-37-06

Law Implemented: NDCC ~~43-37-17~~ 43-37-06

11-02-01-07. Passing score. The successful completion of a national examination means: obtaining a score equal to or greater than the passing score established by the American speech-language-hearing association and in effect at the time of administration of the test.

History: Effective May 1, 1984.

General Authority: NDCC 43-37-09

Law Implemented: NDCC 43-37-06

11-02-02-01. Unethical conduct. The following conduct, in addition to that provided in North Dakota Century Code chapter 43-37, is hereby prohibited in relation to the practice of audiology or speech pathology by a licensee in this state:

- 1- The licensee shall not guarantee the results of any speech or hearing consultation or therapeutic procedures.
- 2- The licensee shall not diagnose or treat individual speech or hearing disorders solely by correspondence.
- 3- The licensee shall not reveal to unauthorized persons any confidential information obtained from the individual the licensee serves professionally without the individual's permission.
- 4- The licensee shall not exploit persons the licensee serves professionally by accepting them for treatment where benefit cannot reasonably be expected, continuing treatment unnecessarily, charging exorbitant fees or working with types of speech involvements for which the licensee has had no specific training.
- 5- The licensee shall not discriminate on the basis of race, religion, or sex in the licensee's professional relationships with the licensee's colleagues, employees, or the consumer public.
- 6- The licensee shall not solicit patients or advertise in any manner or form contrary to current professional standards or practices.

General Authority: NDEE 43-37-06
Law Implemented: NDEE 43-37-06

Repealed effective May 1, 1984.

11-02-02-02. Code of ethics. The board subscribes to the code of ethics of the American speech-language-hearing association. This code is incorporated in the rules by reference except that a certificate of clinical competence is not required to practice speech-language pathology and audiology in North Dakota.

History: Effective May 1, 1984.
General Authority: NDCC 43-37-06
Law Implemented: NDCC 43-37-06

11-02-03-01. Grievance procedures. Grievances are to be submitted to the board in writing. They may be presented in person or mailed to the chairperson of the board. A decision will be made by the board concerning grievances. must be processed in accordance with North Dakota Century Code chapter 28-32.

History: Amended effective May 1, 1984.
General Authority: NDCC 43-37-06
Law Implemented: NDCC 43-37-06, 43-37-13 28-32-05

11-02-04-01. Address and name changes. Any licensee must report a change of address or, name, or educational degree to the board within ten days. If this change involves a change in a license, proof of this any educational degree change must also be submitted. A fee of two ten dollars will be charged to reissue a duplicated or changed license for any change.

History: Amended effective May 1, 1984.
General Authority: NDCC 43-37-06
Law Implemented: NDCC 43-37-06

11-02-04-02. Educational changes. Any licensee must report a change of degree to the board within ten days. If this change involves a change in a license, proof of this change must be submitted. A fee of two dollars will be charged to reissue a license for any change.

General Authority: NDEE 43-37-06
Law Implemented: NDEE 43-37-06

Repealed effective May 1, 1984.

TITLE 13

Banking and Financial Institutions, Department of

JUNE 1984

13-03-04-01. Maximum investment in building fixed assets to be determined by state credit union board --~~Limitation on investment in furniture and fixtures.~~ 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 invest more than six percent of assets in a credit union office building, including the lot, piece, or parcel of land on which the same is located, furniture, fixtures, and equipment, without first obtaining a ruling applying for and obtaining approval from the state credit union board fixing the maximum investment permitted therein, nor shall it invest in furniture and fixtures a sum, carried as an asset, in excess of one thousand dollars, or one percent of its outstanding paid-in shares, whichever is larger, without first obtaining the approval of the state credit union board.

History: Amended effective June 1, 1984.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-04-02. Procedure for investment in building. Any state-chartered credit union planning to construct or purchase a building shall follow and comply with the following procedure:

1. The board of directors shall adopt a resolution to invest in a building, and stating the maximum funds to be invested in a lot and building.
2. If the resolution is adopted by a majority of the board of directors, it shall then be presented to a regular or special meeting of the members.

3. If the resolution is approved by a seventy-five percent of the members present, and if the resolution involves an investment, including the depreciated value of the building, and all furniture, fixtures, and equipment carried as an asset of the credit union, of more than six percent of assets of the credit union, the board of directors may then make application to the North Dakota state credit union board for permission to invest in a building. If the investment totals six percent or less of the assets, the board of directors and management will proceed with the project as approved by the members.

History: Amended effective June 1, 1984.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-04-03. Application to board to invest in building - Requirements. When applying to the state credit union board for permission to invest in a building which, when added to the depreciated value of the building and all furniture, fixtures, and equipment carried as an asset of the credit union, totals more than six percent of the credit union's assets, the following procedures will be followed:

1. The secretary of the credit union will certify compliance with the provisions of section 13-03-04-02.
2. The treasurer will certify that the amount to be invested does not exceed five percent of the amount of the shares, as of the end of the month immediately preceding the application. If the amount to be invested exceeds five percent of shares and deposits, the credit union, by letter, will make a special request of the state credit union board and state the amount, and the percentage of shares, assets they desire to invest in the lot and, building, furniture, fixtures, and equipment.

History: Amended effective June 1, 1984.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-04-02-01. Definitions.

1. "Claim" means any obligation or alleged obligation out of a consumer transaction.
2. "Debt collection" means any action, conduct, or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due a merchant creditor by a consumer.

3. "Debt collector" means any collection agency and any person engaging, directly or indirectly, in debt collection, and includes any person who sells, or offers to sell, forms represented to be a collection system, device, or scheme, intended or calculated to be used to collect claims; except attorneys at law, licensed real estate brokers, banks, trust companies, building and loan associations, abstract companies doing an escrow business, creditors collecting their own debts, individuals or firms who purchase or take accounts receivable for collateral purposes, individuals employed in the capacity of credit person upon the staff of an employer not engaged in the business of a collection agency, or any public officer, receiver, or trustee acting under the order of a court.

History: Amended effective July 1, 1984.

General Authority: NDCC 13-05-06

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

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

1. Publish or cause to be published any list of debtors, except for credit reporting purposes, advertise or threaten to advertise for sale any claim as a means of forcing payment thereof, or use similar devices or methods of intimidation.
2. Communicate with debtors in a misleading or deceptive manner by using the stationery of a lawyer, forms or instruments which only lawyers are authorized to prepare, or instruments which simulate the form and appearance of judicial process.
3. Exercise authority on behalf of a creditor to employ the services of lawyers unless the creditor has specifically authorized the agency in writing to do so, and the agency's course of conduct is always consistent with a true relationship of attorney and client between the lawyer and the creditor.
4. Refuse to return any claim or claims and all valuable papers deposited with a claim or claims upon written request of the creditor, claimant, or forwarder after tender of such amounts due and owing to the agency within thirty days after such request; neglect, refuse, or intentionally fail to account to its clients for all money collected within ~~thirty~~ forty-five days from the last day of the month in which the same is collected; or refuse or fail to furnish at intervals of not less than ninety days upon written request of the claimant or forwarder, a written report upon claims received from such claimant or forwarder.

5. In collection letters or publications, or in any communication, oral or written, threaten wage garnishment or legal suit by a particular lawyer, unless it has actually retained such lawyer without an objective intention to engage a lawyer and commence legal action upon the debtor's failure to comply with the request or demand made.
6. Use or employ constables, sheriffs, or any other officer authorized to serve legal papers in connection with the collection of a claim, except when performing their legally authorized duties.

History: Amended effective July 1, 1984.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-02

13-04-02-03. Solicitors Debt Collectors - Approval - Certificate. Licensed collection agencies may appoint solicitors debt collectors who shall must be citizens of the United States, of good moral character, knowledgeable in good collection agency practices and ethics, and having a good credit reputation and a reputation for fair and honest dealings. The name and address of a person appointed as a solicitor shall debt collector must be forwarded to the department of banking and financial institutions by the licensed collection agency. The department shall thereupon, with approval of the commissioner of banking and financial institutions, issue an identification card bearing the name of the solicitor debt collector and the name of the licensed collection agency. All solicitors' debt collectors' certificates shall expire on June thirtieth of each year, unless renewed by June fifteenth, by a current list of solicitors and representatives debt collectors being submitted by each licensee to the department. In the event of the cancellation of an agency license, the certificates of all solicitors and representatives debt collectors authorized for that agency by the department shall will be concurrently canceled and the solicitors and representatives shall debt collectors must be notified by regular mail. In the event that if a solicitor debt collector ceases to be employed by a licensed agency, the agency shall, within ten days thereafter, notify the department at which time the solicitor's debt collector's certificate shall will be voided and the solicitor debt collector may not thereafter be employed by any other licensed collection agency until such time as the solicitor debt collector has been issued a new certificate as herein provided.

History: Amended effective July 1, 1984.

General Authority: NDCC 13-05-06

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

13-04-02-04. Practice of law-- Prohibited practices. Unless a licensed attorney in this state, no debt collector shall engage in conduct deemed the practice of law. Without

limiting the general application of the foregoing, the following conduct is deemed the practice of law No debt collector may:

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

History: Amended effective July 1, 1984.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

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

1. The use Use, or express expressly or implicit threat of implicitly threaten the use, of violence or other criminal means, to cause harm to the person, reputation, or property of any person.
2. The accusation Accuse or threat threaten to accuse any person of fraud or any other crime, or any conduct which, if true, would tend to disgrace such other person, or in any way subject the person to ~~the~~ ridicule or any conduct which, if true, would tend to disgrace the person, or in any way subject the person to the ridicule or contempt of society.
3. False accusations made Make to another person, including any credit reporting agency, false accusations, or the threat to so falsely accuse threats of false accusations, that a consumer is willfully refusing to pay a just debt.

4. ~~The threat~~ Threaten to sell or assign to another the obligation of the consumer with an attending representation or implication that the result of such sale or assignment would be that the consumer would lose any defense to the claim or would be subjected to harsh, vindictive, or abusive collection attempts.
5. ~~The threat~~ Threaten to take any action prohibited by ~~North Dakota Century Code chapter 13-05 or other law~~ relating to the debt collector's conduct on the rights and liabilities of all parties.

History: Amended effective July 1, 1984.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

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

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

History: Amended effective July 1, 1984.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

13-04-02-07. Unreasonable publication prohibited. No debt collector ~~shall may~~ unreasonably publicize information relating to any alleged indebtedness or debtor. Without limiting the general

application of the foregoing, the following conduct is deemed to violate this section no debt collector may:

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

History: Amended effective July 1, 1984.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

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

1. ~~The use of~~ Use any name while engaged in the collection of claims other than the debt collector's true name.
2. ~~The failure to clearly disclose in all~~ Make misleading representations in any communication made to collect or attempt to collect a claim or to obtain or attempt to obtain information about a consumer ~~that the debt collector is attempting to collect a claim and that any information obtained will be used for that purpose.~~

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

History: Amended effective July 1, 1984.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

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

of the foregoing, ~~the following conduct is deemed to violate this section~~ no debt collector may:

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

History: Amended effective July 1, 1984.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

13-04-02-10. Postal violations prohibited. No debt collector ~~shall~~ may use ~~or~~, distribute, sell, or prepare for use, any written communication that violates or fails to conform to United States postal laws and regulations.

History: Amended effective July 1, 1984.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

13-04-02-11. Trust account - Deposits - When to be made. The client's share of collections ~~shall~~ must be deposited into a trust account in a financial institution insured by a federal agency within

forty-eight hours, except that if such moneys are less than one hundred dollars, deposits may be made weekly.

History: Amended effective July 1, 1984.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-07

13-04-02-12. Disbursements from the trust account. Disbursements of twenty-five dollars or more from the trust account to clients must be made no later than thirty days after the monthly closing for the month in which the money was collected. Disbursements of less than twenty-five dollars must be made no later than sixty days after the monthly closing for the month in which any portion of the money was first collected.

History: Effective July 1, 1984.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-07

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

History: Effective July 1, 1984.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-07

TITLE 17
Chiropractic Examiners, Board of

APRIL 1984

17-01-02-01. **Regular or special meetings.** The board will hold regular sessions twice a year at approximate six-month intervals for examination of candidates, and the transaction of such other business as may properly come before it, ~~commencing on the first Tuesday of January and July in each year.~~ Such meetings shall be held at the state capitol in Bismarck, or at any more convenient place designated by the board. Adjournment or special meetings may be called at any time when the opinion of the board justifies such action. Three members of the board shall constitute a quorum.

History: Amended effective April 1, 1984.

General Authority: NDCC 28-32-02, 43-06-05

Law Implemented: NDCC 43-06-05

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. Each member of the board shall receive compensation in the amount of one hundred dollars for each day or portion thereof spent in the discharge of the member's duties. The secretary-treasurer of the board shall receive an annual salary of one thousand dollars.

History: Effective April 1, 1982; amended effective April 1, 1984.

General Authority: NDCC 28-32-02, 43-06-05

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

17-02-01-01. Educational requirements. 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-

have a degree from an approved and accredited college of chiropractic where the resident course of instruction is not less than four years of nine months each or four thousand credit hours.

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; April 1, 1984.

General Authority: NDCC 28-32-02, 43-06-05

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

17-02-01-01.1. Approved schools. All chiropractic colleges fully accredited and not merely recognized for accreditation by the council on chiropractic education or its successor are approved chiropractic colleges by the board.

History: Effective April 1, 1984.
General Authority: NDCC 28-32-02, 43-06-05
Law Implemented: NDCC 43-06-09

17-02-01-03. Fee for examination. At least thirty days prior to the date set for regular meeting of the board of examiners, every applicant shall file with the secretary-treasurer a written application properly sworn to before a notary public, together with the applicant's diploma, or ~~photograph~~ photocopy of the diploma, and a fee of one hundred fifty dollars, no part of which shall be returned. The application shall be attested by the dean of the college or school of which the candidate is a graduate.

History: Amended effective April 1, 1984.
General Authority: NDCC 28-32-02, 43-06-05
Law Implemented: NDCC 43-06-08

17-02-01-11. Second examination. Any candidate failing the first examination ~~shall be entitled to~~ may take a second examination at the next regular examination session ~~without further fee upon the~~ payment of one hundred dollars.

History: Amended effective April 1, 1984.
General Authority: NDCC 28-32-02, 43-06-05
Law Implemented: NDCC 43-06-12

17-02-01-13. Renewal fees. Every chiropractor who has been licensed by the board shall renew their licenses and remit a renewal fee as required by the board and the laws of the state. ~~(See North Dakota Century Code section 43-06-13.)~~ in the amount of fifty dollars on or before September first of each year. Application for renewal certificates ~~shall~~ must be made upon the official renewal blanks issued by the board. Renewal blanks may be secured upon application to the secretary-treasurer. No renewal certificate will be issued if it has been shown at an administrative hearing that the licensee has violated any of the rules of the board or North Dakota Century Code chapter 43-06. No renewal certificate will be issued if the continuing educational requirements as set forth in North Dakota Century Code section 43-06-13 have not been met. A license which has not been renewed as a result of nonpayment of annual registration fees may be reinstated upon payment to the board of the amount of renewal fees then in default along with an additional administrative fee of one hundred dollars.

History: Amended effective April 1, 1984.

General Authority: NDCC 28-32-02, 43-06-05
Law Implemented: NDCC 43-06-13

TITLE 30
Game and Fish Department

MARCH 1984

STAFF COMMENT: Chapter 30-03-05 contains all new material but is not underscored so as to improve readability.

CHAPTER 30-03-05 FISHING CONTESTS

Section

30-03-05-01	Fishing Contest Defined
30-03-05-02	Organizations Eligible
30-03-05-03	Use of Proceeds
30-03-05-04	Application
30-03-05-05	Fishing Contest Rules and Regulations
30-03-05-06	Reasons for Denying Permits
30-03-05-07	Post-Contest Report Required

30-03-05-01. Fishing contest defined. A fishing contest is any event where prizes are given for catching fish from waters open to public use. These events include, but are not limited to, high value tag contests, fishing tournaments, biggest fish contests, and contests giving prizes for the largest number or weight of fish. Fishing contests do not include the following:

1. Individual big fish promotions not based on tag returns sponsored by resident, local businesses not charging any entry or participation fee. If any local, resident business desires to sponsor a high value (prizes exceeding one thousand dollars cash or merchandise) individual fishing contest, the game and fish commissioner shall designate the species of game fish to be included and the contest may be limited to only those species.

2. Any local fishing tournament not charging an entry or participation fee in excess of five dollars per fisherman or with a total of fifty or fewer participating boats, or both.
3. Local tournaments where fishing is from shore or through the ice for nongame species.

History: Effective March 1, 1984.

General Authority: NDCC 20.1-02-05(22)

Law Implemented: NDCC 20.1-02-05(22)

30-03-05-02. Organizations eligible. Only nonprofit veterans, charitable, education, religious, and fraternal organizations, civic and service clubs, and public-spirited organizations, as those organizations are defined in North Dakota Century Code chapter 53-06.1 will be issued permits to hold fishing contests. Exemptions to this requirement may be granted by the game and fish commissioner, if, in the opinion of the commissioner, the contest is not detrimental to the fishery resource or to the public, or both.

History: Effective March 1, 1984.

General Authority: NDCC 20.1-02-05(22)

Law Implemented: NDCC 20.1-02-05(22)

30-03-05-03. Use of proceeds. A minimum of seventy-five percent of any entry or participation fee paid by the contestants must be returned to the contestants as cash payback. A minimum of ten percent of the gross proceeds from entry or participation fees must be expended on conservation projects or for providing public access to fishing areas. The conservation projects and public access projects must be approved by the game and fish commissioner. In the absence of an outside sponsor, the tournament committee may retain a maximum of fifteen percent of the gross proceeds from entry or participation fees for expenses incurred in putting on the contest.

History: Effective March 1, 1984.

General Authority: NDCC 20.1-02-05(22)

Law Implemented: NDCC 20.1-02-05(22)

30-03-05-04. Application. Anyone desiring to hold a fishing contest must submit an application for a permit to the game and fish commissioner at least forty-five days prior to the start of the contest. Information on the application must include the name of the applicant, location of the waters where the contest is to be held, the dates of the contest, the number of participants expected for the contest, the amount of the entry fee, a copy of the tournament regulations, and the name of a person to be contacted for additional information about the contest.

History: Effective March 1, 1984.

General Authority: NDCC 20.1-02-05(22)

Law Implemented: NDCC 20.1-02-05(22)

30-03-05-05. Fishing contest rules and regulations.

1. In a boat tournament, committee/sponsors shall provide boat launching and loading assistance to tournament participants.
2. All approved tournaments shall utilize a tagging system designed to reduce high-grading of game fish. This requirement does not apply to catch and release fishing contests.
3. The ratio of tournament patrol boats to participant boats shall at no time be less than one to twenty in fishing contests involving one hundred or fewer boats and one to twenty-five for contests involving more than one hundred boats.

History: Effective March 1, 1984.

General Authority: NDCC 20.1-02-05(22)

Law Implemented: NDCC 20.1-02-05(22)

30-03-05-06. Reasons for denying permits. Permits may not be issued if the game and fish commissioner believes the fishing contest does or will not comply with game and fish rules or regulations, will be harmful to the fishing resource, or that public use facilities such as boat ramps, parking areas, campgrounds, and related facilities are inadequate to support the contest.

History: Effective March 1, 1984.

General Authority: NDCC 20.1-02-05(22)

Law Implemented: NDCC 20.1-02-05(22)

30-03-05-07. Post-contest report required. Within thirty days after completion of the fishing contest, the permittee shall submit a report to the game and fish commissioner. The report must include the number of contest participants, the quantity (number and total weight) and species of fish taken in the contest, the gross and net proceeds for the tournament, the percentage of the entry fees paid back to the participants as prizes, and suggested conservation projects for departmental approval. Failure to submit this report is justification for denial of future fishing contest permits.

History: Effective March 1, 1984.

General Authority: NDCC 20.1-02-05(22)

Law Implemented: NDCC 20.1-02-05(22)

MAY 1984

STAFF COMMENT: Chapter 30-04-07 contains all new material but is not underscored so as to improve readability.

CHAPTER 30-04-07
WILDLIFE REPLACEMENT VALUES

Section
30-04-07-01 Schedule of Monetary Values
30-04-07-02 Adjustments to Base Values

30-04-07-01. Schedule of monetary values. The following base values for wildlife are established:

Grebes	\$ 25.00
Pelicans and Loons	100.00
Herons, Egrets, and Bitterns	50.00
Ducks - except:	25.00
Redhead and Canvasback	50.00
Geese	75.00
Whistling Swan	100.00
Hawks and Vultures	100.00
Kites	200.00
Golden Eagle	500.00
Bald Eagle	1,000.00
Peregrine	1,000.00
Osprey, Gyr Falcon, Prairie Falcon	100.00
Kestrel, Merlin	50.00
Grouse, Pheasant, and Partridge - except:	20.00
Greater Prairie Chicken	500.00
Wild Turkey	100.00

Whooping Crane	1,000.00	
Sandhill Crane	100.00	
All Owls	100.00	
Curlew, Godwit, Avocet	50.00	
All Other Birds - except:	20.00	
Blackbirds, Magpies, English		
Sparrow, Crows, Starlings -		
No value		
Snapping Turtles	10.00	
Weasels	10.00	+ Fur market value
Marten	100.00	+ Fur market value
Wolverine	250.00	+ Fur market value
Badger	50.00	+ Fur market value
Coyote, Red Fox, Grey Fox,		
and Fisher	40.00	+ Fur market value
Rabbits, Hares, Tree Squirrels,		
and Muskrat	5.00	+ Fur market value
Porcupine	10.00	+ Fur market value
Elk and Pronghorn	500.00	
Whitetail and Mule Deer	300.00	
Moose and Bighorn Sheep	800.00	
Raccoon, Mink, Beaver	20.00	+ Fur market value
Lynx and Bobcat	100.00	+ Fur market value

Prime fur market value will not be added to the base value if the fur is usable or marketable by the state.

Fish - The values of fish are those listed in the American Fisheries Society Special Publication No. 13, "Monetary Values of Freshwater Fish and Fish-Kill Counting Guidelines", 1982. A copy is available for viewing at the Bismarck office of the North Dakota game and fish department. This publication may be purchased by writing to the following address:

American Fisheries Society
5410 Grosvenor Lane
Bethesda, Maryland 20814

History: Effective May 1, 1984.
General Authority: NDCC 20.1-01-03
Law Implemented: NDCC 20.1-01-03

30-04-07-02. Adjustments to base values. The base values listed in section 30-04-07-01, excluding the values of fish, are subject to the following adjustment:

1. Value = Base value x Species age and size percent x Species condition percent.

a. Species age and size*:

Considerably above

- average size adult - 150% of base value
- Average size adult - 100% of base value
- Young of the year** - 50% of base value

*Average size, age and condition will be determined by investigator.

- ** (1) Species that breed once a year - an obvious young of the year animal killed before September first.
- (2) Species that breed more than once a year - an obvious young of the year animal at time of death.
- (3) Bird species before first flight.

*Species condition:

- Average condition - 100% of base value
- Considerably below average condition - 50% of base value

b. Examples:

- (1) A large adult whitetail buck in good condition was killed by an illegal act.
Value = \$300.00 x 150% x 100% = \$450.00
- (2) An adult red fox in good condition was killed by an illegal act.
Value = \$40.00 x 100% x 100% = \$40.00 (fur sold by the state)

2. Because of rarity or special consideration the value of all bald eagles, bighorn sheep, common loons, peregrine falcons, and whooping cranes will be the base value regardless of age, size, or condition.

History: Effective May 1, 1984.
 General Authority: NDCC 20.1-01-03
 Law Implemented: NDCC 20.1-01-03

JUNE 1984

30-04-06-02. Fees. Each petition shall be accompanied by a two dollar application fee. In addition to the application fee, the following fees are required for each license that is to be replaced:

Type of License	Fee
Resident fishing licenses	\$ 1.00
Husband-wife resident fishing license	1.00
Resident senior citizen fishing license	1.00
Resident totally or permanently disabled fishing license	1.00
Nonresident fishing license	4.00
Nonresident husband-wife fishing license	8.00
Trout and salmon license	1.00
Resident small game and habitat license (age 19 and over)	1.00
Resident youth small game and habitat license (under age 19)	1.00
Nonresident small game - including general game	10.00
Nonresident small game/waterfowl - including general game	10.00
Resident deer bow license	8.00
Nonresident deer bow license	18.00
Resident fur-bearer license	1.00
Resident antelope bow license	8.00
Nonresident antelope bow license	18.00
Resident deer gun license	8.00
Nonresident deer gun license	18.00
Resident general game license	1.00
Nonresident general game license	1.00
Nonresident nongame license	2.00
Wild turkey license	2.00

History: Effective September 1, 1983; amended effective June 1, 1984.

General Authority: NDCC 20.1-02-05

Law Implemented: NDCC 20.1-02-05

TITLE 33
Health, Department of

MARCH 1984

33-11-01-11. ~~Equipment~~ Minimum equipment requirements.

1. Ambulance cot with retaining straps.
2. Stretchers with retaining straps. Vehicle design dictates quantity.
3. ~~Oxygen~~ Piped oxygen system - with appropriate regulator and flow meter. ~~To include, or~~ two "E" size bottles for minimum oxygen supply with regulator and flow meter.
4. Portable oxygen unit with carrying case. To include one "D" size bottle with another "D" bottle in reserve.
5. ~~Oxygen~~ Nasal cannulas and oxygen masks with tubing - transparent and assorted sizes.
6. Suction - portable---~~clear jar with catheter.~~
7. Bag mask type resuscitation unit with child and adult size face masks.
8. Spine boards - one full-size and one half-size, with retaining straps. ~~These can be made locally from three-fourths inch {1.91 centimeters} plywood.~~
9. Inflatable plastic Fracture splints - set of four minimum operator's option: inflatable, ladder, frac-kit, board, or cardboard.
10. Two or more padded boards one-half inch by three and one-half inches wide by four and one-half feet long [1.27 centimeters by 8.89 centimeters wide by 11.43 centimeters long], and two or more padded boards one-half inch by three and one-half

inches wide by three feet long [1.27 centimeters by 8.89 centimeters wide by .91 meters long].

11. Two or more padded wooden splints one-eighth inch by three and one-half inches wide by fifteen inches long {3.18 millimeters by 8.89 centimeters wide by 38.1 centimeters long}. By local option, similar splints of cardboard, plastic, wire ladder, or canvas slotted lace may be carried in place of the above thirty-six-inch {91.44-centimeters} and fifteen-inch {38.10-centimeters} boards. Cold packs - four minimum.
12. Fire extinguisher - dry chemical, mounted, five pound [2.27 kilogram] minimum.
13. Sandbags - two or more --made locally.
14. Obstetrical kit - disposable.
15. Poison kit-- kit or syrup of ipecac. This is available in small one-dose containers.
16. Two sterile burn sheets.
17. Triangular bandages. ~~Can be made from sheeting material.~~
18. Universal dressings - approximately ten inches [25.4 centimeters] by thirty-six inches [91.44 centimeters] - ~~folded and packaged in convenient size.~~
19. Sterile gauze pads - four inches [10.16 centimeters] by four inches [10.16 centimeters].
20. Soft roller self-adhering type bandages - six inches [15.24 centimeters] by five yards [4.57 meters]. Also two-inch [5.08-centimeters] roller bandage.
21. Mouth gags - either commercial or made from three tongue blades taped together and padded. Bite sticks.
22. Oropharyngeal airways in adult, child, and infant sizes.
23. Mouth-to-mouth artificial ventilation airways for adults and children.
24. Roll of aluminum foil - eighteen inches [45.72 centimeters] by twenty-five feet [7.62 meters] - sterilized and wrapped.
25. Two rolls of adhesive Adhesive tape - three inches {7.62 centimeters} wide assorted sizes.

26. Shears - blunt - two minimum.
27. Large size safety pins.
28. Bedpan, emesis basin, urinal.
29. Distilled water --~~plastic container~~ or saline solution.
30. Intravenous bottleholder - cot mounted or ceiling hooks.
31. Flashlights - two minimum.
32. ~~One box sanitary~~ Sanitary napkins.
33. Cotton tip applicators.
34. Cervical collar, headband, chin straps. ~~Cravat bandage may be used for chin strap and headband.~~
35. Adequate blankets, sheets, pillows, towels, et cetera.
36. Sterilization agent to clean equipment - local option.
37. ~~Flares~~ Reflectorized flares for securing scene - set of three minimum.
38. One set socket wrenches, crowbar, heavy hammer, screwdriver, hacksaw, pliers, et cetera.
39. Blood pressure monometer, cuff, and stethoscope.
40. ~~Half-ring Thomas splint or Hare splint or equivalent.~~ Lower extremity traction splint.
41. ~~Two-way radio capability that meets state standards.~~ VHF radio with eight channel capability meeting state emergency medical services standards.

History: Amended effective September 25, 1979; March 1, 1984.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

MAY 1984

33-06-01-01. Reportable diseases. All reportable diseases shall be confidential and not open to inspection. The following diseases are hereby declared to be reportable in this state.

1. ~~Actinomycesis~~ Acquired Immune Deficiency Syndrome (A.I.D.S.).
2. ~~Ancylostomiasis~~ (hookworm disease) Amebiasis.
3. Anthrax.
4. ~~Ascariasis~~.
5. ~~Aseptic meningitis~~.
6. Blastomycosis.
7. 5. Botulism.
8. 6. Brucellosis.
7. Campylobacter enteritis.
9. ~~Cancer, tumors, benign and malignant~~.
10. 8. Chancroid.
11. 9. Chickenpox (varicella).
12. 10. Cholera.
13. ~~Coccidiomycesis~~ (coccidioidal granuloma, "Valley fever")

- ~~14.~~ Conjunctivitis acute, infectious.
- ~~15.~~ Dengue.
- ~~16.~~ Diarrhea of the newborn (in institutions).
- ~~17.~~ 11. Diphtheria.
- ~~18.~~ Dysentery, amebic (amebiasis).
- ~~19.~~ Dysentery, bacillary.
- ~~20.~~ 12. Encephalitis infectious lethargic and nonlethargic (specify etiology).
- ~~21.~~ Favus.
- 13. Foodborne or waterborne outbreaks.
- 14. Giardiasis.
- ~~22.~~ Glanders (farey).
- ~~23.~~ 15. Gonorrhoea.
- 16. Granuloma inguinale.
- ~~24.~~ Hemorrhagic jaundice (spirochetosis ictero-hemorrhagic Weil's disease).
- 17. Hepatitis (specify type).
- 18. Herpes simplex (genital).
- 19. Histoplasmosis.
- ~~25.~~ Impetigo contagiosa (without medical attention).
- ~~26.~~ Infectious and serum hepatitis.
- ~~27.~~ 20. Influenza and influenza like.
- ~~28.~~ Legionnaires disease.
- 21. Legionellosis.
- ~~29.~~ 22. Leprosy (Hansen's disease).
- 23. Leptospirosis.
- ~~30.~~ 24. Lymphogranuloma venereum (inguinale) and climatic bube.
- ~~31.~~ 25. Malaria.

- 32-26. Measles (rubeola).
- 33-27. ~~Meningococcus meningitis~~ Meningitis (specify etiology).
- 34-28. Mumps.
29. Nosocomial infections.
30. Ornithosis (Psittacosis).
- 35- Paratyphoid fever-
- 36-31. Pertussis.
- 37-32. Plague bubonic, septicemia pneumonic.
- 38-33. Poliomyelitis.
- 39- Psittacosis-
- 40- Puerperal infection (puerperal septicemia)-
- 41-34. Rabies.
- 42- Rat bite fever (soduku)-
- 43- Relapsing fever-
35. Reye's syndrome.
- 44-36. Rheumatic fever, acute.
- 45-37. Rocky Mountain spotted (or tick) fever.
- 46-38. Rubella.
- 47-39. Salmonellosis.
40. Scabies (in institutions).
- 48- Scalp ringworm-
- 49-41. Shigellosis.
- 50- Smallpox (variola)-
- 51- Streptococcus sore throat-
- 52-42. Syphilis.
- 53-43. Tetanus.
44. Toxic-shock syndrome.

~~54. Trachoma.~~

~~55-45. Trichinosis.~~

~~56-46. Tuberculosis, pulmonary.~~

~~57. Tuberculosis, other than pulmonary.~~

~~58-47. Tularemia.~~

~~59-48. Typhoid fever.~~

~~60. Yellow fever.~~

History: Amended effective May 1, 1984.

General Authority: NDCC 23-07-01

Law Implemented: NDCC 23-07-01

STAFF COMMENT: Chapter 33-28-01 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-28-01 SPOUSE ABUSE PROGRAMS

Section	
33-28-01-01	Governing Authority
33-28-01-02	Effect of Rules
33-28-01-03	Definitions
33-28-01-04	Shelter Facility Management
33-28-01-05	Safe Home System
33-28-01-06	Emergency Safe Housing
33-28-01-07	Twenty-Four-Hour Service
33-28-01-08	Training of Volunteer Staff Advocates
33-28-01-09	Staff Evaluation
33-28-01-10	Nondiscrimination
33-28-01-11	Advocacy, Information, or Referral
33-28-01-12	Data Collection
33-28-01-13	Records and Reporting
33-28-01-14	Local Support

33-28-01-01. Governing authority. Adult abuse programs receiving domestic violence prevention fund moneys shall operate in accordance with North Dakota Century Code chapter 14-07.2.

History: Effective May 1, 1984.

General Authority: NDCC 14-07.2-04

Law Implemented: NDCC 14-07.2-04

33-28-01-02. Effect of rules. All rules adopted by the health council under the powers granted by any provisions of the North Dakota Century Code shall be binding upon all adult abuse programs receiving grants from the North Dakota domestic violence prevention fund, and shall have the force and effect of law.

History: Effective May 1, 1984.
General Authority: NDCC 14-07.2-04
Law Implemented: NDCC 14-07.2-04

33-28-01-03. Definitions.

1. "Emergency safe housing" means any form of short-term housing other than a safe home or shelter provided to a victim of adult abuse.
2. "Safe home" means a private volunteer home which has agreed to provide shelter to an abused adult and the adult's children for one to three days. The police may make regular patrols of the homes at the discretion of the individual programs.
3. "Shelter" means a permanent shelter facility run by the program, making housing and food available to the abused adult and the adult's children twenty-four hours a day, seven days a week. Generally the length of stay in a shelter is longer than in a safe home; staying approximately five to ten days.

History: Effective May 1, 1984.
General Authority: NDCC 14-07.2-04
Law Implemented: NDCC 14-07.2-04

33-28-01-04. Shelter facility management. In order to receive moneys from the domestic violence prevention fund, a spouse abuse program maintaining a shelter must meet these requirements:

1. The shelter shall provide twenty-four-hour supervision when clients are residing in the shelter.
2. The shelter shall develop and implement evacuation plans for fire and tornado disasters.
3. The shelter shall maintain an effective security system.
4. The shelter shall maintain fire safety standards of the state.

History: Effective May 1, 1984.
General Authority: NDCC 14-07.2-04
Law Implemented: NDCC 14-07.2-04

33-28-01-05. Safe home system. In order to receive moneys from the domestic violence prevention fund, a spouse abuse program maintaining a safe home system must meet these requirements:

1. The program shall develop and implement a safe home recruitment procedure which involves a screening process and home interview.
2. The program shall provide a formal or informal support system for safe home providers, e.g., volunteer liaison, periodic meetings, etc.
3. The program shall provide at least three hours of orientation before beginning service as a safe home.

History: Effective May 1, 1984.

General Authority: NDCC 14-07.2-04

Law Implemented: NDCC 14-07.2-04

33-28-01-06. Emergency safe housing. In order to receive moneys from the domestic violence prevention fund, a spouse abuse program maintaining emergency safe housing must meet these requirements:

1. The program must notify the management of an emergency safe housing system prior to utilization of that system as a housing for any abused adult.
2. The program must ensure that immediate access to program staff is available from the emergency safe housing facility.

History: Effective May 1, 1984.

General Authority: NDCC 14-07.2-04

Law Implemented: NDCC 14-07.2-04

33-28-01-07. Twenty-four-hour service. All programs must have access to twenty-four-hour crisis lines by which project personnel may be reached.

History: Effective May 1, 1984.

General Authority: NDCC 14-07.2-04

Law Implemented: NDCC 14-07.2-04

33-28-01-08. Training of volunteer staff advocates. Programs must provide a minimum of twelve hours of preservice training to volunteer staff advocates. Training must include:

1. Initial orientation.
2. On-the-job training and supervision.

3. An evaluation process.

History: Effective May 1, 1984.
General Authority: NDCC 14-07.2-04
Law Implemented: NDCC 14-07.2-04

33-28-01-09. Staff evaluation. Programs must utilize a staff performance evaluation for both paid and volunteer staff.

History: Effective May 1, 1984.
General Authority: NDCC 14-07.2-04
Law Implemented: NDCC 14-07.2-04

33-28-01-10. Nondiscrimination. Shelter facilities and all other shelter programs must implement a policy of racial nondiscrimination.

History: Effective May 1, 1984.
General Authority: NDCC 14-07.2-04
Law Implemented: NDCC 14-07.2-04

33-28-01-11. Advocacy, information, or referral. Programs must provide advocacy with, information about, or referral to the following:

1. Court system.
2. Legal counsel.
3. Medical community.
4. Social service financial assistance programs.
5. Social service support services.
6. Community self-help groups.
7. Mental health professionals.
8. Law enforcement agencies.

History: Effective May 1, 1984.
General Authority: NDCC 14-07.2-04
Law Implemented: NDCC 14-07.2-04

33-28-01-12. Data collection. Programs shall comply with the requirements of the division of maternal and child health, state department of health, in providing statistical data.

History: Effective May 1, 1984.
General Authority: NDCC 14-07.2-04

Law Implemented: NDCC 14-07.2-04

33-28-01-13. Records and reporting. Programs shall agree to keep records relating to the disbursement of domestic violence prevention funds in a manner acceptable to the state department of health, and submit periodic fiscal and program reports, as required by the department.

History: Effective May 1, 1984.
General Authority: NDCC 14-07.2-04
Law Implemented: NDCC 14-07.2-04

33-28-01-14. Local support. Programs must be able to demonstrate significant, active community support of and involvement in the program by providing a twenty-five percent match for grants (in cash or in kind) from local sources.

History: Effective May 1, 1984.
General Authority: NDCC 14-07.2-04
Law Implemented: NDCC 14-07.2-04

TITLE 43
Industrial Commission

MARCH 1984

STAFF COMMENT: Chapters 43-02-02.1 and 43-02-07 contains all new material but is not underscored so as to improve readability.

CHAPTER 43-02-02.1
UNDERGROUND INJECTION CONTROL PROGRAM

Section	
43-02-02.1-01	Definitions
43-02-02.1-02	Classification of Class III Injection Wells
43-02-02.1-03	Powers and Duties
43-02-02.1-04	Prohibition of Unauthorized Injection
43-02-02.1-05	Prohibition of Movement of Fluid into Underground Sources of Drinking Water
43-02-02.1-06	Identification of Underground Sources of Drinking Water and Exempted Aquifers
43-02-02.1-07	Permitting
43-02-02.1-08	Area Permits
43-02-02.1-09	Draft Permits and Fact Sheets
43-02-02.1-10	Public Notice and Comment - Requests for Hearings - Public Hearings - Response to Comments
43-02-02.1-11	Permit Conditions
43-02-02.1-12	Technical Requirements
43-02-02.1-13	Plugging and Abandonment
43-02-02.1-14	Mechanical Integrity
43-02-02.1-15	Area of Review
43-02-02.1-16	Schedules of Compliance
43-02-02.1-17	Confidentiality of Information
43-02-02.1-18	Authorization by Rule
43-02-02.1-19	Penalties

43-02-02.1-01. Definitions.

1. "Abandoned well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.
2. "Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.
3. "Area of review" is used as defined in 40 CFR 146.06.
4. "CFR" means Code of Federal Regulations as of April 1, 1983.
5. "Commission" means the industrial commission of this state.
6. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
7. "Draft permit" is used as defined in 40 CFR 144.3.
8. "Exempted aquifer" is used as defined in 40 CFR 146.04.
9. "Injection well" means a well into which fluids are being injected.
10. "Mechanical integrity" is used as defined in 40 CFR 146.08.
11. "Person" means an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof.
12. "Underground source of drinking water" is used as defined in 40 CFR 146.03.
13. "Well" means a bored, drilled, or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.1-02. Classification of Class III injection wells. This classification refers to wells which inject for extraction of minerals or energy, including:

1. Mining or sulfur by the Frasch process.
2. In situ production of uranium or other metals. This category includes only in situ production from ore bodies which have not been conventionally mined. Solution mining of

conventional mines such as stopes leaching is included in Class V.

3. Solution mining of salts or potash.

History: Effective March 1, 1984.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02.1-03. Powers and duties. The state geologist shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to the underground injection control program for Class III disposal wells. All applications, correspondence, protests, and other communications shall be addressed to the state geologist as follows:

State Geologist
University Station
Grand Forks, ND 58202-8156
(701) 777-2231

History: Effective March 1, 1984.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02.1-04. Prohibition of unauthorized injection. Any Class III underground injection is prohibited except as authorized by permit issued under this section. Also, the construction of any well required to have a permit under this section is prohibited until the permit has been issued.

History: Effective March 1, 1984.
General Authority: NDCC 38-12-03
Law Implemented: NDCC 38-12-03

43-02-02.1-05. Prohibition of movement of fluid into underground sources of drinking water. No owner or operator may construct, operate, maintain, convert, plug, abandon, or conduct any other underground injection activity in a manner which causes or allows movement of fluid containing any contaminant into underground sources of drinking water or which may adversely affect the health of persons. The applicant for a permit has the burden of proof of showing that the requirements of this section are met.

History: Effective March 1, 1984.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02.1-06. Identification of underground sources of drinking water and exempted aquifers. The commission acting by and through the state geologist shall identify underground sources of drinking water and exempted aquifers in accordance with 40 CFR 144.7.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.1-07. Permitting.

1. Application for a permit.

- a. Any person who is required to have a permit shall complete, sign, and submit an application to the state geologist.
- b. When the owner and operator are different, it is the operator's duty to obtain a permit.
- c. Applicants shall keep records of all data used to complete permit applications and supplemental information for at least three years.
- d. Operators of existing Class III injection wells shall submit a completed application on forms provided by the state geologist no later than four years after approval of the state program.
- e. Operators of new injection wells, unless covered by an existing area permit, shall submit an application within a reasonable time before construction is expected to begin.

2. Signatories to permit applications. Permit applications must be signed in accordance with the specifications in 40 CFR 144.32.

3. Duration of permits. Underground injection control permits for Class III wells are effective for a fixed term of not more than ten years.

4. Transfer of permits. Transfer of a Class III permit to a new permittee must be made in accordance with 40 CFR 144.38.

5. Modification, revocation and reissuance, or termination of permits. The commission shall modify, revoke and reissue, or terminate permits as specified in 40 CFR 144.39, 144.40, 144.41, and 124.5, at the request of any affected person or at the commission's initiative. All requests must be in writing and must contain information supportive to the request.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-03
Law Implemented: NDCC 38-12-03

43-02-02.1-08. Area permits. The commission may issue a permit on an area basis, rather than for each well individually, in accordance with the specifications outlined in 40 CFR 144.33.

