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TABLE OF CONTENTS

Agriculture, Commissioner of	447
Attorney General (September, October, November)	457
Banking and Financial Institutions, Department of	641
Centennial Commission	647
Electrical Board	659
Game and Fish Department	691
Highway Department	697
Industrial Commission (September, November)	703
Insurance, Commissioner of	715
Livestock Sanitary Board	739
Nursing, Board of	743
Parks and Recreation Department	753
Plumbing, Board of	763
Public Service Commission (October, November)	769
Securities Commissioner	811
Department of Human Services (August, September, November)	817
Tax Commissioner (October, November)	903
Workers Compensation Bureau	945

TITLE 7
Agriculture, Commissioner of

7-08-01-01. Purposes and basis. These rules provide terms, conditions, and procedures for the administration by the commissioner of agriculture of the waterbank program as enacted by the forty-seventh legislative assembly in 1981 and codified in North Dakota Century Code chapter 61-31.

History: Effective August 1, 1987.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-01

7-08-01-02. Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Adequate fence" means legal fence as defined in North Dakota Century Code section 47-26-01.
2. "Adjacent lands" means lands bordering the wetland.
3. "County assessment team" means a local soil conservation service representative of a local soil conservation district, a representative of the county water resources board, and a district representative of the North Dakota game and fish department.
4. "Drainage" means vulnerable to destruction through artificial or natural process.
5. "Participant" means landowner participating in the program.
6. "Program" means the North Dakota state waterbank program.
7. "State assessment team" means one representative from the North Dakota department of agriculture, one representative from the North Dakota game and fish department, one representative from the North Dakota state engineer's staff, and one representative from the United States department of agriculture's soil conservation service.

History: Effective August 1, 1987.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-01

7-08-01-03. Cooperative agreement.

1. The commissioner shall assemble a state assessment team and have a cooperative agreement signed by the various agencies so that they may assist the commissioner in fulfilling the objectives of the program. The state assessment team shall, as directed by the commissioner, make recommendations to the commissioner regarding the areas submitted for participation. The state assessment team shall develop program guidelines to

be approved by the commissioner which must include technical and management practices and rates of payment.

2. The commissioner shall assemble the county assessment teams and have a cooperative agreement signed with the various agencies so that they may assist the commissioner and the state assessment team in fulfilling the objectives of the program. The county assessment teams shall, as directed by the commissioner, help prepare the application, evaluate the acreage [hectarage] offered, indicate the order of priority for the county applications, and forward the county applications to the commissioner's office with appropriate comments.

History: Effective August 1, 1987.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-03, 61-31-05, 61-31-08, 61-31-10

7-08-01-04. Procedure for participation in the program.

1. Applications for participation in the program are to be submitted to the local United States department of agriculture's soil conservation service representative who will date and review the applications for compliance with approved application procedures and forward the applications to the county assessment team.
2. The county assessment team shall, as expeditiously as climatic conditions allow, investigate the wetlands delineated and any offered adjacent land delineated in the application.
3. The county assessment team shall:
 - a. Determine the type of wetland.
 - b. Determine whether it is feasible and practical to drain the wetland.
 - c. Rate the recreational and other public values of the wetland.
 - d. Establish a wetland conservation and development plan for the area if it is desired by the participant.
4. Twice a year, prior to February fifteenth or September fifteenth of each year, the county assessment team shall submit a written report to the commissioner which lists the priority of the applications in numerical order utilizing a standardized priority system prepared by the state assessment team and approved by the commissioner.

5. Within ten days after the receipt of the county assessment team's findings, conclusions, and recommendations, the commissioner shall submit applications to the state assessment team which will review and list in priority all of the applications submitted by the county assessment teams.
6. Twice a year, prior to March first or October first of each year, the state assessment team shall submit a written report of its findings, conclusions, and recommendations to the commissioner who will make the final determination of applications to be funded according to the commissioner's evaluation of the recommendations and available waterbank funds.
7. Within thirty days after receipt of the state assessment team's findings, conclusions, and recommendations, the commissioner shall forward a signed contract to the successful applicants. Copies will also be sent to the local soil conservation district, the North Dakota game and fish department, the state water commission, and the county water resource board. A form letter of nonacceptance will be mailed to unsuccessful applicants. Unsuccessful applications will be returned to the local soil conservation district office. These may then be resubmitted to the commissioner along with new applications prior to the next application deadline. Personal contact will be made with each successful applicant by a representative appointed by the commissioner.