History: Effective March 1, 1984.
General Authority: NDCC 38-12-03
Law Implemented: NDCC 38-12-03

43-02-02.1-09. Draft permits and fact sheets.

1. **Draft permits.** When an application is completed, the commission, acting by and through the state geologist, shall either prepare a draft permit or deny the application. A draft permit must contain all permit requirements.
2. **Fact sheets.**
 - a. A fact sheet must be prepared for each draft permit for a major facility or activity, and in those cases which the commission or the state geologist finds that the draft permit is the subject of widespread public interest or raises major issues.
 - b. If a fact sheet is required, it must be sent to the applicant and, on request, to any other person, and must include the items specified in 40 CFR 124.8.

History: Effective March 1, 1984.
General Authority: NDCC 38-12-03
Law Implemented: NDCC 38-12-03

43-02-02.1-10. Public notice and comment - Requests for hearings - Public hearings - Response to comments.

1. **Public notice.**
 - a. The commission shall give public notice that the following actions have occurred:
 - (1) A draft permit has been prepared;
 - (2) A hearing has been scheduled; or
 - (3) Intent to deny a permit application.
 - b. Public notice must be given to allow thirty days for public comment on the draft permit.

- c. Public notice of a public hearing must be given at least thirty days before the hearing.
- d. Public notice must be given by the methods specified in 40 CFR 124.10(c).
- e. Public notices and public notices for hearings must at a minimum contain the information specified in 40 CFR 124.10(d).

2. Public comment.

- a. During the public comment period, any interested person may submit written or oral comments and, if no public hearing is scheduled, request a public hearing in writing, stating the nature of the issues.
- b. All comments must be considered in making the final decision and must be answered when the final permit decision is made.

3. Public hearing. The commission shall hold a public hearing whenever there is a significant degree of public interest in a draft permit. The commission also may hold a public hearing at its discretion.

4. Response to comments.

- a. The commission, acting by and through the state geologist, shall issue a response to comments when a final permit decision is made. The response must:
 - (1) Specify with provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
 - (2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.
- b. The response to comments must be available to the public.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-04

Law Implemented: NDCC 38-12-04

43-02-02.1-11. Permit conditions. All permits must contain the conditions specified in 40 CFR 144.51 and 144.52.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-03

Law Implemented: NDCC 38-12-03

43-02-02.1-12. Technical requirements.

1. Construction requirements.

a. General.

- (1) Existing wells must achieve compliance with construction requirements prior to permitting or according to a compliance schedule established as a permit condition.
- (2) New injection wells must be in compliance with construction requirements prior to commencing injection operations.
- (3) Changes in construction plans require approval of the commission, acting by and through the state geologist.

b. Class III construction must conform to the requirements contained in 40 CFR 146.32.

2. Corrective action.

a. All permits must contain the corrective action requirements specified in 40 CFR 144.55.

b. The state geologist's review of the plan for corrective action shall consider the criteria and factors specified in 40 CFR 146.07.

3. Minimum requirements for operating, monitoring, and reporting on Class III wells are included in 40 CFR 146.33.

4. In authorizing a new Class III well, the commission, acting by and through the state geologist, shall require the submission of all the information specified in 40 CFR 146.34.

5. Prior to granting approval for the operation of a well, the commission, acting by and through the state geologist, shall consider the information listed in 40 CFR 146.34(b).

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.1-13. Plugging and abandonment.

1. Any Class III permit must include conditions to ensure the well will be plugged and abandoned so that movement of fluids is not allowed either into an underground source of drinking water or between underground sources of drinking water.

2. Any underground injection control permit must include a plan for plugging and abandonment which shall be incorporated into the permit as a condition.
3. Temporary intermittent cessation of injection operations is not considered abandonments.
4. Prior to granting approval for plugging and abandonment, the state geologist shall consider the information listed in 40 CFR 146.34(c).

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.1-14. Mechanical integrity. A permit for any Class III well or injection project which lacks mechanical integrity must include a condition prohibiting injection operations until the state geologist is satisfied that the specifications for mechanical integrity listed in 40 CFR 146.08 have been met.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-01

43-02-02.1-15. Area of review. The area of review for each injection well or each field, project, or area of the state must be determined according to 40 CFR 146.06.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-01

Law Implemented: NDCC 38-12-02

43-02-02.1-16. Schedules of compliance.

1. The compliance schedule must require compliance as soon as possible, and not later than three years, after the effective date of the permit.
2. If the compliance schedule is set for a duration of more than one year, interim requirements and completion dates (not to exceed one year) must be incorporated into the compliance schedule and permit.
3. No later than thirty days following each interim and final date, the permittee shall notify the state geologist in writing of compliance/noncompliance.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.1-17. Confidentiality of information. The following information cannot be claimed confidential:

1. Name and address of permit applicant or permittee.
2. Information which deals with the existence, absence, or level of contaminants in drinking water.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.1-18. Authorization by rule. The commission, acting by and through the state geologist, may authorize Class III underground injection by rule as outlined in 40 CFR 144.21, 144.25, and 144.26.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.1-19. Penalties. Any person who violates any provision of this chapter or any permit conditions is subject to the penalties prescribed in North Dakota Century Code sections 38-08-16 and 38-08-17.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-05

Law Implemented: NDCC 38-12-05

CHAPTER 43-02-07 GEOTHERMAL ENERGY PRODUCTION

Section	
43-02-07-01	Definitions
43-02-07-02	Scope of Chapter
43-02-07-03	Powers and Duties
43-02-07-04	Authority to Cooperate with Other Agencies
43-02-07-05	Prohibition of Movement of Fluids into Underground Sources of Drinking Water
43-02-07-06	Permit Required
43-02-07-07	Modification or Revocation and Reissuance of Permit - Termination of Permit - Transfer or Renewal of Permit
43-02-07-08	Bond
43-02-07-09	Proof of Financial Responsibility
43-02-07-10	Technical Requirements

43-02-07-11	Completion Report and Basic Data Collected
43-02-07-12	Production Reports
43-02-07-13	Records to be Kept
43-02-07-14	Disposal of Unusable Products
43-02-07-15	Plugging and Abandonment

43-02-07-01. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-19, except:

1. "Commission" means the industrial commission of this state.
2. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
3. "Deep well" means any hole drilled below one thousand feet [304.8 meters] to develop or produce geothermal energy.
4. "Injection well" means a well into which fluids are being injected.
5. "Person" means and includes any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any department, agency or instrumentality of the state, or of any governmental subdivision thereof.
6. "Shallow well" means any hole drilled to a total depth of less than one thousand feet [304.8 meters] for the purpose of developing or producing geothermal energy.
7. "Underground source of drinking water" means an aquifer or its portion which supplies drinking water for human consumption or in which the ground water contains fewer than ten thousand milligrams per liter total dissolved solids.
8. "Well" means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

History: Effective March 1, 1984.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

43-02-07-02. Scope of chapter. This chapter is of statewide application and has been adopted by the commission to conserve the natural resources of this state, to prevent waste, to protect the correlative rights of all owners, to prevent the contamination of underground sources of drinking water, and to avoid creation of secondary hazards of geologic nature. The commission may grant exceptions to this chapter, after due notice and hearing, when such

exceptions will result in the prevention of waste and operation in a manner to protect correlative rights.

History: Effective March 1, 1984.
General Authority: NDCC 38-19-03
Law Implemented: NDCC 38-19-03

43-02-07-03. Powers and duties. The state geologist shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to geothermal energy extraction facilities. All applications, correspondence, protests, and other communications shall be addressed to the state geologist as follows:

State Geologist
University Station
Grand Forks, ND 58202-8156
(701) 777-2231

History: Effective March 1, 1984.
General Authority: NDCC 38-19-03
Law Implemented: NDCC 38-19-03

43-02-07-04. Authority to cooperate with other agencies. The commission may from time to time enter into arrangements with state and federal government agencies, committees from industry, and individuals with respect to special projects, services, and studies relating to geothermal energy.

History: Effective March 1, 1984.
General Authority: NDCC 38-19-03
Law Implemented: NDCC 38-19-03

43-02-07-05. Prohibition of movement of fluids into underground sources of drinking water. No producer may construct, operate, maintain, convert, plug, or abandon any geothermal energy extraction facility in a manner which causes or allows movement of fluid containing any contaminant into underground sources of drinking water or which may adversely affect the health of persons. The applicant for a permit has the burden of proof of showing that the requirements of this paragraph are met.

History: Effective March 1, 1984.
General Authority: NDCC 38-19-03
Law Implemented: NDCC 38-19-03

43-02-07-06. Permit required. A permit is required prior to the commencement of operations for the drilling, boring, excavating, or construction of a geothermal energy extraction facility. A permit is not required for private residential heating or cooling purposes or for

geothermal extraction facilities with a heat exchange rate of less than one hundred twenty thousand Btu per hour. The state geologist may grant a permit for ten years upon receipt of a permit application on a form provided by the commission, the furnishing of a bond as provided in section 43-02-07-08, and the payment of a fee of one hundred dollars for each permit. The application for a permit must be accompanied by an accurate plat showing the location of the proposed facility with reference to the nearest lines of a governmental section.

The state geologist may deny an application for permit if the construction of a geothermal energy extraction facility would violate correlative rights or would cause, or tend to cause, waste, damage to the environment, or contaminate underground sources of drinking water. The applicant may appeal the decision of the state geologist to the commission.

History: Effective March 1, 1984.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

**43-02-07-07. Modification or revocation and reissuance of permit
- Termination of permit - Transfer or renewal of permit.**

1. Modification or revocation and reissuance of permit.

- a. The commission may modify or revoke and reissue a permit if there are substantial alterations or additions to the permitted facility, or if the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued.
- b. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term.

2. Termination of permit.

- a. The commission may terminate a permit during its term or deny a renewal application for noncompliance by the permittee with any condition of the permit or failure to disclose fully or misrepresent all relevant facts.
- b. A permit may be terminated if the permitted activity endangers human health or the environment, or causes pollution to underground sources of drinking water.

3. Transfer or renewal of permit.

- a. A permit may be renewed or transferred to a new owner or operator if the current permittee notifies the commission

at least thirty days in advance of the proposed renewal or transfer date and provided the permit does not need to be modified or revoked and reissued.

- b. A notice of transfer must include a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them. The notice must demonstrate that the financial responsibility requirements of section 43-02-07-09 will be met by the new permittee.

History: Effective March 1, 1984.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

43-02-07-08. Bond. Before any person receives a permit to drill, bore, excavate, or construct a geothermal energy extraction facility, the person shall submit to the commission and obtain its approval of a bond, on a form approved by the commission, conditioned as provided by law. Each such bond must be executed by a responsible surety company authorized to transact business in this state.

The amount of the bond must be commensurate with the number of extraction wells and the type of project. The amount of a bond must be as follows:

1. Single shallow well facility - \$1,000.
2. Blanket bond for a two or more shallow wells facility - \$15,000.
3. Single deep well facility - \$5,000.
4. Blanket bond for a two or more deep wells facility - \$25,000.

Liability on the bond is conditioned on compliance with North Dakota Century Code chapter 38-19 and the rules and orders of the commission, and continues until any of the following occurs:

1. The wells have been satisfactorily plugged as provided in this chapter, the sites restored and approved by the state geologist, and all logs, plugging records, and other pertinent data required by statute or rules and orders of the commission are filed and approved.
2. The lands disturbed by any method of production of geothermal energy have been restored and approved by the state geologist.
3. The liability on the bond has been transferred to another bond and such transfer approved by the commission.

The commission shall advise the surety and the principal when liability on a bond is terminated.

The state geologist is vested with the power to act for the commission as to all matters within this section.

History: Effective March 1, 1984.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

43-02-07-09. Proof of financial responsibility. The permittee shall maintain financial responsibility and resources to close, plug, and abandon the geothermal energy extraction facility according to this chapter. The permittee shall show evidence of financial responsibility to the commission by the submission of surety bond, or other adequate assurance, such as financial statements or other materials acceptable to the commission.

History: Effective March 1, 1984.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

43-02-07-10. Technical requirements. All geothermal energy extraction facility wells must be in compliance with article 33-18.

History: Effective March 1, 1984.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

43-02-07-11. Completion report and basic data collected. Within thirty days after the completion of any geothermal energy extraction facility, a completion report must be filed with the state geologist, on a form prescribed by the commission.

The following basic data developed by the producer must be delivered, free of charge, to the state geologist, if requested, within six months of the filing of the completion report:

1. Washed and packaged sample cuts, core chips, or whole cores minus those portions of cores used for necessary testing or analysis in which case the results of testing, the analysis, and the description of missing portions shall be submitted to the state geologist upon request.
2. Sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
3. Elevation and location information on the data collection points.

4. Other pertinent information as may be requested by the state geologist.

History: Effective March 1, 1984.
General Authority: NDCC 38-19-03
Law Implemented: NDCC 38-19-03

43-02-07-12. Production reports. The producer in each and every geothermal energy extraction facility shall on or before the fifteenth day of the succeeding month following the month in which production of geothermal energy occurs file with the state geologist a sworn statement showing the quantities, temperatures, and nature of products extracted from or by means of any facility during the month and the ultimate disposition of such products.

History: Effective March 1, 1984.
General Authority: NDCC 38-19-03
Law Implemented: NDCC 38-19-03

43-02-07-13. Records to be kept. All producers of geothermal energy within this state shall make and keep appropriate books and records for a period not less than five years, from which they may be able to make and substantiate the reports required by this chapter.

History: Effective March 1, 1984.
General Authority: NDCC 38-19-03
Law Implemented: NDCC 38-19-03

43-02-07-14. Disposal of unusable products. The surface disposal or underground injection of unusable products or waste produced from a geothermal energy extraction facility must satisfy additional state laws and regulations. The state department of health must be notified of the disposal method and may require a permit under North Dakota Century Code chapter 61-28 or North Dakota Administrative Code article 33-25.

History: Effective March 1, 1984.
General Authority: NDCC 38-19-03
Law Implemented: NDCC 38-19-03

43-02-07-15. Plugging and abandonment. Notice of intention to abandon any geothermal energy extraction facility must be filed with the state geologist by the producer prior to the commencement of plugging operations, on a form prescribed by the commission. The notice must state the name and location of the well and the name of the producer.

Before any geothermal energy extraction facility is abandoned, it must be plugged in a manner which will confine permanently all subsurface minerals, oil, gas, and water in the separate strata

originally containing them. This operation must be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in combination as may be approved by the state geologist. Casing must be cut off three feet [.91 meters] below the surface of the ground. The top plug in any hole must be set at least three feet [.91 meters] below ground level, and the land surface must be restored as nearly as possible to its original condition.

History: Effective March 1, 1984.
General Authority: NDCC 38-19-03
Law Implemented: NDCC 38-19-03

APRIL 1984

43-02-06-01. Royalty owner information statement.

- i. Any person who makes payment to an owner of a royalty interest in land in this state for the purchase of oil or gas produced from the royalty interest must provide with the payment to the royalty owner the following information on a lease, property, or per well basis:
 - a. The month and year during which sales occurred for which payment is being made.
 - b. The lease, property, or well name or any lease, property, or well identification number used to identify the lease, property, or well, provided, that if a lease, property, or well identification number is used the royalty owner must initially be provided with the lease, property, or well name to which the lease, property, or well number refers.
 - c. The total number of barrels of oil or thousand cubic feet {28-32 cubic meters} of gas sold.
 - d. Price per barrel or thousand cubic feet {28-32 cubic meters} based on average current month's gross sales.
 - e. The gross value of oil or gas sold.
 - f. The royalty owner's interest in sales from the lease, property, or well expressed as a decimal.

- g- The royalty owner's share of total value of sales prior to any deductions-
 - h- The production tax paid on royalty owner's interest-
 - i- The extraction tax paid on royalty owner's interest-
 - j- The windfall profit tax paid on royalty owner's interest-
 - k- Any deductions or adjustments. These not explained on the statement or in a separate mailing, shall be explained to the royalty owner upon inquiry to the disbursers-
 - l- The royalty owner's net share of sales after deductions-
 - m- A telephone number and address where additional information may be obtained and any questions answered. If information is requested by certified mail, the answer must be mailed by certified mail within thirty days of receipt of the request-
- 2- The information required by this section may be included on the check stub or may be provided on a separate royalty information statement. All information must be provided on a lease, property, or per well basis except for unitized formations which may be reported as one property-
- 3- This section is effective beginning with any royalty payments made on oil or gas sold in January of 1984-

Whenever payment is made for oil or gas production to an interest owner, whether pursuant to a division order, lease, servitude, or other agreement, all of the following information must be included on the check stub or on an attachment to the form of payment, unless the information is otherwise provided on a regular monthly basis:

1. The lease, property, or well name or any lease, property, or well identification number used to identify the lease, property, or well; provided, that if a lease, property, or well identification number is used the royalty owner must initially be provided with the lease, property, or well name to which the lease, property, or well name refers.
2. The month and year during which sales occurred for which payment is being made.

3. The total number of barrels of oil or thousand cubic feet of gas sold.
4. Price per barrel or thousand cubic feet.
5. Total amount of state severance and other production taxes.
6. Windfall profit tax paid on owner's interest.
7. Any other deductions or adjustments. Those not explained on the statement or in a separate mailing, must be explained to the royalty owner upon inquiry to the disburser.
8. Net value of total sales after deductions.
9. Owner's interest in sales from the lease, property, or well expressed as a decimal.
10. Owner's share of the total value of sales prior to any tax deductions.
11. Owner's share of sales value less deductions.
12. An address where additional information may be obtained and any questions answered. If information is requested by certified mail, the answer must be mailed by certified mail within thirty days of receipt of the request.

History: Effective November 1, 1983; amended effective April 1, 1984.

General Authority: NDCC 38-08-06.3

Law Implemented: NDCC 38-08-06.3

TITLE 45
Insurance, Commissioner of

MAY 1984

STAFF COMMENT: Chapter 45-05-02 contains all new material but is not underscored so as to improve readability.

CHAPTER 45-05-02
CROP HAIL INSURANCE

Section	
45-05-02-01	Policy Term
45-05-02-02	Cash Discounts
45-05-02-03	Dividends
45-05-02-04	Rate for Similar Crop Varieties

45-05-02-01. Policy term. A policy of crop/hail insurance in this state may not provide for a policy term in excess of one crop year.

History: Effective May 1, 1984.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-25

45-05-02-02. Cash discounts.

1. Cash discounts of seven percent or less contained in any crop/hail policy issued in this state are presumed to be a proper discount and will be automatically approved by the insurance department. Cash discounts in excess of seven percent may be approved if documentary evidence is provided to the department, clearly demonstrating that the entire discount is justified.

2. All applications for crop/hail policies which provide a cash discount must contain on or attached to the application a clear indication of the availability of the discount to the policyholder. To receive the discount, the cash must be paid by June first or within thirty days of the date of application, whichever is later.

History: Effective May 1, 1984.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-25

45-05-02-03. Dividends.

1. "Guaranteed dividends" may not be offered or provided with regard to any policy of crop/hail insurance. Dividends may be provided through a participating policy based upon the profit of the preceding year's experience for that line of insurance.
2. Payment of dividends may not be made at the time of or in connection with the solicitation of insurance for the new crop year, nor may payment of the dividend be contingent upon obtaining a policy through the same insurer or agent.
3. Any requests for assignment of dividends by lending institutions must be fully explained to the policy or certificate holder.
4. Only insurance companies or insurers may pay dividends and they shall be paid directly to the policy or certificate holder.
5. A dividend may not be used as a credit against the next year's premium.

History: Effective May 1, 1984.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-25

45-05-02-04. Rate for similar crop varieties. All varieties of a given crop should be written at the same rates. Such rates shall be the same as crop hail insurance actuarial association rates, unless actuarial justification is provided for a variance.

History: Effective May 1, 1984.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-25

JUNE 1984

STAFF COMMENT: Chapter 45-04-04 contains all new material but is not underscored so as to improve readability.

CHAPTER 45-04-04
VARIABLE LIFE INSURANCE

Section	
45-04-04-01	Definitions
45-04-04-02	Qualification of Insurer to Issue Variable Life Insurance
45-04-04-03	Insurance Policy Requirements
45-04-04-04	Reserve Liabilities for Variable Life Insurance
45-04-04-05	Separate Accounts
45-04-04-06	Information Furnished to Applicants
45-04-04-07	Applications
45-04-04-08	Reports to Policyholders
45-04-04-09	Foreign Companies
45-04-04-10	Qualification of Agents for the Sale of Variable Life Insurance
45-04-04-11	Separability
45-04-04-12	Supersession of Conflicting Rules

45-04-04-01. Definitions.

1. "Affiliate" means any person, directly or indirectly, controlling, controlled by, or under common control with such insurer; any person who regularly furnishes investment advice to such insurer with respect to its separate accounts for which a specific fee or commission is charged; or any director, officer, partner, or employee of any such insurer,

controlling or controlled person, or person providing investment advice or any member of the immediate family of such person.

2. "Assumed investment rate" means the rate of investment return which would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses, and mortality and expense guarantees to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.
3. "Benefit base" means the amount, to which the net investment return is applied.
4. "Control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing more than ten percent of the voting securities of any other person. This presumption may be rebutted by a showing made to the satisfaction of the commissioner that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
5. "Flexible premium policy" means any variable life insurance policy other than a scheduled premium policy such as specified in subsection 11.
6. "General account" means all assets of the insurer other than assets in separate accounts established pursuant to North Dakota Century Code section 26-11.1-01 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.
7. "Incidental insurance benefit" means all insurance benefits in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, including but not limited to accidental death and dismemberment benefits, disability benefits, guaranteed insurability options, family income, or term riders.

8. "Minimum death benefit" means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.
9. "Net investment return" means the rate of investment return in a separate account to be applied to the benefit base.
10. "Policy processing day" means the day on which charges authorized in the policy are deducted from the policy's cash values.
11. "Scheduled premium policy" means any variable life insurance policy under which both the amount and timing of premium payments are fixed by the insurer.
12. "Separate account" means a separate account established pursuant to North Dakota Century Code section 26-11.1-01 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.
13. "Variable death benefit" means the amount of the death benefit, other than incidental insurance benefits, payable under a variable life insurance policy dependent on the investment performance of the separate account, which the insurer would have to pay in the absence of any minimum death benefit.
14. "Variable life insurance policy" means any individual policy which provides for life insurance the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to such policy, pursuant to North Dakota Century Code section 26-11.1-01 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

History: Effective June 1, 1984.

General Authority: NDCC 26-11.1-04

Law Implemented: NDCC 26-11.1

45-04-04-02. Qualification of insurer to issue variable life insurance.

1. **Licensing and approval to do business in this state.** Any insurer may not deliver or issue for delivery in this state any variable life insurance policy unless:
 - a. The insurer is licensed or organized to do a life insurance business in this state; and

- b. The insurer has obtained the written approval of the commissioner for the issuance of variable life insurance policies in this state. The commissioner shall grant such written approval only after the commissioner has found that:
- (1) The plan of operation for the issuance of variable life insurance policies is not unsound;
 - (2) The general character, reputation, and experience of the management and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer are such as to reasonably assure competent operation of the variable life insurance business of the insurer in this state; and
 - (3) The present and foreseeable future financial condition of the insurer and its method of operation in connection with the issuance of such policies is not likely to render its operation hazardous to the public or its policyholders in this state. The commissioner shall consider, among other things:
 - (a) The history of operation and financial condition of the insurer.
 - (b) The qualifications, fitness, character, responsibility, reputation, and experience of the officers and directors and other management of the insurer and those persons or firms proposed to supply consulting, investment, administrative, or custodial service to the insurer.
 - (c) The applicable law and regulations under which the insurer is authorized in its state of domicile to issue variable life insurance policies. The state of entry of an alien insurer shall be deemed its state of domicile for this purpose.
 - (d) If the insurer is a subsidiary of, or is affiliated by common management or ownership with another company, its relationship to such other company and the degree to which the requesting insurer, as well as the other company, meet these standards.
2. **Filing for approval to do business in this state.** The commissioner may, at the commissioner's discretion, require that an insurer, before it delivers or issues for delivery any variable life insurance policy in this state, file with this

department the following information for the consideration of the commissioner in making the determination required by subdivision b of subsection 1:

- a. Copies of a general description of the variable life insurance policies it intends to issue.
 - b. A general description of the methods of operation of the variable life insurance business of the insurer, including methods of distribution of policies and the names of those persons or firms proposed to supply consulting, investment, administrative, custodial, or distribution services to the insurer.
 - c. With respect to any separate account maintained by an insurer for any variable life insurance policy, a statement of the investment policy the issuer intends to follow for the investment of the assets held in the separate account, and a statement of procedures for changing the investment policy. The statement of investment policy must include a description of the investment objectives intended for the separate account.
 - d. A description of any investment advisory services contemplated as required by subsection 10 of section 45-04-04-05.
 - e. A copy of the statutes and regulations of the state domicile of the insurer under which it is authorized to issue variable life insurance policies.
 - f. Biographical data with respect to officers and directors of the insurer on the National Association of Insurance Commissioners Uniform Biographical Data Form.
 - g. A statement of the insurer's actuary describing the mortality and expense risks which the insurer will bear under the policy.
3. **Standards of suitability.** Every insurer seeking approval to enter into the variable life insurance business in this state shall establish and maintain a written statement specifying the standards of suitability to be used by the insurer. The standards of suitability must specify that no recommendations will be made to an applicant to purchase a variable life insurance policy and that no variable life insurance policy will be issued in the absence of reasonable grounds to believe that the purchase of such policy is not unsuitable for such applicant on the basis of information furnished after reasonable inquiry of the applicant concerning the applicant's insurance and investment objectives, financial situation and needs, and any other information known to the insurer or to the agent making the recommendation.

4. **Use of sales materials.** An insurer authorized to transact variable life insurance business in this state may not use any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its variable life insurance business in this state which is false, misleading, deceptive, or inaccurate.

Variable life insurance sales material, advertising material, and descriptive literature are subject to the additional requirements of North Dakota Century Code chapter 26.1-04 and North Dakota Administrative Code chapter 45-04-01.

5. **Requirements applicable to contractual services.** Any material contract between an insurer and suppliers of consulting investment, administrative, sales, marketing, custodial, or other services with respect to variable life insurance operations must be in writing and provide that the supplier of such services shall furnish the commissioner with any information or reports in connection with such services with the commissioner may request in order to ascertain whether the variable life insurance operations of the insurer are being conducted in a manner consistent with these rules and any other applicable law or rules.
6. **Reports to the commissioner.** Any insurer authorized to transact the business of variable life insurance in this state shall submit to the commissioner, in addition to any other materials which may be required by this rule or any other applicable laws or rules:
 - a. An annual statement of the business of its separate account or accounts in such form as may be prescribed by the national association of insurance commissioners.
 - b. Prior to the use in this state any information furnished to applicants as provided for in 45-04-04-06.
 - c. Prior to the use in this state the form of any of the reports to policyholders as provided for in 45-04-04-08.
 - d. Such additional information concerning its variable life insurance operations or its separate accounts as the commissioner shall deem necessary.

Any material submitted to the commissioner under this subsection shall be disapproved if it is found to be false, misleading, deceptive, or inaccurate in any material respect and, if previously distributed, the commissioner shall require the distribution of amended material.

7. **Authority of commissioner to disapprove.** Any material required to be filed with and approved by the commissioner is subject to disapproval if at any time it is found by the

commissioner not to comply with the standards established by this rule.

History: Effective June 1, 1984.

General Authority: NDCC 26-11.1-04

Law Implemented: NDCC 26-11.1

45-04-04-03. Insurance policy requirements. The commissioner will not approve any variable life insurance form filed pursuant to this chapter unless it conforms to the requirements of this section.

1. **Filing of variable life insurance policies.** All variable life insurance policies, and all riders, endorsements, applications and other documents which are to be attached to and made part of the policy and which relate to the variable nature of the policy, must be filed with the commissioner and approved by the commissioner prior to delivery or issuance for delivery in this state.
 - a. The procedures and requirements for filing and approval are, to the extent appropriate and not inconsistent with this chapter, the same as those otherwise applicable to other life insurance policies.
 - b. The commissioner may approve variable life insurance policies and related forms with provisions the commissioner deems to be not less favorable to the policyholder and the beneficiary than those required by this chapter.
2. **Mandatory policy benefit and design requirements.** Variable life insurance policies delivered or issued for delivery in this state must comply with the following minimum requirements:
 - a. Mortality and expense risks must be borne by the insurer. The mortality and expense charges must be subject to the maximums stated in the contract.
 - b. For scheduled premium policies, a minimum death benefit must be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid (subject to the provisions of subdivision b of subsection 3).
 - c. The policy must reflect the investment experience of one or more separate accounts established and maintained by the insurer. The insurer must demonstrate that the variable life insurance policy is actuarially sound.

- d. Each variable life insurance policy must be credited with the full amount of the net investment return applied to the benefit base.
- e. Any changes in variable death benefits of each variable life insurance policy must be determined at least annually.
- f. The cash value of each variable life insurance policy must be determined at least monthly. The method of computation of cash values and other nonforfeiture benefits, as described either in the policy or in a statement filed with the commissioner of the state in which the policy is delivered, or issued for delivery, must be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other nonforfeiture benefits must be at least equal to the minimum values required by North Dakota Century Code chapter 26-03.2 for a general account policy with such premiums and benefits. The assumed investment rate may not exceed the maximum interest rate permitted under North Dakota Century Code chapter 26-03.2. If the policy does not contain an assumed investment rate this demonstration must be based on the maximum interest rate permitted under North Dakota Century Code chapter 26-03.2. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee that the amount payable at death or maturity is at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.
- g. The computation of values required for each variable life insurance policy may be based upon such reasonable and necessary approximations as are acceptable to the commissioner.

3. **Mandatory policy provisions.** Every variable life insurance policy filed for approval in this state must contain at least the following:

- a. The cover page or pages corresponding to the cover pages of each such policy shall contain:
 - (1) A prominent statement in either contrasting color or in boldface type that the amount or duration of death

benefit may be variable or fixed under specified conditions.

- (2) A prominent statement in either contrasting color or in boldface type that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees.
 - (3) A statement describing any minimum death benefit required pursuant to subdivision b of subsection 2.
 - (4) The method, or a reference to the policy provision which describes the method, for determining the amount of insurance payable at death.
 - (5) To the extent permitted by state law, a captioned provision that the policyholder may return the variable life insurance policy within ten days of receipt of the policy by the policyholder, and receive a refund equal to the sum of (a) the difference between the premiums paid including any policy fees or other charges and the amounts allocated to any separate accounts under the policy and (b) the value of the amounts allocated to any separate accounts under the policy, on the date the returned policy is received by the insurer or its agent. Until such time as state law authorizes the return of payments as calculated in the preceding sentence, the amount of the refund must be the total of all premium payments for such policy.
 - (6) Such other items as are currently required for fixed benefit life insurance policies and which are not inconsistent with this chapter.
- b. (1) For scheduled premium policies, a provision for a grace period of not less than thirty-one days from the premium due date which must provide that where the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date.
- (2) For flexible premium policies, a provision for a grace period beginning on the policy processing day when the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the amounts available under the policy to pay such charges in accordance with the terms of the policy. Such grace period must end on a date not less than sixty-one days after the mailing date of the report to

policyholders required by subsection 3 of section 45-04-04-08.

The death benefit payable during the grace period will equal the death benefit in effect immediately prior to such period less any overdue charges. If the policy processing days occur monthly, the insurer may require the payment of not more than three times the charges which were due on the policy processing day on which the amounts available under the policy were insufficient to pay all charges authorized by the policy that are necessary to keep such policy in force until the next policy processing day.

- c. For scheduled premium policies, a provision that the policy will be reinstated at any time within two years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding that permitted by North Dakota law.
- d. A full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy.
- e. A provision designating the separate account to be used and stating that:
 - (1) The assets of the separate account will be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account.
 - (2) The assets of such separate account will be valued at least as often as any policy benefits vary but at least monthly.
- f. A provision specifying what documents constitute the entire insurance contract under state law.
- g. A designation of the officers who are empowered to make an agreement or representation on behalf of the insurer and an indication that statements by the insured, or on the insured's behalf, are considered as representations and not warranties.

- h. An identification of the owner of the insurance contract.
- i. A provision setting forth conditions or requirements as to the designation, or change of designation, of a beneficiary and a provision for disbursement of benefits in the absence of a beneficiary designation.
- j. A statement of any conditions or requirements concerning the assignment of the policy.
- k. A description of any adjustments in the policy values to be made in the event of misstatement of age or sex of the insured.
- l. A provision that the policy is incontestable by the insurer after it has been in force for two years during the lifetime of the insured; provided, however, that any increase in the amount of the policy's death benefits subsequent to the policy issue date, which increase occurred upon a new application or request of the owner and was subject to satisfactory proof of the insured's insurability, is incontestable after any such increase has been in force, during the lifetime of the insured, for two years from the date of issue of such increase.
- m. A provision stating that the investment policy of the separate account will not be changed without the approval of the insurance commissioner of the state of domicile of the insurer, and that the approval process is on file with the commissioner of this state.
- n. A provision that payment of variable death benefits in excess of any minimum death benefits, cash values, policy loans, or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred:
 - (1) For up to six months from the date of request, if such payments are based on policy values which do not depend on the investment performance of the separate account; or
 - (2) Otherwise, for any period during which the New York stock exchange is closed for trading (except for normal holiday closing) or when the securities and exchange commission has determined that a state of emergency exists which may make such payment impractical.
- o. If settlement options are provided, at least one such option must be provided on a fixed basis only.
- p. A description of the basis for computing the cash value and the surrender value under the policy.

- q. Premiums or charges for incidental insurance benefits must be stated separately.
 - r. Any other policy provision required by this chapter.
 - s. Such other items as are currently required for fixed benefit life insurance policies and are not inconsistent with this chapter.
 - t. A provision for nonforfeiture insurance benefits. The insurer may establish a reasonable minimum cash value below which any nonforfeiture insurance options will not be available.
4. **Policy loan provision.** Every variable life insurance policy, other than term insurance policies and pure endowment policies, delivered or issued for delivery in this state must contain provisions which are not less favorable to the policyholder than the following:
- a. A provision for policy loans after the policy has been in force for ___ full years which provides the following:
 - (1) At least seventy-five percent of the policy's cash surrender value may be borrowed.
 - (2) The amount borrowed must bear interest at a rate not to exceed that permitted by chapter 45-04-03.
 - (3) Any indebtedness must be deducted from the proceeds payable on death.
 - (4) Any indebtedness must be deducted from the cash surrender value upon surrender or in determining any nonforfeiture benefit.
 - (5) For scheduled premium policies, whenever the indebtedness exceeds the cash surrender value, the insurer shall give notice of any intent to cancel the policy if the excess indebtedness is not repaid within thirty-one days after the date of mailing of such notice. For flexible premium policies, whenever the total charges authorized by the policy that are necessary to keep the policy in force until the next following processing day exceed the amounts available under the policy to pay such charges, a report must be sent to the policyholder containing the information specified by subsection 3 of section 45-04-04-08.
 - (6) The policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or

withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding one hundred percent of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request.

- (7) The policy may specify a reasonable minimum amount which may be borrowed at any time but such minimum may not apply to any automatic premium loan provision.
- (8) No policy loan provision is required if the policy is under extended insurance nonforfeiture option.
- (9) The policy loan provisions may be constructed so that variable life insurance policyholders who have not exercised such provisions are not disadvantaged by the exercise thereof.
- (10) Amounts paid to the policyholders upon the exercise of any policy loan provision must be withdrawn from the separate account and must be returned to the separate account upon repayment except that a stock insurer may provide the amounts for policy loans from the general account.

5. **Other policy provisions.** The following provision may in substance be included in a variable life insurance policy or related form delivered or issued for delivery in this state:

- a. An exclusion for suicide within one year of the issue date of the policy; provided, however, that to the extent of the increased death benefits only, the policy may provide an exclusion for suicide within one year of any increase in death benefits which results from an application of the owner subsequent to the policy issue date.
- b. Incidental insurance benefits may be offered on a fixed or variable basis.
- c. Policies issued on a participating basis must offer to pay dividend amounts in cash. In addition, such policies may offer the following dividend options:
 - (1) The amount of the dividend may be credited against premium payments.
 - (2) The amount of the dividend may be applied to provide amounts of additional fixed or variable benefit life insurance.

- (3) The amount of the dividend may be deposited in the general account at a specified minimum rate of interest.
 - (4) The amount of the dividend may be applied to provide paid-up amounts of fixed benefit one year term insurance.
 - (5) The amount of the dividend may be deposited as a variable deposit in a separate account.
- d. A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans under subsection 4, except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed.
 - e. A provision allowing the policyholder to make partial withdrawals.
 - f. Any other policy provision approved by the commissioner.

History: Effective June 1, 1984.

General Authority: NDCC 26-11.1-04

Law Implemented: NDCC 26-11.1

45-04-04-04. Reserve liabilities for variable life insurance.

- 1. Reserve liabilities for variable life insurance policies must be established under North Dakota Century Code chapter 26-03.2 in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.
- 2. For scheduled premium policies, reserve liabilities for the guaranteed minimum death benefit must be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and must be maintained in the general account of the insurer, and may not be less than the greater of the following minimum reserves:
 - a. The aggregate total of the term costs, if any, covering a period of one full year from the valuation date, of the guarantee on each variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the assumed investment rate; or

b. The aggregate total of the "attained age level" reserves on each variable life insurance contract. The "attained age level" reserve on each variable life insurance contract may not be less than zero and must equal the "residue", as described in paragraph 1, of the prior year's "attained age level" reserve on the contract, with any such "residue", increased or decreased by a payment computed on an attained age basis as described in paragraph 2:

- (1) The "residue" of the prior year's "attained age level" reserve on each variable life insurance contract may not be less than zero and must be determined by adding interest at the valuation interest rate to such prior year's reserve, deducting the tabular claims based on the "excess" if any, of the guaranteed minimum death benefit over the death benefit that would be payable in the absence of such guarantee, and dividing the net result by the tabular probability of survival. The "excess" referred to in the preceding sentence must be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year.
- (2) The payment referred to in subdivision b must be computed so that the present value of a level payment of that amount each year over the future premium paying period of the contract is equal to (a) minus (b) minus (c), where (a) is the present value of the future guaranteed minimum death benefits, (b) is the present value of the future death benefits that would be payable in the absence of such guarantee, and (c) is any "residue", as described in paragraph 1, of the prior year's "attained age level" reserve on such variable life insurance contract. If the contract is paid up, the payment shall equal (a) minus (b) minus (c). The amounts of future death benefits referred to in (b) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate or the valuation interest rate but in no event may exceed the maximum interest rate permitted for the valuation of life contracts.

The valuation interest rate and mortality table used in computing the two minimum reserves described in a and b above shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

3. For flexible premium policies, reserve liabilities for any guaranteed minimum death benefit must be maintained in the general account of the insurer and may be not less than the aggregate total of the term costs, if any, covering the period provided for in the guarantee not otherwise provided for by the reserves held in the separate account assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the valuation interest rate.

The valuation interest rate and mortality table in computing this additional reserve, if any, must conform to permissible standards for the valuation of life insurance contract. In determining such minimum reserve, the company may employ suitable approximations and estimates including but not limited to groupings and averages.

4. Reserve liabilities for all fixed incidental insurance benefits and any guarantees associated with variable incidental insurance benefits shall be maintained in the general account and reserve liabilities for all variable aspects of the variable incidental insurance benefits shall be maintained in a separate account, in amounts determined in accordance with the actuarial procedures appropriate to such benefit.

History: Effective June 1, 1984.

General Authority: NDCC 26-11.1-04

Law Implemented: NDCC 26-11.1

45-04-04-05. Separate accounts. The following requirements apply to the establishment and administration of variable life insurance separate accounts by any domestic insurer.

1. **Establishment and administration of separate accounts.** Any domestic insurer issuing variable life insurance shall establish one or more separate accounts pursuant to North Dakota Century Code section 26-11.1-01.
 - a. If no law or other regulation provides for the custody of separate account assets and if such insurer is not the custodian of such separate account assets, all contracts for custody of such assets must be in writing and the commissioner may review and approve of both the terms of any such contract and the proposed custodian prior to the transfer of custody.
 - b. The insurer may not without the prior written approval of the commissioner employ in any material connection with the handling of separate account assets any person who:

- (1) Within the last ten years has been convicted of any felony or misdemeanor arising out of such person's conduct involving embezzlement, fraudulent, conversion, or misappropriation of funds or securities or involving violation of 18 U.S.C. 1341, 1342, or 1343;
 - (2) Within the last ten years has been found by any state regulatory authority to have violated or has acknowledged violation of any provision of any state insurance law involving fraud, deceit, or knowing misrepresentation; or
 - (3) Within the last ten years has been found by federal or state regulatory authorities to have violated or has acknowledged violation of any provision of federal or state securities laws involving fraud, deceit, or knowing misrepresentation.
- c. All persons with access to the cash, securities, or other assets of the separate account must be under bond in the amount of not less than \$_____.
- d. The assets of such separate accounts must be valued at least as often as variable benefits are determined but in any event at least monthly.
2. **Amounts in the separate account.** The insurer shall maintain in each separate account assets with a value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for such policies.
3. **Investments by the separate account.**
- a. No sale, exchange, or other transfer of assets may be made by an insurer or any of its affiliates between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:
- (1) In case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the policies with respect to the separate account to which the transfer is made; and
 - (2) The transfer, whether into or from a separate account, is made by a transfer of cash; but other assets may be transferred if approved by the commissioner in advance.

- b. The separate account must have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under policies funded by the account.

4. Limitations on ownership.

- a. A separate account may not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after such purchase or acquisition the value of such investment, together with prior investments of such account in such security valued as required by these regulations, would exceed ten percent of the value of the assets of the separate account. The commissioner may waive this limitation in writing if the commissioner believes waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.
- b. No separate account may purchase or otherwise acquire the voting securities of an issuer if as a result of such acquisition the insurer and its separate accounts, in the aggregate, will own more than ten percent of the total issued and outstanding voting securities of the issuer. The commissioner may waive this limitation in writing if the commissioner believes waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state or jeopardize the independent operation of the issuer of such securities.
- c. The percentage limitation specified in subdivision a may not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to the Investment Company Act of 1940 or other pools of investment assets if the investments and investment policies of such investment companies or assets pools comply substantially with subsection 3 and the other applicable portions of this chapter.

5. Valuation of separate account assets. Investments of the separate account must be valued at their market value on the date of valuation, or at amortized cost if it approximates market value.

6. Separate account investment policy. The investment policy of a separate account operated by a domestic insurer filed under subdivision c of subsection 2 of section 45-04-04-02 may not be changed without first filing the change with the commissioner.

- a. Any change filed pursuant to this subsection is effective sixty days after the date it was filed with the commissioner, unless the commissioner notifies the insurer

before the end of such sixty-day period of approval of the proposed change. At any time the commissioner may, after notice and public hearing, disapprove any change that has become effective pursuant to this subsection.

b. The commissioner may disapprove the change if the commissioner determines that the change would be detrimental to the interests of the policyholders participating in such separate account.

7. **Charges against separate account.** The insurer must disclose in writing, prior to or contemporaneously with delivery of the policy, all charges that may be made against the separate account, including, but not limited to, the following:

a. Taxes or reserves for taxes attributable to investment gains and income of the separate account.

b. Actual cost of reasonable brokerage fees and similar direct acquisition and sale costs incurred in the purchase or sale of separate account assets.

c. Actuarially determined costs of insurance (tabular costs) and the release of separate account liabilities.

d. Charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate account.

e. A charge, at a rate specified in the policy, for mortality and expense guarantees.

f. Any amounts in excess of those required to be held in the separate accounts.

g. Charges for incidental insurance benefits.

8. **Standards of conduct.** Every insurer seeking approval to enter into the variable life insurance business in this state shall adopt by formal action of its board of directors a written statement specifying the standards of conduct of the insurer, its officers, directors, employees, and affiliates with respect to the purchase or sale of investments of separate accounts. The standards of conduct must be binding on the insurer and those to whom it refers. A code or codes of ethics meeting the requirements of Section 17j under the Investment Company Act of 1940 and applicable rules and regulations thereunder satisfies the provisions of this subsection.

9. **Conflicts of interest.** Rules under any provision of the insurance laws of this state or any rule applicable to the

officers and directors of insurance companies with respect to conflicts of interest also apply to members of any separate account's committee or other similar body.

10. **Investment advisory services to a separate account.** An insurer may not enter into a contract under which any person undertakes, for a fee, to regularly furnish investment advice to the insurer with respect to its separate accounts maintained for variable life insurance policies unless the investment advisory contract is in writing and provides that it may be terminated by the insurer without penalty to the insurer or the separate account upon no more than sixty days' written notice to the investment adviser and unless:
- a. The person providing such advice is registered as an investment adviser under the Investment Advisers Act of 1940;
 - b. The person providing such advice is an investment manager under the Employee Retirement Income Security Act of 1974 with respect to the assets of each employee benefit plan allocated to the separate account; or
 - c. The insurer has filed with the commissioner and continues to file annually the following information and statements concerning the proposed adviser:
 - (1) The name and form of organization, state of organization, and its principal place of business;
 - (2) The names and addresses of its partners, officers, directors, and persons performing similar functions or, if such an investment adviser be an individual, of such individual;
 - (3) A written standard of conduct complying in substance with the requirements of subsection 8 which has been adopted by the investment adviser and is applicable to the investment adviser, its officers, directors, and affiliates;
 - (4) A statement provided by the proposed adviser as to whether the adviser or any person associated therewith:
 - (a) Has been convicted within ten years of any felony, or misdemeanor arising out of such person's conduct as an employee, salesman, officer or director of an insurance company, a banker, an insurance agent, a securities broker, or an investment adviser involving embezzlement, fraudulent conversion, or misappropriation of

funds or securities, or involving the violation of 18 U.S.C. 1341, 1342, or 1343;

- (b) Has been permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or as an employee of any investment company, bank, or insurance company, or from engaging or in continuing any conduct or practice in connection with any such activity;
- (c) Has been found by federal or state regulatory authorities to have willfully violated or have acknowledged willful violation of any provision of federal or state securities laws or state insurance laws or of any rule or regulation under any such laws; or
- (d) Has been censured, denied an investment adviser registration, had a registration as an investment adviser revoked or suspended, or been barred or suspended from being associated with an investment adviser by order of federal or state regulatory authorities.

The commissioner may, after notice and opportunity for hearing, by order require such investment advisory contract to be terminated if he deems continued operation thereunder to be hazardous to the public or the insurer's policyholders.

History: Effective June 1, 1984.
General Authority: NDCC 26-11.1-04
Law Implemented: NDCC 26-11.1

45-04-04-06. Information furnished to applicants. An insurer delivering or issuing for delivery in this state any variable life insurance policy shall deliver to the applicant for the policy, and obtain a written acknowledgement of receipt from such application coincident with or prior to the execution of the application, the following information. The requirements of this section are deemed to have been satisfied to the extent that a disclosure containing information required by this section is delivered in the form of a prospectus included in the requirements of the Securities Act of 1933 and which was all information and reports required by the Employee Retirement Income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to Section 3(a)(2) thereof.

1. A summary explanation, in nontechnical terms, of the principal features of the policy, including a description of the manner

in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such variation. Such explanation must include notices of the provision required by paragraph 5 of subdivision a of subsection 3 and subdivision f of subsection 3 of section 45-04-04-03.

2. A statement of the investment policy of the separate account, including:
 - a. A description of the investment objectives intended for the separate account and the principal types of investments intended to be made; and
 - b. Any restriction of limitations on the manner in which the operations of the separate account are intended to be conducted.
3. A statement of the net investment return of the separate account for each of the last ten years or such lesser period as the separate account has been in existence.
4. A statement of the charges levied against the separate account during the previous year.
5. A summary of the method to be used in valuing assets held by the separate account.
6. A summary of the federal income tax aspects of the policy applicable to the insured, the policyholder and the beneficiary.
7. Illustrations of benefits payable under the variable life insurance contract. Such illustrations shall be prepared by the insurer and may not include projections of past investment experience into the future or attempted predictions of future investment experience; provided, that nothing contained herein prohibits use of hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that such assumed rates are hypothetical only.

History: Effective June 1, 1984.

General Authority: NDCC 26-11.1-04

Law Implemented: NDCC 26-11.1

45-04-04-07. Applications. The application for a variable life insurance policy must contain:

1. A prominent statement that the death benefit may be variable or fixed under specified conditions.

2. A prominent statement that cash values may increase or decrease in accordance with the experience of the separate account (subject to any specified minimum guarantees).
3. Questions designed to elicit information which enables the insurer to determine the suitability of variable life insurance for the applicant.

History: Effective June 1, 1984.

General Authority: NDCC 26-11.1-04

Law Implemented: NDCC 26-11.1.

45-04-04-08. Reports to policyholders. Any insurer delivering or issuing for delivery in this state any variable life insurance policies shall mail to each variable life insurance policyholder at the policyholder's last known address the following reports:

1. Within thirty days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge, and any optional payments allowed pursuant to subsection 4 of section 45-04-04-03 under the policy computed as of the policy anniversary date. Provided, however, that such statement may be furnished within thirty days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than sixty days prior to the mailing of the notice. This statement must state that, in accordance with the investment experience of the separate account, the cash values and the variable death benefit may increase or decrease, and must prominently identify any value described therein which may be recomputed prior to the next statement required by this section. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in such statement, the statement must be modified to so indicate. For flexible premium policies, the report must contain a reconciliation of the change since the previous report in cash value and cash surrender value, if different, because of payments made (less deductions for expense charges), withdrawals, investment experience, insurance charges, and any other charges made against the cash value. In addition, the report must show the projected cash value and cash surrender value, if different, as of one year from the end of the period covered by the report assuming that: (a) planned periodic premiums, if any, are paid as scheduled; (b) guaranteed costs of insurance are deducted; and (c) the net investment return is equal to the guaranteed rate or, in the absence of a guaranteed rate, is not greater than zero. If the projected value is less than zero, a warning message must be included that states that the policy may be in danger of terminating without value in the next twelve months unless additional premium is paid.

2. Annually, a statement or statements including:
 - a. A summary of the financial statement of the separate account based on the annual statement last filed with the commissioner.
 - b. The net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of not less than five years when available.
 - c. A list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the commissioner.
 - d. Any charges levied against the separate account during the previous year.
 - e. A statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account or in the investment adviser of the separate account.
3. For flexible premium policies, a report must be sent to the policyholder if the amounts available under the policy on any policy processing day to pay the charges authorized by the policy are less than the amount necessary to keep the policy in force until the next following policy processing day. The report must indicate the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment of such amount.

History: Effective June 1, 1984.

General Authority: NDCC 26-11.1-04

Law Implemented: NDCC 26-11.1

45-04-04-09. Foreign companies. If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholder and the public which is substantially similar to that provided by this chapter, the commissioner to the extent deemed appropriate by the commissioner in the commissioner's discretion, may consider compliance with such law or regulation as compliance with this chapter.

History: Effective June 1, 1984.

General Authority: NDCC 26-11.1-04

Law Implemented: NDCC 26-11.1

45-04-04-10. Qualification of agents for the sale of variable life insurance.

1. Qualification to sell variable life insurance.

- a. No person may sell or offer for sale in this state any variable life insurance policy unless such person is an agent and has filed with the commissioner, in a form satisfactory to the commissioner, evidence that such person holds any license or authorization which may be required for the solicitation or sale of variable life insurance and evidence that such person holds a license as a securities salesman under North Dakota law.
- b. Any examination administered by the department for the purpose of determining the eligibility of any person for licensing as an agent shall, after June 1, 1984, include such questions concerning the history, purpose, regulation, and sale of variable life insurance as the commissioner deems appropriate.

2. Reports of disciplinary actions. Any person qualified in this state under this section to sell or offer to sell variable life insurance shall immediately report to the commissioner:

- a. Any suspension or revocation of that person's agent's license in any other state or territory of the United States.
- b. The imposition of any disciplinary sanction, including suspension or expulsion from membership, suspension or revocation of or denial of registration, imposed upon that person by any national securities exchange, or national securities association, or any federal, state or territorial agency with jurisdiction over securities or variable life insurance.
- c. Any judgment or injunction entered against that person on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation.

3. Refusal to qualify agent to sell variable life insurance. The commissioner may reject any application or suspend or revoke or refuse to renew any agent's qualification under this section to sell or offer to sell variable life insurance upon any ground that would bar such applicant or such agent from being licensed to sell other life insurance contracts in this state. The rules governing any proceeding relating to the suspension or revocation of an agent's license shall also govern any proceeding for suspension or revocation of an agent's qualification to sell or offer to sell variable life insurance.

History: Effective June 1, 1984.
General Authority: NDCC 26-11.1-04
Law Implemented: NDCC 26-11.1

45-04-04-11. Separability. If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances not affected thereby.

History: Effective June 1, 1984.
General Authority: NDCC 26-11.1-04
Law Implemented: NDCC 26-11.1

45-04-04-12. Supersession of conflicting rules. This chapter supersedes and fully replaces any prior rule concerning variable life insurance. This chapter is particularly intended to replace any provisions of chapter 45-04-02, sections 45-04-04-01 through 45-04-02-18 as they may pertain to variable life insurance. The provisions of chapter 45-04-02, sections 45-04-02-01 through 45-04-02-18 that regulate variable annuities remain undisturbed by this chapter.

History: Effective June 1, 1984.
General Authority: NDCC 26-11.1-04
Law Implemented: NDCC 26-11.1

TITLE 61
Pharmacy, Board of

MAY 1984

61-02-01-13. Pharmacist on duty. Each pharmacy shall have at least one registered pharmacist on duty and physically present in the pharmacy area at all times that the pharmacy prescription area is open for the transaction of business.

History: Amended effective May 1, 1984.

General Authority: NDCC 43-15-10(9), 43-15-10(12), 43-15-10(14)

Law Implemented: NDCC 43-15-10(9), 43-15-10(12), 43-15-10(14)

61-02-03-01. Security standards for pharmacies. A pharmacy must comply with the following security standards:

1. **Pharmacist in charge.** Every pharmacy must have a pharmacist designated as the pharmacist-in-charge who shall be responsible to the board for a pharmacy's compliance with the laws and regulations, both state and federal, pertaining to the practice of pharmacy. The pharmacist-in-charge shall see that directives from the board are communicated to, and complied with by, the management, other pharmacists, and interns of the pharmacy.
2. **Personnel permitted in prescription area.** Personnel permitted in the prescription area are pharmacists, interns, drug inspectors, peace officers when acting in their official capacity, drug salesmen, and supporting personnel of the pharmacy. Interns, drug salesmen, and supporting personnel shall be permitted in the prescription area only when a pharmacist is on duty, except in an extreme emergency. No more than one clerical person shall be permitted in the prescription area per pharmacist.
3. **Prescription area and storage shall be kept locked.** The prescription area and any additional storage area for drugs

restricted to a pharmacist, except in an extreme emergency, shall be kept locked when a pharmacist is not on duty. The pharmacist shall keep each portion of the prescription area secured and locked at all times the pharmacist does not have full vision or control of such portions of the prescription area. The prescription area shall be open for business to the public at all times that the retail establishment is open for business to the public, or for a minimum of eight hours a day should the retail establishment be open longer than eight hours per day. The board of pharmacy recognizes that the hours that the prescription area of a pharmacy is open for business to the public will depend on the type of pharmaceutical services offered, as well as other factors, and therefore, variations in the required hours that a prescription area shall be open for business to the public may be granted by the board of pharmacy.

4. **Only pharmacist permitted to unlock prescription area or storage area.** The pharmacist shall be the only person permitted to unlock the prescription area or any additional storage area for drugs restricted to a pharmacist, except in an extreme emergency. Only the pharmacist shall maintain possession of the key to the prescription area. The pharmacist shall be responsible for assuring that only authorized personnel have access to the legend and nonproprietary drugs stored in the prescription area or additional storage area.
5. **Extreme emergency.** An extreme emergency shall be in case of fire, water leak, electrical failure, public disaster, or other catastrophe, whereby the public is better served by overlooking the safety security restrictions on drugs.
6. **Receiving and checking area for drugs.** The area where prescription drugs are received, opened, and marked shall be under the immediate supervision of a pharmacist, and immediately thereafter the prescription drugs shall be kept or moved into the secured area of the pharmacy.
7. **Security of prescription area.** In order for the prescription area to be left without a pharmacist on duty when other people are in the store, after business hours, the prescription area shall be enclosed by a permanent barrier or partition from floor to ceiling, with entry doors that can be securely locked. If a prescription area is continually attended by a pharmacist when other people are in the store, the prescription area need not be enclosed by the permanent barrier. The barrier shall be so designed that only a pharmacist with a key, except in an extreme emergency, shall have access to the area where prescription only drugs, dangerous drugs, narcotics, and other drugs and devices restricted to sales by pharmacists are stored, compounded, and dispensed.

8. **Types of permanent barrier.** The permanent barrier may be constructed of other than a solid material. If constructed of a material other than a solid, the openings or interstices in the material shall not be large enough to permit removal of items in the prescription area by any means. Any material used in the construction of the permanent barrier must be of sufficient strength and thickness that it cannot be readily or easily removed, penetrated, or bent. The plans and specifications of the permanent barrier shall be submitted to the board for approval that it affords adequate security.
9. **Additional storage area.** When additional storage area is required for drugs that are restricted to pharmacists, the area shall be contained by a permanent barrier from floor to ceiling. All doors or gates to the storage area shall be able to be locked, and only a pharmacist with a key shall be permitted to enter the storage area, except in an extreme emergency.

History: Amended effective May 1, 1984.

General Authority: NDCC 43-15-10(11)

Law Implemented: NDCC 43-15-10(11)

TITLE 62
Plumbing, Board of

APRIL 1984

62-03-04-02. Types of joints for piping materials.

1. Caulked.

- a. **Cast iron soil pipe.** Every lead caulked joint for cast iron hub and spigot soil pipe shall be firmly packed with oakum or hemp and filled with molten lead not less than one inch [2.54 centimeters] deep and not to extend more than one-eighth inch [3.18 millimeters] below the rim of the hub. No paint, varnish, or other coatings shall be permitted on the jointing material until after the joint has been tested and approved. Lead shall be run in one pouring and shall be caulked tight.
- b. **Cast iron water pipe.** Every lead caulked joint for cast iron bell and spigot water pipe shall be firmly packed with clean, sound asbestos rope or treated paper rope. The remaining space in the hub shall be filled with molten lead according to the following schedule:

<u>Pipe Size</u>	<u>Depth of Lead</u>
Up to twenty inches	Two and one-fourth inches
Twenty-four, thirty, thirty-six inches	Two and one-half inches
Larger than thirty-six inches	Three inches

Lead shall be run in one pouring and shall be caulked tight.

2. **Threaded.** Every threaded joint shall conform to the American National Taper Pipe Thread, ANSI B2.1-1960. All burrs shall be removed. Pipe ends shall be reamed or filed out to size of

bore, and all chips shall be removed. Pipe joint compound shall be used only on male threads.

3. **Wiped.** Every joint in lead pipe or fittings, or between lead pipe or fittings and brass or copper pipe, ferrules, solder nipples, or traps, shall be full-wiped joints. Wiped joints shall have an exposed surface on each side of a joint not less than three-fourths inch [19.05 millimeters] and at least as thick as the material being jointed. Wall or floor flange lead-wiped joints shall be made by using a lead ring or flange placed behind the joints at wall or floor. Joints between lead pipe and cast iron, steel, or wrought iron shall be made by means of a caulking ferrule, soldering nipple, or bushing.
4. **Soldered.** Joints in copper tubing shall be made by the appropriate use of approved brass or copper fittings. The surface to be joined by soldering shall be cleaned bright by manual or mechanical means. The joints shall be properly fluxed with an approved noncorrosive paste type flux and made up with approved solder. All solder and fluxes shall be manufactured to approved standards. Soldered joints shall not be used for tube installed underground.
5. **Flared.** Every flared joint for annealed-temper copper water tube shall be made with fittings meeting approved standards. The tube shall be reamed and then expanded with a proper flaring tool.
6. **Hot poured.** Hot poured compound for clay or concrete sewer pipe or other materials shall not be water absorbent and when poured against a dry surface shall have a bond of not less than one hundred pounds [45.36 kilograms] per square inch [6.45 square centimeters] in shear. All surfaces of the joint shall be cleaned and dried before pouring. If wet surfaces are unavoidable, a suitable primer shall be applied. The compound shall not soften sufficiently to destroy the effectiveness of the joint when subjected to a temperature of one hundred sixty degrees Fahrenheit [71.11 degrees Celsius] nor be soluble in any of the waste carried by the drainage system. Approximately twenty-five percent of the joint space at the base of the socket shall be filled with jute or hemp. A pouring collar, rope, or other device shall be used to hold the hot compound during pouring. Each joint shall be poured in one operation until the joint is filled. Joints shall not be tested until one hour after pouring.
7. **Precast.** Every precast collar shall be formed in both the spigot and bell of the pipe in advance of use. Collar surfaces shall be conical with side slopes of three degrees with the axis of the pipe and the length shall be equal to the depth of the socket. Prior to making joint contact, surfaces shall be cleaned and coated with solvents and adhesives as recommended in the standard. When the spigot end is inserted

in the collar, it shall bind before contacting the base of the socket. Material shall be inert and resistant to both acids and alkalies.

8. **Brazed joints and extracted mechanical joints.** Brazed joints shall be made by first cleaning the surfaces to be joined down to the base metal, applying flux approved for such joints and for the filler metal to be used, and making the joint by heating to a temperature sufficient to melt the approved brazing filler metal on contact.
 - a. Brazed joints must be made by first cleaning the surface to be joined down to the base metal, applying flux approved for such joints and for the filler metal to be used, and making the joint by heating to a temperature sufficient to melt the approved brazing filler metal on contact.
 - b. An extracted mechanical joint may be made in copper tube. It must be produced with an appropriate tool and joined by brazing. To prevent the branch tube from being inserted beyond the depth of the extracted joint, depth stops must be provided. The brazed joint must be made according to subdivision a.
9. **Cement.** Except for repairs and connections to existing lines constructed with such joints, cement mortar joints are prohibited. Where permitted, cement mortar joints shall be made in the following manner: A layer of jute or hemp shall be inserted into the base of the annular joint space and packed tightly to prevent mortar from entering the interior of the pipe or fitting. Not more than twenty-five percent of the annular space shall be used for jute or hemp. The remaining space shall be filled in one continuous operation with a thoroughly mixed mortar composed of one part cement and two parts sand, with only sufficient water to make the mixture workable by hand. Additional mortar of the same composition shall then be applied to form a one to one slope with the barrel of the pipe. The bell or hub of the pipe shall be left exposed and when necessary the interior of the pipe shall be swabbed to remove any mortar or other material which may have found its way into such pipe.
10. **Burned lead (welded).** Every burned (welded) joint shall be made in such manner that the two or more sections to be joined shall be uniformly fused together into one continuous piece. The thickness of the weld shall be at least as thick as the lead being joined.
11. **Mechanical (flexible or slip joint).**

- a. **Asbestos cement pipe.** Every joint in asbestos cement pipe shall be made with a sleeve coupling of the same composition as the pipe or an approved material meeting these standards, sealed with rubber rings except that asbestos cement perforated pipe shall be made with a sleeve coupling which fits on the spigot end of the pipe.
- b. **Cast iron pipe.**
 - (1) **Mechanical joint.** Every mechanical joint in cast iron pipe shall be made with a flanged collar, rubber ring gasket, and appropriate number of securing bolts.
 - (2) **Hubless pipe.** Joints for hubless cast iron soil pipe and fittings shall be made with an approved elastomeric sealing sleeve and stainless steel clamp, clamping screw, and housing.
 - (3) **Bell and spigot pipe.** Joints for bell and spigot cast iron soil pipe and fittings may be made by caulking with lead and oakum or by use of a compression gasket that is compressed when the spigot is inserted into the hub of the pipe.
- c. **Clay pipe.** Flexible joints between lengths of clay pipe may be made using approved resilient materials both on the spigot end and in the bell end of the pipe.
- d. **Concrete pipe.** Flexible joints between lengths of concrete pipe may be made using approved elastomeric materials both on the spigot end and in the bell end of the pipe. For plain end pipe see American society for testing and materials C-594; for bell and spigot see American society for testing and materials C-425.
- 12. **Tapered couplings.** Every joint in bituminized fiber pipe shall be made with tapered type couplings of the same material as the pipe. Joints between bituminized fiber pipe and metal pipe shall be made by means of an adapter coupling caulked as required in subsection 1.
- 13. **Welded joints.** Joints to be welded shall be prepared by approved procedure, cleaned free from paint, oil, rust, scale, or other objectionable material and welded by welders who qualify according to section 6 of the code for pressure piping, American national standards institute B31.1-1955, with addenda B31.1a-1965.
- 14. **Plastic.** Every joint in plastic piping shall be made with approved fittings by either solvent welded or fusion welded connections, approved insert fittings and metal clamps and screws of corrosion resistant material, or threaded joints

according to accepted standards. Plastic pipe shall be cut square with a power circular or band saw, hand saw with miter box, or with a pipe cutter, or tubing cutter with cutting wheel specifically designed for plastic. All burrs, chips, and filings shall be removed from both the inside diameter and outside diameter of the pipe, and comingling of ABS and PVC material is prohibited.

15. **Slip.** Every slip joint shall be made using approved packing or gasket material, or approved ground joint brass compression rings. Ground joint brass connections which allow adjustment of tubing but provide a rigid joint when made up shall not be considered as slip joints.
16. **Expansion.** Every expansion joint shall be of approved type and its material shall conform with the type of piping in which it is installed.
17. **Split couplings.** Couplings made in two or more parts and designed for use with plain end or grooved pipe or approved fittings and with compression gaskets may be used for hot and cold water piping and conductors and leaders. Each manufacturer must have the manufacturer's complete joining assembly approved for the intended use by one of the organizations listed in chapter 62-03-03 or by the administrative authority.

History: Amended effective April 1, 1984.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-07-24. Minimum plumbing facilities.

1. **Minimum number of fixtures.** Plumbing fixtures shall be provided for the type of building occupancy and in the minimum number shown in Table 62-03-07. Types of building occupancy not shown in Table 62-03-07 will be considered individually by the administrative authority.
2. **Separate facilities.** In other than residential installations where toilet and bathing facilities are provided to serve members of both sexes and are designed for use by more than one person at a time, separate facilities shall be installed for each sex.
3. **Separate facilities in places of employment.** ~~When in the opinion of the administrative authority, every~~ Every place of employment shall be provided with toilet facilities which are separate for each sex. Toilet facilities shall be readily accessible to all employees. Toilet facilities so located that employees must use more than one floor-to-floor flight of stairs are not considered as readily accessible.

Toilet facilities shall be located within two hundred feet [60.96 meters] of all locations at which workers are regularly employed.

History: Amended effective April 1, 1984.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-07-25. Facilities for the handicapped.

1. ~~When in the opinion of the administrative authority~~ in ~~new~~ constructed buildings and facilities used by the public, toilet rooms shall be made accessible to, and usable by, the physically handicapped.
2. It is essential that an appropriate number (note 5) of toilet rooms, in accordance with the nature and use of a specific building or facility, be made accessible to, and usable by, the physically handicapped.
3. Toilet rooms shall have space to allow traffic of individuals in wheelchairs.
4. Toilet rooms shall have at least one toilet stall that:
 - a. Is three feet [91.44 centimeters] wide.
 - b. Is at least four feet eight inches [142.24 centimeters], preferably five feet [152.4 centimeters] deep.
 - c. Has a door (where doors are used) that is thirty-two inches [81.28 centimeters] wide and swings out.
 - d. Has handrails on each side, thirty-three inches [83.82 centimeters] high and parallel to the floor, one and one-half inches [38.1 millimeters] in outside diameter, with one and one-half inches [38.1 millimeters] clearance between rail and wall, and fastened securely at ends and center.
 - e. Has a water closet with the seat eighteen to twenty inches [45.72 to 50.8 centimeters] from the floor (standard height bowls with seat that raise bowl height are permissible).

Note: The design and mounting of the water closet is of considerable importance. A wall-mounted water closet with a narrow understructure that recedes sharply is most desirable. If a floor-mounted water closet must be used, it should not have a front that is wide and perpendicular to the floor at the front of the seat. The bowl should be shallow at the front of the seat and turn backward more

than downward to allow the individual in a wheelchair to get close to the water closet with the seat of the wheelchair.

5. Toilet rooms shall have lavatories with narrow aprons, which when mounted at standard height are usable by individuals in wheelchairs, or shall have lavatories mounted higher, when particular designs demand, so that they are usable by individuals in wheelchairs.

Note: It is important that drainpipes and hot water pipes under a lavatory be covered or insulated so that a wheelchair individual without sensation will not burn oneself.

6. Some mirrors and shelves shall be provided above lavatories at a height as low as possible and no higher than forty inches [101.6 centimeters] above the floor, measured from the top of the shelf and the bottom of the mirror.
7. Toilet rooms for men shall have wall-mounted urinals with the opening of the basin nineteen inches [48.26 centimeters] from the floor.
8. Toilet rooms shall have an appropriate number (note 5) of towel racks, towel dispensers, and other dispensers and disposal units mounted no higher than forty inches [101.6 centimeters] from the floor.
9. Water fountains. An appropriate number (note 5) of water fountains or other water dispensing means shall be accessible to, and usable by, the physically disabled.
10. Water fountains or coolers shall have up-front spouts and controls.
11. Water fountains or coolers shall be hand-operated or hand-and-foot operated. (See also American Standard Specifications for Drinking Fountains, Z4.2-1942.)

Note 1. Conventional floor-mounted water coolers can be serviceable to individuals in wheelchairs if a small fountain is mounted on the side of the cooler thirty inches [76.2 centimeters] above the floor.

Note 2. Wall-mounted, hand-operated coolers of the latest design, manufactured by many companies, can serve the able-bodied and the physically disabled equally well when the cooler is mounted with the basin thirty-six inches [91.44 centimeters] from the floor.

Note 3. Fully recessed water fountains are not recommended.

Note 4. Water fountains should not be set into an alcove unless the alcove is wider than a wheelchair.

Note 5. As used in this section, appropriate number means the number of a specific item that would be necessary, in accord with the purpose and function of a building or facility, to accommodate individuals with specific disabilities in proportion to the anticipated number of individuals with disabilities who would use a particular building or facility.

Example: Although these specifications shall apply to all buildings and facilities used by the public, the numerical need for a specific item would differ, for example, between a major transportation terminal, where many individuals with diverse disabilities would be continually coming and going, an office building or factory, where varying numbers of individuals with disabilities of varying manifestations (in many instances, very large numbers) might be employed or have reason for frequent visits, a school or church, where the number of individuals may be fixed and activities more definitive, and many other buildings and facilities dedicated to specific functions and purposes.

Note. Disabilities are specific and where the individual has been properly evaluated and properly oriented and where architectural barriers have been eliminated, a specific disability does not constitute a handicap. It should be emphasized that more and more of those physically disabled are becoming participants, rather than spectators, in the fullest meaning of the word.

History: Amended effective April 1, 1984.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-09-04. Receptors or sumps.

1. **Installation.** Waste receptors or sumps serving indirect waste pipes shall not be installed in any toilet room, nor in any inaccessible or unventilated space such as a closet or storeroom.
2. **Location.** The receptor must be located so that the required airgap between the indirect waste line and receptor can be maintained under all conditions of backflow. If this is not possible then the receptor at such a location must be a sewer ejector installed as required under section 62-03-11-07 and the discharge must be indirectly connected to the building drainage system as required by subsection 1 of section 62-03-09-01.
3. **Strainers and baskets.** Every indirect waste receptor shall be equipped with a readily removable metal basket over which

all indirect waste pipes shall discharge, or the indirect waste receptor outlet shall be equipped with a beehive strainer not less than four inches [10.16 centimeters] in height.

4. **Splashing to be prevented.** All plumbing receptors receiving the discharge of the indirect waste pipes shall be of such shape and capacity as to prevent splashing or flooding.
5. **Domestic or culinary fixtures prohibited as receptors.** No plumbing fixture which is used for domestic or culinary purposes shall be used to receive the discharge of an indirect waste except that in a residence a kitchen sink trap is acceptable for use as a receptor for a dishwasher and similarly a laundry tray as a receptor for a clothes washing machine.
6. **Standpipe receptors.** The standpipe receptor for an automatic clothes washer shall be no less than two inches [5.08 centimeters] in diameter and shall extend no more than thirty-six inches [91.44 centimeters] or less than twenty-four inches [60.96 centimeters] above its trap. The trap shall be located where it is readily accessible for inspection and cleaning.
 - a. The standpipe receptor for an automatic clothes washer may be no less than two inches [5.08 centimeters] in diameter and must extend no more than forty-eight inches [121.92 centimeters] or less than eighteen inches [45.72 centimeters] above its trap.
 - b. Connection of laundry tray waste line in a single dwelling unit may be made into the standpipe for the automatic clothes washer drain.

History: Amended effective April 1, 1984.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-10-06. Water service.

1. **Separation of water service and building sewer.** Except as permitted below, the underground water service pipe and the building drain or building sewer shall be not less than ten feet [3.05 meters] apart horizontally and shall be separated by undisturbed or compacted earth.

The water service pipe may be placed in the same trench with the building drain and building sewer provided approval is given by the administrative authority and the following conditions are met:

- a. The bottom of the water service pipe at all points shall be level with or above the top of the sewerline at its highest point.
 - b. The number of joints in the water service pipe shall be kept to a minimum.
 - c. The water service pipe material shall comply with subsection 1 of section 62-03-10-10 and conditions in subsection 1 of section 62-03-11-02 and section 62-03-02-16 shall also be met.
 - d. The building sewer shall be rootproof and watertight and tested with a ten-foot head of water or equivalent.
2. **Water service near sources of pollution.** Potable water service pipes shall not be located in, under or above cesspools, septic tanks, septic tank drainage, fields, or seepage pits. A separation of ten feet [3.05 meters] shall be maintained. Where the water service must cross the sewerline, the bottom of the water service within ten feet [3.05 meters] of the point of crossing, shall be at least twelve inches [30.48 centimeters] above the top of the sewerline. The sewerline shall be of cast iron, Schedule 40 acrylonitrile-butadiene-styrene or polyvinyl chloride plastic pipe, at least ten feet [3.05 meters] on both sides of the crossing.
 3. **Stop and waste valves.** Combination stop and waste valves or cocks may be installed in an underground water service pipe only when not less than ten feet [3.05 meters] apart horizontally from the building sewer, and shall be separated by undisturbed or compacted earth.
 4. **Water service pipe through wall or floor.** Clearance shall be provided around a water service pipe passing through ~~walls~~ wall or floor to protect it against (a) chemical action from direct contact with concrete, (b) distortion or rupture of water service pipe from shearing action due to settlement, (c) distortion or rupture of the water service pipe caused by expansion or contraction. Clearance shall be not less than one-half inch [12.7 millimeters] between the outside of the pipe and the wall or floor. Sleeves or arches may be used to provide the wall opening. The space between the pipe and wall structure or floor shall be carefully packed or caulked with lead or waterproof and vermin- ~~and~~, rodent-, and fire- resistant material.

History: Amended effective November 1, 1982; April 1, 1984.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-10-15. Hot water distribution.

1. **Hot water supply system.** In residences and buildings intended for human occupancy, hot water shall be supplied to all plumbing fixtures and equipment used for bathing, washing, culinary purpose, cleansing, laundry, or building maintenance. A ~~nonsense~~ valve or pressure balancing valve shall be installed on all showers in hotels, motels, ~~public or private schools~~, and dormitories. (See subdivision c of subsection 3 of section 62-03-10-14.)

2. **Return circulation - where required.** Hot water supply systems in buildings four or more stories high or in buildings where developed length of hot water piping from the source of hot water supply to the farthest fixture supplied exceeds one hundred feet [30.48 meters] shall be of the return circulation type.

3. **Minimum requirements for hot water storage tanks.** Hot water storage tanks shall be adequate in size, when combined with the Btu input of the water heating equipment to provide the rise in temperature necessary.

The water heater and storage tank shall be sized to provide sufficient hot water to provide both daily requirements and hourly peak loads of the occupants of the building.

Hot water storage tanks shall meet construction requirements of the American society of mechanical engineers, American gas association, or underwriters' laboratories as appropriate.

Storage tanks less in volume than those requirements specified by the American society of mechanical engineers shall be of durable materials and constructed to withstand one hundred twenty-five pounds per square inch [56.70 kilograms per 6.45 square centimeters] with a safety factor of two.

The water inlets and outlets of a hot water storage tank shall be not less than the hot water distribution pipe served.

All storage tanks shall be protected against excessive temperatures and pressure conditions as specified in this article.

4. **Drain cocks or valves for hot water storage tanks.** Drain cocks or valves for emptying shall be installed at the lowest point of each hot water storage tank.

History: Amended effective April 1, 1984.
General Authority: NDCC 43-18-09
Law Implemented: NDCC 43-18-09

62-03-11-01. Materials.

1. **Aboveground piping within buildings.** Soil and waste piping above ground in buildings shall be of brass pipe, copper pipe, copper tube drainage, waste, and venting weight or heavier, service weight or heavier cast iron soil pipe, bell and spigot or hubless system, galvanized wrought iron pipe, galvanized open-hearth iron pipe, galvanized steel pipe, lead pipe, or acrylonitrile-butadiene-styrene, polyvinyl chloride, drainage, waste, and venting, Schedule 30, 40 or heavier plastic pipe. When plastic pipe is installed each soil or waste stack (does not include stack vent) shall not exceed thirty-five feet [10.67 meters] in height. Horizontal offsets in stacks and, horizontal branches connected to stacks and building drains aboveground are limited to a maximum developed length of thirty-five feet [10.67 meters].
2. **Underground building drains.** All drainage piping within buildings when under ground shall be of service weight or heavier cast iron soil pipe, bell and spigot or hubless system, hard temper copper tube type K or L, or Schedule 40, or heavier plastic pipe.
3. **Fittings.** The materials of which drainage system pipe fittings are made shall conform to the type of piping materials used in the drainage system. The fittings shall have no ledges, shoulders, or reductions which can retard or obstruct flow in the piping. Threaded drainage pipe fittings shall be of the recessed drainage type, black or galvanized.

History: Amended effective April 1, 1984.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-11-05. Determining size of drainage system.

1. **Selecting size of drainage piping.** Pipe sizes shall be determined from the tables contained in this subsection on the basis of drainage load computed from the table contained in subsection 1 of section 62-03-11-04 and from subsection 2 of section 62-03-11-04.

BUILDING DRAINS AND SEWERS

Maximum number of fixture units that may be connected to any portion of the building drain or the building sewer including branches of the building drain.

Diameter of Pipe Inches	Fall per Foot			
	One-sixteenth Inch	One-eighth Inch	One-fourth Inch	One-half Inch

2			21	26
2 1/2			24	31
3			<u>27</u> 42 *	36 <u>50</u> *
4		180	216	250
5		390	480	575
6		700	840	1,000
8	1,400	1,600	1,920	2,300
10	2,500	2,900	3,500	4,200
12	3,900	4,600	5,600	6,700
15	7,000	8,300	10,000	12,000

* Not over two water closets or two bathroom groups, except that in single family dwellings, not over three water closets or three bathroom groups may be installed.

HORIZONTAL FIXTURE BRANCHES AND STACKS

Maximum number of fixture units that may be connected to:

Diameter of Pipe	Any Horizontal Fixture Branch *	Stack Sizing for Three Stories in Height or Three Intervals	Stack Sizing For More Than Three Stories In Height	
			Total for Stack	Total at One Story or Branch Interval
Inches				
1 1/2	3 ***	4 ***	8 ***	2 ***
2	6	12	24	6
2 1/2	12	20	42	9
3	20 **	30 <u>48</u> **	60 <u>72</u> **	16 <u>20</u> **
4	160	240	500	90
5	360	540	1,100	200
6	620	960	1,900	350
8	1,400	2,200	3,600	600
10	2,500	3,800	5,600	1,000
12	3,900	6,000	8,400	1,500
15	7,000			

* Does not include branches of the building drain.

** Not more than two water closets or bathroom groups within each branch interval nor more than six water closets or bathroom groups on the stack. Stacks must be sized according to the total accumulated connected load at each story or branch interval and may be reduced in size as this load decreases to a minimum diameter of one-half of the largest size required.

*** Does not include kitchen sink.

2. **Minimum size of soil and waste stacks.** No soil or waste stack shall be smaller than the largest horizontal branch connected thereto, except that:
 - a. A four-inch by three-inch [10.16-centimeter by 7.62-centimeter] water closet connection shall not be considered as reduction in pipe size.
 - b. A four-inch [10.16-centimeter] horizontal drain to a three-inch [7.62-centimeter] soil stack by means of a three-inch by four-inch [7.62-centimeter by 10.16-centimeter] tee-wye, or to above the centerline of a three-inch [7.62-centimeter] horizontal drain by means of a three-inch by four-inch [7.62-centimeter by 10.16-centimeter] wye shall be acceptable; provided that the four-inch [10.16-centimeter] drain does not receive the discharge of any stack and that it receives only the discharge of fixtures located on the floor or wall immediately above the four-inch [10.16-centimeter] drain. All such four-inch [10.16-centimeter] horizontal drain lines shall be sized, graded, and vented as if the four-inch [10.16-centimeter] drain were a three-inch [7.62-centimeter] horizontal drain.
3. **Minimum size of stack vent or vent stack.** Any structure in which a building drain is installed shall have at least one stack vent or vent stack not less than three inches [7.62 centimeters] in diameter, or the size of the building drain if the building drain is less than three inches [7.62 centimeters] in diameter, carried full size through the roof.
4. **Provision for future fixtures.** When provision is made for the future installation of fixtures, those provided for shall be considered in determining the required size of drain and vent pipes. Construction to provide for such future installations shall be terminated with a plugged fitting or fittings.
5. **Minimum size of underground drainage piping.** No portion of the drainage system installed underground or below a basement or cellar shall be less than two inches [5.08 centimeters] in diameter.

This does not apply when used for condensate wastes or a relief valve discharge line which shall not be less than one and one-fourth inches [31.75 millimeters] in diameter.

Underground waste lines serving kitchen sinks shall not be less than three inches [7.62 centimeters] in diameter if the developed length exceeds ten feet [3.05 meters].

6. **Minimum size for aboveground drainage piping.** No portion of the drainage system installed aboveground shall be less than one and one-half inches [38.1 millimeters].

History: Amended effective April 1, 1984.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-12-03. Vent stacks and stack vents.

1. **Vent stack required.** Every building in which plumbing is installed shall have at least one main stack, which shall run undiminished in size and as directly as possible, from the building drain through to the open air above the roof. A vent stack or a main vent shall be installed with a soil or waste stack whenever back vents, relief vents, or other branch vents are required in a building of ~~three~~ five or more branch intervals.
2. **Connection at base.** All main vents or vent stacks shall connect full size at their base to the drainage system or to the main soil or waste pipe, at or below the lowest fixture branch.
3. **Horizontal offsets in building having ten or more branch intervals.** Horizontal offsets in buildings having ten or more branch intervals of less than forty-five degrees from the horizontal in a soil or waste stack may be vented as two separate soil or waste stacks and may be vented by installing a relief vent as a vertical continuation of the lower section of the stack or as a side vent connected to the lower section between the offset and the next lower fixture or horizontal branch. The upper section of the offset shall be provided with a yoke vent. The diameter of the vents shall not be less than the diameter of the main vent, or of the soil and waste stack, whichever is the smaller.
4. **Vent headers.** Stack vents and vent stacks may be connected into a common vent header at the top of the stacks and then extended to the open air at one point. This header shall be sized in accordance with the requirements of the table in subsection 6 of section 62-03-12-16, the number of units on a section of the header being the sum of all units on all stacks served by the section and the developed length being the

longest vent length from the intersection at the base of the most distant stack to the vent terminal in the open air as a direct extension of one stack.

5. **Other use prohibited.** The plumbing vent system shall not be used for purposes other than the venting of the plumbing system.

History: Amended effective April 1, 1984.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-12-08. Fixture vents.

1. **Distance of trap from vent.** Each fixture trap shall have a protecting vent so located that the developed length of the fixture drain from the trap weir to the vent fitting is within the requirements set forth in the following table.

MAXIMUM DISTANCE OF FIXTURE TRAP FROM VENT

Size of Fixture Drain Inches	Distance - Trap to Vent
1-1/2	4 5 feet
2	7 8 feet
3	9 10 feet
4	12 feet

2. **Venting of fixture drain.** The vent pipe opening from a soil or waste pipe, except for water closets and similar fixtures, shall not be below the top weir of the trap.
3. **Crown venting limitation.** No vent shall be installed within two pipe diameters of the trap weir.

History: Amended effective April 1, 1984.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-12-10. Wet venting.

1. **Single bathroom groups - top floor.** A single bathroom group of fixtures may be installed with the drain from a back-vented lavatory serving as a wet vent for a bathtub or shower stall and for the water closet, provided that:

- a. Not more than one fixture unit is drained into a one and one-half-inch [38.1-millimeter] diameter wet vent or not more than four fixture units drain into a two-inch [5.08-millimeters] diameter wet vent.
 - b. The horizontal branch shall be a minimum of two inches [5.08 centimeters] and connect to the stack at the same level as the water closet drain or below the water closet drain when installed on the top floor. It may also connect to the water closet bend.
2. **Double bath.** Bathroom groups back-to-back on the top floor consisting of two lavatories and two bathtubs or showers may be installed on the same horizontal branch with a common vent for the lavatories and with no back vent for the bathtubs or showers, provided the fixture drains for the bathtubs or showers connect downstream from the fixture drain for the lavatories, the bathtub traps and supply fittings are accessible, the wet vent is two inches [5.08 centimeters] in diameter, and the length of the fixture drains conform to the table in subsection 1 of section 62-03-12-08.
 3. **Multistory bathroom groups.** On the lower floors of a multistory building, the waste pipe from one or two lavatories may be used as a wet vent for one or two bathtubs or showers provided that:
 - a. The wet vent and its extension to the vent stack is two inches [5.08 centimeters] in diameter.
 - b. Each water closet below the top floor is individually back vented.
 4. **Exception.** ~~In multistory bathroom groups, wet vented in accordance with subsection 3, the water closets below the top floor need not be individually vented if the two-inch [5.08-centimeter] waste pipe connects directly into the water closet bend at a forty-five degree angle to the horizontal portion of the bend in the direction of the flow.~~
 - a. In multistory bathroom groups, wet vented in accordance with subsection 3, the water closets below the top floor need not be individually vented if the two-inch [5.08-centimeter] waste pipe connects directly into the water closet bend at a forty-five degree angle to the horizontal portion of the bend in the direction of flow.
 - b. If a stack fitting is used which consists of one or two 3-inch [7.62-centimeter] or four-inch [10.16-centimeter] water closet openings and two side-inlets each two inches [5.08 centimeters] in diameter that have their invert above the center of, but below the top of the water closet

opening, and one of the two-inch [5.08-centimeter] inlets is used to connect one (if revented) or two bathtubs or showers, and the other two-inch [5.08-centimeter] inlet is used to connect one or two lavatories.