History: Effective August 1, 1987.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-03, 61-31-05

7-08-01-05. Reassessment procedure.

1. If a landowner has reasonable grounds to believe his application was unfairly denied participation in the program, he may request a reassessment of his application. The request must be made in writing with the commissioner within ten days after receipt of a nonacceptance notice. The reasons why the commissioner's determination should be reversed must be stated in writing.
2. If, upon reevaluation of the state assessment team's data, the commissioner determines that the claim has merit, the commissioner shall request the assessment team to reassess the application in question. The commissioner may, upon reassessment, change the original determination if in the commissioner's opinion the claim has merit.

History: Effective August 1, 1987.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-03, 61-31-05

7-08-01-06. Participation priority. If, because of a shortfall in funds, all the eligible applicants seeking participation cannot be included in the program, priority will be based on the date the application is received and the state assessment team's report.

History: Effective August 1, 1987.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-03, 61-31-05

7-08-01-07. Rate and date of payment.

1. The base rate of payment for participation in the program shall be comparable to the rate used in the federal waterbank program.
2. A base rate shall be established for effecting a wetland conservation and development plan for adjacent lands.
3. The base rate shall be increased for allowing walking public access to the program land.
4. Payments shall be made in accordance with the contract between the commissioner and the participant.

History: Effective August 1, 1987.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-03, 61-31-05

7-08-01-08. Acreage limitations and designations.

1. Total acreage [hectarage] of adjacent land must be at least equal to qualifying wetland acreage [hectarage] included in the application but may not exceed four times the acreage [hectarage] of the wetlands.
2. Total acreage [hectarage] allowed for a participant in the program must be at least ten acres [4.05 hectares] and not more than one hundred sixty acres [64.75 hectares] unless otherwise approved by the commissioner with consultation with the state assessment team.
3. The acreage [hectarage] designated for participation must be described by metes and bounds or other legal description or method specifically delineating the acreage [hectarage] to be included in the program.
4. Acreage [hectarage] selected for the program must have signs posted to indicate participation in the program and whether and where walking public access is allowed on that acreage [hectarage].

History: Effective August 1, 1987.
General Authority: NDCC 61-31-01
Law Implemented: NDCC 61-31-03, 61-31-05

7-08-01-09. The waterbank agreement. The waterbank agreement must include the following:

1. The number of years of participation.
2. The present rate and conditions that vary the rate of payment.
3. The incentive payments, if applicable.
4. Duties of the parties to the waterbank agreement as prescribed in North Dakota Century Code sections 61-31-04 and 61-31-05.
5. Signatures of the commissioner, the landowner of the designated area, and the tenant or operator of the land, if the tenant or operator is not the landowner.
6. Whether or not the participant will allow the land to be open for emergency haying or grazing and conditions applicable to the allowance of emergency haying or grazing.
7. A clause permitting access to the program lands for inspection by a representative of the commissioner.
8. A copy of the waterbank program rules and the management guidelines.

History: Effective August 1, 1987.
General Authority: NDCC 61-31-01
Law Implemented: NDCC 61-31-03, 61-31-04, 61-31-05

7-08-01-10. Drought emergency.

1. If the governor or the United States department of agriculture declares a drought emergency, the grass cover on lands included in the program may be released to a qualified participant for haying or grazing with the authorization of and under the terms prescribed by the commissioner as provided in subsection 4 of North Dakota Century Code section 61-31-05.
2. In the event the participant does not utilize this option to hay or graze in a drought emergency, the commissioner may conduct a lottery subject to the approval of the participant to award haying or grazing privileges to qualified applicants using the following procedure:
 - a. The commissioner shall give published notice that program land will be open to grazing or haying at dates

established with the approval of the state game and fish commissioner.

- b. The commissioner shall publish notice that written applications to participate in the lottery will be received by the commissioner's office for five days after the final notice.
- c. Notice must run for three consecutive days in a daily newspaper of general circulation in the county where the majority of the program land is situated and for one day in the official county newspaper, if the official newspaper is a weekly. Notice must include the participant's name and address, the legal description of the program land being open for haying or grazing, the price established by the commissioner on a per-acre basis for the haying or grazing, and the date by which hay, machinery, or livestock must be removed from the program land.
- d. Seven days after the final notice, the commissioner shall conduct a lottery among the qualified applicants and award haying or grazing rights.
- e. Notice of award of rights and conditions for agricultural use of the program land must be mailed to the successful qualified applicants.
- f. Conditions for agricultural use pursuant to the lottery must include whether the land may be hayed or grazed, the date on which entry can be made on the program land, the date by which all hay, machinery, or equipment must be removed from the program land, and the amount and date by which payment is to be remitted to the commissioner's office.
- g. All expenses incurred by the commissioner's office in implementing the lottery will be reimbursed from the gross receipts of the lottery.
- h. The net receipts from the lottery will be used for the program.