- c. In lieu of the special stack fitting in subdivision b, a four-inch [10.16-centimeter] closet bend with two 2-inch [5.08-centimeter] wye taps may be used.

History: Amended effective April 1, 1984.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-12-10. Wet venting.

1. **Single bathroom groups - top floor.** A single bathroom group of fixtures may be installed with the drain from a back-vented lavatory serving as a wet vent for a bathtub or shower stall and for the water closet, provided that:
 - a. Not more than one fixture unit is drained into a one and one-half-inch [38.1-millimeter] diameter wet vent or not more than four fixture units drain into a two-inch [5.08-millimeters] diameter wet vent.
 - b. The horizontal branch shall be a minimum of two inches [5.08 centimeters] and connect to the stack at the same level as the water closet drain or below the water closet drain when installed on the top floor. It may also connect to the water closet bend.
2. **Double bath.** Bathroom groups back-to-back on the top floor consisting of two lavatories and two bathtubs or showers may be installed on the same horizontal branch with a common vent for the lavatories and with no back vent for the bathtubs or showers, provided the fixture drains for the bathtubs or showers connect downstream from the fixture drain for the lavatories, the bathtub traps and supply fittings are accessible, the wet vent is two inches [5.08 centimeters] in diameter, and the length of the fixture drains conform to the table in subsection 1 of section 62-03-12-08.
3. **Multistory bathroom groups.** On the lower floors of a multistory building, the waste pipe from one or two lavatories may be used as a wet vent for one or two bathtubs or showers provided that:
 - a. The wet vent and its extension to the vent stack is two inches [5.08 centimeters] in diameter.
 - b. Each water closet below the top floor is individually back vented.

4. Exception. In multistory bathroom groups, wet vented in accordance with subsection 3, the water closets below the top floor need not be individually vented if the two-inch [5.08-centimeter] waste pipe connects directly into the water closet bend at a forty-five degree angle to the horizontal portion of the bend in the direction of the flow:
- a. In multistory bathroom groups, wet vented in accordance with subsection 3, the water closets below the top floor need not be individually vented if the two-inch [5.08-centimeter] waste pipe connects directly into the water closet bend at a forty-five degree angle to the horizontal portion of the bend in the direction of flow.
 - b. If a stack fitting is used which consists of one or two 3-inch [7.62-centimeter] or four-inch [10.16-centimeter] water closet openings and two side-inlets each two inches [5.08 centimeters] in diameter that have their invert above the center of, but below the top of the water closet opening, and one of the two-inch [5.08-centimeter] inlets is used to connect one (if revented) or two bathtubs or showers, and the other two-inch [5.08-centimeter] inlet is used to connect one or two lavatories.
 - c. In lieu of the special stack fitting in subdivision b, a four-inch [10.16-centimeter] closet bend with two 2-inch [5.08-centimeter] wye taps may be used.

History: Amended effective April 1, 1984.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-12-12. Individual fixture reventing.

1. **Where required.** When fixtures other than water closets discharge into a horizontal branch downstream from a water closet, each fixture connecting downstream shall be individually vented except as permitted in subsection 1 of section 62-03-12-11.
2. **Horizontal branches.** Three lavatories or one sink within ~~seven~~ eight feet [~~2.13~~ 2.44 meters] developed length of a main-vented line may be installed on a two-inch [5.08-centimeter] horizontal waste branch without reventing, provided the branch is not less than two inches [5.08 centimeters] in diameter throughout its length, and provided the wastes are connected into the side of the branch and the branch leads to its stack connection with a pitch of not more than one-fourth inch [6.35 millimeters] per foot [30.48 centimeters].

3. **Load limit for fixtures above bathtubs and water closets without reventing.** The total drainage load that may be placed on a soil or waste stack above the highest water closet or bathtub connection without the use of revents shall not exceed three-fixture units, provided all of the following are met:
 - a. The soil or waste stack is not less than three inches [7.62 centimeters] in diameter.
 - b. The total load on the stack is in accordance with the applicable provisions of the table entitled "Horizontal Fixture Branches and Stacks" in subsection 1 of section 62-03-11-05.
 - c. The waste piping of the fixtures above the water closet or bathtub connection is in accordance with subsection 2 of this section and subsection 1 of section 62-03-12-08.

4. **Wastes connected to vents.** A fixture other than a kitchen sink or disposal that has a hydraulic load of not more than two-fixture units may be connected to a two-inch [5.08-centimeter] loop vent, circuit vent, or to the relief vent used with a loop or circuit vent, and in the case of four-fixture units to a three-inch [7.62-centimeter] loop vent, circuit vent, or to the relief vent used with a loop or circuit vent, if:
 - a. No other fixture is drained to the vent pipe; and
 - b. Where the vent pipe is a loop, circuit, or relief vent, the fixture that is connected to the vent pipe is in the same story as the fixtures that are served by the vent pipe.

History: Amended effective April 1, 1984.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-11. Piping material. All piping from building drain to sewage disposal system shall be four inches [10.16 centimeters] or larger service or heavier weight cast iron, Schedule 40 acrylonitrile-butadiene-stryrene or polyvinyl chloride plastic pipe, type PSP PVC sewer pipe and fittings A.S.T.M. D3033 or D3034, exclusive of the absorption lines, which shall be as in subsection 5 of section 62-03-16-09.

History: Amended effective April 1, 1984.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

TITLE 69
Public Service Commission

APRIL 1984

69-10-02-05. Pitless scales. Self-contained pitless scales may be used only for the commercial weighing of gravel, sand, rock, fill, or for check weighing of materials associated with highway construction, or as approved as a variance under section 64-02-02 of the North Dakota Century Code.

History: Amended effective April 1, 1984.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

MAY 1984

69-07-01-02. Change of commission firms. When a warehouseman changes commission firms, the warehouseman must file with the commission an acknowledged itemized statement showing ~~storage~~ warehouse receipts, advances on stored grain, grain inventories, and grain in transit, name of firm dropped, and name of new firm.

History: Amended effective May 1, 1984.

General Authority: NDCC 60-02-03

Law Implemented: NDCC 60-02-03

69-07-01-04. Storage in other than originating elevators. Value of grain on hand must equal outstanding storage liabilities at all times; provided, when fifty percent of rated capacity of the warehouse is occupied by grain held subject to ~~storage~~ warehouse receipts, the remainder may be placed in special bins or in general storage in any licensed and bonded warehouse within or without the state to remain in possession of the issuer of the original warehouse receipt.

History: Amended effective May 1, 1984.

General Authority: NDCC 60-02-03

Law Implemented: NDCC 60-02-03

69-07-01-05. Special bin. Grain received for special bin storage shall go through the same procedure as cash or other stored grain, as provided in North Dakota Century Code sections 60-02-11 to 60-02-38, subject to exceptions noted in North Dakota Century Code section 60-02-19. All special bin scale tickets, storage receipts, and stubs shall be marked "special bin".

If the agreed charge is other than that for regular storage, the agreed charge shall be shown on the storage receipt and stub.

History: Amended effective May 1, 1984.

General Authority: NDCC 60-02-03

Law Implemented: NDCC 60-02-03

69-07-01-06. Procedure for closing. Whenever the owner, lessee, or manager of a public elevator or warehouse licensed to do business in the state a warehouseman desires to close the elevator or warehouse for a period of more than fifteen days, the owner, lessee, or manager warehouseman shall first make application to the commission for permission to do so. Blanks will be furnished for this purpose. Notice of the application to close shall be posted in a conspicuous place in the elevator or warehouse at the time application is made and given to holders of all outstanding storage receipts by registered mail at their last known address. Arrangements for redemption of storage receipts must be made at a local point. If closing of elevator or a warehouse is permitted, notice shall be posted in the office window and on the front driveway door stating where and by whom receipts may be redeemed. When closing an elevator a warehouse for a period of less than fifteen days, the warehouseman must immediately post notices in the office window and on the front driveway door stating the dates the elevator warehouse will be closed, and where and by whom storage receipts may be redeemed. The above information, including the posting of notices must be immediately mailed to the commission. Approved notices to be posted and approved notice to commission will be furnished by the commission on request.

History: Amended effective May 1, 1984.

General Authority: NDCC 60-02-03

Law Implemented: NDCC 60-02-03, 60-02-39

69-07-02-01. Procedure for licensing. Before a license is granted, an application for the license (on blanks which will be furnished), accompanied by the corporate surety company bond as provided by law and the license fee required by North Dakota Century Code section 60-02-07 for each elevator or warehouse to be licensed and a copy of a the scale ticket and storage, warehouse receipt, and credit-sale contracts used by the warehouseman, must be filed with the public service commission. All corporate surety bonds must be countersigned by an authorized agent who is a resident of North Dakota.

History: Amended effective May 1, 1984.

General Authority: NDCC 60-02-03

Law Implemented: NDCC 60-02-03

69-07-02-02. **Schedule of requirements - Bonding schedule.** The capacity of elevator, annex, and any additional storage used must be listed as the capacity of your elevator giving the capacity of each unit individually. The following schedule shall be used for determining the minimum surety to accompany the warehouseman's application:

CAPACITY OF ELEVATORS, ANNEXES, AND ANY ADDITIONAL STORAGE

	<u>Bond *</u> <u>Schedule</u>
Capacity to 50,000 bushels	\$ 50,000.
From 50,001 bushels through 75,000 bushels	75,000.
From 75,001 bushels through 100,000 bushels	100,000.
From 100,001 bushels through 125,000 bushels.....	125,000.
From 125,001 bushels through 150,000 bushels.....	150,000.

From 150,001 bushels through 175,000 bushels.....	\$175,000.
From 175,001 bushels through 200,000 bushels.....	200,000.
From 200,001 bushels through 225,000 bushels.....	225,000.
From 225,001 bushels through 250,000 bushels.....	250,000.
From 250,001 bushels through 275,000 bushels.....	275,000.
From 275,001 bushels through 300,000 bushels.....	300,000.

From 300,001 bushels through 325,000 bushels.....	\$325,000.
From 325,001 bushels through 350,000 bushels.....	350,000.
From 350,001 bushels through 375,000 bushels.....	375,000.
From 375,001 bushels through 400,000 bushels.....	400,000.

From 400,001 bushels through 425,000 bushels.....	\$425,000.
From 425,001 bushels through 450,000 bushels.....	450,000.
From 450,001 bushels through 475,000 bushels.....	475,000.
From 475,001 bushels through 500,000 bushels.....	500,000.

Elevators with a capacity in excess of five hundred thousand bushels shall be required to furnish an additional bond of five thousand dollars for each twenty-five thousand bushels or fraction thereof.

The commission may require a warehouseman to file a bond in addition to the above minimum amounts when it deems such an increase necessary to accomplish the purposes of North Dakota Century Code chapter 60-02.

History: Amended effective May 1, 1984.

General Authority: NDCC 60-02-03

Law Implemented: NDCC 60-02-02, 60-02-07

69-07-03-01. Form of scale tickets. A scale ticket in the following form must be issued by the a warehouseman for each load of grain delivered at the warehouseman's warehouse, must be consecutively numbered and issued in consecutive order.

CERTIFICATE OF GRADE, WEIGHT AND DOCKAGE
OF GRAIN WEIGHED OVER THE SCALES OF

.....
(Name of Company)
....., North Dakota-
....., 19..... Number

This certificate is not a storage ticket and is not negotiable. It should be presented on day of issue for a lawful storage ticket or cash check.

Owners' Name Off-
Driver's Name Driver
On-

Test Weight Percentum
Kind of Grain Per Bushel of Dockage
Wagon and Grain, Pounds
Grade
Wagon Pounds
Gross Grain Pounds Gross Bushel
Dockage Pounds Dockage Bushel
Net Grain Pounds Net Bushel

Check Number Storage Ticket Number Assembling Sheet
and must contain as a minimum the name of the warehouseman, the warehouse location, the name of the depositor, the type of grain, the per centum of dockage, the test weight, and the gross, tare, and net weights.

History: Amended effective May 1, 1984.
General Authority: NDCC 60-02-03
Law Implemented: NDCC 60-02-03, 60-02-11

69-07-03-02. Cross-referencing of scale, storage, and cash tickets receipts. All scale ticket stubs must show the number of each cash ticket or storage receipt issued therefor. All storage receipts and storage receipt stubs must show the number of each scale ticket, storage receipt, or reissue storage receipt for which the storage receipt is issued. When the storage receipt is redeemed, the storage receipt and storage receipt stub must show the number of each cash ticket or reissue storage receipt issued in settlement therefor. Stubs of all cash tickets issued in payment for grain must show the number of each scale ticket or storage receipt for which the cash ticket was issued. All accounts and

records relating to grain storage and purchase, including all scale tickets, warehouse receipts, checks, and credit-sale contracts, must be properly cross-referenced to allow audit identification from delivery to purchase or redelivery of all grain.

History: Amended effective May 1, 1984.

General Authority: NDCC 60-02-03

Law Implemented: NDCC 60-02-03

69-07-03-03. Storage receipt - Form prescribed. Upon delivery of grain for storage, every warehouseman must issue to the person storing the grain a receipt the contents of which shall be prescribed by the public service commission.

General Authority: NDCC 60-02-03

Law Implemented: NDCC 60-02-03

Repealed effective May 1, 1984.

69-07-03-04. Canceled storage receipts and paid cash tickets. All canceled storage receipts and paid cash tickets shall be arranged numerically and filed where they may be readily inspected by a representative of the public service commission. Records - Filing. The warehouseman shall keep in a safe place all records of grain purchased and stored and all receipts and contracts issued and canceled. Such records must be kept current and open for inspection by commission personnel and must be retained for a period of three years. All receipts and contracts must be issued and filed in numerical sequence. The warehouseman shall provide the necessary assistance required for any examination of the warehouseman's books and records.

History: Amended effective May 1, 1984.

General Authority: NDCC 60-02-03

Law Implemented: NDCC 60-02-03

69-07-03-06. Credit-sale contracts. Unless the warehouseman has secured independent bond coverage for credit-sale contracts, the following statement must be printed on the contract in a clear and prominent manner directly above the place for the seller to sign:

THIS CONTRACT IS NOT PROTECTED BY NORTH DAKOTA STATUTORY WAREHOUSEMAN'S BOND COVERAGE IN THE EVENT OF THE BUYER'S INSOLVENCY.

If the warehouseman has obtained bond coverage in addition to that required by North Dakota Century Code section 60-02-09 and such coverage extends to the benefit of credit-sale contracts, the following statement or a similar statement approved by the commission must be printed on the

contract in a clear and prominent manner directly above the place for the seller to sign:

THIS CONTRACT IS NOT PROTECTED BY NORTH DAKOTA STATUTORY WAREHOUSEMAN'S BOND COVERAGE IN THE EVENT OF THE BUYER'S INSOLVENCY. HOWEVER, THE BUYER HAS SECURED INDEPENDENT BOND COVERAGE IN THE AMOUNT OF (state amount) FOR THE PROTECTION OF SELLERS UNDER CREDIT-SALE CONTRACTS IN THE EVENT OF THE BUYER'S INSOLVENCY.

A warehouseman securing independent bond coverage for the protection of sellers under credit-sale contract, shall file a copy of such bond with the commission.

History: Effective May 1, 1984.
General Authority: NDCC 60-02-03
Law Implemented: NDCC 60-02

JUNE 1984

69-09-03-02. Adoption of regulations. The following parts of Title 49, Code of Federal Regulations, effective March 1, 1984, are adopted by reference:

1. Part 190 - Department of Transportation Pipeline Safety Enforcement Procedures.
2. Part 191 - Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards.
4. Part 195 - Minimum Federal Safety Standards for Liquid Pipelines.

History: Effective June 1, 1984.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

69-09-04-01. Railroad warning signs - Specifications. All railroad warning signs for use at grade crossings in this state shall be designed, fabricated, installed, operated, and maintained in a safe, proper, and careful manner and shall conform to the current manual on uniform traffic control devices as adopted by the state highway commissioner.

History: Amended effective June 1, 1984.

General Authority: NDCC 49-10.1-03

Law Implemented: NDCC 24-09-02

69-09-04-02. Abandonment of railroad trackage - Applications. In addition to the requirements of section 69-02-02-04, applications for authority to abandon railroad trackage must include:

1. The names and addresses of all persons leasing from the applicant railroad property adjacent to the trackage.
2. The names and addresses of all persons who have originated or received freight over the trackage for each of the five years prior to the date of the application.
3. A proposed notice of opportunity for hearing clearly describing the location of the trackage.

History: Effective June 1, 1984.

General Authority: NDCC 49-10.1-03

Law Implemented: NDCC 49-10.1-03

69-09-04-03. Change in agency service - Applications. In addition to the requirements of section 69-02-02-04, applications for authority to discontinue or change agency service must include:

1. The names and addresses of all persons who have originated or received freight from the affected stations for each of the three years prior to the date of the application.
2. A proposed notice of opportunity for hearing clearly describing the requested change in agency service and the reasons for requesting the change.

History: Effective June 1, 1984.

General Authority: NDCC 49-10.1-03

Law Implemented: NDCC 49-10.1-03

JULY 1984

69-04-03-02. Burden of proof. In any proceeding to determine the reasonableness of a rate under subsection 2 of section 69-04-03-01:

1. The shipper challenging the rate shall have the burden of proving that the rate is not reasonable if:
 - a. The rate is authorized under section 69-04-03-06, and results in a revenue-variable cost percentage for the transportation to which the rate applies that is less than the lesser of the percentages described in paragraph 1 of subdivision c of subsection 5 of section 69-04-03-06; or
 - b. The rate does not meet the description set forth in subdivision a of this subsection, but the commission does not begin an investigation proceeding under section 69-04-03-05 to determine if the rate is reasonable.
2. The rail carrier establishing the challenged rate shall have the burden of proving that the rate is reasonable if:
 - a. The rate is greater than that authorized under section 69-04-03-06, or results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than the lesser of the percentages described in paragraph 1 of subdivision c of subsection 5 of section 69-04-03-06; and
 - b. The commission begins an investigation proceeding under section 69-04-03-05 to determine if such rate is reasonable.

History: Effective September 1, 1982; amended effective July 1, 1984.

General Authority: NDCC 49-10.1-03

Law Implemented: NDCC 49-10.1-01

69-04-03-03. Minimum rates.

1. A rate for transportation by a rail carrier that equals or exceeds the variable cost of providing the transportation is conclusively presumed to contribute to the going concern value of such rail carrier. The objective of the provisions of this section is to accord rail carriers maximum flexibility to lower rates in order to meet competition or otherwise attract traffic. A rate that does not contribute to the going concern value of the proponent carrier is presumed not to be reasonable while a rate that does contribute to the going concern value is conclusively presumed reasonable.
 - a. The presumptive cost floor is the sum of the line-haul cost of lading, applicable switching costs, and station clerical costs. A rate that does not equal or exceed the presumptive cost floor is presumed unreasonable.
 - b. The sum of the presumptive cost floor and any other costs that are proven by a protestant to vary directly with the particular movement to which a challenged rate is applicable is the directly variable cost of providing the service.
 - c. A rate that equals or exceeds the directly variable cost of providing the service is conclusively presumed to contribute to the going concern value and is thus reasonable.
 - d. A party wishing to challenge the minimum reasonableness of a rate must prove either that it is not at least equal to the presumptive cost floor or that it is equal to the presumptive cost floor but that there are other specific expenses that vary directly with the level of the particular movement. In either case, available cost data from Rail Form A or other acceptable costing systems may be used to show that the challenged rate is unlikely to cover either presumptive cost floor or directly variable cost. This showing can be rebutted through the use of actual movement cost data.
2. Upon the filing of a complaint alleging that a rate is below a reasonable minimum, the commission will take final action on the complaint by the ninetieth day after the date the complaint is filed.
3. If the commission determines, based on the record after opportunity for a hearing, that a rate is below a reasonable minimum, the commission will order the rate to be raised but only to the minimum level required by section 69-04-03-01. The complainant shall have the burden of proving that the rate is below a reasonable minimum.

4. For purposes of this section, variable costs will be determined under formulas or procedures prescribed or certified by the interstate commerce commission.
5. In the determination of variable costs for purposes of minimum rate regulation, the commission will, on application of the rail carrier proposing the rate, determine only the costs of the carrier and only those costs of the specific service in question unless the specific information is not available. The commission will not include in the variable costs an expense that does not vary directly with the level of transportation provided under the proposed rate.

History: Effective September 1, 1982; amended effective July 1, 1984.

General Authority: NDCC 49-10.1-03

Law Implemented: NDCC 49-10.1-01

69-04-03-05. Investigation and suspension.

1. When a new individual or joint rate or individual or joint classification, rule, or practice related to a rate is filed with the commission by a rail carrier, the commission may begin a proceeding to determine if the proposed rate, classification, rule, or practice would violate subtitle IV of title 49 of the United States Code for transportation performed in interstate commerce. The commission will give reasonable notice to interested parties before beginning a proceeding under this subsection but may act without allowing an interested party to file an answer or other formal pleading in response to its decision to begin the proceeding.
2. If the commission does not complete a proceeding under this section and make its final decision by the end of the fifth month after the rate, classification, rule, or practice was to become effective, the rate, classification, rule, or practice is effective at the end of that time period, or if already in effect at the end of that time period, remains in effect unless the commission determines a final decision cannot be made within five months, in which instance it may take an additional three months to complete the proceeding and make its final decision; except that if a rail carrier files a change in a rate, or a change in a classification, rule, or practice that has the effect of changing a rate, that adjusts the rate to the rate charged on similar traffic in interstate or foreign commerce, and the commission does not act finally on the change by the one hundred twentieth day after it was filed, the interstate commerce commission will have exclusive jurisdiction to prescribe a rate for the transportation affected by the change.

3. If an interested party has filed a complaint under subsection 1, the commission may set aside a rate, classification, rule, or practice that has become effective under this section if the commission finds it would be in violation of chapter 107 of title 49 of the United States Code for transportation performed in interstate commerce.
4. a. The commission will not suspend a proposed rate, classification, rule, or practice during the course of a commission proceeding under this section unless it appears from the specific facts shown by the verified statement of a person that:
 - (1) It is substantially likely that the protestant will prevail on the merits;
 - (2) Without suspension, the proposed rate change will cause substantial injury to the protestant or the party represented by the protestant; and
 - (3) Because of the peculiar economic circumstances of the protestant, the provisions of subsection 5 do not protect the protestant.
- b. The burden shall be on the protestant to prove the matters described in subdivision a.
5. If the commission does not suspend a proposed rate increase under subsection 4, the rail carrier shall account for all amounts received under the increase until the commission completes its proceedings under subsection 2. The accounting shall specify by whom and for whom the amounts are paid. When the commission takes final action, the carrier shall refund to the person for whom the amounts were paid that part of the increased rate found to be unreasonable, plus interest at a rate equal to the average yield (on the date the statement is filed) of marketable securities of the United States government having a duration of ninety days.
6. If a rate is suspended under subsection 4 and any portion of such rate is later found to be reasonable under this chapter the carrier shall collect from each person using the transportation to which the rate applies the difference between the original rate and the portion of the suspended rate found to be reasonable for any services performed during the period of suspension, plus interest at a rate equal to the average yield (on the date the statement is filed) of marketable securities of the United States government having a duration of ninety days.
7. If any portion of a proposed rate decrease is suspended under subsection 4 and later found to be reasonable under this chapter the rail carrier may refund any part of the portion of

the decrease found to comply with this chapter if the carrier makes the refund available to each shipper who participated in the rate, in accordance with the relative amount of such shipper's traffic transported at such rate.

8. a. Notwithstanding the provisions of sections 69-04-03-11 and 69-04-03-14, a rail carrier may waive the collection of amounts due under subsection 6 of this section if the amounts are not significant.
- b. If a rail carrier wishes to waive collection of amounts due under subsection 6, which are more than two thousand dollars, a petition for appropriate authority should be filed by the carrier by submitting a Petition to Waive Insignificant Amounts. These petitions should contain the following information:
 - (1) The name and address of the customer for whom the carrier wishes to waive collection.
 - (2) The name and addresses of the carriers involved in the intended waiver and a statement certifying that all carriers concur in the action.
 - (3) The amount intended to be waived.
 - (4) The number of the investigation and suspension case involved, the beginning and ending dates of the suspension period, and any other pertinent tariff information.
 - (5) The points of origin and destination of the shipments and the routes of movement, if relevant.
- c. If a rail carrier wishes to waive collection of amounts due under subsection 6 which are two thousand dollars or less, no petition need be filed prior to waiver, provided that this exemption may be invoked by a carrier only once for any person who uses the suspended rate during the suspension period. A Letter of Disposition informing the commission of the action taken, the date of the action, and the amount waived shall be submitted to the commission within thirty days of the waiver.
- d. Any interested person may protest the granting of a Petition to Waive Insignificant Amounts by filing a letter of objection within thirty days of commission receipt of the petition. Letters of objection shall clearly state the reasons for the objection, and shall certify that a copy of the letter of objection has been served on all parties named in the petition. A period of fifteen days will be allowed for reply.

History: Effective September 1, 1982; amended effective July 1, 1984.
General Authority: NDCC 49-10.1-03
Law Implemented: NDCC 49-10.1-01

69-04-03-06. Rate flexibility zone.

1. In this section:

- a. "Adjusted base rate" means the base rate for the transportation of a particular commodity multiplied by the latest rail cost adjustment factor published by the interstate commerce commission pursuant to 49 U.S.C. 10707a(a)(2).
- b. "Base rate" means, with respect to the transportation of a particular commodity:
 - (1) For the twenty-four-month period beginning on October 1, 1980, the rate in effect on October 1, 1980;
 - (2) For the twenty-four-month period beginning on October 1, 1982, the rate in effect on October 1, 1982; and
 - (3) For the five-year period beginning on October 1, 1984, and for each subsequent five-year period, the rate in effect on the first day of the applicable five-year period.

If no rate exists for the transportation of a particular commodity on October 1, 1980, the base rate for the transportation of such commodity shall be the rate established by the rail carrier (divided by the latest rail cost adjustment factor published by the interstate commerce commission), unless such rate is found to be unreasonable by the commission, in which case the base rate shall be the rate authorized by the commission (divided by the latest rail cost adjustment factor published by the interstate commerce commission).

2. a. Except as provided in subdivision b, a rail carrier may increase any rate for transportation over which the carrier has market dominance under section 69-04-03-07, so long as the increased rate is not greater than the adjusted base rate for the transportation involved, plus any rate increases implemented under subsection 3 or 4 of this section.
- b. A rate increase authorized under this subsection will not be found to exceed a reasonable maximum for the transportation involved.

- c. A rail carrier may not increase a rate under this subsection to the extent that the cost increases to the carrier due to inflation are recovered through general rate increases pursuant to 49 U.S.C. 10706, or inflation-based rate increases under 49 U.S.C. 10712 applicable to that rate.
- 3. a. During the twelve-month period beginning October 1, 1980, and during each of the three succeeding twelve-month periods, a rail carrier may, in addition to rate increases authorized under subsection 2, increase any rate over which the rail carrier has market dominance under section ~~69-04-03-03~~ 69-04-03-07, by an annual amount of not more than six percent of the adjusted base rate, except that in no event shall the total increase under the subsection result in a rate which is more than one hundred eighteen percent of the adjusted base rate.
 - b. (1) If any portion of a rate increase under this subsection is not implemented in the year in which it is authorized, such portion may, except as provided in paragraph 2, be implemented only in the next succeeding year.
 - (2) If any portion of the total rate increase authorized under this subsection is not implemented by September 30, 1984, such portion may be implemented in the next two succeeding years, except that in no event may a rail carrier increase a rate under this subsection or under subsection 4 in either of such two succeeding years by an annual amount of more than ten percent of the adjusted base rate.
- 4. a. Except as provided in subdivision c, during the twelve-month period beginning on October 1, 1984, and during each succeeding twelve-month period, a rail carrier may, in addition to rate increases under subsection 2, increase any rate for transportation over which the rail carrier has market dominance under section 69-04-03-07 by an annual amount of not more than four percent of the adjusted base rate.
 - b. No portion of any rate increase under this subsection which is not implemented in the year in which it is authorized may be implemented in any other year.
 - c. (1) The provision of this subsection shall not apply to a rail carrier proposing to increase a single line rate if the carrier earns adequate revenues, as determined by the interstate commerce commission under 49 U.S.C. 10704(a)(2).

- (2) The commission will, after a hearing on the record, prescribe rules or take whatever other action is necessary with respect to joint rates to ensure that rail carriers which earn adequate revenues, as determined by the interstate commerce commission under 49 U.S.C. 10704(a)(2), do not receive the rate increases authorized by this subsection unless the commission determines that it is unable to prescribe such rules without precluding rail carriers not earning adequate revenues from receiving the rate increases authorized under this subsection.
5. a. Notwithstanding the provisions of section 69-04-03-05, in the case of any rate increase that is authorized under subsection 3 or 4 of this section, the commission will not suspend the rate increase pending final commission action, and except as provided in subdivision b, the commission will not begin an investigation proceeding under section 69-04-03-05 with respect to the reasonableness of the rate increase, but an interested party may file a complaint alleging that such rate increase would violate the provisions of subtitle IV of title 49 of the United States Code for transportation performed in interstate commerce.
- b. In considering any complaint challenging a rate increase that is authorized under subsection 3 and that results in a revenue-variable cost percentage that is less than the lesser of the percentages described in paragraph 1 of subdivision c of this subsection, the commission will, in determining the reasonableness of the rate increase, give due consideration to whether the carrier proposing the rate increase has attained adequate revenues, as determined by the interstate commerce commission under 49 U.S.C. 10704(a)(2), giving regard to preventing a carrier with adequate revenues from realizing excessive profits on the traffic involved and also the policy of bringing to an adequate level the revenues of carriers not having an adequate revenue level.
- c. (1) If a rate increase authorized under this section in any year results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than twenty percentage points above the revenue-variable cost percentage applicable in that year under subsection 4 of section 69-04-03-07, or a revenue-variable cost percentage of one hundred ninety percent, whichever is less, the commission may, on its own initiative, or on complaint of an interested party, begin an investigation proceeding to determine if the proposed rate increase would violate subtitle IV of title 49 of the United States Code for transportation performed in interstate commerce.

(2) In determining whether to investigate or not to investigate any proposed rate increase that results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than the lesser of the percentages described in paragraph 1 (without regard to whether such rate increase is authorized under this section), the commission will set forth its reasons therefor, giving due consideration to the following factors:

- (a) The amount of traffic which is transported at revenues which do not contribute to going concern value and efforts made to minimize such traffic;
- (b) The amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and
- (c) The impact of the proposed rate or rate increase on the attainment of the national energy goals and the rail transportation policy under 49 U.S.C. 10101a, taking into account the railroads' role as a primary source of energy transportation and the need for a sound rail transportation system in accordance with the revenue adequacy goals of 49 U.S.C. 10704.

This paragraph shall not be construed to change existing law with regard to the nonreviewability of such determination.

(3) In determining whether a rate is reasonable, the commission will consider, among other factors, evidence of the following:

- (a) The amount of traffic which is transported at revenues which do not contribute to going concern value and efforts made to minimize such traffic;
- (b) The amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and
- (c) The carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.

6. In any proceeding under this section, evidence of the underlying rail carrier rate is admissible.
7. A finding by the commission that a rate increase exceeds the increase authorized under this section does not establish a presumption that the rail carrier proposing such rate increase has or does not have market dominance over the transportation to which the rate applies, or that the proposed rate exceeds or does not exceed a reasonable maximum.
8. The authority of the commission to determine and prescribe reasonable rules, classifications, and practices will not be used, directly or indirectly, to limit the rates which rail carriers would otherwise be authorized to establish under subtitle IV of title 49 of the United States Code for transportation performed in interstate commerce.

History: Effective September 1, 1982; amended effective July 1, 1984.

General Authority: NDCC 49-10.1-03

Law Implemented: NDCC 49-10.1-01

69-04-03-07. Market dominance.

1. In this section, "market dominance" means an absence of effective competition from other carriers or modes of transportation for the transportation to which a rate applies.
2. When a rate for transportation by a rail carrier is challenged as being unreasonably high, the commission will determine, within ninety days after the start of a proceeding under section 69-04-03-05 to investigate the lawfulness of that rate, whether the carrier proposing the rate has market dominance over the transportation to which the rate applies. The commission may make that determination on its own initiative or on complaint. A finding by the commission that the carrier does not have market dominance is determinative in a proceeding under this chapter related to that rate or transportation unless changed or set aside by the commission or set aside by a court of competent jurisdiction.
3. When the commission finds in any proceeding that a rail carrier proposing or defending a rate for transportation has market dominance over the transportation to which the rate applies, it may then determine that rate to be unreasonable if it exceeds a reasonable maximum for that transportation. However, a finding of market dominance does not establish a presumption that the proposed rate exceeds a reasonable maximum. This subsection does not limit the power of the commission to suspend a rate under subsection 4 of section 69-04-03-05. However, if the commission has found that a carrier does not have market dominance over the transportation to which the rate applies, the commission will suspend an

increase in that rate as being in excess of a reasonable maximum for that transportation only if it specifically changes or sets aside its prior determination of market dominance.

4. a. In this subsection:

- (1) "Cost recovery percentage" means the cost recovery percentage as annually determined by the interstate commerce commission pursuant to 49 U.S.C. 10709.
- (2) "Fixed and variable cost" means all cost incurred by rail carriers in the transportation of freight, but limiting the return on equity capital to a rate equal to the embedded cost of debt.

b. In making a determination under this section, the commission will find that the rail carrier establishing the challenged rate does not have market dominance over the transportation to which the rate applies if such rail carrier proves that the rate charged results in a revenue-variable cost percentage for such transportation that is less than:

- (1) One hundred sixty-five percent during the period beginning October 1, 1981, and ending September 30, 1982;
- (2) One hundred seventy percent during the period beginning October 1, 1982, and ending September 30, 1983;
- (3) One hundred seventy-five percent or the cost recovery percentage, whichever is less, during the period beginning October 1, 1983, and ending September 30, 1984; and
- (4) The cost recovery percentage, during each twelve-month period beginning on or after October 1, 1984.

For purposes of paragraphs 3 and 4, the cost recovery percentage shall in no event be less than a revenue-variable cost percentage of one hundred seventy percent or more than a revenue-variable cost percentage of one hundred eighty percent.

c. For purposes of determining the revenue-variable cost percentage for a particular transportation, variable costs shall be determined by using the carrier's costs, calculated using a cost finding methodology adopted by the interstate commerce commission and indexed quarterly to account for current wage and price levels in the region in

which the carrier operates, and with adjustments specified accepted by the commission. A rail carrier may meet its burden of proof under this subsection by establishing its variable costs using a cost finding methodology adopted by the interstate commerce commission and indexed quarterly to account for current wage and price levels in the region in which the carrier operates, but a shipper may rebut that showing by evidence of such type, and in accordance with such burden of proof, as the commission shall prescribe cost adjustments to reflect individual movement costs.

d. A finding by the commission that a rate charged by a rail carrier results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than the applicable percentage under subdivision b does not establish a presumption that the rail carrier has or does not have market dominance over such transportation, or that the proposed rate exceeds or does not exceed a reasonable maximum.

5. For purposes of determining if a rail carrier has market dominance under this section, the commission will consider evidence pertaining to the presence or absence of effective competition for the traffic to which a challenged rate applies in accordance with such evidentiary guidelines or standards adopted by the interstate commerce commission. The protestant bears the burden of demonstrating that there exists no effective intramodal or intermodal competition for the transportation to which the rate applies. Respondent railroad may rebut the protestant's showing with evidence that effective intramodal or intermodal competition exists. If intramodal and intermodal competition is shown not to exist, the respondent railroad has the burden of proving that either product or geographic competition for the involved transportation does exist. The protestant then has the burden of proving that such competition is not effective.

History: Effective September 1, 1982; amended effective July 1, 1984.

General Authority: NDCC 49-10.1-03

Law Implemented: NDCC 49-10.1-01

69-04-03-09. Contract rates.

1. One or more rail carriers may enter into a contract with one or more purchasers of rail services to provide specified services under specified rates and conditions. Such a rail carrier may not enter into a contract with purchasers of rail service except as provided in this section. A contract subject to this section is a written agreement, including any amendment, entered into by one or more rail carriers with one or more purchasers of rail

services, to provide specified services under specified rates, charges, and conditions. A contract filed under this section must specify that it is made pursuant to this section and must be signed by duly authorized parties. An amendment includes written contract modifications signed by the parties. An amendment is treated as a new contract. An amendment is lawful only if it is filed and approved in the same manner as a contract. To the extent terms affecting the lawfulness of the underlying contract are changed, remedies are revived and review is again available.

2. Each contract entered into under this section shall be filed with the commission, together with a summary of the contract containing the nonconfidential information prescribed by the interstate commerce commission pursuant to 49 U.S.C. 10713 for contract rates subject to the jurisdiction of the interstate commerce commission. The rail carriers shall publish the essential terms of the contract in the format prescribed by the interstate commerce commission pursuant to 49 U.S.C. 10713 for contract rail rates subject to the jurisdiction of the interstate commerce commission to assure the essential terms of the contract are available to the general public in tariff format elements of the contract in the format specified in section 69-04-03-22.1. A contract and contract summary (and amendments and supplements) may be rejected for noncompliance with applicable statutes and rules.
3. A contract filed under this section will be approved by the commission, as provided in subsection 5, unless the commission determines in a proceeding under subsection 4 that the contract is in violation of this section.
4. a. No later than thirty days after the date of filing of a contract under this section, the commission may, on its own initiative or on complaint, begin a proceeding to review the contract only on the grounds described in this subsection.
 - b. (1) In the case of a contract other than a contract for the transportation of agricultural commodities (including forest products and paper), a complaint may be filed:
 - (a) By a shipper only on the grounds that the shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting carrier or carriers to meet their common carrier obligations to the complainant under section 69-04-03-10; or

- (b) By a port only on the grounds that the port individually will be harmed because the proposed contract will result in unreasonable discrimination against the port.
- (2) In the case of a contract for the transportation of agricultural commodities (including forest products and paper), in addition to the grounds for a complaint described in paragraph 1, a complaint may be filed by a shipper on the grounds that the shipper individually will be harmed because:
 - (a) The rail carrier has unreasonably discriminated by refusing to enter into a contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; or
 - (b) The proposed contract would constitute a destructive competitive practice under subtitle IV of title 49 of the United States Code for transportation performed in interstate commerce.

In making a determination under subparagraph b, the commission shall consider the difference between contract rates and published single car rates.

- (3) For purposes of this subdivision, the term "unreasonable discrimination" has the same meaning as such term has under section 69-04-03-11.
- c. (1) Within thirty days after the date a proceeding is commenced under subdivision a the commission shall determine if the contract that is the subject of such proceeding is in violation of this section.
 - (2) If the commission determines, on the basis of a complaint filed under subparagraph a of paragraph 2 of subdivision b, that the grounds for a complaint described in such subparagraph have been established with respect to a carrier, the commission will, subject to the provisions of this section, order the carrier to provide rates and service substantially similar to the contract at issue with such differentials in terms and conditions as are justified by the

evidence. If the commission finds that the contract is in violation of this section, it will disapprove the contract; or in the case of agricultural contracts where the commission finds unreasonable discrimination by a carrier in accordance with subparagraph a of paragraph 2 of subdivision b, allow the carriers the option to provide rates and services substantially similar to the contract at issue, with such differences in terms and conditions as are justified by the evidence, or to cancel the contract.

5. Approval of a contract filed under this section shall be effective on the date the commission expressly approves such contract, but in no event before the end of the thirty-day period beginning on the date such contract is filed or after the end of the sixty-day period beginning on such date, or if the commission has not disapproved such contract by the end of the sixty-day period beginning on the date such contract is filed, at the end of such sixty-day period. If the commission does not institute a proceeding to review the contract, it is approved on the thirtieth day after the filing of the contract and is considered "expressly approved" by the commission. If the commission institutes a proceeding to review a contract, the contract is approved:
 - a. On the date the commission approves the contract if the date of approval is thirty or more days after the filing date of the contract;
 - b. On the thirtieth day after the filing date of the contract if the commission denies the complaint against the contract prior to the thirtieth day after the filing date of the contract; or
 - c. On the sixtieth day after the filing date of a contract, if the commission fails to disapprove the contract.
6. The commission may limit the right of a rail carrier to enter into future contracts under this section following a determination that additional contracts would impair the ability of the rail carrier to fulfill its common carrier obligations under section 69-04-03-10.
7. The commission will not require a rail carrier to violate the terms of a contract that has been approved under this section, except under the circumstances set forth in 49 U.S.C. 11128.
8. A party to a contract entered into under this section shall have no duty in connection with services provided under such

contract other than those duties specified by the terms of the contract.

9. a. A contract that is approved by the commission under this section, and transportation under such contract, shall not be subject to the provisions of this chapter, and may not be subsequently challenged before the commission or in any court on the grounds that such contract violates a provision of this chapter.
- b. The exclusive remedy for any alleged breach of a contract entered into under this section shall be an action in an appropriate state court or United States district court, unless the parties otherwise agree.
10. The provisions of this section shall not affect the status of any lawful contract between a rail carrier and one or more purchasers of rail service that was in effect on October 1, 1980. Any such contract shall hereafter have the same force and effect as if it had been entered into in accordance with the provisions of this section. Nothing in this section shall affect the rights of the parties to challenge the existence of such a contract.
11. a. Any rail carrier may, in accordance with the terms of this section, enter into contracts for the transportation of agricultural commodities ~~(, including forest products and paper)~~, but not including woodpulp, woodchips, pulpwood, or paper, involving the utilization of carrier owned or leased equipment not in excess of forty percent of the capacity of such carrier's owned or leased equipment by major car type (plain boxcars, covered hopper cars, gondolas and open top hoppers, coal cars, bulkhead flatcars, pulpwood rackcars, and flatbed equipment, including TOFC/COFC), except that in the case of a proposed contract between a class I carrier (as defined by the interstate commerce commission) and a shipper originating an average of one thousand cars or more per year during the prior three-year period by major car type on a particular carrier, not more than forty percent of carrier owned or leased equipment utilized on the average during the prior three-year period may be used for such contract without prior authorization by the commission.
- b. The commission may, on request of a rail carrier or other party or on its own initiative, grant such relief from the limitations of subdivision a of this subsection as the commission considers appropriate, if it appears that additional equipment may be made available without impairing the rail carrier's ability to meet its common carrier obligations under section 69-04-03-10.

12. Service under a contract approved under this section will be deemed to be a separate and distinct class of service, and the equipment used in the fulfillment of such a contract shall not be subject to car service decisions.
13. Transportation or service performed under a contract or amendment may begin, without specific commission authorization, on or after the date the contract and contract summary or contract amendment and supplement are filed and before commission approval as defined in subsection 5, subject to the following conditions:
 - a. The contract or contract amendment must specifically state that the transportation or service may begin on the date of filing and that performance is subject to the conditions of subsection 13 of section 69-04-03-09 of the North Dakota Administrative Code. The contract summary or supplement must separately reflect the date of commencement of service under this provision under "duration of contract", as required by paragraph 4 of subdivision a of subsection 4 of section 69-04-03-22.1.
 - b. If the rail equipment standards of subsection 11 are exceeded, prior relief must be obtained from the commission and must be specifically identified in the contract summary.
 - c. If the commission disapproves or rejects the contract or amendment, the appropriate noncontract tariffs or the contract provisions otherwise in effect under previously approved contracts and amendments will be applicable.
 - d. Before commission approval, the contract or amendment and transportation are subject to commission jurisdiction.
 - e. Transportation or service may not begin under a contract or an amendment to a contract before the filing date of either the contract or the amendment, respectively.

History: Effective September 1, 1982; amended effective July 1, 1984.

General Authority: NDCC 49-10.1-03

Law Implemented: NDCC 49-10.1-01

69-04-03-11. Discrimination.

1. A rail carrier may not charge or receive from a person a different compensation (by using a special rate, rebate, drawback, or another means) for a service rendered, or to be rendered, in transportation the carrier may perform under North Dakota Century Code section 49-10.1-01, than it charges or receives from another person for performing a like and contemporaneous service in the transportation of a like kind

of traffic under substantially similar circumstances. A common carrier that charges or receives such a different compensation for that service unreasonably discriminates.

2. A rail carrier may not subject a person, place, or type of traffic to unreasonable discrimination. However, subject to subsection 3, this subsection does not apply to discrimination against the traffic of another carrier providing transportation by any mode.
3. A rail carrier may not subject a freight forwarder (as defined in 49 U.S.C. ~~101020F~~ 10102(9)) to unreasonable discrimination whether or not the freight forwarder is controlled by that carrier.
4. Differences between rates, classifications, rules, and practices of rail carriers do not constitute a violation of this section if such differences result from different services provided by rail carriers.
5. This section shall not apply to:
 - a. Contracts approved under section 69-04-03-09, other than as provided in subparagraph b of paragraph 1 of subdivision b of subsection 4 and paragraph 2 of subdivision b of subsection 4 of such section.
 - b. Surcharges or cancellations under section 69-04-03-20.
 - c. Separate rates for distinct rail services under section 69-04-03-12.
 - d. Rail rates applicable to different routes.
 - e. Expenses authorized under section 69-04-03-13.

History: Effective September 1, 1982; amended effective July 1, 1984.

General Authority: NDCC 49-10.1-03

Law Implemented: NDCC 49-10.1-01

69-04-03-15. Exemption of rail transportation.

1. The commission will exempt a person, class of persons, or a transaction or service when the commission finds that the application of a provision of this chapter:
 - a. Is not necessary to carry out the transportation policy set forth in 49 U.S.C. 10101a; and
 - b. Either the transportation or service is of limited scope, or the application of a provision of this chapter is not needed to protect shippers from the abuse of market power.

- 2- The commission may, where appropriate, begin a proceeding under this ~~section~~ subsection on its own initiative or on application by an interested party.
- 3- The commission may specify the period of time during which an exemption granted under this ~~section~~ subsection is effective.
- 4- The commission may revoke an exemption, to the extent it specifies, when it finds that application of a provision of this chapter to the person, class, or transportation is necessary to carry out the transportation policy set forth in 49 U.S.C. 10101a.

2. A person, class of persons, or a transportation or service is exempt from a provision of this chapter if the interstate commerce commission has exempted the same person, class of persons, or transportation or service in interstate commerce from the application of a corresponding provision of subtitle IV of title 49 of the United States Code. An exemption under this subsection is revoked, to the extent specified, if the interstate commerce commission finds that application of a provision of this chapter to the person, class, or transportation is necessary to carry out the transportation policy set forth in 49 U.S.C. 10101a.

- 5- 3. No exemption order issued pursuant to this section will operate to relieve any rail carrier from an obligation to provide contractual terms for liability and claims. Nothing in this subsection shall prevent rail carriers from offering alternative terms nor give the commission the authority to require any specific level of rates or services based upon the carrier's obligation to provide contractual terms for liability and claims.

History: Effective September 1, 1982; amended effective July 1, 1984.

General Authority: NDCC 49-10.1-03

Law Implemented: NDCC 49-10.1-01

69-04-03-17. Rates for recyclable materials.

1. In this section:
 - a. "Recyclable material" means material collected or recovered from waste for a commercial or industrial use whether the collection or recovery follows end usage as a product.
 - b. "Virgin material" means raw material, including previously unused metal or metal ore, woodpulp or pulpwood, textile fiber or material, or other resource that, through the

application of technology, is or will become a source of raw material for commercial or industrial use.

2. When appropriate, the commission will:

a. Investigate the rate structure for the transportation of recyclable or recycled materials and competing virgin material by rail carriers and the manner in which that rate structure has been affected by successive general rate increases approved by the commission or the interstate commerce commission for those carriers.

b. Determine whether those rate increases affect any part of the rate structure in violation of section 69-04-03-18 or 69-04-03-11 and order the rate found to be in violation of either of those sections removed from the rate structure.

3. A determination under subdivision b of subsection 2 may be made only after a public hearing. During the hearing, the rail carriers have the burden of proving that rate increases that affect the rate structure applicable to the transportation of those competing materials comply with sections 69-04-03-18 and 69-04-03-11.

4. Notwithstanding any other provision of this chapter, all rail carriers shall take all actions necessary to reduce and thereafter maintain rates for the transportation of recyclable or recycled materials, other than recyclable or recycled iron or steel, at revenue-to-variable cost ratio levels that are equal to or less than the average revenue-to-variable cost ratio that rail carriers would be required to realize, under honest, economical, and efficient management, in order to cover total operating expenses, including depreciation and obsolescence, plus a reasonable and economic profit or return (or both) on capital employed in the business sufficient to attract and retain capital in amounts adequate to provide a sound transportation system in the United States. As long as any such rate equals or exceeds such average revenue-to-variable cost ratio as established by the interstate commerce commission, such rate shall not be required to bear any further rate increase.

History: Effective September 1, 1982; amended effective July 1, 1984.

General Authority: NDCC 49-10.1-03

Law Implemented: NDCC 49-10.1-01

69-04-03-22. General tariff requirements.

1. A rail carrier shall publish and file with the commission tariffs containing the rates, and classifications, rules, and practices related to those rates, established under this chapter. Such tariffs shall be kept open for public inspection.
2. a. Tariffs must identify plainly:
 - (1) The places between which property will be transported;
 - (2) Terminal, storage, and icing charges (stated separately);
 - (3) Privileges given and facilities allowed; and
 - (4) Any rules that change, affect, or determine any part of the published rate.
- b. A joint tariff filed by a carrier shall identify the carriers that are parties to it. The carriers that are parties to a joint tariff, other than the carrier filing it, must file a concurrence or acceptance of the tariff with the commission but are not required to file a copy of the tariff.
3. a. When a rail carrier proposes to change a rate, the carrier shall publish, file, and keep open for public inspection a notice of the proposed change as required under subsections 1 and 2.
- b. A notice filed under this subsection shall plainly identify the proposed change or new or reduced rate and indicate its proposed effective date. ~~A proposed rate change resulting in an increased rate or a new rate shall not become effective for twenty days after the notice is published and a proposed rate change resulting in a reduced rate shall not become effective for ten days after the notice is published, except that a contract authorized under section 69-04-03-09 shall become effective in accordance with the provisions of such section.~~ Except with regard to contract rates filed under section 69-04-03-09, the notice period for tariff publications shall be:
 - (1) Twenty days for rates or provisions published by rail carriers in connection with new services or changes resulting in increased rates or decreased value of service; and
 - (2) Ten days for changes published by rail carriers resulting in decreased rates or increased value of

service, or changes resulting in neither increases nor reductions.

4. a. The commission may reduce the notice ~~peried~~ periods of this ~~subseetion~~ section if cause exists. The commission may change the other requirements of this section if cause exists in particular instances or as they apply to special circumstances.
 - b. All rates of rail carriers and rail ratemaking associations shall be incorporated in their individual tariffs by the end of the second year after initial publication of the rate, or by the end of the second year after a change in a rate becomes effective, whichever is later. The commission may extend these periods if cause exists. A rate not incorporated in an individual tariff as required by the commission is void.
5. The commission may reject a tariff submitted to it by a common carrier under this section if that tariff violates this section.

History: Effective September 1, 1982; amended effective July 1, 1984.

General Authority: NDCC 49-10.1-03

Law Implemented: NDCC 49-10.1-01

69-04-03-22.1. Contract tariff requirements.

1. A railroad or railroads entering into a contract for railroad transportation services with one or more purchasers of rail service shall file with the commission the original and one copy of the contract and two copies of the contract summary in the following manner:
 - a. Contracts and contract summaries may not be filed in the same packages with standard tariff filings.
 - b. The confidential contract may not be attached to the contract summary.
 - c. The envelope or wrapper containing the contract and summary must be marked "Confidential, Rail Contract".
 - d. A contract and summary must be accompanied by a transmittal letter identifying the submitted documents and the name and telephone number of a contact person.

The contract filed under this section will not be available for inspection by persons other than the parties to the contract and authorized commission personnel, except by petition demonstrating a likelihood of succeeding on the merits of the complaint and that the matter complained of

could not be proven without access to additional contract information. The commission's action in any contract-disclosure matter, including a petition filed under this subsection is subject to the limitations imposed by 5 U.S.C. 552(b) and the United States Trade Secrets Act [18 U.S.C. 1905]. A contract and its summary filed under section 69-04-03-09 may be labeled "Nonconfidential". Such a designation will permit the general public to inspect the entire contract. The contract summary filed under this section will be made available for inspection by the general public. The contract summary filed under these rules is not required to be posted in any stations, but will be made available from carriers participating in the contract upon reasonable request.

2. a. The title page of every contract and amendment must contain only the following information:

- (1) In the upper right corner, the contract number (see subsection 3).
- (2) In the center of the page, the issuing carrier's name, followed by the word "CONTRACT" in large print.
- (3) Amendments to contracts must also show, in the upper right corner, the amendment number (see subsection 3).
- (4) A solid one-inch [2.54-centimeter] black border down the right side of the title page.
- (5) Date of issue and date to be effective.

b. The title page of every contract summary and supplement must contain only the following information:

- (1) In the upper right corner, the contract summary number (see subsection 3).
- (2) In the center of the page, the issuing carrier's name, followed by the words "CONTRACT SUMMARY" in large print.
- (3) Date of issue and date to be effective.
- (4) In the center lower portion, the issuing individual's name and address.
- (5) Supplements to contract summaries must also show, in the upper right corner, the supplement number (see subsection 3).

3. Each issuing carrier shall sequentially number the contract and contract summary it issues. The contract and contract summary identification number must include the letters "NDPSC", the industry standard alphabet code for the issuing railroad (limited to four letters), the letter "C", and the sequential number, with each separated by a hyphen. Any amendment to a contract must be reflected in a corresponding supplement to the contract summary. If the change in the contract is only in confidential matter, a statement to that effect must be made in the supplement. At the carrier's option, the carrier's tariff publishing officers may reserve blocks of numbers if tariffs are issued from different departments. An index to the blocks of reserved numbers must be filed with the commission. Contract amendments and contract summary supplements must be sequentially numbered.

4. a. Contract summaries for agricultural commodities and forest products, but not including woodpulp, woodchips, pulpwood, or paper, must contain the following terms in the order named:

(1) A list alphabetically arranged, of the corporate names of all carriers that are parties to the contract plus their addresses for service of complaints.

(2) The commodity or commodities to be transported under the contract.

(3) The origin stations and destination stations.

(4) The duration of the contract.

(5) Railcar data by number of dedicated cars, or, at the carrier's option, car days by major car type used to fulfill the contract or contract options:

(a) Available and owned by the carriers listed pursuant to paragraph 1 with average number of bad-order cars identified;

(b) Available and leased by the carriers listed pursuant to paragraph 1 with average number of bad-order cars identified;

(c) [Optional] On order (for ownership or lease) along with delivery dates; and

(d) In the event a complaint is filed involving common carrier obligation and carrier furnished cars, the carrier shall immediately submit to the commission and the complainant additional data on cars used to fulfill the challenged

contract. Data must include (by major car type used to fulfill the contract) the total bad car orders, the assigned car obligations, and free running cars.

In addition to subparagraph a, if agricultural commodities, including forest products, but not including woodpulp, woodchips, pulpwood, or paper, a certified statement by the participating rail carriers that the cumulative equipment total for all contracts does not exceed forty percent of the capacity of the rail carrier's owned and leased cars by applicable major car type, and in the case of an agricultural shipper which originated an average of one thousand cars or more per year during the prior three-year period by major car type, that the equipment used does not exceed forty percent of the rail carrier's owned or leased cars used on the average by that shipper during the previous three years. Railcar data need not be submitted if the shipper furnishes the railcars, unless the cars are leased from the carrier, or the contract is restricted to certain services which do not entail car supply.

(6) Identification of base rates or charges and movement type (e.g. single car, multiple car, unit train), the minimum annual volume, and a summary of escalation provisions.

(7) Identification of existence (but not terms or amount) of special features such as transit time commitments, guaranteed car supply, minimum percentage of traffic requirements, credit terms, discount, et cetera.

b. Contract summaries for other commodities or services shall contain the information contained in paragraphs 1, 2, 4, and 5 of subdivision a of this subsection. Paragraph 7 of subdivision a is applicable to the extent that service requirements are placed in the contract.

c. The contract summary and supplements must enumerate and have each item completed. Where the item does not pertain to the contract or amendment, the term "Not applicable" ("NA") must be used.

5. Copies of contract summaries will be available from the commission's traffic division. Copies of contract summaries will also be available from carriers participating in the contract.

6. All filed contracts, and amendments, and contract summaries, and supplements, must provide thirty days' notice to the public as required by subsection 5 of section 69-04-03-09.

History: Effective July 1, 1984.

General Authority: NDCC 49-10.1-03

Law Implemented: NDCC 49-10.1-01

69-04-03-25. Limitations in rulemaking proceedings relating to rates of rail carriers. When an interested person petitions the commission to begin a rulemaking proceeding in a matter related to rates of a rail carrier providing transportation, the commission shall grant or deny that petition by one hundred twenty days after receiving it. If the petition is granted, the commission shall begin an appropriate proceeding as soon as practicable. If the petition is denied, the reasons for the denial must be so stated in the order denying the petition.

History: Effective July 1, 1984.

General Authority: NDCC 49-10.1-03

Law Implemented: NDCC 49-10.1-01

69-04-03-26. Commission action in rail carrier rate proceedings.

1. This section applies to matters before the commission involving a rate of a rail carrier providing transportation; however, other sections of this chapter related to actions of the commission in proceedings involving rates of rail carriers supersede this section to the extent they are inconsistent with the provisions of this section related to deadlines.
2. In a proceeding under this section, all evidentiary proceedings related to the matter must be completed within one hundred eighty days after the matter is docketed. The commission shall reach a decision within one hundred twenty days after completion of all evidentiary proceedings and shall include specific findings of fact, specific and separate conclusions of law, an order, and justification of the findings of fact, conclusions of law, and order.
3. In a proceeding under this section, after the parties have had at least an opportunity to submit evidence in written form, the commission shall give them an opportunity for briefs, written statements, or conferences of the parties. A conference of the parties must be chaired by an individual commissioner or an employee designated by the commission.
4. The commission may, at any time on its own initiative because of material error, new evidence, or substantially changed circumstances:

- a. Reopen a proceeding;
- b. Grant rehearing, reargument, or reconsideration of an action of the commission; and
- c. Change an action of the commission.

An interested party may petition to reopen and reconsider an action of the commission under rules of the commission.

- 5. An action of the commission under this section is effective on the thirtieth day after service on the parties to the proceeding unless the commission provides for it to become effective on an earlier date.
- 6. An action of the commission under this section is final on the date on which it is served.
- 7. The commission may extend a time period established by this section by a period of not more than ninety days. The extension must be granted if a majority of the commissioners agree to it by public vote.
- 8. If an extension granted under subsection 7 is not sufficient to allow for completion of necessary proceedings, the commission may grant a further extension in an extraordinary situation if:
 - a. A majority of the commissioners agree to the further extension by public vote; and
 - b. Not later than the fifteenth day before expiration of the extension granted under subsection 7, the commission completes and adopts a written report which includes:
 - (1) A full explanation of the reasons for the further extension;
 - (2) The anticipated duration of the further extension;
 - (3) The issues involved in the matter before the commission; and
 - (4) The names of commission personnel working on the matter.

History: Effective July 1, 1984.
General Authority: NDCC 49-10.1-03
Law Implemented: NDCC 49-10.1-01

69-04-03-27. Procedures for requesting surcharge costs and revenues from rail carriers applying a commodity oriented surcharge or canceling the application of a joint rate.

1. A rail carrier applying a commodity oriented surcharge or canceling the application of a joint rate shall provide a shipper with its division of revenue within three working days of receipt of a request.
2. If a request for a division of revenues is not timely honored, the tariff will be suspended and investigated by the commission, and ultimately disapproved.
3. The commission will furnish within five working days of a request, determinations of the variable cost of service and revenue of a rail carrier applying a surcharge or canceling the application of a joint rate. A request must be route specific and must include, for each surcharged rate or route to be canceled:
 - a. The amount of the surcharge.
 - b. The tariff minimum weight.
 - c. The tariff rate applicable at the minimum weight, tariff reference, unit, e.g., per hundredweight.
 - d. The relevant territorial division and the relevant intraterritorial subdivision, where applicable, as percentages. Surcharging carriers must supply this information within three working days of request.
 - e. The car type or types in which the traffic normally moves.
 - f. The commodity description - STCC code.
 - g. The class of traffic.
 - h. The number of intertrain and intratrain switches, if known.
 - i. The origin, destination, interchanges, carriers used, and the short line distance of the surcharging or canceling carrier's line (from the published distance tables) from or to the interchange points at which the traffic is tendered.
4. Along with any request for variable cost and revenue information, shippers must certify to the commission that they have no feasible transportation alternatives to the surcharged or canceled routes.

History: Effective July 1, 1984.

General Authority: NDCC 49-10.1-03
Law Implemented: NDCC 49-10.1-01

TITLE 75
Department of Human Services

MARCH 1984

AGENCY SYNOPSIS: This chapter of the North Dakota Administrative Code is proposed to clarify what constitutes information corroborating paternity under the provisions of Section 14-15-16(4) of the North Dakota Century Code. This chapter clarifies what specific information found in a licensed child-placing agency file can be used as corroborative evidence to cause an investigation to be made for nonidentifying information of an alleged father.

This new chapter also establishes the type of information which cannot be considered as corroborative information to initiate a search for nonidentifying information of an alleged father.

STAFF COMMENT: Chapter 75-03-13 contains all new material but is not underscored so as to improve readability.

CHAPTER 75-03-12

[Reserved]

CHAPTER 75-03-13 INFORMATION CORROBORATING PATERNITY

Section	
75-03-13-01	Definitions
75-03-13-02	Corroborative Information
75-03-13-03	When Additional Information to be Secured

75-03-13-01. Definitions. "Alleged father" means an individual identified by the genetic mother of an adopted person as the genetic father of the adopted person.

History: Effective March 1, 1984.

General Authority: NDCC 14-15-16(4), 50-06-16

Law Implemented: NDCC 14-15-16(4)

75-03-13-02. Corroborative information. Information which corroborates an allegation of paternity includes information in the form provided for in subsection 4 of North Dakota Century Code section 14-15-16, and also includes:

1. Written communications from the alleged father to the genetic mother, child-placing agency, or other persons concerning the adopted child; provided, that a communication containing a denial of paternity is not corroborative information.
2. A written report of an interview, with the alleged father, by a representative of a licensed child-placing agency, or other reputable person; provided, that a report containing a denial of paternity is not corroborative information.
3. A record of any payment made by the alleged father for the care of the child, for the care of the genetic mother during pregnancy or birth of the child, or for any cost of adoption.
4. A report of admission or acknowledgment of paternity of the adopted child, whether or not the admission or acknowledgment is legally sufficient to establish a parent and child relationship or create a presumption of paternity.

History: Effective March 1, 1984.

General Authority: NDCC 14-15-16(4), 50-06-16

Law Implemented: NDCC 14-15-16(4)

75-03-13-03. When additional information to be secured. A licensed child-placing agency must secure and disclose nonidentifying information concerning an alleged father, when that information is not a part of the files and records of the agency or of the North Dakota department of human services, only if those files and records contain:

1. The name of the alleged father; and
2. Information which corroborates the allegation of paternity.

History: Effective March 1, 1984.

General Authority: NDCC 14-15-16(4), 50-06-16

Law Implemented: NDCC 14-15-16(4)

APRIL 1984

STAFF COMMENT: Chapter 75-03-12 contains all new material but is not underscored so as to improve readability.

AGENCY SYNOPSIS: This proposed new chapter of the North Dakota Administrative Code clarifies and establishes additional procedures to be used in the foster parents grievance procedure established by Chapter 50-11.2 of the North Dakota Century Code. These proposed rules establish who specifically may file a grievance and establishes the form and time limitations for the correct filing of the grievance.

In addition, the rules establish the procedure to be followed in the informal meetings and formal hearings which are established by the statute. The rules determine who shall preside over the informal meetings and who are the persons who may attend the informal meetings. Time limitations are established for notification of the result of the informal meeting as well as the time limitations in which the request for a formal hearing must be submitted. The rules to be used at the formal hearing are established by these proposed rules. The time limitations for an issuance of a decision after the formal hearing are established as well as reference to the appropriate section of the North Dakota Century Code concerning the confidentiality of this grievance procedure.

Prepared By: Thomas A. Dahle
Assistant Attorney General

CHAPTER 75-03-12
FOSTER PARENT GRIEVANCE PROCEDURE

Section	
75-03-12-01	Definitions
75-03-12-02	Who May File Grievance
75-03-12-03	Grievance to be in Writing - Contents - Time for Filing
75-03-12-04	Informal Meeting
75-03-12-05	Request for Formal Hearing
75-03-12-06	Formal Hearing
75-03-12-07	Hearing Decision
75-03-12-08	Confidentiality

75-03-12-01. Definitions.

1. "Department" means the North Dakota department of human services.
2. "Regional foster care director" means the regional supervisor of county social services located in the regional human service centers.

History: Effective April 1, 1984.
General Authority: NDCC 50-11.2-02(5)
Law Implemented: NDCC 50-11.2

75-03-12-02. Who may file grievance. Only the foster parents who are providing, or who most recently provided, care to a foster child may file a grievance. No grievance may be filed with respect to a decision concerning a foster child who has not been living in the grievant's home within one hundred days prior to filing.

History: Effective April 1, 1984.
General Authority: NDCC 50-11.2-02(5)
Law Implemented: NDCC 50-11.2

75-03-12-03. Grievance to be in writing - Contents - Time for filing. The grievance must be in writing. It must contain a succinct statement of the grievant's reasons for objections to a decision and the grievant's proposed substitute decision. A grievance must be filed within ten days of the grievant's receipt of the written decision of the department or county social service board.

History: Effective April 1, 1984.
General Authority: NDCC 50-11.2-02(5)
Law Implemented: NDCC 50-11.2

75-03-12-04. Informal meeting.

1. The agency which has made the grieved decision shall schedule an informal meeting with the foster parents. This meeting

shall be held within ten days of receipt of the written grievance. When the decision which is the subject of the grievance is a decision made by a county social service board staff member, a member of the county social service board shall preside at the informal meeting.

2. The informal meeting may include, but is not limited to, the following participants:
 - a. Foster parents.
 - b. County social service board members and staff.
 - c. County directors.
 - d. State youth authority staff.
 - e. Juvenile court staff.
 - f. State's attorneys.
 - g. Natural parents of the foster child.
 - h. Foster child.
 - i. Staff of the agency having care, custody, and control of the foster child.
 - j. Any other person having information concerning the decision which is the subject of the grievance.
3. Within two working days after conclusion of the informal meeting, the agency which has made the grieved decision shall prepare a written summary of the meeting and any resolution of the grievance. The summary must be submitted to the grievants for approval and signing. If the grievants do not approve of the summary or any stated resolution, they shall, within two working days of receipt of the agency summary, prepare a written grievants' summary of the meeting and any resolution. If the parties cannot agree to the contents of a summary, the proposed summary of each must be made a part of the record of any formal hearing.

History: Effective April 1, 1984.
General Authority: NDCC 50-11.2-02(5)
Law Implemented: NDCC 50-11.2

75-03-12-05. Request for formal hearing. If the grievants and the department or the county social service board do not resolve the grievance at the informal meeting, the grievants may submit a written request for a formal hearing to the regional foster care director. This request must be received by the regional foster care supervisor within

three working days after receipt by the foster parents of the written summary of the informal meeting.

History: Effective April 1, 1984.

General Authority: NDCC 50-11.2-02(5)

Law Implemented: NDCC 50-11.2

75-03-12-06. Formal hearing.

1. The department or the county social service board involved shall provide the regional foster care director with pertinent files and records for the review by the regional foster care director.
2. The regional foster care director, or the director's designee, shall conduct the hearing, swear witnesses, and maintain order.
3. Testimony taken at the hearing shall be preserved by a suitable recording device. Any party may receive a transcribed copy of the testimony upon request and payment of the transcription costs; provided, that the request is received within ninety days of the hearing.
4. The statements received at the hearing must be limited to those probative of the grievance under review.

History: Effective April 1, 1984.

General Authority: NDCC 50-11.2-02(5)

Law Implemented: NDCC 50-11.2

75-03-12-07. Hearing decision. The regional foster care director shall prepare a written decision upon the files, records, and testimony received at the hearing. The decision constitutes the final determination of the grievance. The findings and conclusions of the regional foster care director must be sent to the grievants and the county social service board within five working days of the hearing.

History: Effective April 1, 1984.

General Authority: NDCC 50-11.2-02(5)

Law Implemented: NDCC 50-11.2

75-03-12-08. Confidentiality. Information furnished at the informal meeting and formal hearing is confidential and subject to the provisions of North Dakota Century Code section 50-06-15.

History: Effective April 1, 1984.

General Authority: NDCC 50-11.2-02(5)

Law Implemented: NDCC 50-11.2

MAY 1984

AGENCY SYNOPSIS: Amends definitions of the terms "applicant" and "facility" and adds definitions of the terms "common ownership" and "control".

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 which has requested a loan of moneys from the revolving loan funds maintained in the Bank of North Dakota pursuant to North Dakota Century Code chapter 6-09.6.
2. "Common ownership" exists where an individual or organization possesses significant ownership or equity in both the previous successful applicant and the new applicant.
3. "Control" exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of another individual or organization.
- 2- 4. "Department" means the North Dakota department of human services.
- 3- 5. "Day service facility" means a nonresidential building in which a variety of activities are designed to maximize the developmental potential of persons served.

4- 6. "Facility" means a building ~~to be~~ constructed, reconstructed, or acquired to serve eligible developmentally disabled, chronically mentally ill, and physically disabled persons pursuant to 42 CFR 442, Subpart G.

History: Effective April 1, 1982; amended effective May 1, 1984.

General Authority: NDCC 6-09.6-02, 50-06-16

Law Implemented: NDCC 6-09.6

AGENCY SYNOPSIS: Amends the section to apply Health Department standards unless a specific and different requirement is imposed under this chapter.

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,~~ chapter 33-03-13 or 33-03-14, and this chapter; provided however, that a facility may not be disqualified from the receipt of financing for a failure to comply with chapter 33-03-13 or 33-03-14 if that facility complies with specific standards in this chapter as exceptions to the application of chapter 33-03-13 or 33-03-14.

History: Effective April 1, 1982; amended effective May 1, 1984.

General Authority: NDCC 6-09.6-02, 50-06-16

Law Implemented: NDCC 6-09.6

AGENCY SYNOPSIS: Amends this section by adding four additional requirements to assure that applicants are in compliance with specific rules and policies before the application will be considered.

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; ~~;~~

6. Is a nonprofit entity pursuant to the laws of this state and the United States;
7. Has a governing board whose members live in the geographical area in which the facility or facilities are located;
8. Has a governing board whose members consist of at least one-third consumers or representative of consumers; and
9. Possesses effective control of land, upon which construction is proposed, and buildings to be reconstructed.

History: Effective April 1, 1982; amended effective May 1, 1984.

General Authority: NDCC 6-09.6-02, 50-06-16

Law Implemented: NDCC 6-09.6

AGENCY SYNOPSIS: Repealed as duplicative of Health Department rules.

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 17, 1982-
General Authority: NDEC 6-09-6-02, 50-06-16
Law Implemented: NDEC 6-09-6

Repealed effective May 1, 1984.

AGENCY SYNOPSIS: Repealed as duplicative of Health Department rules.

75-04-03-06. Fire protection. Facilities shall be located in areas served by an approved fire protection organization.

History: Effective April 17, 1982-
General Authority: NDEC 6-09-6-02, 50-06-16
Law Implemented: NDEC 6-09-6

Repealed effective May 1, 1984.

AGENCY SYNOPSIS: Repealed as duplicative of Health Department rules.

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 17, 1982-
General Authority: NDEC 6-09-6-02, 50-06-16
Law Implemented: NDEC 6-09-6

Repealed effective May 1, 1984.

AGENCY SYNOPSIS: Repealed as duplicative of Health Department rules.

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: NDEC 6-09-6-02, 50-06-16

Law Implemented: NDEC 6-09-6

Repealed effective May 1, 1984.

AGENCY SYNOPSIS: This section, formerly containing 21 subsections, had all but two of those subsections repealed as duplicative of Health Department rules. Additionally, five new subsections limit facility size, require compliance with Health Department rules, require modest design, require the design to accommodate both sexes, and require the design to make possible the facility's conversion to an alternate use at reasonable cost. All of these requirements are included so as to assure an adequate facility at a modest cost.

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.
- 1. Facilities must be limited in size to three hundred fifty square feet [32.52 square meters] per resident, inclusive of space for two employees of the applicant. Facilities of more than eight resident beds must be limited to one hundred seventy-five square feet [16.26 square meters] per additional resident bed.
- 17. 2. Facilities shall must 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 counterspace 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.~~ 3. Facilities must be equipped with emergency lighting capable of sustained battery operation.
- 4. Facilities must be in compliance with the applicable requirements of chapter 33-03-13 or 33-03-14.
- 5. Facilities must be of modest design minimizing the length of hallways, the number of exterior corners, and complexity of construction.
- 6. Facility design must include provisions for its conversion to an alternate use at a reasonable cost.
- 7. Facility design and use must accommodate both sexes with space allocated in a manner which provides for the appropriate separation of bedrooms and bathrooms to assure the privacy of both sexes.

History: Effective April 1, 1982; amended effective May 1, 1984.

General Authority: NDCC 6-09.6-02, 50-06-16

Law Implemented: NDCC 6-09.6

AGENCY SYNOPSIS: Amended to make reference to the appropriate Health Department rules.

75-04-03-10. Day service facilities. Facilities providing day services to eligible intermediate care facility for the developmentally disabled residents shall Day service facilities may 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 and the applicable provisions of North Dakota Administrative Code chapter 33-03-14.

History: Effective April 1, 1982; amended effective May 1, 1984.

General Authority: NDCC 6-09.6-02, 50-06-16

Law Implemented: NDCC 6-09.6

AGENCY SYNOPSIS: New section imposing specific duties of the Department of Human Services and the applicant.

75-04-03-12. Financing.

1. The department will establish for each project the level of state financial participation.
2. The applicant shall, upon final settlement of project cost, submit to the department a cost report certifying that all loan proceeds have been disbursed for project costs pursuant to the requirements of North Dakota Century Code chapter 6-09.6.
3. The applicant shall promptly report to the department the filing of any lien, or other encumbrance, any work stoppage, or any circumstance likely to cause extraordinary delay of project completion.
4. Architects' fees are subject to the limits established by the department.
5. Architects' fees for the reuse of designs for duplicate buildings must be limited to no more than fifty percent of the original design fee.

History: Effective May 1, 1984.

General Authority: NDCC 6-09.6-02, 50-06-16

Law Implemented: NDCC 6-09.6

AGENCY SYNOPSIS: Requires the applicant to show local zoning authority approval.

75-04-03-13. Zoning. The applicant shall submit evidence satisfactory to the department that the local zoning authority has reviewed the site and has certified the proposed use as consistent with North Dakota Century Code section 25-16-14.

History: Effective May 1, 1984.

General Authority: NDCC 6-09.6-02, 50-06-16

Law Implemented: NDCC 6-09.6

AGENCY SYNOPSIS: Requires the applicant to show that he has attempted to secure available tax exemptions.

75-04-03-14. Tax exemption. The applicant shall show that it has made application to exempt its property from taxation insofar as exemptions may be available under North Dakota Century Code section 57-02-08.

History: Effective May 1, 1984.

General Authority: NDCC 6-09.6-02, 50-06-16

Law Implemented: NDCC 6-09.6

AGENCY SYNOPSIS: Applies Health Department rules, with exceptions, to facilities for the chronically mentally ill.

75-04-03-15. Facilities for the chronically mentally ill. Facilities for the chronically mentally ill must comply with chapter 33-03-14; provided, however, that:

1. Sections 33-03-14-03 and 33-03-14-07, and subsection 1 of section 33-03-14-06 may not be applied;
2. Such facilities must be designed so as to be accessible to nonambulatory visitors and employees, with at least one bathroom accessible to and usable by such visitors and employees; and
3. Such facilities must comply with chapter 20 of the Life Safety Code 1981 edition.

History: Effective May 1, 1984.

General Authority: NDCC 6-09.6-02, 50-06-16

Law Implemented: NDCC 6-09.6

AGENCY SYNOPSIS: Applies Health Department rules to facilities for the physically handicapped.

75-04-03-16. Facilities for the physically handicapped. Facilities for the physically handicapped must comply with chapter 33-03-13.

History: Effective May 1, 1984.

General Authority: NDCC 6-09.6-02, 50-06-16

Law Implemented: NDCC 6-09.6

AGENCY SYNOPSIS: Requires the department's consent as the condition of transferring property which secures a loan issued under this chapter.

75-04-03-17. Transfer and assignment. No applicant may transfer or assign any interest in property which secures, in whole or in part, any loan made pursuant to North Dakota Century Code chapter 6-09.6, without the written consent of the department. No applicant, which has constructed a facility which secures, in whole or in part, any such loan, may transfer or assign any right to operate that facility, with or without consideration, without the written consent of the department. The department may condition the granting of any consent, requested under this section, upon the use of any consideration received to repay outstanding interest or principal due on any such loan which may have been made to the applicant.

History: Effective May 1, 1984.
General Authority: NDCC 6-09.6-02, 50-06-16
Law Implemented: NDCC 6-09.6

AGENCY SYNOPSIS: Sets terms and conditions for the applicants who have already received loans.

75-04-03-18. Reapplications. Any applicant who has made prior application, and who has received a loan pursuant to such prior application, or who is related to a prior successful applicant by common ownership or control, shall report the prior loan as a part of the application. No loan will be granted to an applicant so situated unless the identity of the applicant is the same on the original application and any reapplication. The department may condition its approval of any reapplication upon the applicant's consent to changes in the terms and conditions upon which any previous loan was made.

History: Effective May 1, 1984.
General Authority: NDCC 6-09.6-02, 50-06-16
Law Implemented: NDCC 6-09.6

JUNE 1984

AGENCY SYNOPSIS: Amend section to permit a determination of the expenditures for Aid to Families with Dependent Children, in each county, on the basis of a formula rather than by tracking each individual case.

75-02-01-08. County administration and share of assistance cost.

1. Except as provided in subsection 2, the county where the families with dependent children unit is physically present will be responsible for the administration of the program with respect to that unit.
2. Where a family unit receiving assistance moves from one county to another, the outgoing county continues to be responsible for the administration of the program with respect to that unit until the last day of the month after the month in which the unit assumes physical residence in an incoming county.
3. For purposes of apportioning the each county's share of assistance costs in the aid to families with dependent children program, all of the following principles shall govern:
 - a- The county in which the person has resided for the past year, provided the person has not received assistance from another county during that time, except in the instance described in subdivision d-
 - b- A person who has lived in the state for at least a year but not in any one county shall be ascribed to the county in which the person has

longest resided within the twelve months prior to application.

- e- The county's portion of aid to families with dependent children costs for a child who is a resident of the state but not a particular county, by virtue of not having lived in the state for a year, shall be borne by the county in which the child becomes in need. An exception to this subdivision exists if the child is committed to a state institution before establishing legal residence in a county and is subsequently returned to a community. In this instance, the child is the financial responsibility of the county from which the child was committed.
- d- A child whose mother marries a man having residence in a county different from their own follows that of the stepfather regardless of whether or not the child was a recipient at the time of the marriage. If the child was a recipient and eligibility continues after the marriage, financial responsibility shall be promptly transferred to the new county of residence in such manner that no lapse in assistance occurs.
- e- Similarly a stepchild and the stepchild's parent who moves with the stepchild's stepparent to another county shall become a resident of the new county if the stepparent (or any person residing with the stepparent whom the stepparent is legally responsible to support) becomes a resident therein by residing there a year without receiving assistance from another county.
- f- An aid to families with dependent children program family whose assistance from North Dakota is properly terminated because of a supposedly permanent move to another state may move back to North Dakota within a relatively short time but to a county other than the one originally providing assistance. For assistance purposes the family shall be regarded as new state residents and dealt with in the manner described in subdivision e. a fraction will be formed for each county. Each county's assistance expenses, in the year ending June 30, 1983, is the numerator, and the total of all county's assistance expenses, in that year, is the denominator. For periods beginning July 1, 1984, each county's share of the amount

expended, statewide, for aid to dependent children, will be determined by multiplying that county's fraction times the total of all county's assistance expenses.

4. When the county of cost responsibility is in doubt, the county in which the families with dependent children unit is physically present shall process the application promptly and designate the county to participate in the financing of any payments. A county so designated may appeal the decision to the department pursuant to the provisions of chapter 75-01-03. For purposes of this section, "county's assistance expense" means the total amount, in dollars, expended from each county's funds, for aid to dependent children, but excluding child support collection expenses and expenses for dependent children defined in subdivision b of subsection 4 of North Dakota Century Code section 50-09-01.

History: Amended effective November 1, 1983; July 1, 1984.

General Authority: NDCC 50-09-02

Law Implemented: NDCC 50-09-02, 50-09-21

AGENCY SYNOPSIS: Amend section to allow a determination of medical services expenditures in each county to be based upon a formula rather than by tracking individual cases.

75-02-02-14. County administration.

1. Except as provided in subsection 2, the county where the medical assistance unit is physically present will be responsible for the administration of the program with respect to that unit.
2. Where a family unit receiving assistance moves from one county to another, the outgoing county continues to be responsible for the administration of the program with respect to that unit until the last day of the month after the month in which the unit assumes physical residence in an incoming county.
3. Where the county of cost responsibility is in doubt, the county where the medical assistance unit is physically present shall process the application promptly and designate the county to participate in the financing of any payments. A county so designated may appeal the decision to the department pursuant to the provisions of chapter 75-01-03. For the purposes of apportioning each county's share of assistance costs in the medical assistance program, a fraction will be formed for each county. Each county's assistance expenses, in the year ending June 30, 1983, is the numerator, and the total of all county's assistance expenses,

in that year, is the denominator. For periods beginning July 1, 1984, each county's share of the amount expended, statewide, for the medical assistance program, will be determined by multiplying that county's fraction times the total of all county's assistance expenses.

4. For purposes of this section, "county's assistance expense" means the total amount, in dollars, expended from each county's funds, for the medical assistance program, excluding the cost of services furnished by regional human service centers and intermediate care facilities for the mentally retarded.

History: Effective November 1, 1983; amended effective July 1, 1984.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-01-09

AGENCY SYNOPSIS: Amends subsection 3 of this section to require salary and fringe benefit costs projections to be based upon a specific consumer price index which is available six months earlier than the index provided by the existing rule.

75-02-06-16. Reimbursement.

1. The method of determining the reimbursement rate per day will be through the use of the prospective ratesetting system. The system requires that the rate be established during the year in which it will be effective with retroactive adjustment to the beginning of the facility's fiscal year.
2. The determination of a prospective rate for all accommodations begins with the actual cost of the facility's operations for the previous fiscal year. Once the reasonable patient-related costs from the previous year are determined, adjustments are then applied to the historical cost to determine the prospective rate. Reasonable patient-related costs will be determined with reference to health insurance manual 15 (HIM-15) and instructions issued by the department.
3. The historical costs combined with the adjustments take into consideration the economic conditions and trends during the period to be covered by the rate. Costs which are incurred to meet certification standards shall be allowable and included in the determination of the rate. Rate adjustments to provide appropriate compensation may be requested where major unforeseeable expenses are incurred. Such requests may be made to the director of medical services, who shall determine if the expense is patient related and beyond the control of those responsible for the management of the facilities. The following adjustment methods will be used:

- a. Salary and fringe benefit costs of the facility will be projected based upon the reasonable patient-related salary and fringe benefit costs incurred in the facility's previous fiscal year plus the unadjusted annual percent increase, if any, of the consumer price index for urban wage earners and clerical workers, nonfood expenditure categories, United States city average, as itemized under the subheading "other professional services" of the heading "medical care services", as of the ending date of that the twelve-month period which ended six months before the end of the facility's previous fiscal year.
- b. Property costs will be included in the rate at the historical amount unless adjusted in accordance with these rules.
- c. The other costs of the facility will be projected based upon the historical cost plus the annual percent of increase, if any, in the consumer price index as of the facility's fiscal year end twelve-month period which ended six months before the end of the facility's previous fiscal year.

4. Limitations.

- a. The department shall accumulate and analyze statistics on costs incurred by the nursing facilities. These statistics may be used to establish reasonable ceiling limitations and incentives for efficiency and economy based on reasonable determination of standards of operations necessary for efficient delivery of needed services. These limitations and incentives may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. It shall be the option of the department to implement the ceilings so mentioned at any time based upon the information available and under guidelines required within the regulations of title XIX.
- b. At such time as federal regulations establish a ceiling on medical rates for skilled nursing facilities, that ceiling shall also be considered the maximum for title XIX payment.
- c. A facility is expected to maintain an average annual occupancy rate which is based upon its size. Facilities with up to forty licensed beds should maintain an eighty-five percent occupancy rate; facilities with forty-one to sixty licensed beds should maintain a ninety percent occupancy rate; and facilities with sixty-one and more licensed beds should maintain a ninety-five percent occupancy rate. For facilities with less than the stated

percentage for the period under consideration, the number of patient days for rate computation will be computed using the required percentage instead of the lower actual percentage of occupancy. The computed patient days will apply only to the following areas:

- (1) Administrative costs;
- (2) Plant operation costs; and
- (3) Property costs.

A reserved paid bed will be counted as an occupied bed. A waiver to the minimum bed occupancy allowance may be made for new facilities or existing facilities which add new beds under a certificate of need during the first year of operation. Consideration will be given in these circumstances to the facts available.