History: Effective August 1, 1987.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-05

7-08-01-11. Violations.

1. It is a violation of the waterbank agreement if the participant does not fulfill each and every term of the

waterbank agreement established between the participant and the commissioner.

2. If the commissioner determines a violation of the waterbank agreement has occurred, the commissioner shall notify the participant by registered or certified mail at the participant's post-office address of record. The notice must specify the nature of the violation and that the affected participant may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of a demand for hearing, the commissioner shall set a date for the hearing.
3. The penalties for violations determined as a result of hearing or for violations where the affected participant does not demand a hearing must be imposed in accordance with subsection 5 of North Dakota Century Code section 61-31-04.

History: Effective August 1, 1987.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-04

TITLE 10
Attorney General

SEPTEMBER 1987

10-05-01-02. Dayroom. All groups of inmates in grade one and grade two jails, as set out in North Dakota Century Code section 12-44.1-09, and juvenile detention centers authorized to detain juveniles for more than ninety-six hours shall have equal access to a dayroom. If more than one group of inmates will have access to the same dayroom, then the dayroom shall be separated from inmate cells or dormitories.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-24

10-05-01-03. Exercise room. All groups of inmates in grade one and grade two jails, as set out in North Dakota Century Code section 12-44.1-09, and juvenile detention centers authorized to detain juveniles for more than ninety-six hours shall have equal access to an exercise room. The exercise room in a grade one jail shall be separate from the dayroom. Inmate physical exercise in a grade two jail or juvenile detention center may be provided in a separate exercise room or in the dayroom. If more than one group of inmates will have access to the same exercise room, then the exercise room shall be separated from inmate cells or dormitories.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-24

10-05-01-05. Educational and counseling program space. Grade one and grade two jails and juvenile detention centers authorized to detain juveniles for more than ninety-six hours shall provide adequate

and secure space for conducting educational and counseling programs for inmates which shall be equally available to all classifications of inmates.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-17

10-05-01-12. Recognized standards. The governing bodies of existing jails are encouraged to make every effort to ~~meet recognized~~ substantially comply with model correctional facility standards for jails such as those published by ~~the United States department of justice~~ and the American ~~correctional association~~ Correctional Association.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-24

10-05-02-01. Juvenile detention centers. Juvenile detention centers shall meet, at a minimum, the regulations contained herein. For purposes of these regulations, juvenile detention centers are considered grade one jails. The attorney general shall determine, for each juvenile detention facility in this state, whether county, city, or privately administered, the maximum number of hours or days that juveniles may be detained. In addition, the attorney general may impose other conditions to the authorization for such facility, including, but not limited to, conditions pertaining to the operation, administration, and physical plant requirements of such facility.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-06, 12-44.1-24

10-05-02-05. School study assistance. A juvenile detained for more than ~~ninety~~ ninety-six hours ~~shall~~ must be given reasonable assistance in obtaining educational materials and assignments necessary to keep the juvenile current in regular school studies.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-17

10-05-02-06. Administration. All juvenile detention centers shall have an administrator appointed by the governing authority and a budget separate from adult corrections, detention, or jail facility.

History: Effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-04(3)

10-05-02-07. Security. The facility must be secured in such a way that juveniles remain within the security perimeter and that access by the general public is denied without proper authorization. Sight and sound separation must be maintained between juvenile detainees and all persons not authorized to be present within the juvenile detention facility.

History: Effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-13

10-05-02-08. Sleeping rooms. All sleeping rooms in detention facilities must have, at a minimum, access to all the following sanitation facilities:

1. Toilet above floor level which is available for use without staff assistance twenty-four hours a day.
2. Washbasin and drinking water.
3. Hot and cold running water.
4. A bed above floor level and storage space.
5. Natural light.