- d. Administrative cost shall be limited to fifteen percent of total allowable nursing home costs exclusive of administrative costs.
- e. For facilities which do not have an adequate accounting system to allocate costs to the various levels of care, the following methodology is used:
 - (1) In calculating nursing care cost per day, total patient days are rated at a ratio of 1.0 for total skilled care days, .67 for total intermediate care days, and .12 for total custodial care days.
 - (2) Costs other than nursing are prorated over total patient days. (Subject to occupancy requirement.)

5. Rate payments.

- a. The rate as established shall be considered as payment for all accommodations and includes all items designated as routine services for each level of care. No payments may be solicited or received from the patient or any other person to supplement the rate as established.
- b. The rate as established shall only be paid if the private pay patients' rates for semiprivate accommodations equal or exceed the established rate for medical services patients. The rate being charged private pay patients at the time the services were provided will govern. In cases where private pay patients are not charged a daily rate, the daily charge will be computed by dividing the total private pay charges for each month by the private pay census for each month. At no time shall the rate paid by medical services exceed the lesser of cost or private pay

charges as previously defined. If at any time the facility discounts the private pay rate for those periods of time that the patient is not in the facility, the discounted rate will be the maximum chargeable to medical services patients. If the discounting policy creates a situation in which the private rate is less, then all medical assistance patients shall be afforded a discount in the amount of the difference between the discounted private rate and the established medical assistance rate.

- c. If the medical assistance reimbursement rate exceeds the private payment rate for a particular level of care, on any given date, the facility shall immediately report that fact to the department and charge the department at the lower rate. If payments were received at the higher rate, the facility shall, within thirty days, refund the overpayment. The refund will be the difference between the private pay rate and medical assistance rate times the number of medical assistance patient days paid during the period in which the medical assistance reimbursement rate exceeded the private pay rate plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. The refund provision will also apply to all duplicate billings involving the department. Interest charges on these refunds are not allowable costs.
- d. Overpayments found in audits will be accounted for on the HCFA-64 report no later than the second quarter following the quarter in which found, as provided for in federal regulations.
- e. Participation in the program will be limited to providers of service who accept, as payment in full, the amounts paid in accordance with the rate structure.
- f. Rate payments to the facility will be made on a schedule detailed as follows:
 - (1) During the last month of each facility's fiscal year, a letter will be mailed indicating the appropriate adjustment to be used for the upcoming year. The facility may then request a change in its rate. The rate adjustment should consider the private pay rate in the facility at that time and their best estimate of the medicaid rate for the next fiscal year. The rate will be reviewed and, if deemed reasonable, will be implemented effective the first of that facility's fiscal year. This rate is only an interim rate.
 - (2) Each facility must file an annual report within three months of the end of its fiscal year. Within one month of the receipt of each report, it will be

reviewed for completeness and accuracy. If the report is filed in a timely manner and if all information requested is present on the report, it will be used as a basis for establishing an interim rate for the facility within one month of filing.

- (3) An onsite audit of the facility may be done as a final step in the procedure. At that time the actual rate will be established retroactive to the start of the home's fiscal year. The rate so calculated will be considered the final rate.

6. Partial year.

- a. For facilities changing ownership during the fiscal year, the rate established for the previous owner will be retained.
- b. For facilities adding beds during the year, the reimbursement rate for the new beds will be the same as for the other similarly licensed beds in the facility.
- c. For new facilities and beds added on the first day of the fiscal year, the facility will calculate, subject to departmental approval, an interim rate. The department may adjust this rate after the end of the fiscal year.

7. Adjustments and appeal procedures.

- a. Rate adjustments may be made to correct errors subsequently determined and shall also be retroactive to the beginning of the facility's fiscal year.
- b. An adjustment must be made for those facilities which have terminated participation in the program and have disposed of its depreciable assets or which have changed ownership. In this case the regulations pertaining to gains and losses on disposable assets will be effective.
- c. Any requests for reconsideration of the rate should be filed with the division of management services for administrative consideration within thirty days of the date of the rate notification.
- d. An appeal may be initiated by indicating a desire for an appeal hearing to the appeals referee supervisor, department of human services, state capitol. The appeal will be governed by chapter 75-01-03.

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; July 1, 1984.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32); 42 CFR Part 447, Subpart C

AGENCY SYNOPSIS: Amends subdivision c of subsection 2 of this section to require that the care giver not have been subject to a probable cause determination indicating that the care giver has abused or neglected the child unless there is demonstration that the care giver has completed a successful and appropriate therapy or unless the care giver can demonstrate the elimination of the basis for the abuse and neglect.

75-03-08-06. Application for and nontransferability of family child care home license.

1. An application for license may be made to the county social service board office in the county wherein the applicant proposes to provide family child care.
 - a. Application shall be made in the form and manner prescribed by the board.
 - b. Any license issued by the board shall serve as public documentation that the provider of family child care has complied with the provisions of North Dakota Century Code chapter 50-11.1 and the requirements contained in subsection 2.
 - c. The license shall be nontransferable and shall be valid only on the premises that are indicated on the license. A new application for a license must be filed by a licensed home upon change of provider or location.
2. Standards for provision of supplemental parental care in a family child care home.
 - a. Staffing. The staffing requirements are determined on the basis of the number of children physically in care at a given time, rather than total enrollment.
 - (1) A family child care provider may provide care to no more than four children ages twenty-four months or younger, or for no more than a total of seven children. Where one or more children is a child with a handicapping condition which requires more than usual care, the child's evaluated developmental age level, rather than chronological age level, will be used in determining the number of children for which care can be provided.
 - b. Minimum qualifications of family child care providers. Providers shall:
 - (1) Be at least eighteen years of age.
 - (2) Certify attendance at a minimum of four hours of board-approved training related to child care

annually when made available in the provider's community.

- (3) Be physically present in the home no less than sixty percent of the time when children are in care.
 - (4) Be mentally, physically, and emotionally able to provide adequate care for the children in the provider's charge.
- c. Minimum qualifications of all caregivers who provide direct care, supervision, and guidance to children. Caregivers shall:
- (1) Be at least fourteen ~~year~~ years of age or, if a member of the immediate family of the family child care provider, be at least twelve years of age.
 - (2) Be mentally, physically, and emotionally able to provide adequate care for the children under their supervision.
 - (3) Ensure that there has not been a probable cause determination indicating that the individual has abused or neglected a child unless the regional director or day care supervisor, after making appropriate consultation with persons qualified to evaluate the capabilities of the caregiver, documenting criteria used in making the determination, and imposing any restrictions deemed necessary, approves the license; and
 - (a) The caregiver can demonstrate the successful completion of an appropriate therapy; or
 - (b) The caregiver can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.
- d. Caregivers under the age of eighteen and all children in care must have adult supervision in the home at all times.
- e. All volunteers, including family members providing direct care for children, shall meet the minimum requirements of caregivers.
- f. Health factors.
- (1) Family child care home providers and caregivers shall complete a health statement to certify that they do not have health problems that would interfere with their functioning as caregivers or that would be

detrimental to the health of the children or other staff.

- (2) If the physical or mental health of a provider or caregiver appears questionable, the board may require the provider or caregiver to be evaluated by appropriate professionals, with the results provided to the board.
 - (3) Providers or caregivers shall not use any drugs or alcoholic beverages except for medical purposes while children are in care.
 - (4) The provider or caregiver shall at no time place children in an environment that would be harmful or dangerous to their physical or emotional health. Children under care shall never be left without supervision by a person meeting the minimum qualifications of a caregiver.
- g. Liability insurance. The family child care provider shall carry liability insurance coverage for their family child care operation.
- h. Physical facilities.
- (1) The family child care home shall provide adequate space, indoors and out, for the daily activities of the children. This shall include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered shall exclude bathrooms, pantries, and passageways leading to outdoor exits.
 - (2) The home shall be clean, free of clutter, and maintained in a sanitary condition. Rubbish shall be regularly removed.
 - (3) The home shall have adequate heating, ventilation, and lighting facilities for the comfort and protection of the health of the children. During the heating season, a temperature of not less than sixty-eight degrees Fahrenheit [20 degrees Celsius] shall be maintained in all rooms occupied by children.
 - (4) The home shall be equipped with at least one smoke detector per floor used by the children and one fire extinguisher per home.

- (5) Elevated areas such as stairs or porches shall have railings and safety gates where necessary to prevent falls.
- (6) The home shall have a drinking water supply from an approved community water system. If water is from another source, a sample shall be tested and approved by the local health department.
- (7) Each child shall have a comfortable and clean place to sleep or rest and an individual blanket. The floor shall be used only when carpeted or padded, warm, and free from drafts. A child who is in care between the hours of eight p.m. and six a.m. shall have an individual sleeping place. Children under twelve months of age and any child unable to walk unassisted shall sleep in a crib, bed with side rails and a firm mattress, or playpen.
- (8) Exterior play areas in close proximity to busy streets and other unsafe areas shall be contained, fenced, or have natural barriers to restrict children from unsafe areas.
- (9) Potential hazards such as guns, household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways must not be accessible to young children.
- (10) Equipment and toys shall be in good repair.
- (11) The home shall have a telephone.
- (12) The home shall have an indoor bathroom with a toilet and plumbing.
- (13) If the fire/safety, health, or sanitation of the home appears questionable, the board may require the provider to obtain an appropriate inspection or inspections from local officials and to submit the results of the inspection to the board. Any problems found shall be corrected.

i. Admission procedures.

- (1) The provider shall request a preadmission visit by the child and the child's parents to acquaint the child and the parent with the home and its surroundings, the other children, and the family day care provider.
- (2) The provider shall inform parents about the day care program, places and times of special activities

outside the home, policies, and emergency procedures, and discuss information concerning the child so that the child's needs can be identified and accommodated. An explanation of how accidents and illnesses will be dealt with shall be provided as well as methods of discipline and child management techniques to be used.

- (3) Parents shall be notified of the payment rates and the time of payment.
- (4) The provider shall regularly offer parents opportunities to observe their children while in care.
- (5) A licensed health practitioner's statement based upon a health assessment or a health assessment statement completed by the parents shall be obtained at the time of initial enrollment of the child. No more than six months shall have elapsed between the date the health assessment was completed and the date of initial enrollment. The statement shall indicate any special precautions for diet, medication, or activity. This statement shall serve as evidence that a child is physically able to take part in the day care program. The statement for each child must be completed annually.

j. Program.

- (1) There shall be a program of daily individual and small group activities appropriate to the ages and needs of the children in the family child care home. The program shall include activities which foster sound social, intellectual, emotional, and physical growth, developed with discussion and consultation with parents as to their children's needs.
- (2) The program shall be designed with intervals of stimulation and relaxation, and a balance between periods of active play and quiet play or rest. The daily routine should foster the development of good health habits and self-discipline, adequate indoor and outdoor play, rest, and sleep with sufficient time and opportunities for various experiences.
- (3) The program shall provide for a variety of educational experiences for all ages of children served with an adequate supply of safe play equipment, toys, and materials for indoor and outdoor activity.

- (4) Areas used for napping shall provide an opportunity for undisturbed rest. Napping schedules should be set for children according to their ages, needs, and parent's wishes.

k. Nutrition.

- (1) All children present at mealtime shall be served a nutritious meal, including a food from each of the four basic food groups. Adequate amounts of food shall be available. A nourishing midmorning and midafternoon snack shall be provided.
- (2) If sack lunches are provided by parents, the day care provider shall supplement these lunches as necessary.

l. Health protection.

- (1) Children shall receive all immunizations appropriate for their age, as prescribed by the North Dakota state department of health.
- (2) Family child care provider shall be familiar with emergency first aid techniques.
- (3) A copy of a statement signed by the child's parents authorizing emergency medical care for each child shall be in the possession of the provider.
- (4) Sufficient first aid supplies shall be available for minor emergencies.
- (5) The family child care provider shall have plans to respond to illness and to emergencies including evacuation in case of fire, serious injury, and ingestion of poison.
- (6) At least one person who may be called upon for child care assistance in emergencies shall be designated.
- (7) Plans shall be made to respond to minor illnesses when children can be cared for in the provider's home.
- (8) If children in care require medication, proper instruction as to the administration of such medication shall be secured and followed by the caregiver.
- (9) The family child care provider shall release a child only to the child's parent, guardian, or person in loco parentis, or to an individual authorized in

writing by such person to take the child from the day care home.

- (10) No child shall be allowed to play outdoors without clothing appropriate to the climatic conditions.
- (11) No child shall be bathed, permitted to use wading pool, or to play outdoors without adequate supervision.

m. Records.

- (1) A current license for the family child care home must be available in the premises to which it applies.
- (2) A copy of the current standards for family child care homes shall be kept in the premises.
- (3) The following records shall be kept and maintained for each child:
 - (a) The child's full name, birthdate, current home address, names of the child's parents or legal guardian and business phone and home telephone numbers where those persons can be reached.
 - (b) A health assessment statement completed annually by the child's parent or a licensed health practitioner.
 - (c) A written statement from the parents or legal guardian authorizing emergency medical care.
 - (d) Names and telephone numbers of persons authorized to take the child from the home.
 - (e) Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the North Dakota department of health.
- (4) All records which are maintained with respect to children receiving child care services shall be deemed confidential, and access shall be limited to the provider, the provider's staff, parents, and to the following:
 - (a) Authorized social service board representatives.
 - (b) Persons having a definite interest in the well-being of the child or children concerned and who, in the judgment of the board, are in a

position to serve their interests should that be necessary.

- (c) Persons who possess a written authorization from the child's parent.

n. Punishment.

- (1) No child shall be punished by withholding or force-feeding food, requiring or prohibiting rest, or by placement in isolation. No child shall be punished for wetting or soiling clothes due to a failure of toilet habits.
- (2) Brief, supervised separation from the rest of the children may be used if necessary.
- (3) No method of punishment which humiliates or frightens the child or causes more than minor transient physical or emotional discomfort, or both, shall be used.
- (4) No child of any age may be shaken, spanked, bitten, pinched, or otherwise physically punished.
- (5) Profane, threatening, unduly loud or abusive language shall not be used when addressing children or in the presence of children.

History: Effective December 1, 1981; amended effective July 1, 1984.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04.1, 50-11.1-07, 50-11.1-08

AGENCY SYNOPSIS: Amends subdivision h of subsection 3 to require the operator of a group child care facility to insure that no care giver or employee who has access to children has been subject to a probable cause determination that the individual has abused and neglected a child unless there is demonstration that the care giver has completed a successful and appropriate therapy or unless the care giver can demonstrate the elimination of the basis for the abuse or neglect.

75-03-09-09. Minimum qualifications and duties of operator.

- 1. The operator of a group child care home or facility is responsible to the board for compliance with requirements set forth in the standards.
- 2. The operator may be any individual, group, agency, association, or organization legally responsible for the operation of the home or facility.

3. The operator shall ensure that all standards are complied with and shall:
 - a. Be responsible for establishing the child care program.
 - b. Make application for a license for each home or facility operated.
 - c. Outline a plan of operation for each home or facility.
 - d. Notify the board of any major changes in the operation or in the ownership or governing body of the home or facility.
 - e. Carry liability insurance for the home or facility.
 - f. Maintain required records.
 - g. Be responsible for all persons who provide child care in the home or facility.
 - h. Ensure that no ~~individual~~ caregiver or employee who has access to children shall be employed or retained in the child care home or facility ~~who has been determined to have~~ when there has been a probable cause determination that the individual has abused or neglected a child unless the regional director or day care supervisor, after making appropriate consultation with persons qualified to evaluate the capabilities of the caregiver, documenting criteria used in making the determination, and imposing any restrictions deemed necessary, approves the license; and
 - (1) The caregiver or employee can demonstrate the successful completion of an appropriate therapy; or
 - (2) The caregiver or employee can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.
 - i. Ensure that the home or facility is sufficiently staffed at all times to meet the child/staff ratios for children in attendance and that no more children than the licensed capacity be served at any one time.
 - j. Request preadmission visits for children and their parents in order that the facility's program, fees, operating policies, and procedures can be viewed and discussed. Information concerning the child shall be shared so that the child's needs can be identified and accommodated. An explanation of how accidents and illnesses will be dealt with shall be provided as well as methods of discipline and child management techniques to be used.

- k. Ensure that parents of each enrollee are notified of the fees to be paid, methods of payment, and policies regarding delinquency of fees.
 - l. Regularly offer parents opportunities to observe their children while in care.
 - m. Provide parents upon request any progress reports on their individual child or children and the compliance of the home or facility with standards contained in this chapter.
 - n. Provide parents with the name of the home or facility's operator and the group child care supervisor.
4. If the operator of the group child care home or facility is also the group child care supervisor, the operator must also meet the qualifications of the supervisor set forth in section 75-03-09-10.

History: Effective December 1, 1981; amended effective July 1, 1984.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

AGENCY SYNOPSIS: Amends subdivision i of subsection 3 to require the operator of a child care facility to insure that no care giver or employee who has access to children has been subject to a probable cause determination that the individual has abused and neglected a child unless there is demonstration that the care giver has completed a successful and appropriate therapy or unless the care giver can demonstrate the elimination of the basis for the abuse or neglect.

75-03-10-09. Minimum qualifications and duties of operator.

1. The operator of a child care facility is responsible to the board for compliance with requirements set forth in the standards.
2. The operator may be any individual, group, agency, association, or organization legally responsible for the operation of the facility.
3. The operator shall ensure that all standards are complied with and shall:
 - a. Be responsible for establishing the child care program.
 - b. Make application for a license for each child care center operated.
 - c. Outline a plan of operation for each child care center.

- d. Notify the board of any major changes in the operation or in the ownership or governing body of the facility.
- e. Carry liability insurance for the center.
- f. Ensure the formulation of written policies and procedures relating to the children's activities and care, enrollment, the responsibilities and rights of staff and of parents.
- g. Maintain required enrollment, attendance, health, financial, and related records.
- h. Be responsible for all center staff, volunteers, or others who provide services in the facility and for notifying the board of any change of directors.
- i. Maintain necessary information to verify staff qualifications and that ensures that no ~~individual~~ caregiver or employee who has access to children shall be employed or retained in the child care center who has been determined to have when there has been a probable cause determination that the individual has abused or neglected a child unless the regional director or day care supervisor, after making appropriate consultation with persons qualified to evaluate the capabilities of the caregiver, documenting criteria used in making the determination, and imposing any restrictions deemed necessary, approves the license; and
 - (1) The caregiver or employee can demonstrate the successful completion of an appropriate therapy; or
 - (2) The caregiver or employee can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.
- j. Cooperate with the board and other appropriate agencies in all reasonable efforts to improve the quality of care and the competence of caregivers.
- k. Designate a qualified center director.
- l. Ensure that parents of enrolled children and other interested parties are informed of the goals, policies and procedures, and content of the child care center's program. An explanation of how accidents and illnesses will be dealt with shall be provided as well as methods of discipline and child management techniques to be used.
- m. Ensure that the center is staffed sufficiently to provide physical care to each child, to offer individual attention to children as needed and to provide time to interact with

children for the benefit of their social competence, emotional well-being, and intellectual development.

- n. Ensure that the child care center shall have sufficient qualified caregivers provided to substitute for regularly assigned staff who are sick, on leave, or who are otherwise unable to be on duty.
 - o. Ensure that parents of enrolled children are advised of the center's program, service fees, operating policies and procedures, location, and of any significant changes in the services offered by the center. Written notice shall be provided to the parents and the board of such changes and their effective date, duration, scope, and impact on the center.
 - p. Ensure that written agreements with the parent or parents of each enrollee specify the fees to be paid, methods of payment, and policies regarding delinquency of fees.
 - q. Ensure that written policies are established which provide for emergency medical care, the care of children with special physical, emotional, or mental needs (if children with these needs are in care) and the treatment of illness and accident.
 - r. Ensure that written policies are established concerning the care and safeguarding of personal belongings brought to the child care center by enrollees or others on their behalf.
 - s. Provide parents with opportunities to observe the center and to discuss their children's needs before enrollment; regularly offer parents opportunities to observe their children and to meet with caregivers to advise and comment on their children's needs.
 - t. Provide parents upon request any progress reports on their individual child or children and the compliance of the facility with standards contained in this chapter.
4. If the operator of the child care center is also the center director, the operator must also meet the qualifications of the child care center director set forth in section 75-03-10-10.

History: Effective December 1, 1981; amended effective July 1, 1984.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

AGENCY SYNOPSIS: Amends subdivision i of subsection 3 to require the operator of a Half Day Child Care facility to insure that no care giver

or employee who has access to children has been subject to a probable cause determination that the individual has abused and neglected a child unless there is demonstration that the care giver has completed a successful and appropriate therapy or unless the care giver can demonstrate the elimination of the basis for the abuse or neglect.

75-03-11-09. Responsibilities of facility operator.

1. The operator of a half-day child care program is responsible to the board for compliance with requirements set forth in the standards.
2. The operator may be any individual, group, agency, association, or organization legally responsible for the operation of the program.
3. The operator shall ensure that all standards are complied with and shall:
 - a. Be responsible for establishing the half-day child care program.
 - b. Make application for a license for each half-day child care program operated, if more than one program is operated.
 - c. Outline a plan of operation for each program.
 - d. Notify the board of any major changes in the operation or in the ownership or governing body of the program.
 - e. Carry liability insurance for the facility.
 - f. Ensure the formulation of written policies and procedures relating to the children's activities and care, enrollment, the responsibilities and rights of staff and of parents.
 - g. Maintain required records.
 - h. Be responsible for all center staff, volunteers, or others who provide services in the facility and for notifying the board of any change of supervisors.
 - i. Ensure that no individual staff member or employee who has access to children shall be employed or retained in the half-day child care program who has been determined to have when there has been a probable cause determination that the individual has abused or neglected a child unless the regional director or day care supervisor, after making appropriate consultation with persons qualified to evaluate the capabilities of the

staff member, documenting criteria used in making the determination, and imposing any restrictions deemed necessary, approves the license; and

(1) The staff member or employee can demonstrate the successful completion of an appropriate therapy; or

(2) The staff member or employee can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.

- j. Designate a qualified supervisor.
 - k. Ensure that parents of enrolled children and other interested parties are informed of the goals, policies and procedures, methods of discipline and child management to be used, and content of the preschool program.
 - l. Ensure that the center is sufficiently staffed.
 - m. Ensure that written policies are established which provide for emergency medical care, and the treatment of illness and accident.
 - n. Provide parents, upon request, any progress reports on their individual child or children and the compliance of the facility with standards contained in this chapter.
 - o. Provide parents with the name of the facility's operator and the supervisor.
4. If the operator of the half-day child care program is also the supervisor, the operator must also meet the qualifications of the supervisor set forth in section 75-03-11-10.

History: Effective December 1, 1981; amended effective July 1, 1984.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

TITLE 81
Tax Commissioner

JUNE 1984

81-01-01-02. Organization and functions of the North Dakota tax department.

1. **History.** During the period from 1890 to 1912 the functions currently performed by the tax commissioner were performed by the state auditor. From January 1912 to August 1, 1919, a nonpartisan tax commission composed of three commissioners appointed by the governor, by and with the advice and consent of the senate, administered the tax laws on the state level. Beginning August 1, 1919, these duties were assumed by a governor-appointed tax commissioner who served a six-year term. The appointment was subject to approval by the senate. The present office of tax commissioner was created by an amendment of section 12 of article V of the Constitution of North Dakota which was approved by the voters at a statewide election held on June 25, 1940. This amendment provides that the tax commissioner must be at least twenty-five years old and must have the qualifications of a state elector. Under this amendment the tax commissioner is elected for a four-year term. The first tax commissioner was elected at the fall election of 1940 and took office in January 1941.
2. **Divisions.** The tax department consists of the following six divisions:
 - a. **Commissioner's division.** The commissioner's division bears ultimate responsibility for the general administration of the tax department. This division also coordinates the department's data processing needs, and serves as the department's primary research center, and manages the department's personnel functions. Included under the direct control of the commissioner's division is management, planning, and personnel which administers the department's management by objectives

program, as well as the personnel function. The tax commissioner is assisted by the deputy commissioner, research and data processing sections, internal audit, an administrative officer, a personnel officer, a secretary, and a receptionist.

- b. **Controller's division.** The controller's division of the tax department functions in three areas: accounting, staff services, and accounts receivable. The accounting section maintains records of tax revenue and department expenditures, prepares the tax department executive budget, and maintains an internal budget, and conducts internal audits. The staff services section is responsible for the initial processing of all tax returns and the operation of the mailroom, stenographic pool, and central records, and offset printing. The accounts receivable section is responsible for collecting delinquent taxes for all divisions of the tax department.
- c. **Legal division.** The legal division of the tax department is comprised of attorneys who research and prepare opinions answering tax-related questions posed by the commissioner, legislators, other officials, and citizens; who draft proposals for changes in tax laws; who conduct all litigation for the tax department and the state board of equalization; and who help draft rules and regulations for the administration of the various state taxes. Generally speaking, the legal division works in an advisory capacity to the commissioner so that policy, procedures, administration, and formulation of new ideas are in keeping with the laws that govern state taxes.
- d. **Sales and special taxes division.** The sales and special taxes division consists of a sales and use tax section, an estate tax section, and a motor fuel and miscellaneous tax section.

The sales and use tax section is responsible for the administration of the following chapters of the North Dakota Century Code: the retail sales tax chapter 57-39.2, use tax chapter 57-40.2, motor vehicle excise tax chapter 57-40.3, and motor vehicle excise tax refund chapter 57-40.4, and aircraft excise tax chapter 57-40.5. This section issues sales and use tax permits, provides taxpayer assistance, conducts programs to ensure compliance with the law, and processes and audits sales and use tax returns. There is also a sales tax field audit staff which audits permit holders' records.

The estate tax section is responsible for the administration of North Dakota Century Code chapter 57-37.1. This section receives and reviews all state

estate tax returns and assesses and collects estate taxes due.

The motor fuel and miscellaneous taxes section is responsible for the administration of the following chapters and sections of the North Dakota Century Code: refund motor fuel tax chapter 57-50, Special Fuel Tax Act chapter 57-52, special fuels tax levy chapter 57-53, motor vehicle fuel tax chapter 57-54, importers for use tax chapter 57-54.1, aviation fuel tax chapter 57-56 motor vehicle fuels and importer for use taxes chapter 57-43.1, special fuels and importer for use taxes chapter 57-43.2, aviation fuel tax chapter 57-43.3, tobacco products tax law chapter 57-36, and section 47-21-08 which deals with the tax levied on selling and licensing performing rights of music or dramatico-musical compositions. These taxes are collected and audited by the motor fuel and miscellaneous taxes section which also issues the motor fuel tax refund to those consumers using motor fuel for agricultural or industrial purposes.

- e. Income and oil taxes division: This division is divided into two sections: the corporate income and oil taxes section and the individual income tax section.

The corporate income and oil taxes section administers North Dakota Century Code chapters 57-35, 57-35.1, 57-35.2, the corporate income tax provisions of chapter 57-38, and chapters 57-38.1, 57-51, 57-51.1, and 57-59. Specific taxes administered by this section include the corporate income tax, the taxation of banks, trust companies, building and loan associations, savings and loan associations, the oil and gas gross production tax, and the oil extraction tax.

The individual income tax section administers the individual income tax provisions of North Dakota Century Code chapters 57-38 and 57-38.2.

Both the corporate income tax and the individual income tax sections review tax returns, perform audits, and provide taxpayer assistance.

Income and oil taxes division. This division is divided into three sections: corporate income taxes, individual income taxes, and oil and gas taxes.

The corporate income tax section is responsible for the administration of chapters 57-38 and 57-38.1 pertaining to

corporate income taxes and the Uniform Division of Income Tax Act, and the administration of chapter 57-59 pertaining to multistate tax compact. This section is also responsible for the administration of chapters 57-35, 57-35.1, and 57-35.2 pertaining to the taxation of banks, trust companies, building and loan associations, and savings and loan associations.

The individual income tax section is responsible for the administration of chapters 57-38, 57-38.1, 57-38.2, and 57-38.3 pertaining to individual income taxes, the Uniform Division of Income Tax Act, income averaging, and setoff of income tax refund. This section is also responsible for administration of chapter 57-59 pertaining to multistate tax compact.

The oil and gas division is responsible for the administration of chapters 57-51 and 57-51.1 pertaining to oil and gas gross production tax and oil extraction tax.

All sections review tax returns, perform audits, and provide taxpayer assistance.

- f. **Property and utility tax division.** The property tax is a ~~major~~ source of revenue for the financing of county, city, township, school district, and other local governments. While local government has the responsibility of assessing and taxing all classes of real property, this division provides assistance and helps to establish uniformity of procedures ~~and it.~~ It also develops rules and regulations for the taxation of mobile homes under North Dakota Century Code chapter 57-55, which tax is administered ~~and collected~~ by the county directors of tax equalization and collected by the county treasurers of the various counties. This division also provides administrative services to the state board of equalization relating to new industry tax exemption applications made pursuant to North Dakota Century Code chapter 40-57.1, and to assessment and sales ratio statistical analyses.

The ~~utilities~~ utility tax section makes annual tentative valuations of railroad and ~~utilities~~ utility properties for use by the tax commissioner to make tentative assessments to submit to the state board of equalization which makes the final assessments. The ~~utilities~~ utility tax section also administers the following North Dakota Century Code chapters: 57-33, for taxation of rural electric cooperatives; 57-33.1, for taxation of cooperative- ~~electrical~~ generating plants owned transmission lines of two hundred thirty kilovolts or larger; 57-34, for taxation of mutual and cooperative

telephone companies; 57-60, for privilege tax on coal conversion facilities; and 57-61, for coal severance tax.

- 3. Inquiries - Submissions - Requests.** The public may obtain information or make submissions of reports and other matters or make requests regarding any of the tax matters described in subdivisions d, e, and f of subsection 2 by directing such inquiries, submissions, or requests to the North Dakota tax commissioner or to the division of the North Dakota tax department responsible for the administration of the tax involved. The mailing address for the North Dakota tax commissioner and for the North Dakota tax department is:

State Capitol
Bismarck, North Dakota 58505

- 4. Tax department functions subject to North Dakota Century Code chapter 28-32.** For purposes of its administration of the various tax laws, the tax department is an "administrative agency" that is subject to North Dakota Century Code chapter 28-32. See the 1981 amendment of subsection 1 of North Dakota Century Code section 28-32-01.

History: Amended effective December 31, 1981; June 1, 1984.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

STAFF COMMENT: Articles 81-02.1, 81-04.1, 81-05.1, 81-06.1, 81-07.1, and Chapter 81-01-02 contain all new material but are not underscored so as to improve readability.

CHAPTER 81-01-02 GENERAL CONSIDERATIONS

Section

81-01-02-01

Source Note Not part of Rule

81-01-02-02

Headnotes and Cross-references Not Part
of Rule

81-01-02-01. Source note not part of rule. Source notes consist of citations to general authority and law implemented found after each section in this title. The source notes are not deemed a part of the promulgation by the tax commissioner as to the purpose, scope, or effect of any section of this title to which that source note relates.

History: Effective June 1, 1984.

General Authority: NDCC 57-37.1, 57-39.2, 57-40.2, 57-40.3-12, 57-43.1, 57-43.2, 57-55-09

Law Implemented: NDCC 57-37.1, 57-39.2, 57-40.2, 57-40.3-12, 57-43.1, 57-43.2, 57-55

81-01-02-02. Headnotes and cross-references not part of rule.
Headnotes and cross-references, whether designating an entire article, chapter, or section, or any part thereof, do not constitute any part of a rule.

History: Effective June 1, 1984.

General Authority: NDCC 57-37.1, 57-39.2, 57-40.2, 57-40.3-12, 57-43.1, 57-43.2, 57-55-09

Law Implemented: NDCC 57-37.1, 57-39.2, 57-40.2, 57-40.3-12, 57-43.1, 57-43.2, 57-55

ARTICLE 81-02

PROPERTY TAXES

[Repealed effective October 1, 1982; June 1, 1984]

ARTICLE 81-02.1

PROPERTY TAXES

Chapter

81-02.1-01 Mobile Home Tax

CHAPTER 81-02.1-01

MOBILE HOME TAX

Section

81-02.1-01-01 Requirements for Application
81-02.1-01-02 Filing Requirements
81-02.1-01-03 Form and Contents of Application
81-02.1-01-04 Computation of Taxable Value
81-02.1-01-05 Filing Procedures for the Counties
81-02.1-01-06 Accounting of Mobile Home Taxes
81-02.1-01-07 Due Dates
81-02.1-01-08 Noncompliance by Mobile Home Owner

81-02.1-01-09	Penalties Cannot be Waived
81-02.1-01-10	Collections
81-02.1-01-11	Application by New Owner Not Required if Mobile Home Has Current Decal
81-02.1-01-12	Decal Nontransferable
81-02.1-01-13	Mobile Home Temporarily in State
81-02.1-01-14	Tax Not Applicable to Licensed Mobile Home Dealers
81-02.1-01-15	Liability for Taxes Upon Sale of Mobile Home
81-02.1-01-16	No Refunds or Credits Upon Sale or Disposition
81-02.1-01-17	Tax Decal or Tax Release Displayed During Transport
81-02.1-01-18	Tax Decals Lost or Destroyed

81-02.1-01-01. Requirements for application. The term "owner" for the purpose of determining who must apply for a mobile home tax decal means the person holding legal title to the mobile home. A vendee, mortgagor, or lessee is the owner if the mobile home is subject to a conditional sales agreement or lease with an option to purchase upon expiration of the agreement and if the vendee, mortgagor, or lessee is entitled to possession of the mobile home.

History: Effective June 1, 1984.
General Authority: NDCC 57-55-09
Law Implemented: NDCC 57-55-01.1, 57-55-02

81-02.1-01-02. Filing requirements. The owner of every mobile home subject to tax must apply for a tax decal each year to the county director of tax equalization in the county of the owner's domicile. If the mobile home is permanently located in a county other than the owner's domicile, the application must be made in the county where the mobile home is located.

A mobile home owner exempt from the tax must apply to the county director of tax equalization for a tax-exempt decal. If the owner's exempt status is established, the county treasurer will issue a special tax-exempt decal which must be attached to the mobile home.

History: Effective June 1, 1984.
General Authority: NDCC 57-55-09
Law Implemented: NDCC 57-55-01, 57-55-02

81-02.1-01-03. Form and contents of application. The application for a tax decal must be made on forms furnished by the county director of tax equalization. An original and two copies must be filed with the director. The application must include a full description of the mobile home, the name of the manufacturer, the serial number, age, length and width, the location, and the owner's name and address.

History: Effective June 1, 1984.
General Authority: NDCC 57-55-09

Law Implemented: NDCC 57-55-02

81-02.1-01-04. Computation of taxable value. The taxable value of a mobile home is determined as follows:

1. The total square feet of the mobile home is multiplied by the average cost per square foot, as shown in the tax department's guidelines for the appropriate quality and width, to determine the true and full value.
2. The true and full value is multiplied by the percentage in subsection 3 of North Dakota Century Code section 57-02-01 to determine assessed value.
3. The assessed value is multiplied by the percentage in subsection 1 of North Dakota Century Code section 57-02-27, to arrive at the taxable value if the mobile home is used for residential purposes. If the mobile home is used for commercial purposes, the assessed value is multiplied by the percentage found in subsection 3 of North Dakota Century Code section 57-02-27.

The taxes due on the mobile home are then determined by applying the taxable value to the preceding year's total mill levies which applied to property within the taxing district where the mobile home is located.

History: Effective June 1, 1984.

General Authority: NDCC 57-55-09

Law Implemented: NDCC 57-55-04

81-02.1-01-05. Filing procedures for the counties. When the computation of the mobile home tax decal section of the application is complete, the county director of tax equalization must retain one copy and deliver the original and one copy to the county treasurer.

If the taxes are paid in full, the treasurer must issue a prenumbered decal and a receipt showing the amount of payment and the type of tax. The receipt and decal number must be recorded on the face of the application. The copy is then returned to the owner and the original retained by the treasurer.

The county treasurer must maintain an account for tax payments received in installments. If payment of the tax is made in installments, a receipt indicating the amount of payment and the type of tax must be issued to the owner. The tax decal must be issued upon payment of the second installment. The county treasurer must inform the county director of tax equalization if an installment becomes delinquent, and the director must give the owner notice of the delinquency as provided in North Dakota Century Code section 57-55-11.

History: Effective June 1, 1984.
General Authority: NDCC 57-55-09
Law Implemented: NDCC 57-55-03, 57-55-04

81-02.1-01-06. Accounting of mobile home taxes. Mobile home taxes, including penalties for delinquencies, must be credited by the county treasurer to a special account established for each year. The account must be designated as the "Mobile Home Tax Account" for the year in which the tax decal was issued. The taxes must be retained by the county treasurer in the account until the monthly disbursements are made as provided for in North Dakota Century Code section 11-14-16.

History: Effective June 1, 1984.
General Authority: NDCC 57-55-09
Law Implemented: NDCC 57-55-01.1, 57-55-02, 57-55-04

81-02.1-01-07. Due dates. The due date for the mobile home tax is the day fixed by law on which the tax first becomes due and payable. If the mobile home is brought into or acquired in this state on or after January first, the tax becomes due on the eleventh day thereafter. The eleventh day is computed by counting day one as the first day it was brought into or acquired in this state.

The due date must be distinguished from the delinquency date, which is the date penalties fixed by law attach to unpaid taxes.

History: Effective June 1, 1984.
General Authority: NDCC 57-55-09
Law Implemented: NDCC 57-55-01.1, 57-55-03

81-02.1-01-08. Noncompliance by mobile home owner. A mobile home owner is not in compliance with the mobile home tax law if the owner:

1. Has not applied for a tax decal within the required time.
2. Has applied for a tax decal but has not paid the tax or installment on time.
3. Has not paid the full penalty which has attached to a delinquent tax.
4. Has not properly attached the tax decal to the mobile home.

History: Effective June 1, 1984.
General Authority: NDCC 57-55-09
Law Implemented: NDCC 57-55-07, 57-55-11

81-02.1-01-09. Penalties cannot be waived. No penalties attached to delinquent and unpaid taxes levied under the mobile home tax law may be waived by the county treasurer.

History: Effective June 1, 1984.
General Authority: NDCC 57-55-09
Law Implemented: NDCC 57-55-03

81-02.1-01-10. Collections. The provisions of North Dakota Century Code chapter 57-22 for collection of delinquent personal property tax apply to the collection of delinquent mobile home taxes. Any housetrailer or mobile home occupied as a residence by a debtor or a debtor's family is not exempt from process, levy, or sale for tax levied pursuant to the mobile home tax law.

History: Effective June 1, 1984.
General Authority: NDCC 57-55-09
Law Implemented: NDCC 57-55-02, 57-55-03

81-02.1-01-11. Application by new owner not required if mobile home has current decal. If a mobile home with a current decal is acquired during a year, the new owner is not required to obtain a new decal for that year. If a tax-exempt decal is attached to the mobile home, the new owner must apply for a tax decal within the statutory time.

History: Effective June 1, 1984.
General Authority: NDCC 57-55-09
Law Implemented: NDCC 57-55-04

81-02.1-01-12. Decal nontransferable. The tax decal issued for a particular mobile home is nontransferable and cannot be used on any other mobile home. If the mobile home is sold, traded in on another mobile home or property, or disposed of in any manner, the decal must remain on the mobile home.

History: Effective June 1, 1984.
General Authority: NDCC 57-55-09
Law Implemented: NDCC 57-55-07

81-02.1-01-13. Mobile home temporarily in state. A mobile home in the state temporarily because it is being transported through the state or being used by persons on vacation or visiting in North Dakota is not subject to tax.

A mobile home brought into North Dakota for use by the owner or another person employed or engaged in a trade, occupation, business, or profession in this state is subject to tax. An application must be filed with the county director of tax equalization on or before the

eleventh day it is in the state even though it may be taken out of state at a later date within the year.

History: Effective June 1, 1984.
General Authority: NDCC 57-55-09
Law Implemented: NDCC 57-55-07, 57-55-07.1

81-02.1-01-14. Tax not applicable to licensed mobile home dealers. The mobile home tax does not apply to mobile homes held by a licensed mobile home dealer for resale if the mobile home is not used as a residence or as a place of business.

History: Effective June 1, 1984.
General Authority: NDCC 57-55-09
Law Implemented: NDCC 57-55-01

81-02.1-01-15. Liability for taxes upon sale of mobile home. When a mobile home upon which the yearly decal tax has not been paid is sold, it is presumed that the tax was taken into consideration during the price negotiations between the buyer and the seller. The tax is imposed upon the property itself even though the owner is required to pay it. When the tax remains unpaid after the sale, it will be collected as follows:

1. The county director of tax equalization will collect the tax due from the seller prorated for the period of ownership during the year.
2. The buyer is liable for tax prorated for the period of ownership during the year of purchase.
3. If the tax cannot be collected from the seller, the buyer is liable for the full amount of tax due for the year of purchase.

History: Effective June 1, 1984.
General Authority: NDCC 57-55-09
Law Implemented: NDCC 57-55-01.1, 57-55-05

81-02.1-01-16. No refunds or credits upon sale or disposition. If tax is levied for a particular year on a mobile home sold during that year, none of the tax will be refunded or abated except as provided in North Dakota Century Code sections 57-55-04.1 and 57-55-12. No refund will be issued if the mobile home sold is moved to another state.

History: Effective June 1, 1984.
General Authority: NDCC 57-55-09
Law Implemented: NDCC 57-55-12

81-02.1-01-17. Tax decal or tax release displayed during transport. A licensed mobile home dealer transporting a mobile home from the dealer's lot to a purchaser's lot is not required to display a current mobile home tax decal or a tax release statement.

History: Effective June 1, 1984.
General Authority: NDCC 57-55-09
Law Implemented: NDCC 57-55-11

81-02.1-01-18. Tax decals lost or destroyed. If a tax decal issued by the county treasurer is lost, destroyed, or mutilated, a replacement decal may be obtained from the county treasurer by paying one dollar and furnishing information indicating the reason for the replacement.

History: Effective June 1, 1984.
General Authority: NDCC 57-55-09
Law Implemented: NDCC 57-55-02, 57-55-06

ARTICLE 81-04
SALES AND USE TAXES

[Repealed effective October 1, 1982; June 1, 1984]

ARTICLE 81-04.1
SALES AND USE TAXES

Chapter	
81-04.1-01	General Rules
81-04.1-02	Sales to Government Entities
81-04.1-03	Miscellaneous Sales
81-04.1-04	Specific Occupations

CHAPTER 81-04.1-01
GENERAL RULES

Section	
81-04.1-01-01	Purpose
81-04.1-01-02	Confidential Information
81-04.1-01-03	Taxable Sales - Engaging in Business

81-04.1-01-04	Permits
81-04.1-01-05	Direct Payment Permits
81-04.1-01-06	Sale of Business - Permit Not Transferable
81-04.1-01-07	Change of Location
81-04.1-01-08	Monthly Sales Tax Deposits
81-04.1-01-09	Deposits or Prepayments on Purchase Price of Tangible Personal Property
81-04.1-01-10	Freight, Delivery, and Other Transportation Charges
81-04.1-01-11	Handling Charges and Finance or Carrying Charges
81-04.1-01-12	Processing
81-04.1-01-13	Containers, Wrapping Materials, Cartons, String
81-04.1-01-14	Receipts From Sales of Taxable Materials, Supplies, and Services
81-04.1-01-15	Certificate of Resale
81-04.1-01-16	Casual or Occasional Sales
81-04.1-01-17	Used or Secondhand Tangible Personal Property
81-04.1-01-18	Goods on Consignment
81-04.1-01-19	Sale of Traded-in Property
81-04.1-01-20	Repossessed and Returned Property
81-04.1-01-21	Articles Made to Order
81-04.1-01-22	Services
81-04.1-01-23	Manufacturers
81-04.1-01-24	Manufacturer's and Retailer's Federal Excise Tax
81-04.1-01-25	Bad Debts
81-04.1-01-26	Purchases Subject to Use Tax
81-04.1-01-27	Bookkeeping Requirements

81-04.1-01-01. Purpose. The retail sales tax is imposed on the gross receipts of retail sales of tangible personal property within North Dakota. The statutes governing sales tax in North Dakota are found in North Dakota Century Code chapter 57-39.2.