History: Effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-14

10-05-02-09. Other standards. Juvenile detention facility governing authorities and administrators are also required to follow all jail rules of title 10-05 of the North Dakota Administrative Code except such rules as may by their provisions be specifically excluded from application to a juvenile detention center, to a juvenile detention center of a limited detention period authorization, or to a juvenile detention center which has been granted a variance pursuant to North Dakota Century Code section 12-44.1-26.

History: Effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-24

10-05-03-01. Construction or renovation plan approval. Plans for the construction of a new jail facility or plans for the major renovation (estimated expenditure of more than ten thousand dollars) of an existing jail must be approved by the facility shall require approval from the office of attorney general prior to commencement of the project.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-24

10-05-03-02. Plan conformance to federal applicable model standards. Plans for the construction or major renovation of jails and juvenile detention centers shall be substantially in accordance with the federal jail standards and other equivalent model standards model correctional facility standards such as those published by the United States department of justice and the American correctional association Correctional Association.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-24

10-05-03-03. Grade classification. The attorney general shall determine the grade classification of each jail facility and shall determine how many groups of inmates or detainees, as set out in North Dakota Century Code section 12-44.1-09, may be housed in the jail facility.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC ~~12-44.1-24~~ 12-44.1-06

10-05-04-08. Inmate instructions. Upon admission, or as soon thereafter as is practicable, an inmate shall be informed of visitation hours, mail procedures, what constitutes contraband, prohibited acts, disciplinary procedures, grievance procedures, health care procedures, and inmate cell care responsibility.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-24

10-05-06-02. Medical care access. Inmates shall have access to necessary emergency medical care, including, but not limited to,

physical, psychiatric, and dental care. The cost of such medical care shall be ~~paid~~ subject to reimbursement from the inmate. Adequate staff, space, equipment, supplies, and materials shall be provided if health care is delivered in the jail. Nonemergency physical, psychiatric, and dental care shall be provided to an inmate as directed by the health care administrator.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-14

10-05-06-13. Sick call procedures. Sick call shall be provided in grade one and grade two jails and juvenile detention centers at least once a week. The health care administrator shall establish sick call procedures.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-14

10-05-08-03. Mealtimes. Three meals, at least one of which shall be a hot meal in grade one and grade two jails and juvenile detention centers, shall be provided at regular mealtimes during each twenty-four-hour period with no more than fourteen hours between the evening meal and breakfast.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-14

10-05-08-06. Meal service. Inmates in a grade one facility and juvenile detention centers authorized to detain juveniles for more than ninety-six hours shall be served their meals in a dayroom or a dining hall. An inmate may be required to have his meals served in his ~~cell~~ living space area if the jail administrator has reasonable grounds to believe that the inmate presents a threat to jail security, order, or rehabilitation. Inmates in a grade two or grade three jail or a juvenile detention center authorized to detain juveniles for no more than ninety-six hours may have their meals served in their ~~cells~~ living space.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-24

10-05-12-01. Indoor exercise - ~~Ninety-hour~~ Ninety-six-hour detention. Inmates in grade one and grade two jails and juvenile detention centers who are detained for more than ~~ninety~~ ninety-six hours shall be provided a minimum of one hour daily physical exercise outside their cells. Physical exercise within the cell may be provided if the jail administrator has reasonable grounds to believe that the release of an inmate from the cell would jeopardize jail security. Such reasonable grounds shall be documented. The exercise room shall be separate from the dayroom in grade one jails. The exercise room may also be used as a dayroom in grade two jails and juvenile detention centers authorized to detain juveniles for more than ninety-six hours.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-24

10-05-12-02. Outdoor exercise - Thirty days' detention. Inmates in grade one jails who are detained for more than thirty consecutive days and juveniles detained in a juvenile detention center or grade one jail for more than ninety-six hours shall be provided a minimum of one hour daily physical exercise in a secure outdoor exercise area. Physical exercise within the ~~cell~~ living space or indoor exercise area may be provided if the jail administrator has reasonable grounds to believe that the release of an inmate ~~from the inmate's cell to an outdoor area~~ would jeopardize jail security. Such reasonable grounds shall be documented. This one hour outdoor daily physical exercise may be in lieu of the physical exercise provided for in section 10-05-12-01. The jail administrator may require that inmates exercise outdoors when the jail administrator, in the administrator's sound discretion, has determined that the weather is adequate. Jail administrators in all jail classifications are encouraged to provide for physical exercise in a secure outdoor exercise area for all inmates.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-24

10-05-12-03. Daily recreation. Inmates shall be allowed daily recreation. Jail administrators in grade one and grade two jails and juvenile detention centers authorized to detain juveniles for more than ninety-six hours shall provide for recreation in a dayroom.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-24

10-05-16-06. Disciplinary Administrative action prior to hearing. Emergency circumstances may require that an inmate inmate/detainee be placed in disciplinary segregation administrative isolation for a violation of the jail facility rules prior to a disciplinary hearing. Such emergency and disciplinary administrative action shall be documented. A disciplinary hearing shall follow such disciplinary administrative action as soon as possible.