The use tax is imposed on the storage, use, or consumption of tangible personal property in North Dakota. If property is purchased at retail for use, storage, or consumption in North Dakota and is not subject to sales tax in North Dakota, it is subject to use tax. The statutes governing use tax in North Dakota are found in North Dakota Century Code chapter 57-40.2.

The purpose of the administrative rules covering sales and use tax in North Dakota is to define and expand upon the relevant statutes in the North Dakota Century Code. Therefore, these rules are to be used in conjunction with relevant statutes.

History: Effective June 1, 1984.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01

81-04.1-01-02. Confidential information. A return includes all the business records and information of a retailer which reflect or record sales or use tax data which are used to calculate sales or use tax obligations for purposes of North Dakota Century Code section 57-39.2-23.

History: Effective June 1, 1984.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-23

81-04.1-01-03. Taxable sales - Engaging in business. Taxable sales are sales at retail made in North Dakota by a person engaged in the business of selling at retail to purchasers for final use or consumption and not for resale or processing. Such sales are usually made by retail merchants but may also be made by manufacturers, jobbers, wholesalers, farmers, and others.

1. The term "sale" includes:
 - a. The exchange of property.
 - b. Installment, credit, conditional, or consignment sale.
 - c. Any sale or transfer for consideration.
 - d. Ordering, selecting, or aiding a customer in selecting from a price list goods which are shipped directly to the customer.
 - e. The leasing or renting of tangible personal property for final consumption or use.
 - f. Periodic minimum charges received by a retailer of steam, gas, or communication services whether or not the customer actually used the services during the period.

2. Engaging in selling at retail includes:
 - a. Maintaining directly or indirectly or through a subsidiary, an office, warehouse, distribution house, or other place of business.
 - b. Having an agent, salesman, or solicitor temporarily or permanently operating within the state under the authority of the seller or its subsidiary regardless of whether the business is qualified to do business in the state.

History: Effective June 1, 1984.
General Authority: NDCC 57-39.2-19, 57-40.2-13
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-14, 57-39.2-20

81-04.1-01-04. Permits. A sales tax permit will not be issued to a person not engaged in a retail business for the purpose of permitting that person to purchase at wholesale or to purchase without payment of sales tax to the seller.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-14

81-04.1-01-05. Direct payment permits. The direct payment permit authorizes the applicant to make direct payment of sales or use tax to the tax commissioner.

An applicant electing to pay taxes directly to the tax commissioner must issue a direct payment certificate to the retailer in the form prescribed by the tax commissioner. The certificate exempts the retailer from liability for sales or use tax and obligates the applicant to pay taxes directly to the tax commissioner.

To qualify for a direct payment permit, a business must demonstrate to the satisfaction of the tax commissioner that:

1. The person purchases substantial amounts of tangible personal property for business use under circumstances which make it difficult or impractical at the time of purchase to determine whether such property is subject to sales or use tax.
2. The person holds or has applied for a sales and use tax permit.
3. The direct payment method will materially reduce the administrative work of collecting the tax.
4. The firm's accounting system will clearly reflect the proper amount of tax due.
5. The firm makes taxable purchases in sufficient volume to justify the expense of regular tax department audits.

Application for a direct payment permit must be submitted to the tax commissioner. The application must be a letter containing the applicant's name, address, sales and use tax account number, description of the business, the accounting system used, volume of purchases, and justification for adopting the direct payment method.

Each application accepted will receive a direct payment permit numbered, dated, and signed by the tax commissioner or the commissioner's representative. The tax commissioner will issue a direct payment permit only when, in the tax commissioner's judgment, it is in the best interest of the state to do so.

Each person issued a direct payment permit must keep a list of all vendors from whom purchases are made under the direct payment method and must submit such list for examination upon the tax commissioner's request.

The holder of a direct payment permit must either issue the permit to all vendors required to collect North Dakota sales and use taxes and accrue all liability as a use tax, or maintain accounting records sufficient to show the amount of sales tax paid to vendors in each reporting period.

If the holder of the permit chooses the latter alternative, all purchases from any one supplier must be made either exempt or taxable. The vendor may not assess the sales tax on only selected transactions.

A direct payment permit may not be used in connection with:

1. Purchases of taxable food or beverages.
2. Purchases of taxable lodging or related services.
3. Purchases of admissions to places of amusement or athletic events, or the use of amusement devices.

A direct payment permit is not transferable. The tax commissioner may revoke a direct payment permit at any time with or without cause.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-14.1, 57-40.2-13

81-04.1-01-06. Sale of business - Permit not transferable. When the holder of a sales tax permit sells the business to another person, all sales tax for which the holder is liable is due immediately. The holder must immediately notify the tax commissioner and surrender the holder's permit for cancellation. Within fifteen days, the holder must make a final sales tax return and remit all sales tax due. The purchaser of the business must make application for a new permit in the purchaser's own name.

If the ownership status of a business which holds a sales tax permit changes from one type of business ownership to another, the new owner must apply for a new permit.

When a corporation is sold, or when new corporate officers are added or replaced, the tax commissioner must be notified of these changes although no new sales tax permit is required. A new permit is required if one or more partners enter or leave a partnership.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-10, 57-39.2-11, 57-39.2-14, 57-39.2-20

81-04.1-01-07. Change of location. When a holder of a retail sales tax permit changes the business location of the retail business without changing the nature of the business, the permitholder must notify the tax commissioner of the change of location and of the new address. Upon notification, the tax commissioner will issue without charge a corrected sales tax permit showing the new business address.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-14

81-04.1-01-08. Monthly sales tax deposits. Qualified sales or use tax permitholders who fail to comply with the monthly requirement, fail to file the forms on time, or fail to pay ninety-five percent of the tax due for the month forfeit the one and one-half percent compensation for expenses.

A quarterly sales and use tax return must be filed in addition to the monthly estimates each quarter. The quarterly return is to contain a reconciliation schedule which the sales and use tax permitholder must complete. Any additional sales or use tax due over and above the ninety-five percent reported on each monthly estimate must be paid together with the quarterly report.

The filed returns will be reviewed by the office of the tax commissioner each calendar year to determine if new sales or use tax permitholders qualify to file monthly estimates and to determine if sales or use tax permitholders who have filed monthly estimates must revert to quarterly filing status.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-12

81-04.1-01-09. Deposits or prepayments on purchase price of tangible personal property. When retailers of tangible personal property accept deposits from customers for goods to which the purchaser obtains possession only upon payment of the full purchase price, if there is a contract to sell specific goods, title passes to the buyer when the parties to the contract intend it to be transferred, with consideration of the terms of the contract, the conduct of the parties, usage of trade, and the circumstances of the case.

If the buyer makes a deposit on the purchase price of specific goods, and the seller assigns those goods to the sale, title to the goods passes and the sale is made at the time the contract is entered into irrespective of the fact that the full amount of the purchase price

may not have been paid by the buyer. The prepayment or deposit must be included in the measure of the seller's tax at that time.

If no specific goods are selected by the buyer or assigned to the sale by the seller, title to the goods does not pass until the buyer selects specific goods, and they are assigned to the sale by the seller. Here the seller merely acts as a depository of funds left with the seller by the buyer, and such prepayments or deposits are not receipts from a sale of tangible personal property until a sale is actually made. In such case, the sale takes place when possession of the goods is delivered to the buyer, and the seller must report as gross receipts from the sale the total amount of the purchase price as of the time of sale.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-10, 57-39.2-11, 57-39.2-12, 57-39.2-12.1

81-04.1-01-10. Freight, delivery, and other transportation charges.

1. If the retail sale is made free on board point of origin, the title passes to the buyer at that time, and any subsequent shipment of the merchandise is a shipment made by the buyer of the buyer's own property. The retail seller, in such a situation, would not collect tax on the amount of freight paid because the buyer is shipping the buyer's own merchandise.
2. If the retail sale is made free on board destination, the title to the merchandise passes to the buyer when the merchandise has reached the point of destination. The retail seller, in such a situation, is required to include the freight charges in the base upon which sales tax is charged.
3. Charges paid by a retailer for transporting tangible personal property from the source of supply to the retailer's place of business are not deductible for sales tax purposes by the retailer from the price for which the retailer thereafter sells it.
4. If the freight, delivery, or transportation charges in the contract are violated, the time and place at which title passes depend on the intent of the parties, as determined by the terms of the contract, the conduct of the parties, and usage of the trade.
5. If the subject matter of the contract (that is, the merchandise) has not been ascertained and assigned to the contract or if something remains to be done by the seller to put the merchandise in a deliverable state, title does not pass until that occurs.

6. Unless a contrary intent appears, delivery to the buyer will be considered prima facie evidence of an intention to pass title at the time delivery is made, and the sale occurs at that time.
7. All the provisions and conditions listed above apply to freight, delivery, and transportation charges on rental equipment since a rental or lease is a sale under the sales tax law.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-04, 57-40.2-01, 57-40.2-02.1, 57-40.2-04, 57-40.2-13

81-04.1-01-11. Handling charges and finance or carrying charges. When tangible personal property is sold at a fixed price plus an additional service, handling, or finance charge, such charges are part of the selling price, and sales tax must be computed on the gross receipts from such sale. Finance, carrying, and interest charges are not taxable as handling charges if separately agreed upon by the buyer and the seller and if separately billed by the seller to the buyer.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-01-12. Processing. The nonreturnable containers in which tangible personal property is sold, when sold for processing, are exempt from sales tax if it is intended that such containers become an integral, ingredient, or component part of tangible personal property intended to be sold ultimately at retail. Receipts from the sale of tangible personal property to fabricators, manufacturers, producers, or processors which will not actually become an integral, ingredient, or component part of the product produced, are taxable.

The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property is a sale of tangible personal property for a purpose other than for processing and is taxable sold to a contractor or subcontractor for attachment to real property situated outside of North Dakota if taxable in state of attachment.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01

81-04.1-01-13. Containers, wrapping materials, cartons, string. Receipts from the sale of containers, labels, cartons, packing cases, wrapping paper, wrapping twine, bags, bottles, shipping cases, and

similar articles and receptacles sold to manufacturers, producers, wholesalers, retailers, or jobbers, which are used as containers of tangible personal property and are sold either for resale or at retail, are not subject to sales tax if the charge made for the property sold includes the container and title to the container passes to the purchaser with the merchandise sold.

Receipts from the sale of containers, labels, and cartons sold to those businesses rendering service are subject to the sales tax since these businesses are the users or consumers of such items, and sales to them are taxable.

Containers used for the purpose of delivering tangible personal property sold to customers, which may be returned to the seller, are not subject to sales tax when sold to the customer. The seller consumes or uses the containers in the seller's business, and the sale to the seller

of such containers is subject to the tax. A deposit made by or required of the customer to secure the return of the container is not regarded as a retail sale, and it is not subject to the sales tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-04

81-04.1-01-14. Receipts from sales of taxable materials, supplies, and services. Receipts from sales of taxable materials, supplies, and services to retail stores for their own use in maintenance, advertising, and office use are not for resale and are subject to sales tax.

The retailer must pay tax on all items for final use when purchasing them from the supplier. If the retailer fails to pay the tax when buying these items, the retailer must report them on his regular sales and use tax return for the filing period in which the items were purchased.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-07

81-04.1-01-15. Certificate of resale. Receipts from the sale of tangible personal property for the purpose of resale by the purchaser are not subject to sales tax if the buyer furnishes a resale certificate. A new resale certificate is not needed for each sale, but the seller must have a signed certificate of resale from all customers who buy for resale.

If a seller claims a sale as a sale for resale, and it is determined that such sale is not exempt, any tax and penalty due thereon will be collected from the buyer.

Whenever a person submits a false certificate of resale to a seller, the person submitting the false certificate is liable for any tax and penalties which attach on the sale.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-04, 57-39.2-10

81-04.1-01-16. Casual or occasional sales. Casual or occasional sales made by an individual are not subject to sales tax. Sales made in the course of a regularly conducted business are subject to sales tax. The following are retailers who must collect and remit sales tax:

1. The auctioneer who auctions the belongings of several undisclosed individuals at a public auction.
2. Persons who buy antiques from others and offers them for sale at a public auction or through a private sale.
3. Persons who conduct permanent rummage sales through which they dispose of the property of others.

A retailer may not claim a casual sale if the property sold is similar to property sold by the retailer in the regular course of business.

A person selling one's own products occasionally is making casual sales, and such sales are not taxable. Sales of such number, volume, or frequency as to indicate that the sale is not a casual or isolated one are subject to tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-04, 57-39.2-20, 57-40.3

81-04.1-01-17. Used or secondhand tangible personal property. Used or secondhand tangible personal property in the form of goods, wares, and merchandise is taxable in the same manner as new property would be taxed, unless the sale is a casual or isolated one.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-20

81-04.1-01-18. Goods on consignment. Persons engaged in the business of selling tangible personal property of others are retailers. Sales are subject to sales tax if such property is sold in the retailer's place of business or is sold by the retailer for an undisclosed principal. This also applies to an auctioneer who sells tangible personal property belonging to a retailer, no matter where the sale is located.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3

81-04.1-01-19. Sale of traded-in property. When one article is traded in on another article, the sales tax applies only on the difference in value between the two articles. The secondhand article is subject to sales tax when resold.

Whenever property not subject to sales tax or to motor vehicle excise tax is taken as part consideration of the purchase price, the purchaser is required to pay sales tax on the full purchase price.

When a used mobile home is traded in for other tangible personal property, sales tax applies on the full purchase price with no deduction for the value of the trade-in.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1

81-04.1-01-20. Repossessed and returned property. When tangible personal property which has been repossessed by the original seller or by a finance company is resold, the entire gross receipts from such sales are taxable.

When retailers sell tangible personal property on time payments, and it becomes necessary for the retailer to repossess the tangible personal property, the transaction is handled as follows:

1. If the retailer previously included the total selling price of the tangible personal property in the retailer's gross sales and remitted tax to the tax commissioner but did not collect sales tax from the buyer, the retailer may enter a credit in the amount of the unpaid balance of the original sale. This credit is deductible by the retailer regardless of whether or not the retailer has assigned the installment contract. If the retailer assigns the contract, it must be assigned subject to an agreement to repurchase it in the event of default by the purchaser under the contract or subject to a guarantee that the payment under the contract will be made.

2. If the retailer collected and remitted the full amount of sales tax on the full sales price at the time of sale, the retailer is not entitled to take a deduction for the goods returned unless the tax is returned to the purchaser on the unpaid balance.
3. If the retailer included in gross receipts only the amount of cash actually received from the sale and did not collect full sales tax from the customer, no credit for return of the repossessed property to the retailer's stock will be allowed.

When goods are returned to a retailer, and the purchase price is returned to the buyer, the retailer may claim a credit on a subsequent sales and use tax return for the amount of the sale claimed on a prior return if the previously paid tax is returned to the customer.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-05, 57-39.2-24, 57-39.2-27

81-04.1-01-21. Articles made to order. When manufacturers, fabricators, or retailers agree to furnish the material and fabricate articles of tangible personal property, the total receipts from the sale of such articles are subject to sales tax. These businesses may not deduct labor or service costs of fabrication or production from the sales tax base even though such charges are billed to customers apart from charges for materials.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1

81-04.1-01-22. Services. Personal and professional services are not subject to sales tax, but materials and supplies used solely in rendering services are subject to sales tax when purchased. Materials and supplies which may be used either in rendering service or sold at retail may be purchased for resale, and sales tax must be collected when these items are sold at retail. The portion of these materials and supplies sold separately to the customer is subject to sales tax and must be included in the sales and use tax report as gross sales. The portion of these materials and supplies used and consumed in rendering service is taxable. The purchase cost must be included as use tax on the sales and use tax return of the person rendering the service.

If taxable materials and supplies are purchased from a supplier holding a North Dakota sales and use tax permit, sales tax must be paid to the supplier, but if taxable materials and supplies are purchased from an out-of-state supplier who does not collect North Dakota sales tax, the use tax must be remitted to the tax commissioner.

If a service charge for installation of tangible personal property and the property remains personal is included in the price, sales tax applies to the entire price, but if the installation charge is separate from the price of the personal property, sales tax does not apply to the installation charge.

Persons engaged in the business of repairing, altering, restoring, or cleaning of tangible personal property belonging to others render a service, which is not subject to sales tax. If the repairer also sells tangible personal property at retail which is similar to the property used and consumed in rendering the services, the repairer must hold a retail sales tax permit. A repairer making an additional itemized charge to the customer for supplies and materials used and consumed by the repairer must charge sales tax on the additional charge.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-11, 57-39.2-14, 57-40.2-01, 57-40.2-02.1, 57-40.2-05, 57-40.2-06, 57-40.2-13

81-04.1-01-23. Manufacturers. Sales tax applies to the sale of tangible personal property to persons who purchase it for use in manufacturing, producing, or processing tangible personal property and not for physically incorporating it into the manufactured article.

Items which are consumed or destroyed in the manufacturing process but which do not become a part of the finished product are subject to sales tax. Purchase of these items by a manufacturer is taxable, and suppliers must charge sales tax on these consumable items. If the items are purchased from an out-of-state supplier, or if a North Dakota supplier fails to charge the tax, the North Dakota manufacturer must report the use tax directly to the North Dakota tax commissioner.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-07

81-04.1-01-24. Manufacturer's and retailer's federal excise tax. When products subject to federal manufacturer's excise tax are sold at retail by other than the manufacturer, the tax becomes a part of the sales tax base.

When manufacturers sell directly to consumers, and the federal manufacturer's excise tax is billed separately, the excise tax is not included in the sales tax base.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2

81-04.1-01-25. Bad debts. Bad debts may be deducted from gross receipts when the tangible personal property is sold on credit and the following facts are fully shown:

1. That the account has not been paid and has been found to be worthless.
2. That the amount was previously included in the gross receipts and sales tax collected and remitted by the retailer.
3. That the account has been charged off the retailer's books for income tax purposes.

When claiming the deduction, the permitholder must report the customers' names, addresses, amount charged off, and the period in which the sale was included in the holder's taxable sales.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-05, 57-39.2-10, 57-39.2-11

81-04.1-01-26. Purchases subject to use tax. When a retailer takes merchandise from stock for personal use or for a gift, the retailer is responsible for the use tax based on the cost of the merchandise. Retailers purchasing items for maintenance, advertising, and office use are subject to sales tax and must pay tax on all items for final use when purchasing them from the supplier. If the retailer fails to pay tax when buying these items, the retailer must report them on the quarterly sales or use tax return for the filing period in which the items were purchased.

A purchaser is required to pay any use tax to the seller if the seller holds a North Dakota sales and use tax permit. If the seller does not hold a permit, the purchaser is required to remit the tax directly to the tax commissioner.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.2, 57-40.2-05, 57-40.2-06, 57-40.2-07, 57-40.2-09, 57-40.2-13

81-04.1-01-27. Bookkeeping requirements. All sales tax permitholders, construction contractors, those selling, storing, using, or consuming tangible personal property in this state and every lessor and lessee of tangible personal property for use in this state must keep adequate and complete records showing:

1. Gross receipts from sales or rental payments from leases of tangible personal property.

2. All deductions allowed by law and claimed in filing returns.
3. Total purchase price of all tangible personal property purchased for sale, consumption, or lease in North Dakota.

The records must include the books of account ordinarily maintained by the average businessman engaged in a similar business, together with all bills, receipts, invoices, cash register tapes, or other original documents supporting the entries in the books of accounts as well as all schedules or working papers used in the preparation of sales or use tax returns.

All records must be maintained so that details underlying the summary accounting data are identifiable and available upon the tax commissioner's request. Supporting documents such as sales invoices, purchase invoices, and credit memoranda, must be readily available.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-10, 57-39.2-11, 57-39.2-21, 57-40.2-01, 57-40.2-09, 57-40.2-13

CHAPTER 81-04.1-02 SALES TO GOVERNMENT ENTITIES

Section

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| 81-04.1-02-01 | Sales to the State of North Dakota, Other States, any Subdivisions of North Dakota, and Sales by Municipal Corporations |
| 81-04.1-02-02 | Contracts with Governments |
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| 81-04.1-02-04 | Sales to Federal Corporations |

81-04.1-02-01. Sales to the state of North Dakota, other states, any subdivisions of North Dakota, and sales by municipal corporations. Gross receipts from sales of tangible personal property or from furnishing services to this state or any of its political subdivisions, departments, agencies, or institutions are exempt from sales tax. Sales or furnishing services to any other state are exempt from sales tax, but sales or furnishing services to the political subdivisions or municipalities of a foreign state are subject to sales tax.

Retail sales or furnishing of services to the public by any state, subdivisions, departments, or institutions of any state, are subject to sales tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-04

81-04.1-02-02. Contracts with governments. A contractor performing contracts for the United States government, this state, counties, cities, villages, or any other municipal corporation in this state is not exempt from payment of the sales or use tax on materials and supplies used by the contractor to carry out the contracts.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-10, 57-39.2-20, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.3, 57-40.2-05, 57-40.2-06, 57-40.2-09, 57-40.2-13, 57-40.2-14

81-04.1-02-03. Tangible personal property purchases - United States government. Except as provided by Congress, the United States government is not required to collect sales tax when making a sale. However, the purchaser of taxable tangible personal property or services from the United States government must report and remit the sales or use tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-04, 57-39.2-11, 57-39.2-20, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.2, 57-40.2-04, 57-40.2-05, 57-40.2-06, 57-40.2-13

81-04.1-02-04. Sales to federal corporations. Federal statutes creating the following corporations contain provisions which have been construed by the United States supreme court as exempt from sales or use tax.

1. Federal land banks.
2. Federal deposit insurance corporation.
3. Homeowners loan corporation.
4. Federal farm mortgage corporation.
5. Federal home loan banks.
6. Reconstruction-finance corporation.
7. American national red cross.
8. Federal credit unions.

History: Effective June 1, 1984.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04,
57-40.2-04

**CHAPTER 81-04.1-03
MISCELLANEOUS SALES**

Section	
81-04.1-03-01	Sales to American Indians - Sales on an Indian Reservation
81-04.1-03-02	Sales by Employers to Employees
81-04.1-03-03	Food and Food Products for Human Consumption
81-04.1-03-04	Sales in Interstate Commerce
81-04.1-03-05	Sales of Legal Tender Coins and Currency
81-04.1-03-06	Meal Tickets and Gift Certificates
81-04.1-03-07	Sales to Owners or Operators of a Building
81-04.1-03-08	Sales by Trustees, Receivers, Executors, and Administrators

81-04.1-03-01. Sales to American Indians - Sales on an Indian reservation. An Indian retailer whose place of business is on an Indian reservation in this state is not required to hold a North Dakota sales tax permit or to collect North Dakota sales tax on sales to any customer.

A non-Indian retailer whose place of business is on an Indian reservation cannot collect sales tax on sales to enrolled Indian customers but must collect and remit North Dakota sales tax on all sales to non-Indian customers.

Any retailer whose place of business is outside an Indian reservation may exempt sales made by delivery to an enrolled Indian customer living on an Indian reservation if the retailer maintains adequate records supporting the exempt status of the sale.

All sales to American Indians outside of an Indian reservation are subject to sales tax.

History: Effective June 1, 1984.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-03-02. Sales by employers to employees. Purchases of tangible personal property by employees from their employer are subject to sales tax. Employers operating a restaurant or cafeteria exclusively

for employees are retailers and the gross receipts from such sales are subject to sales tax. Employees ordering merchandise from an employer's wholesale catalog for personal use are subject to sales tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3

81-04.1-03-03. Food and food products for human consumption.

Candy, confectionary, breath mints, and nonmedicated chewing gum are food products for human consumption and are exempt from sales tax when purchased for consumption off the premises where purchased. These products sold at a place where they will be consumed on or near the premises are taxable.

Sales of food products prepared for immediate consumption on or near the premises of the seller are subject to sales tax even though they are sold on a "take out" or "to go" order by restaurants and drive-ins and are actually packaged or wrapped and taken from the premises.

When a package contains food and nonfood products, if the value of the nonfood items exceeds fifty percent of the total selling price, the entire sale is subject to the tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04.1

81-04.1-03-04. Sales in interstate commerce. When tangible personal property is sold by a North Dakota retailer for use or consumption and delivered to the purchaser in another state and the goods are not to be returned to this state, the sale is not subject to sales tax. The method of transporting the goods is irrelevant. However, where the seller actually delivers possession of the goods to the buyer or the buyer's representative or agent within this state, the transaction is then terminated, and the tax applies.

Tangible personal property sold by a North Dakota retailer is not subject to sales tax if it is shipped from the source of supply in another state to the purchaser at a point outside this state or delivered to the purchaser at the source of supply outside the state. If the property is brought into this state, it is subject to use tax.

Sales of tangible personal property made within this state by salesmen, representatives, agents, persons, or firms residing outside this state and delivered in this state are subject to tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-04, 57-39.2-10, 57-40.2-01, 57-40.2-03.3

81-04.1-03-05. Sales of legal tender coins and currency. Coins or currency issued as legal tender by foreign nations are exempt from sales tax. Sales of gold or silver bullion, bars, ingots, or other sales of precious metal not issued as legal tender by the United States government or any foreign government are subject to sales tax if sales of these products takes place within this state.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-10

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-03-06. Meal tickets and gift certificates. A meal ticket or gift certificate is not subject to sales tax when it is sold to the consumer. Sales tax is added when the meals or merchandise are purchased.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1

81-04.1-03-07. Sales to owners or operators of a building. Purchases of tangible personal property by an owner or operator of a building for tenants' use in alterations, repair, or convenience are subject to sales tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1

81-04.1-03-08. Sales by trustees, receivers, executors, and administrators. When trustees, receivers, executors, and administrators operate, manage, or control a business engaged in selling tangible personal property or services, they must collect and remit sales tax on the gross receipts. It is immaterial that the officer may have been appointed by a federal court.

Trustees, receivers, executors, or administrators engaged in liquidating the assets of the business are subject to sales tax if liquidation is by sales made in the usual and customary manner for use or consumption.

The trustee, receiver, executor, or administrator may not report and remit under a permit issued to the previous owner but must apply for and obtain a separate sales tax permit.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-14

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81-04.1-04-01. Agriculture - Commercial fertilizers and seeds for planting. Sales of commercial fertilizers, seeds, roots, bulbs, and small plants for commercial vegetable gardens or agricultural purposes are not subject to the tax, but such sales for noncommercial purposes are taxable. A householder's garden is not a commercial vegetable garden.

The term "small plants" includes potted plants, set plants, small young trees, shrubs, herbs, slips, cuttings, flower seeds, flower plants, and small saplings.

Small young trees, including fruit trees, and shrubs, when sold for the purpose of rural windbreaks, shelterbelts, soil erosion prevention, and other agricultural purposes, are exempt from sales tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-02. Agriculture - Farm machinery and equipment. Farm machinery and irrigation equipment used principally for producing agricultural crops or livestock, including leasing or renting of farm machinery and equipment, are subject to sales tax at a reduced rate.

Machinery sold for nonagricultural purposes is subject to sales tax at the full rate. Items such as snowmobiles, snowblowers, lawnmowers, garden type tractors, and garden tillers are not farm machines and are subject to sales and use tax. Irrigation equipment sold for nonagricultural purposes is subject to sales tax. Tires,

batteries, repair or replacement parts, accessories, communication equipment, tools, shop equipment, grain bins, feed bunks, fencing material, and other farm supplies are subject to sales tax.

Contractors installing barn cleaners, milking systems, automatic feeding systems, irrigation systems, and similar installations which become a part of real property are subject to use tax on the cost of the materials.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-08.2, 57-40.2, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.3, 57-40.2-05, 57-40.2-12

81-04.1-04-03. Agriculture - Livestock and poultry feeds. Pet foods, including wormers and tonics, are not livestock feeds and are subject to sales tax whether or not such animals are kept as pets. Horse feed and rabbit feed are exempt from sales tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-04. Amusement - Admission receipts - Public school districts. The receipts of public school districts from entertainment or events are exempt from sales tax if the net receipts after necessary operating expenses are deposited in the school district treasury. It is immaterial whether the receipts are expended directly from the school district treasury or through an incidental revolving fund.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-05. Amusement - Fair operators and concessionaires. When a fair enters into a percentage basis contract with concessionaires for the privilege of conducting exhibitions, games, or entertainment, the concessionaire is responsible for payment of tax on gross receipts. Sale of tickets for activities operated during the fair and entirely controlled by a state, county, district, or local fair board are not subject to sales tax.

All concessionaires operating under licensed carnivals, circuses, show troupes, and similar organizations are agents of the licensed operator and must report their gross receipts and sales tax to the licensed operator. The licensed operator must maintain a record of the gross receipts and tax of each concessionaire and remit the sales tax to the tax commissioner when the operator's own payments are made. The records must be available to the tax commissioner.

Operators of carnivals, circuses, show troupes, and similar organizations traveling from place to place and with tangible personal property not permanently located in North Dakota must furnish security in the form of surety, cash, or negotiable bond to the tax commissioner before starting operations in the state.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-04, 57-39.2-20

81-04.1-04-06. Amusement - Games of chance. Receipts from games of chance operated by nonprofit organizations are exempt from sales tax. Instruments for gambling purchased by these organizations are subject to sales and use tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.3, 57-39.2-04, 57-39.2-20, 57-40.2-02.1

81-04.1-04-07. Amusement - Materials purchased by religious, educational, and charitable organizations. Purchases by nonprofit, religious, educational, or charitable organizations of materials needed to conduct entertainment or athletic events are subject to sales tax. Items such as programs which are given away, advertising posters, tickets, and similar items are taxable when purchased by these organizations. Programs which are sold may be purchased tax exempt by the organization if the organization presents a certificate of resale to the seller.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-04

81-04.1-04-08. Amusement - Skating rinks. The admission charge and the charge for the rental or use of skates is subject to sales tax whether or not they are separately stated.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1

81-04.1-04-09. Amusement - Tickets and admissions to places of amusement - Charges for participation in amusement. Tax is imposed upon the gross receipts from the sale of tickets or admission for participation in amusement, entertainment, or athletic events.

Admission includes regular dues or fees which entitle one to usual club or similar organization privileges. Complimentary tickets are, taxable on the same amount as the regular admission charge.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-04, 57-39.2-20

81-04.1-04-10. Amusement - Vending machines and coin-operated amusement devices. Gross receipts derived from all coin-operated machines are subject to sales tax if the price per article exceeds fifteen cents. In the absence of a written lease agreement stipulating division of gross receipts between the machine owner and the location owner, the machine owner is responsible for sales tax on all of the gross receipts derived from a vending machine or amusement device.

The owner of a vending machine or amusement device is liable for sales tax on machines purchased in this state or for use tax on machines purchased outside of this state regardless of whether or not a license fee is paid to any governmental authority for operating the machine.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-40.2-02.1

81-04.1-04-11. Auctions - Auctioneers, agents, and public auctions. Every auctioneer or agent acting for an unknown or undisclosed principal, entrusted with the possession of any bill of lading, customhouse, or warehouseman's receipt for delivery of any tangible personal property for the purpose of sale, is the owner. Upon the sale of such property, the individual is required to file a return and pay sales tax. This rule applies to lienholders, such as storagemen, pawnbrokers, mechanics, and artisans.

Auctioneers are retailers if they conduct a sale at which tangible personal property owned by any other retailer is sold. Sales of property submitted to the auction by nonretailers are casual sales and are not subject to sales or use tax.

Community sales and auction houses are retail establishments, the gross receipts of which are subject to sales tax. If the auctioneer is employed by the operator of a public auction, the operator is liable for the payment of sales tax. A public auction held to dispose of tangible personal property of an individual is a casual sale, the receipts of which are not taxable.

History: Effective June 1, 1984.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.3, 57-39.2-04, 57-39.2-20

81-04.1-04-12. Auctions - Foreclosure sales. Receipts from the sale at public auction of tangible personal property secured under the Uniform Commercial Code are not taxable if the sale is made by a court decree of foreclosure by an officer appointed by the court for that purpose or if the property is bid in by the mortgagee. Receipts from other foreclosure sales where goods and chattels are sold at retail are subject to sales tax.

History: Effective June 1, 1984.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-04

81-04.1-04-13. Automobiles - Sales. The gross receipts from the sale of motor vehicles, including trailers and semitrailers, are exempt from sales tax. Vehicles such as all-terrain vehicles, trail bikes, minibikes, snowmobiles, and go-carts, are not considered motor vehicles because they are not equipped for highway use and are subject to sales tax.

History: Effective June 1, 1984.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-14. Automobiles - Tire and tube repairing. The sale of tires which have been retreaded is subject to sales tax. Retreading is a nontaxable service only when the customer brings in the customer's own tire casings and those same casings are actually retreaded and returned to the customer.

History: Effective June 1, 1984.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-14, 57-39.2-20

81-04.1-04-15. Automobiles - Washing, waxing, and lubrication. If lubricants are sold separately from the rendering of lubrication service, and the customer is billed separately for greases or lubricants, the tax applies upon the gross receipts from such sale.

Receipts from coin-operated automobile washes are not subject to sales tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-16. Banks - Federal and state credit unions. Any credit union organized under North Dakota Century Code chapter 6-06 or under the Federal Credit Union Act is exempt from North Dakota sales tax on purchases of tangible personal property for its own use.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-17. Banks - Purchases and sales by national banks, state banks, trust companies, and savings and loan associations. When financial institutions are engaged in the business of purchasing tangible personal property for sale, lease, or rental at retail, they are required to collect and remit the tax from their customers on all such sales, leasing, or rental.

When financial institutions acquire tangible personal property to offer as an inducement to deposit funds, sales tax applies on the full purchase price. If the seller fails to collect the sales tax, the financial institution must report the purchase of such merchandise and pay use tax. If such merchandise is subsequently sold at a reduced price to depositors, no sales tax applies.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-20, 57-40.3

81-04.1-04-18. Banks - Sales by loan or finance companies. Companies which repossess or acquire tangible personal property in connection with their loan or finance business and sell such tangible personal property at retail are required to hold a retail sales tax permit and collect and remit sales tax on such sales.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-14, 57-39.2-20

81-04.1-04-19. Blacksmith and machine shops. When a blacksmith or machine shop makes or fabricates and sells a finished article to a customer, the sales tax applies to the full selling price of such article, with no deduction for labor or material used.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-11

81-04.1-04-20. Contractors. A contractor or subcontractor installing materials into real property located in North Dakota must pay sales or use tax on those materials regardless of who owns them. If the materials are sold for installation into real property located outside of this state, sales or use tax must be paid if such sales would be subject to tax in the state of attachment. For example, delivery of possession of tangible personal property within this state to a South Dakota contractor for installation in South Dakota is subject to tax because the delivery of possession to a North Dakota contractor in South Dakota would be subject to tax there. This also applies to a contractor or subcontractor engaged in retail sales who removes all or part of the machinery, equipment, material, or supplies used in carrying out a contract from stock purchased for resale.

A contractor or subcontractor is liable for sales tax on the cost of any items incorporated into or used in assembling articles used or consumed in carrying out a construction contract.

A contractor not engaged in retail sales who purchases carpeting, drapery, or drapery hardware and installs them into a home is required to pay tax on the selling price or to offer the seller a contractor's certificate of resale.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1

81-04.1-04-21. Florists and nurserymen. When the seller transplants for the buyer, the transaction is as an installation into real property, and the tax is computed on the cost of the merchandise.

When florists conduct transactions through a florists' telegraphy delivery association, the following rules apply:

1. On all orders taken by a North Dakota florist and sent to a second florist for delivery in any state, the sending florist is liable for sales tax on the receipts for the total amount collected from the customer.

2. When North Dakota florists receive telegraphic instructions from florists located within or outside of this state, the receiving florist is not liable for tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-20

81-04.1-04-22. Funeral homes - Memorial stones. When the seller of a memorial stone agrees to erect a stone upon a foundation, the total gross receipts from the sale, including the erection of the foundation, are taxable.

Charges for inscription or work incidental to preparing a stone for a customer are subject to tax. Charges for inscription upon a stone subsequent to erection are sales of service rendered in the alteration of tangible personal property and not subject to sales tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-23. Health - Drugstores, druggists, and pharmacists. Druggists and pharmacists selling nonprescription medicines and merchandise are liable for the collection and remittance of sales tax on the gross receipts from such sales.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-20

81-04.1-04-24. Health - Hospitals and infirmaries. Health institutions operating cafeterias, gift shops, or novelty shops open to the public are required to collect and remit sales tax on their gross receipts. If the cafeteria is operated solely for convenience of the staff, the proceeds are not subject to tax. Sales to these institutions of food supplies used in the cafeteria operation and sales of inventory for gift shops or novelty shop purposes are sales for processing or resale and are not subject to tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-11, 57-39.2-20, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.2, 57-40.2-05, 57-40.2-07, 57-40.2-09, 57-40.2-13

81-04.1-04-25. Health - Physicians. Drugs prescribed, compounded, and sold by a physician are not subject to sales tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-20

81-04.1-04-26. Hotels, restaurants, and lodging. The sale of meals by hotels, restaurants, and other eating places, are sales of tangible personal property and subject to sales tax. Sale of food supplies and beverage products to eating places for use in preparing and serving meals are sales for processing or resale and are not subject to tax.

When hotels, restaurants, or other eating places furnish meals to their employees as part compensation, they are liable for the tax upon the cost of the meals furnished. If records to substantiate the cost of meals to employees are not available, the tax commissioner will accept figures from records kept by competing hotels, restaurants, and other eating places, as a basis on which to compute the tax.

Cover charges made exclusively for the privilege of occupying space within eating places are included in the gross receipts.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-04, 57-39.2-21

81-04.1-04-27. Laundries and drycleaners. Gross receipts from coin-operated laundry or drycleaning machines are not subject to sales tax. Sale of soaps, bleaches, and other tangible personal property is subject to sales tax unless dispensed by a vending machine for fifteen cents or less. Sales of these items directly are taxable.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.3, 57-39.2-04

81-04.1-04-28. Military - Army or navy personnel and veterans. Gross receipts from retail sales to persons in the army, navy, or other service of the United States are subject to tax regardless of whether the delivery of the merchandise is at the retailer's place of business

or elsewhere. Merchandise delivered to a military base is taxable. Gross receipts from retail sales to all veterans are subject to tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3

81-04.1-04-29. Minerals - Coal. Coal mined and sold in this state subject to the coal severance tax is exempt from sales tax. Coal mined outside this state is subject to sales tax when sold in this state.

Coal used primarily for heating buildings in this state, including the heating of buildings with steam created by the burning of coal is subject to sales tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-61

81-04.1-04-30. Minerals - Coke and natural gas sold to industrial users. Sales of coke, natural gas, and other fuels not subject to a special tax are sales at retail and subject to sales tax if they do not become an integral, ingredient, or component part of a manufactured product sold at retail.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-31. Mobile homes - Factory manufactured homes. Factory manufactured homes are tangible personal property subject to sales tax at a reduced rate. A manufacturer or seller who permanently attaches such homes to a foundation is a construction contractor and is liable for tax based on the cost of materials to the manufacturer or seller.

Trade-ins are to be deducted from the gross sales price prior to application of the sales tax if the property being traded in was subject to either sales tax or the motor vehicle excise tax. No trade-ins are allowed on the purchase of a used mobile home.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-32. Mobile homes - Sales and rentals. Leasing or renting mobile homes for nonresidential purposes is subject to sales tax. A mobile home dealer using a mobile home as an office must pay sales or use tax based on the dealer's cost. Sales tax is applied on the lease or rental of a new mobile home at a reduced rate. The lease or rental of a used mobile home for residential purposes is not subject to sales or use tax, but rental of a used mobile home for nonresidential purposes is subject to tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-33. Moving and storage companies. Materials of a permanent and reusable nature are subject to North Dakota sales tax when purchased by a moving or storage company. Materials intended for one time usage are subject to North Dakota sales tax when used to pack, preserve, load, or store a shipment from one point in this state to another. These materials are exempt from sales tax when used to pack, preserve, load, or store a shipment from a point in this state to a point outside this state.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-34. Pawnbrokers. When a customer does not redeem property from a pawnbroker within the statutory period, title passes to the pawnbroker who must collect and remit the sales tax when the item is sold.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-20

81-04.1-04-35. Pit operators - Sand and gravel - Truckers and haulers. Operators of sand and gravel pits are retailers and are liable for sales tax on receipts from sales. Sales to truckers and haulers who do not have an established place of business and are not engaged in the business of selling at retail are taxable sales. When sand or gravel is procured at the pit for delivery to one who has employed a trucker or hauler, the operator of the pit must collect and remit the tax.

Sales to truckers and haulers who sell tangible personal property are not taxable if the pit operator obtains a certificate of resale. The trucker's or hauler's sales price, including the cost of delivery, is subject to sales tax. When a pit operator agrees to deliver sand or gravel to the purchaser's home, place of business, or other designated place, the entire cost, including the cost of delivery, is subject to sales tax.

When sand or gravel is sold unsevered and is severed for the purchaser's own use, the severing is subject to use tax. It is presumed that the selling price is eight cents per ton of two thousand pounds [905 kilograms], and the tax must be computed upon this value unless the contrary is shown.

When other minerals are severed and used by the person who severs them, the severance is subject to use tax. The price upon which the tax is based is the prevailing market price for such minerals in that geographic area of the state.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-10, 57-39.2-20, 57-40.2-01, 57-40.2-02.1, 57-40.2-05, 57-40.2-13

81-04.1-04-36. Picture framers. When a picture framer sells a frame and agrees to frame or install a picture for a lump sum, the total gross receipts are subject to sales tax. The gross receipts from services of installing a picture owned by a customer into a frame owned by that customer are exempt from sales tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-37. Photographers and photofinishers. Commercial photographers are the producers and sellers of tangible personal property which is subject to sales tax.

Sitting or camera charges are not subject to sales tax.

A photographer selling tangible personal property such as cameras, lenses, film, frames, photo equipment, and supplies may purchase them for resale. Sales tax must be collected when these items are sold to customers.

When photofinishers develop and print pictures, they are producing a completed article of tangible personal property and must collect the tax on the total selling price. Photofinishers engaged in the processing of color film who mount such film in frames are engaged in the production of tangible personal property and must collect the tax on the total charge or selling price.

The materials which become an integral part of the finished product are not taxable to the photofinisher. Chemicals which are used in the process of photofinishing and which do not become a part of the finished product are subject to tax when purchased by the photofinisher.

Charges for developing movie films are subject to sales tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01

81-04.1-04-38. Printers, mimeographers, duplicators, and lithographers. Printers, mimeographers, duplicators, and lithographers, are engaged in producing tangible personal property, and sales of printed matter are subject to tax. Tax applies to the full selling price of such property, including cost of labor or service rendered in its production. A separate charge made for addressing, folding, enclosing, and sealing is subject to sales tax.

Commercial printing involving the use of United States post cards or stamped envelopes purchased by the printer is taxed on the basis of the selling price of the job, less the amount of postage on the post cards or envelopes. Typesetting performed by a printer when title to the metal does not pass to the customer is not subject to sales tax.

The sales of printed advertising brochures and pamphlets are not taxable if labeled as an advertising supplement to a newspaper and delivered to the newspaper for insertion and distribution.

Materials and supplies used by printers, mimeographers, duplicators, lithographers, or newspaper publishers in their operations, which do not become an ingredient or component part of the end product, are taxable when purchased. If the printer sells these items after using them, it is a casual sale and not subject to sales tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-39. Rural electric cooperatives. Rural electric cooperatives are subject to sales or use taxes on purchases made for final use or consumption. These organizations are also required to collect the sales tax on all retail sales made by them.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-20, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.2, 57-40.2-05, 57-40.2-06, 57-40.2-13

81-04.1-04-40. Rentals and rental agencies. In a lease-purchase arrangement, sales tax must be charged on the rentals until the option is exercised. When the option is exercised, sales tax must be charged on any additional amount the purchaser must pay to complete the purchase.

An agent acting for an undisclosed principal and leasing tangible personal property to the public is the owner, and the rentals received are subject to sales tax. Tax applies to the full rental as long as the leased item is used within this state.

Persons engaged in the business of leasing or renting tangible personal property other than motor vehicles, are retailers and subject to sales tax. Purchases by rental agencies of items to be leased or rented are purchases for resale and are not subject to sales tax. A certificate of resale must be presented to the seller for these purchases.

The term "sale" does not include sales or rentals of motor vehicles licensed by the North Dakota motor vehicle registrar on which the motor vehicle excise tax has been paid to North Dakota.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-20

81-04.1-04-41. Telephone companies. Mutual or cooperative telephone companies are subject to payment of sales or use taxes on purchases made for final use or consumption. They must collect and remit sales tax on gross receipts derived from all retail sales.

Exchange companies must collect and remit sales tax upon their gross receipts. The exchange must pay the tax on the total receipts of a pay station. The gross receipts of an exchange must include assessments made to subscribers as well as regular periodic billings for telephone service. Exchange companies which receive switching fees from rural telephone lines must include the fees in gross receipts.

An exchange company owning service station lines but which does not operate switchboards, must collect sales tax from its subscribers. The company operating the switchboard and performing the switching service will collect the switching charge without tax, unless special authority for billing switching charges with tax added is requested jointly by the companies and authorized by the tax commissioner.

When toll services are furnished to subscribers of a service station or exchange company on a line switched by another exchange company, the company operating the switchboard over which the toll service call is placed must collect tax from the service station company.

Switching charges made to service station companies are taxable. There is no additional tax upon assessments to rural users for the switching charge.

Charges for telephone calls or telegrams beginning within this state and completed outside the state or beginning outside this state

and completed within this state are not subject to sales or use tax if such charges are clearly indicated on a statement given to the customer. Federal excise taxes separately stated may be excluded.

Telegrams subject to sales tax charged to the account of telephone subscribers and billed by the telephone company must appear on the toll bill with the sales tax added.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-11, 57-39.2-19, 57-39.2-20

81-04.1-04-42. Signs - Sales, rental, and leasing. If, as a condition of sale, the sign is physically attached by the seller to real property, the sale is not subject to tax. However, the seller must pay sales tax when purchasing materials to construct the sign. The lease or rental payments for use of any type of sign are subject to sales tax unless the sign is attached to real property.

Sales of small signs, desk signs, plaques, posters, magnetic signs, and similar products are subject to tax without a deduction for cost of material or labor.

When a painter paints a sign on the painter's own personal property and sells the finished product, it is subject to sales tax without any deduction for cost of material or labor.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-43. School - Students - Fraternities and sororities. Colleges, universities, student fraternities, or sororities serving meals to students other than members, for which separate charges are made, or operating canteens selling tangible personal property must collect and remit sales tax.

Student fraternities and sororities are not political subdivisions or institutions of the state and are not exempt from sales tax on purchases of tangible personal property for their own use.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-04, 57-39.2-20

81-04.1-04-44. School - Students - Supplies. The term "school supplies" means only those items purchased by a school for use by it in the classrooms, gymnasiums, athletic fields, and offices to conduct its

programs and courses of study and in operating and maintaining the school plant. It does not include materials purchased to construct a school building or other buildings. School or athletic supplies sold directly to students by a retailer are not exempt from sales tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-04

81-04.1-04-45. Transportation - Dining. Sales of tangible personal property on railway trains, club cars, lounge cars, dining cars, or airlines operated in or through this state are taxable if ordered or delivered within the boundaries of this state.

Food, meals, or alcoholic beverages included in the ticket charge by an airline are not subject to sales tax. The airline may not purchase such food, meals, or alcoholic beverages for resale, and all such purchases which take place in this state are subject to sales tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-04

ARTICLE 81-05

MOTOR VEHICLE EXCISE TAX

[Repealed effective June 1, 1984]

ARTICLE 81-05.1

MOTOR VEHICLE EXCISE TAX

Chapter

81-05.1-01

Motor Vehicle Excise Tax

CHAPTER 81-05.1-01

MOTOR VEHICLE EXCISE TAX

Section

81-05.1-01-01

Definitions

81-05.1-01-02	Motor Vehicle Excise Tax Imposed
81-05.1-01-03	Exemptions
81-05.1-01-04	Leasing Companies
81-05.1-01-05	Purchases by Indians
81-05.1-01-06	Company-owned Vehicles
81-05.1-01-07	Nonfranchise Purchases
81-05.1-01-08	Purchase of Vehicles With Extra Equipment
81-05.1-01-09	Refunds

81-05.1-01-01. Definitions. As used in this article all terms and phrases have the same meaning as defined in the North Dakota Century Code, and in addition "trailer" and "semitrailer" includes trailers towed by a bona fide resident farmer hauling agricultural, horticultural, dairy, or other farm products if the gross weight, not including the towing vehicle, does not exceed twenty-four thousand pounds [10,886.22 kilograms].

History: Effective June 1, 1984.

General Authority: NDCC 57-40.3-12

Law Implemented: NDCC 57-40.3-01

81-05.1-01-02. Motor vehicle excise tax imposed.

1. All motor vehicles purchased or acquired in or outside this state intended for use upon the streets and highways of this state are subject to an excise tax at the rate of four percent on the purchase price, less any trade-in allowance, of the motor vehicle.
2. A credit will be allowed for sales, use, or motor vehicle excise tax paid in another state on all motor vehicles purchased or acquired outside this state if the state in which the motor vehicle was purchased or acquired allows a similar credit.

If the state in which the motor vehicle was purchased does not impose a sales tax or a motor vehicle excise tax, the North Dakota motor vehicle excise tax must be paid on the full purchase price of the vehicle before license and registration will be issued in this state. If the motor vehicle has been previously licensed and registered in a state which imposes no sales tax or motor vehicle excise tax, the North Dakota motor vehicle excise tax will apply at the fair market value of the vehicle upon registration in this state.

If a motor vehicle has been licensed and registered in a foreign country prior to its licensing and registration in this state, no credit is allowed for sales tax or motor vehicle excise tax previously paid to such foreign country.

3. The motor vehicle excise tax is in addition to any other tax provided for by law on the purchase price of motor vehicles.
4. The motor vehicle excise tax must be paid to the motor vehicle registrar when application is made for registration plates or for a certificate of title for a motor vehicle.

Registration plates and certificates of title will not be issued unless the tax is paid.

History: Effective June 1, 1984.

General Authority: NDCC 57-40.3-12

Law Implemented: NDCC 39-04-18, 57-40.3-02, 57-40.3-06, 57-40.3-07, 57-40.3-08, 57-40.3-09

81-05.1-01-03. Exemptions. The following are exempt from payment of the North Dakota motor vehicle excise tax:

1. Motor vehicles owned by disabled veterans pursuant to conditions set forth in North Dakota Century Code section 57-40.3-04.
2. Any motor vehicle owned by or in possession of the federal or state government, including any state institution, or a political subdivision thereof.
3. Motor carrier vehicles in excess of twenty thousand pounds [9,071.85 kilograms] gross weight, whether owned or leased, engaged in interstate commerce but only to the extent their revenue from interstate hauling bears to their total revenue from hauling for the preceding operating year.

For the purpose of properly administering this exemption, the percentage allowed as an exemption to carriers is derived from figures included in either the auto transportation utility annual report or the agricultural carrier annual report. One of those reports must be filed annually by each carrier registered with the North Dakota public service commission. When completing the required report, the carrier must include figures which indicate gross income from freight or passenger transport during the preceding calendar year as well as income from strictly intrastate transport for that year. No exemption is allowed until the required report is filed with the North Dakota public service commission.

When one person owns or leases two or more motor carrier vehicles over twenty thousand pounds [9,071.85 kilograms], the receipts from all such vehicles will be used when figuring the percentage of revenue earned from interstate and intrastate transport for motor vehicle excise tax purposes.

When the person responsible for payment of the motor vehicle excise tax has not owned or leased such a motor carrier vehicle during the preceding year, no exemption is allowed at the time of titling it with the registrar of motor vehicles, unless that person purchases a business which received revenue from interstate hauling in the preceding year. The exemption will be allowed only if there are no substantial changes intended which would affect the percentage of interstate hauling done by the business. No exemption will be allowed to persons responsible for the motor vehicle excise tax on the basis of projected miles of interstate transport for a future year or years. A person who purchases or leases such a motor carrier vehicle for use in interstate commerce but who did not own or lease such a vehicle for interstate commerce use during the preceding year will not be allowed an exemption at the time of titling the vehicle with the registrar of motor vehicles, but after using it one year in interstate commerce, that person may apply for a refund for that part of the tax attributed to use in interstate commerce as determined in accordance with this section.

Private motor carriers and those agricultural carriers who are not required to file an annual report with the public service commission are eligible for the interstate exemption when titling motor carrier vehicles of at least twenty thousand pounds [9,071.85 kilograms] gross weight. However, owners must submit a signed affidavit to the registrar of motor vehicles indicating the percentage of gross revenue they received during the preceding calendar year from interstate transport of passengers or freight in such vehicles. These carriers' records will be subject to audit by the North Dakota tax department to substantiate figures claimed on the affidavit. The percentage of gross revenue refers to the gross revenue from freight or passenger transport.

4. Any motor vehicle transferred without consideration to or from a person within thirty days prior to that person's entering into, within thirty days after discharge from, or while serving in the armed services of the United States, provided the person certifies to the registrar of motor vehicles that the transfer is made for one of those reasons.

Members of the armed forces on active military duty within this state are liable for payment of motor vehicle excise tax when titling a vehicle in this state.

Any motor vehicle purchased by a North Dakota resident who is a member of the armed forces and is stationed out of state may title that vehicle in this state but is exempt from payment of excise tax provided the vehicle is not intended for use in this state.

5. Motor vehicles acquired by inheritance from or by bequest of a decedent who owned it; the transfer of motor vehicles which were previously titled or licensed in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more of the joint tenants; the transfer of motor vehicles by way of gift between a husband and wife, parent and child, or brothers and sisters.

This exemption includes title changes for motor vehicles as a result of name changes due to adoption, court order, marriage, or divorce.

6. Motor vehicles transferred between a lessee and a lessor, provided that the lessee has been in continuous possession of such vehicle for a period of one year or longer, and provided that the lessor has paid either the tax imposed by North Dakota Century Code chapter 57-40.3 at the time of titling or licensing the vehicle in this state or the use tax imposed by North Dakota Century Code chapter 57-40.2.
7. Any motor vehicle in the possession of and used as a bus exclusively by a nonprofit senior citizens' or handicapped persons' corporation, provided that such bus is not used for commercial activities.
8. Any motor vehicle which does not exceed ten thousand pounds [4,535.92 kilograms] gross weight and which is acquired by a permanently physically disabled licensed driver who is restricted to operating only motor vehicles equipped with special controls to compensate for the disability, or by a permanently physically disabled individual who has either surrendered or who has been denied a operator's license because of a permanent physical disability, provided the individual obtains from the state highway commissioner or an authorized representative a statement that either the individual has such a restricted operator's license, or has surrendered the license, or one has not been issued because of a permanent physical disability.
9. Any motor vehicle being registered pursuant to North Dakota Century Code chapter 39-04 for the first time by a person who manufactured or assembled the motor vehicle for that person's own use, except when such vehicle is manufactured by a manufacturer of motor vehicles as defined in subsection 32 of North Dakota Century Code section 39-01-01.
10. Motor vehicles purchased or otherwise acquired by a parochial or a private nonprofit school to be used for the transportation of students. This exemption includes motor vehicles used for driver education instruction. The vehicles may not be used in a commercial activity, and the school must normally maintain a regular faculty and a curriculum approved

by the department of public instruction and must have a regularly organized body of students.

11. Housetrailers or mobile homes subject to the sales and use tax. Travel trailers are not exempt.
12. Motor vehicles transferred as the result of the following partnership transactions:
 - a. Motor vehicles licensed in the name of an individual who is a member of a general or limited partnership transferred to the partnership at the time the partnership is established.
 - b. Motor vehicles licensed in the name of a general or limited partnership transferred to an individual who is a member of such partnership at the time the partnership is terminated.
13. Motor vehicles transferred as the result of the following corporate transactions:
 - a. Motor vehicles licensed in the name of an individual who is a stockholder in a corporation transferred to the corporation at the time the corporation is organized.
 - b. Motor vehicles licensed in the name of a corporation transferred to a stockholder of that corporation at the time the corporation is liquidated.
14. Motor vehicles transferred due to business reorganization. The original owner of the motor vehicle must be a member of the reorganized business and the exemption applies only under the following circumstances:
 - a. A sole proprietor changes the name or the nature of the proprietor's business and requests a new title to reflect this change.
 - b. A sole proprietor becomes a partner in a partnership and a new title is requested to reflect the change in ownership of the vehicle.
 - c. A sole proprietor or partnership reorganized into a corporation and a motor vehicle is transferred from the sole proprietor or a partnership to the corporation.
 - d. A motor vehicle is transferred between a subsidiary and a parent corporation as the result of a merger, exchange of, or redistribution of assets during the course of reorganization.

- e. A merger takes place between any of the following: a sole proprietorship, partnership, or corporation.
- f. A joint venture is undertaken.

History: Effective June 1, 1984.
General Authority: NDCC 57-40.3-12
Law Implemented: NDCC 57-40.3-04

81-05.1-01-04. Leasing companies. Leasing companies are responsible for payment of the motor vehicle excise tax to the registrar of motor vehicles when titling vehicles for leasing purposes. The subsequent sale of such a vehicle to a lessee who has been in continuous possession of the vehicle for a period of one year or more is tax exempt. If a leased vehicle is sold to a lessee who has been in possession of the vehicle for a period of less than a year, the tax must be remitted to the registrar of motor vehicles by the purchaser.

When a dealer occasionally rents a vehicle on a daily basis and has not paid motor vehicle excise tax on the vehicle, such as one held for resale, the dealer is required to collect and remit sales tax at the current rate based on the daily rental charges.

History: Effective June 1, 1984.
General Authority: NDCC 57-40.3-12
Law Implemented: NDCC 57-40.3-02, 57-40.3-04

81-05.1-01-05. Purchases by Indians. Purchases of motor vehicles by Indians are subject to the motor vehicle excise tax for titling purposes. It is presumed that such vehicles are intended for use upon public highways in the state of North Dakota.

Motor vehicles owned and operated by Indian mission schools are exempt from payment of motor vehicle excise tax.

History: Effective June 1, 1984.
General Authority: NDCC 57-40.3-12
Law Implemented: NDCC 39-04-18, 57-40.3-02, 57-40.3-04, 57-40.3-08

81-05.1-01-06. Company-owned vehicles. When a company owns a vehicle which is titled in an employee's name, then transfers the title to another employee or to the company itself, motor vehicle excise tax is due.

History: Effective June 1, 1984.
General Authority: NDCC 57-40.3-12
Law Implemented: NDCC 57-40.3-02

81-05.1-01-07. Nonfranchise purchases. Any automobile dealer who purchases a new vehicle for resale for which the dealer does not have the factory franchise is liable for motor vehicle excise tax based on the acquisition cost of such vehicle.

History: Effective June 1, 1984.
General Authority: NDCC 57-40.3-12
Law Implemented: NDCC 39-22-02

81-05.1-01-08. Purchase of vehicles with extra equipment. When purchasing and titling a vehicle which includes extra equipment such as a grain box, camper topper, well drilling rig, and bulk tank, motor vehicle excise tax must be remitted on the combined purchase price of both the vehicle and the extra equipment if purchased as a unit.

History: Effective June 1, 1984.
General Authority: NDCC 57-40.3-12
Law Implemented: NDCC 57-40.3-02

81-05.1-01-09. Refunds. If it appears that any motor vehicle excise tax was paid in error or remitted when not due, the tax will be refunded upon application. The application must be made within three years from the date of payment of the tax.

Such application should be made to the registrar of motor vehicles who will, upon presentation of satisfactory proof, authorize the refund to be made. No refund will be authorized by the registrar of motor

vehicles until the registrar is fully satisfied through the production of necessary purchase agreements, tax receipts, other documents, and information that the refund is warranted.

History: Effective June 1, 1984.
General Authority: NDCC 57-40.4-01
Law Implemented: NDCC 57-40.4-01, 57-40.4-02

ARTICLE 81-06

MOTOR FUEL TAX

[Repealed effective June 1, 1984]

ARTICLE 81-06.1

MOTOR FUEL TAX

Chapter	
81-06.1-01	Definitions
81-06.1-02	Motor Fuel Tax Imposed
81-06.1-03	Refunds and Assignments
81-06.1-04	Licenses, Bonding, and Permits

CHAPTER 81-06.1-01 DEFINITIONS

Section	
81-06.1-01-01	Definitions

81-06.1-01-01. Definitions. As used in this article, unless the context otherwise requires, all terms and phrases have the same meaning as defined in the North Dakota Century Code, and, in addition:

1. "Motor fuel" means all motor vehicle fuels and aviation fuels.
2. "Public funds" means payment by the United States, state, county, city, township, park district, or other political subdivision.
3. "Special fuels" include diesel fuel, heating oil, kerosene, jet aviation fuel, propane, butane, agriculturally derived alcohol used pure or blended with another agriculturally derived alcohol, and fuel consisting of a blend of diesel fuel and recovered oil. It does not include gasoline or antifreeze.

History: Effective June 1, 1984.

General Authority: NDCC 57-43.1-30, 57-43.2-22, 57-43.3-05

Law Implemented: NDCC 57-43.1-01, 57-43.2-01, 57-43.3-01

CHAPTER 81-06.1-02 MOTOR FUEL TAX IMPOSED

Section	
81-06.1-02-01	Motor Vehicle Fuel Tax Imposed
81-06.1-02-02	Importer for Use Tax Imposed
81-06.1-02-03	Special Fuels Tax Imposed
81-06.1-02-04	Aviation Fuel Tax Imposed
81-06.1-02-05	Tax Deductions Allowed to Dealers

81-06.1-02-01. Motor vehicle fuel tax imposed. Motor vehicle fuel sold or used in this state is taxed at the rate of thirteen cents per gallon [3.79 liters].

1. Agriculturally derived alcohol-blended motor vehicle fuels are taxed as follows:
 - a. Through December 31, 1983, four cents per gallon [3.79 liters] less than the above-stated tax.
 - b. From January 1, 1984, through December 31, 1984, five cents per gallon [3.79 liters] less than the above-stated tax.
 - c. From January 1, 1985, through December 31, 1985, six cents per gallon [3.79 liters] less than the above-stated tax.
 - d. From January 1, 1986, through June 30, 1992, four cents per gallon [3.79 liters] less than the above-stated tax.
 - e. After June 30, 1992, at the same rate as the tax stated in the first paragraph of this section.
2. Banks, trust companies, building and loan associations, credit unions, and public and private educational facilities are subject to the motor vehicle fuel tax. Federal credit unions organized under the Federal Credit Union Act are exempt.
3. Motor vehicle fuel used to operate power take-off equipment on well drilling rigs to transmit power from vehicles to auxiliary equipment is subject to motor vehicle fuel tax. However, the tax may be refunded in accordance with the provisions in section 81-06.1-03-01.
4. The motor vehicle fuel dealer is responsible for collecting and remitting the tax imposed. Monthly returns are required and the tax must be remitted upon filing of the returns.

History: Effective June 1, 1984.

General Authority: NDCC 57-43.1-30

Law Implemented: NDCC 57-43.1-02, 57-43.1-16, 57-43.1-23, 57-43.1-33

81-06.1-02-02. Importer for use tax imposed. Importer for use tax on all motor vehicle fuel and special fuels used in the propulsion of motor vehicles upon the public highways in this state is imposed at the rate provided for motor vehicle fuels in section 81-06.1-02-01 and special fuels in section 81-06.1-02-03.

1. For purposes of computing the amount of fuel used in interstate fleet operations, a factor of total miles [kilometers] traveled in all states, divided by total fuel consumed in and out of state, determines average miles per

gallon [kilometers per liter]. This factor must be used to determine fuel used in North Dakota.

2. The user is to receive credit for North Dakota fuel tax paid on such fuel.
3. The tax referred to in this section does not apply to fuel imported into and used in this state in:
 - a. Automobiles used solely for the transportation of persons for purposes other than for hire.
 - b. Motor vehicles with a fuel capacity of thirty-five gallons [132.49 liters] or less if the vehicle is not being used as a common or contract carrier or as a private commercial carrier.
 - c. Motor vehicles of the government of the United States, state, county, city, or political subdivision.
4. The fuel dealer is responsible for collecting and remitting the tax and is responsible for filing a monthly report. The tax must be remitted when the reports are filed.
5. Any commercial vehicle transporting fuel in a supply tank into this state for use in this state must be licensed and must report and remit any tax due.

History: Effective June 1, 1984.

General Authority: NDCC 57-43.1-30, 57-43.2-22

Law Implemented: NDCC 57-43.1-02, 57-43.1-33, 57-43.1-34, 57-43.1-35, 57-43.2-12, 57-43.2-26, 57-43.2-27, 57-43.2-28

81-06.1-02-03. Special fuels tax imposed. Special fuels sold, used, or delivered in this state are taxed at the rate of thirteen cents per gallon [3.79 liters].

1. This tax does not apply to special fuels used for heating, agricultural, industrial, or railroad purposes.
2. Included in this tax are:
 - a. Contractors performing government contracts.
 - b. Banks, trust companies, building and loan associations, credit unions, and public and private educational facilities. Federal credit unions organized under the Federal Credit Union Act are exempt.
3. An excise tax of two percent applies on sales of special fuels exempt from the special fuels tax if that tax is subsequently refunded.

4. The special fuels dealer is responsible for collecting and remitting the tax imposed.

History: Effective June 1, 1984.

General Authority: NDCC 57-43.2-22

Law Implemented: NDCC 57-43.2-02, 57-43.2-03, 57-43.2-04

81-06.1-02-04. Aviation fuel tax imposed. Aviation fuel is taxed at the rate of eight cents per gallon [3.79 liters]. The aviation fuel dealer is responsible for collecting and remitting the tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-43.3-05

Law Implemented: NDCC 57-43.3-02

81-06.1-02-05. Tax deductions allowed to dealers.

1. A motor vehicle fuel dealer is allowed to deduct two percent of the amount of the tax due to cover the cost of collecting the tax and remitting it to the tax commissioner.
2. A motor vehicle fuel dealer and a special fuels dealer, other than a dealer of liquefied petroleum gas, is allowed to deduct the actual shrinkage of the total gallonage of the motor fuel received each calendar month, if that allowance does not exceed one percent of the total received by the dealer during that month.
 - a. The motor vehicle fuel dealer must file reports on gross purchases unless a temperature adjusted method is agreed to between the dealer and the supplier. A reporting method must be used for a full reporting year, and any change in the reporting method must have prior approval by the tax commissioner.
 - b. It is presumed that all motor vehicle fuel and special fuels received by a dealer over and above the one percent shrinkage allowance has been sold, delivered, or used, and the dealer is liable for the appropriate tax on each gallon [3.79 liters] of fuel not accounted for.
 - c. In consideration of shrinkage losses and a retailer's cost of collecting and transmitting taxes, a wholesale dealer making a sale of motor vehicle fuels must credit the retail dealer with one percent of the gallons [liters] sold.
 - d. The special fuels dealer of liquefied petroleum gas may deduct the actual shrinkage of the total gallonage received each month not to exceed two percent of the gallonage received during that month.

History: Effective June 1, 1984.

General Authority: NDCC 57-43.1-30, 57-43.2-22

Law Implemented: NDCC 57-43.1-24, 57-43.1-26, 57-43.1-27, 57-43.2-21

CHAPTER 81-06.1-03 REFUNDS AND ASSIGNMENTS

Section

81-06.1-03-01	Motor Vehicle Fuel Tax Refunds
81-06.1-03-02	Motor Vehicle Fuel Tax Not Refundable
81-06.1-03-03	Special Fuels Tax Refunds
81-06.1-03-04	Aviation Fuel Tax Refunds
81-06.1-03-05	Supporting Documents Required for Refund
81-06.1-03-06	Assignment of Tax on Agricultural and Industrial Purchases of Motor Vehicle Fuel

81-06.1-03-01. Motor vehicle fuel tax refunds. Motor vehicle fuel tax refunds may be obtained upon application to and approval by the tax commissioner. Refunds may be provided for:

1. Tax paid by any person on motor vehicle fuel used for agricultural or industrial purposes, except that fuel used in motor vehicles operated or intended to be operated on public highways of this state.

The tax commissioner will deduct one-half cent per gallon [3.79 liters] from any refund for deposit in the agriculturally derived motor fuel fund.

2. Motor vehicle fuel tax paid by the state of North Dakota or any of the political subdivisions on that fuel used in publicly owned vehicles for construction, reconstruction, or maintenance of any public road, highway, street, or airport. The tax imposed may be fully refunded.
3. Motor vehicle fuel tax imposed on that fuel used in the operation of auxiliary (drilling) equipment and which fuel is exempt from the tax provided:
 - a. The well driller keeps complete and accurate daily records of the time during which the drilling equipment is operated.
 - b. The records reflect miles [kilometers] traveled in each individual unit.

- c. The well driller has certified figures from the manufacturer of the drilling equipment as to standard fuel consumption.
 - d. The well driller (drilling operator) complies with all provisions of North Dakota Century Code chapter 57-43.1 in applying for the refund.
4. Motor vehicle fuel tax imposed on fuel which was thereafter removed from this state to a state which requires payment of a tax upon the use of the fuel in that state.

The tax commissioner will deduct one-half cent per gallon [3.79 liters] from any refund for deposit in the agriculturally derived motor fuel fund.

This refund also applies to special fuels.

5. No refund claim for less than five dollars will be allowed.

History: Effective June 1, 1984.

General Authority: NDCC 57-43.1-30

Law Implemented: NDCC 57-43.1-03, 57-43.1-06, 57-43.1-08, 57-43.1-42

81-06.1-03-02. Motor vehicle fuel tax not refundable. Any motor vehicle fuel tax imposed upon a person, firm, or private corporation is not refundable if the work performed was paid for with public funds.

History: Effective June 1, 1984.

General Authority: NDCC 57-43.1-30

Law Implemented: NDCC 57-43.1-03, 57-43.1-05, 57-43.1-06, 57-43.1-08, 57-43.1-09

81-06.1-03-03. Special fuels tax refunds. Taxes paid on special fuels used for heating, agricultural, industrial (other than public funded), or railroad purposes, which are exempt from the tax, are refundable upon application to and approval by the tax commissioner.

The two percent special fuels tax imposed on fuels otherwise exempt from tax is not refundable.

History: Effective June 1, 1984.

General Authority: NDCC 57-43.2-22

Law Implemented: NDCC 57-43.2-02, 57-43.2-03

81-06.1-03-04. Aviation fuel tax refunds. The excise tax imposed on aviation fuel is refundable upon application to and approval by the tax commissioner:

1. When a refund is made, a special excise tax of four percent is applied and that special tax will be deducted from the refund.
2. Eligibility for refunds of aviation fuel tax is determined by the same criteria as that for motor vehicle fuels.
3. No refund claim for less than five dollars will be allowed.

History: Effective June 1, 1984.

General Authority: NDCC 57-43.3-05

Law Implemented: NDCC 57-43.3-03, 57-43.3-04

81-06.1-03-05. Supporting documents required for refunds.

Claims for refund of motor vehicle fuel tax and aviation fuel tax must be supported by original sales tickets and invoices. For this purpose, only the top copy will be considered as original and must be designated by the word "original" shown thereon. Double-faced carbon must be used between the top original and the second copy so that carbon imprint is made on the reverse side of the top of the original ticket.

Sales tickets or invoices must be issued in an original and one or more carbon copies and must show the following information:

1. Date of sale (date of delivery of the fuel).
2. Name and address of the purchaser (which must be in the name of the claimant).
3. Name and address of seller (machine printed or rubber stamped).
4. Number of gallons [liters] purchased and price per gallon [3.79 liters], exclusive of taxes, accurately extended.
5. North Dakota motor vehicle tax must be listed as a separate item.
6. The invoice book and the sales tickets or invoices in each book must be used in consecutive order and must be machine numbered serially.
7. Sales tickets or invoices must bear the signature of the purchaser as having received the motor vehicle or aviation fuels.
8. Only paid sales tickets or invoices may be submitted for refund, and proof of payment must appear on the face of the document.
9. Mileage of licensed vehicles is to be listed on the claim.

- 10 Service station purchases for licensed vehicle use must be listed in space provided on the refund claim form.
11. The gasoline tax report and claim for refund must be gold in color, Form R-11-12, and the aviation fuel tax refund claim must be pink in color, Form R-31.
12. Claims for refunds filed on behalf of another, such as a deceased person or trust, must include a certified copy of the authority of the person making the claim.

All sales tickets or invoices must be made out at the time of delivery of the motor vehicle or aviation fuel and only in the amount of the gallonage delivered at the time.

Making erasures, changes, or corrections on the tickets or invoices, such as changes in dates, gallonage, and name, may result in rejection of the entire claim. When corrections are necessary, they must be certified by the dealer by affidavit.

Sales tickets or invoices for all purchases during a calendar year presented for refund must be filed on or after January first and before July first of the next succeeding year and must be attached to the claim.

A carbon copy of each invoice must be retained by the seller for a period of not less than two years.

All dealers who use a computerized system such as CARD TROL must supply a monthly invoice and must attach copies of all billings to that invoice when requesting a refund.

History: Effective June 1, 1984.

General Authority: NDCC 57-43.1-30, 57-43.3-05

Law Implemented: NDCC 57-43.1-04, 57-43.1-05, 57-43.1-10, 57-43.3-03

81-06.1-03-06. Assignment of tax on agricultural and industrial purchases of motor vehicle fuel. Any person who has purchased motor vehicle fuel on account and who is eligible for a refund may assign that person's claim for a refund to the dealer who has paid the refundable tax, provided a valid tax assignment agreement is attached to the refund claim form.

1. Dealers may take assignments on agricultural fuel sales for credit on their tax returns in April, May, June, July, August, and September. Tickets must be thirty days old before credit can be allowed on dealers' returns. Before any person is allowed to assign a motor vehicle fuel tax refund to the dealer during this period, the person must have a valid permit issued by the tax commissioner authorizing such assignment. Application forms may be obtained from the tax commissioner. There is no fee for a permit.

2. Those persons who have a valid tax assignment permit issued by the tax commissioner will be charged one-half cent per gallon [3.79 liters] by the dealer and that charge will be remitted to the tax commissioner by the dealer when the dealer submits the tax assigned invoices for credit. The tax will be deposited in the agriculturally derived fuel tax fund.
3. All tickets must include the following:
 - a. The amount of the tax.
 - b. The purchaser's tax assignment permit number.
 - c. The purchaser's address.
 - d. A tax assignment agreement stamp.
 - e. Two signatures, one as the assignor and one verifying goods received. If the signature of the assignor is missing from the ticket, the tax commissioner will send the dealer a form upon which the purchases are listed and which the dealer and the purchaser must sign verifying that those purchases were intended to be assigned. The signed certifications must be submitted to the tax commissioner by the dealer by the date specified on the form.
4. All tax assignments must meet the following conditions:
 - a. Custom combine tickets are not acceptable for assignment credit on monthly tax returns.
 - b. Assignments will be accepted on agricultural fuel only in bulk deliveries of fifty gallons [189.27 liters] or more.
 - c. All invoices must have the carbon imprint on the reverse side.
 - d. Tickets must be tax assigned by the purchaser.
 - e. Sales of special fuels are not acceptable for assignment credit on the dealer's report.
 - f. Assignment stamps should be placed where they least interfere with other items and signatures on the ticket.
 - g. If more than one item appears on the ticket, the gallonage on which tax is being assigned must be clearly indicated.
 - h. Only original tickets will be acceptable.
5. Tickets issued to a partnership must be assigned as follows:

If issued to "Brown Brothers", the assignment agreement must be signed "Brown Brothers by John Brown, partner". If issued in individual names as "Bob and John Brown", the assignment agreement should be signed "Bob and John Brown by John Brown, partner".

6. In the case of a husband and wife, either spouse may sign the ticket even though it is issued to one spouse only, provided both parties signed the tax assignment permit application.

History: Effective June 1, 1984.

General Authority: NDCC 57-43.1-30

Law Implemented: NDCC 57-43.1-03, 57-43.1-11, 57-43.1-12

CHAPTER 81-06.1-04 LICENSES, BONDING, AND PERMITS

Section

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|---------------|---|
| 81-06.1-04-01 | Motor Vehicle Fuel Dealer's License,
Fee, and Bond |
| 81-06.1-04-02 | Special Fuels License and Bonding |
| 81-06.1-04-03 | Importer for Use License and Bonding |

81-06.1-04-01. Motor vehicle fuel dealer's license, fee, and bond.

Each person who wishes to engage in the sale of motor fuel in this state must obtain a motor vehicle fuel dealer's license from the tax commissioner. To obtain the license, an applicant must file an application upon a form prescribed and furnished by the tax commissioner. The fee for the license is two dollars and is renewable on June thirtieth of each odd-numbered year. An applicant must also furnish a bond guaranteeing the payment of the motor vehicle fuel tax. Bonds will be required to equal approximately two months' tax collections and may not be less than one thousand dollars.

History: Effective June 1, 1984.

General Authority: NDCC 57-43.1-30

Law Implemented: NDCC 57-43.1-13, 57-43.1-14, 57-43.1-15

81-06.1-04-02. Special fuels license and bonding.

1. Any person who wishes to act as a special fuels dealer in this state must obtain a special fuels dealer's license from the tax commissioner. Applications for a special fuels dealer's license are available upon request from the tax commissioner. The applicant must submit a completed application together with a surety bond to assure compliance with North Dakota Century Code chapter 57-43.2 and the payment of all taxes. Separate licenses are required for each place of business or

location where special fuels are regularly sold. The amount of the bond is based on the equivalent of two months of fuel tax collections and may not be less than five hundred dollars. Upon receipt of application and bond and upon payment of the special fuels dealer's license fee of ten dollars, the tax commissioner will issue a license. Licenses are nontransferable and remain valid until revoked for cause or are otherwise canceled.

2. Any person who wishes to act as a dealer of liquefied petroleum gas must obtain a wholesale or retail special liquefied petroleum gas dealer's license issued by the tax commissioner. The wholesale liquefied petroleum gas dealer must post a continuous surety bond with the tax commissioner equal to two months of liquefied petroleum gas tax collections but not less than five hundred dollars. The license fee is ten dollars and the license remains in effect until revoked for cause or canceled by the licenseholder.
3. The retail liquefied petroleum gas dealer must obtain a liquefied petroleum gas retail dealer's permit biennially from the tax commissioner. The cost of the permit is one dollar and the permit expires June thirtieth of each odd-numbered year.

History: Effective June 1, 1984.

General Authority: NDCC 57-43.2-22

Law Implemented: NDCC 57-43.2-05, 57-43.2-06, 57-43.2-07, 57-43.2-08, 57-43.2-25

81-06.1-04-03. Importer for use license and bonding.

1. Any person seeking to transport fuel into this state in the fuel supply tank of any motor vehicle unless otherwise exempt by law must obtain an importer for use license. All applications for such licenses must be on forms furnished by the tax commissioner. The license or permit issued by the tax commissioner or a photocopy thereof must be carried in the passenger compartment of each motor vehicle at all times when the motor vehicle is in this state. Quarterly returns must be filed with the tax commissioner. Forms are available upon request.

If an importer for use license has been revoked for cause, the tax commissioner may reinstate the license upon payment of a fifty dollar fee.

2. Any person who makes no more than one trip in any seventy-two-hour period into or through the state of North Dakota may secure an occasional trip permit for a fifteen dollar fee in lieu of obtaining an importer for use permit. A

permit can be obtained at the port of entry upon entering this state.

History: Effective June 1, 1984.

General Authority: NDCC 57-43.1-30, 57-43.2-22

Law Implemented: NDCC 57-43.1-36, 57-43.1-37, 57-43.1-39, 57-43.1-40, 57-43.1-43, 57-43.2-29, 57-43.2-30, 57-43.2-32, 57-43.2-33, 57-43.2-36

ARTICLE 81-07

ESTATE TAX

[Repealed effective January 1, 1980;
July 1, 1981; June 1, 1984]

ARTICLE 81-07.1

ESTATE TAX

Chapter

81-07.1-01

Estate Taxes

CHAPTER 81-07.1-01

ESTATE TAXES

Section

81-07.1-01-01

Terms and Phrases

81-07.1-01-02

Taxes and Interest Payable

81-07.1-01-03

Credit for State Death Taxes

81-07.1-01-04

Valuations

81-07.1-01-05

Estate Tax Documents

81-07.1-01-01. Terms and phrases. Beginning July 1, 1975, and for all years thereafter, terms and phrases used in North Dakota Century Code chapter 57-37.1 and in this article have the same meaning as given to those terms and phrases in the United States Internal Revenue Code of 1954 as amended and in effect for state purposes on the date of decedent's death.

History: Effective June 1, 1984.

General Authority: NDCC 57-37.1-17

Law Implemented: NDCC 57-37.1-01

81-07.1-01-02. Taxes and interest-payable. Estate taxes are due and payable upon death of a decedent and become delinquent if not paid within fifteen months from the date of death. Interest attaches to unpaid taxes beginning with the expiration of the fifteen-month period. Neither the tax commissioner, the county court, nor any other person has the authority to waive interest which has or which will accrue on unpaid estate taxes.

History: Effective June 1, 1984.

General Authority: NDCC 57-37.1-17

Law Implemented: NDCC 57-37.1-02, 57-37.1-07

81-07.1-01-03. Credit for state death taxes. The credit for state death taxes is computed based upon the federal taxable estate exclusive of adjusted taxable gifts.

History: Effective June 1, 1984.

General Authority: NDCC 57-37.1-17

Law Implemented: NDCC 57-37.1-04

81-07.1-01-04. Valuations. Under no circumstances will the tax commissioner be bound by any valuation on the federal estate tax return which was approved without audit. The tax commissioner reserves the right to change any improper valuation deemed fit and proper.

History: Effective June 1, 1984.

General Authority: NDCC 57-37.1-17

Law Implemented: NDCC 57-37.1-11

81-07.1-01-05. Estate tax documents. It is the responsibility of the personal representative of an estate to file the proper documents required by the tax commissioner.

1. If the gross value of an estate meets the requirements for filing a federal estate tax return, the following documents must be submitted to the tax commissioner:
 - a. One copy of an application for determination of estate tax.
 - b. Duplicate certificate of estate tax determination. One copy will be returned to the personal representative or the attorney for the estate who is responsible for filing the document with the register of deeds in the appropriate county for release of any lien imposed by statute.
 - c. A copy of decedent's will, if any.
 - d. A copy of the federal estate tax return.

- e. If there is a North Dakota estate tax due, a duplicate situs affidavit. One copy will be filed with the state treasurer for proper distribution of taxes collected.
 - f. If the estate includes farmland, a supplemental information form listing the assessed value.
 - g. Such other information as the tax commissioner may require.
2. If the total value of the estate is under the federal filing requirement, and the estate includes property to which a lien attached upon the death of a decedent, the following documents must be filed with the tax commissioner:
 - a. A verified petition for release of lien.
 - b. Duplicate release of lien. One copy will be returned to the personal representative or the attorney for the estate for filing with the register of deeds in the appropriate county.
 3. The documents required by this section apply to all estates of decedents who died on or after July 1, 1975. For estates of decedents who died prior to July 1, 1975, the proper forms are those required by the statutes and rules in effect on the date of death of the decedent.

History: Effective June 1, 1984.

General Authority: NDCC 57-37.1-17

Law Implemented: NDCC 57-37.1-17, 57-37.1-21

TITLE 90
Water Well Contractors, Board of

MARCH 1984

STAFF COMMENT: The following four rules contain all new material but are not underscored so as to improve readability.

CHAPTER 90-01-02
APPLICATION OF RULES

Section
90-01-02-01 Definition - Wells

90-01-02-01. Definition - Wells. This title, the rules and regulations adopted by the state department of health, and North Dakota Century Code chapter 43-35 are applicable to all openings in the earth's surface wherein ground water is sought whether such opening is made for the purpose of extracting ground water, discovering or observing ground water, or monitoring the level, quantity, or quality of ground water.

History: Effective March 1, 1984.

General Authority: NDCC 28-32-02, 43-35-01, 43-35-10

Law Implemented: NDCC 43-35-02

90-02-02-01.1. Purpose of certification. The philosophy of the board in enforcing North Dakota Century Code chapter 43-35 shall be at all times the protection of the quantity and the quality of the ground water resources.

History: Effective March 1, 1984.

General Authority: NDCC 28-32-02, 43-35-01, 43-35-10

Law Implemented: NDCC 43-35-01

90-02-02-02.1. Definition of one year's experience. One year's experience as required by statute consists of twelve months of full-time employment in drilling water wells under the direct supervision of a certified water well contractor, which experience has occurred during the three years immediately preceding the date of application, or suitable vocational training approved by the board. The board may, upon application and request, approve equivalent experience under a nonlicensed water well driller if the experience was in a state other than this state and if the board is satisfied that the experience was the equivalent of working under a certified water well contractor in this state. The board may certify other experience as equivalent as it finds appropriate.

History: Effective March 1, 1984.

General Authority: NDCC 28-32-02, 43-35-01, 43-35-10

Law Implemented: NDCC 43-35-13

90-02-02-02.2. Certification by examination - Time limit. Any person who desires to become certified and who has taken the exam and successfully passed it shall complete the other requirements for certification within six months of notification of the passing score. Failure to complete certification within six months from such notification will nullify the passing score on the exam and the applicant shall initiate a new application in the same manner as if the applicant had not applied before, and be reexamined before becoming certified.

History: Effective March 1, 1984.

General Authority: NDCC 28-32-02, 43-35-01, 43-35-10

Law Implemented: NDCC 43-35-13