History: Effective November 1, 1981; amended effective September 1, 1987.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-24

OCTOBER 1987

10-04.1-01-01. Definitions.

1. "Adjusted gross proceeds" - refer to subsection 1 of North Dakota Century Code section 53-06.1-01.
2. "Admissions" means the price paid to enter a site to play games of chance.
3. "Ante" in poker means a player's initial wager or predetermined contribution to the pot before the first card of the game is dealt.
4. "Bet" in poker means a player's wager to the pot on any betting round.
- 3- 5. "Bingo session" means a single gathering at which a series of one or more successive bingo games is played.
- 4- 6. "Blackjack" - see "natural twenty-one".
7. "Blind bet" in poker is a bet made before the first card of the game is dealt.
- 5- 8. "Bona fide guest" - refer to subsection 2 of North Dakota Century Code section 53-06.1-01.
- 6- "Capital cost" means a disbursement for tangible personal property, excluding security devices, the useful economic life of which is expected to extend beyond one year and which has a net cost greater than one hundred dollars. Capital cost equipment normally includes, but is not limited to, twenty-one table, chips, stools, bingo machine,

~~flashboard, public address system, coin-operated dispensing device, and jar bar.~~

9. "Button" in poker is an object which is moved clockwise around the table to denote an imaginary dealer. A button is used when the organization provides a dealer.
10. "Buy-in" in poker is a purchase of chips by a player prior to the player playing.
11. "Call" in poker means a bet made in an amount equal to the immediately preceding bet.
- ~~7-~~ 12. "Cash prize" means coin, currency, marketable securities, and any other similar item that can be readily redeemed or converted into legal tender and that is not volatile.
- ~~8-~~ 13. "Charitable gaming ticket" means the paper pull-tab or jar ticket used in games of pull-tabs and jar tickets - refer to subsection 3 of North Dakota Century Code section 53-06.1-01.
- ~~9-~~ 14. "Charitable organization" - refer to subsection ~~3~~ 4 of North Dakota Century Code section 53-06.1-01.
15. "Check" in poker means to waive the right to initiate the betting in a round, but to retain the right to call after all other players have either bet or folded. It is synonymous with pass.
16. "Check and raise" in poker means a player raising after the player first checked in a round.
- ~~10-~~ 17. "Checker" means a person who records the number of bingo cards played during each game and ~~records~~ may record the prizes awarded, but does not collect the ~~gross proceeds~~ cash receipts for the sale of bingo cards nor make the award of the prizes.
- ~~11-~~ 18. "Civic and service club" - refer to subsection ~~4~~ 5 of North Dakota Century Code section 53-06.1-01.
19. "Community cards" in the poker game of Texas hold'em are cards dealt faceup which can be used by all players to make their best hand.
- ~~12-~~ 20. "Compensation" means wages, salaries, bonuses, benefits, and all other forms of remuneration for services rendered, including employer paid taxes.
- ~~13-~~ 21. "Conduct of games of chance" means the actual operation of games of chance. The term "conduct" includes, but is not limited to, the selling of charitable gaming tickets, raffle

tickets, rafflewheel tickets, bingo cards, dealing of twenty-one and poker, spinning a rafflewheel, calling of bingo numbers, purchasing of equipment and supplies, and paying of expenses and eligible use contributions. Conduct does not include the playing of any game of chance.

~~14-~~ 22. "Deal":

a. In charitable gaming tickets means each separate package, series of packages, or card consisting of one game of charitable gaming tickets, or lines with the same game serial number purchased from a distributor. Games of "club specials", "tip boards", and "seal boards" which use a seal are included in this definition.

b. In twenty-one and poker means the distributing of the playing cards among the players.

~~15-~~ 23. "Dealer" in twenty-one is the general term for the eligible organization's employee or volunteer that the players bet against. "Dealer" in poker is the general term for the eligible organization's employee or volunteer, or player that deals the playing cards to the players.

24. "Deuce" in poker is the term for the two.

~~16-~~ 25. "Devoted" means the unrestricted disbursement to an eligible use, by check from the general gaming bank account provided in subsection 1 of North Dakota Century Code section 53-06.1-11, or for class B organizations it means a transfer of net proceeds to the charitable gaming trust fund bank account.

~~17-~~ 26. "Distributor" - refer to subsection ~~5~~ 6 of North Dakota Century Code section 53-06.1-01.

~~18-~~ 27. "Doubling-down" in twenty-one means the act of a player doubling the amount of the player's original wager on any two card count. When the player doubles-down the player must draw one and only one card.

28. "Draw" in the poker game of draw means the taking of additional cards by the player prior to the second round of betting.

~~19-~~ 29. "Educational, charitable, patriotic, fraternal, religious, or other public-spirited uses" - refer to subsection ~~6~~ 7 of North Dakota Century Code section 53-06.1-01.

~~20-~~ 30. "Educational organization" - refer to subsection ~~7~~ 8 of North Dakota Century Code section 53-06.1-01.

~~21-~~ 31. "Eligible organization" - refer to subsection ~~8~~ 9 of North Dakota Century Code section 53-06.1-01.

- ~~22-~~ 32. "Entire net proceeds" or "net proceeds" - refer to subsection 9 10 of North Dakota Century Code section 53-06.1-01.
- ~~23-~~ 33. "Equipment" - see gaming equipment.
- ~~24-~~ 34. "Flare" is the posted display with the North Dakota state gaming stamp affixed which sets forth the rules and prizes of a specific game of rafflewheel tickets, punchboards, professional sports-pool boards, and or deals of charitable gaming tickets, including club specials, tip boards, and seal boards. The flare for a game of rafflewheel tickets is the master flare. The flare for a paper-type punchboard is the face sheet of the punchboard. The flare for an electronic punchboard is the punchcard of the punchboard. The flare for a professional sports-pool board is the sports-pool board itself. The flare for a tip board is the tip board itself. The flare for a seal board is the seal board itself.
35. "Flop" in the poker game of Texas hold'em means the first three community cards dealt faceup at one time.
36. "Fold" in poker means to quit contending for the pot and discarding a player's hand during any betting round. A player would fold the player's hand by refusing to match a bet.
- ~~25-~~ 37. "Fraternal organization" - refer to subsection ~~10~~ 11 of North Dakota Century Code section 53-06.1-01.
- ~~26-~~ 38. "Gaming equipment" means any device, apparatus, or implement usable in the conduct of games of chance, specifically designed for the purpose, but excluding tables and chairs normally used in the occupancy of a premise. The term "equipment" includes, but is not limited to, twenty-one table, poker table, rafflewheel, chip tray, dealing shoe, drop box, chips, table playing surface, bingo machine, flashboard, bingo cards, decks of twenty-one and poker cards, coin-operated dispensing device, jar bar, paper-type and electronic punchboards, punchcards, raffle tickets, rafflewheel tickets, professional sports-pool boards, and deals of charitable gaming tickets, including club specials, tip boards, and seal boards.
- ~~27-~~ 39. "Gross proceeds" - refer to subsection ~~11~~ 12 of North Dakota Century Code section 53-06.1-01.
40. "Hand" in poker means one game in a series, one deal, the cards held by a player, or the best five cards of a player's holding.
41. "Hole-card":

- a. In twenty-one is the second card dealt to the dealer. The card is either dealt face downwards or dealt face upwards depending on the method of dealing.
- b. In poker is a card held by the player which is unseen by the other players.
42. "Inside information" is any information about a game of chance that gives a person an advantage over other persons that do not have that information (for example, for games of charitable gaming tickets such information includes tip-offs, buyables, or dumpables).
- ~~28-~~ 43. "Insurance bet" in twenty-one means a wager by a player that a dealer holds a natural twenty-one when the dealer has an ace showing.
44. "Last sale feature" is a prize offered on deals of charitable gaming tickets, tip boards, club specials, and punchboards to the player who purchases the last charitable gaming ticket or punch of that game.
- ~~29-~~ 45. "Licensed organization" means an organization licensed by the attorney general to conduct games of chance.
- ~~30-~~ 46. "Licensee" - refer to subsection ~~12~~ 13 of North Dakota Century Code section 53-06.1-01.
- ~~31-~~ 47. "Licensing authority" - refer to subsection ~~13~~ 14 of North Dakota Century Code section 53-06.1-01.
48. "Local permit" means a permit issued by the local governing body of a city or county to an organization which is eligible to conduct bingo, raffles, or professional sports pools, or any combination, but which is not required to have a class A or class B license.
- ~~32-~~ 49. "Manufacturer" **is any person who converts, modifies, adds to or removes parts or a portion from any item, device, or assembly, or assembles from raw materials or subparts a completed piece of gaming equipment or pieces of gaming equipment to further its promotion, sale, or use in authorized gaming activities, including but not limited to punchboards, professional sports-pool boards, deals of charitable gaming tickets, including club specials, tip boards, and seal boards, coin-operated dispensing devices, twenty-one tables, bingo machines, and flashboards, and who sells or otherwise furnishes the same to any distributor. Provided, that a person adding only promotional flares to advise the public of the prizes available, the rules of play and the**

~~consideration required is not deemed a manufacturer~~
- refer to subsection 15 of North Dakota Century Code section
53-06.1-01.

50. "Master flare" is used in conjunction with a series of rafflewheel ticket cards. The master flare describes the type of rafflewheel tickets in the series, lists the range of rafflewheel ticket card numbers in each series, and has a state gaming stamp affixed to it bearing the card number of the lowest numbered rafflewheel ticket card in the series.
- ~~33-~~ 51. "Member" - refer to subsection ~~14~~ 16 of North Dakota Century Code section 53-06.1-01.
- ~~34-~~ 52. "Natural twenty-one" is the highest ranking hand in the game of twenty-one consisting of an ace and a ten-count card on the first two cards dealt.
53. "Occasion" in poker means either a nontournament or a tournament term during which an organization may conduct the game of poker at the organization's licensed sites, as follows:
- a. A nontournament term is a twenty-four-hour period of play completed within a continuous forty-eight-hour period.
 - b. A tournament term is a consecutive three-calendar-day period of play without a limit on the number of hours of play.
54. "Opener" in poker is the player who makes the first bet on any betting round.
- ~~35-~~ 55. "Other public-spirited organization" - refer to subsection 15 17 of North Dakota Century Code section 53-06.1-01.
56. "Pat hand" in poker means a hand in draw poker which does not need another card drawn to it.
- ~~36-~~ 57. "Person" - refer to subsection ~~15-~~ 18 of North Dakota Century Code section 53-06.1-01.
58. "Pot" in poker is a location on the poker table. It also is referred to as the total amount anted and bet by players during a game. The pot is awarded to the winning player.
59. "Rafflewheel" is a mechanical vertical wheel marked off into equally spaced sections that contain numbers or symbols, and which after being spun, uses a pointer or marker to indicate the winning numbers or symbols. It is used for the selection of the winner of a raffle involving rafflewheel tickets.

60. "Rafflewheel ticket" is a preprinted detachable ticket on a rafflewheel ticket card that has printed on it a rafflewheel ticket card number and one or more numbers or symbols corresponding to the numbers or symbols on a rafflewheel.
61. "Rafflewheel ticket card" means a card to which is attached rafflewheel tickets bearing all the numbers or symbols on a rafflewheel. A rafflewheel ticket card must have a stub attached that has preprinted on it a rafflewheel ticket card number and space for the winning number or symbol to be written in. Each rafflewheel ticket card must have a different and consecutive card number within the series of rafflewheel ticket cards.
62. "Rafflewheel ticket card number" means the game serial number preprinted by the manufacturer on a rafflewheel ticket card and its rafflewheel tickets.
63. "Raise" in poker means a bet in an amount greater than the immediately preceding bet on that betting round.
64. "Rake" in poker is two percent of a pot containing a total amount of ten dollars or greater which is taken by the organization for conducting the game.
- 37- 65. "Religious organization" - refer to subsection 16 19 of North Dakota Century Code section 53-06.1-01.
- 38- "Security device" means personal property used to prevent or detect unauthorized access to or use of gaming equipment, cash, books and records. Includes equipment designed to deter and detect players and employees from making errors or committing irregularities. The term "security device" includes, but is not limited to, cash register, safe, black light, electronic count scale, micrometer, electronic bingo card validator, bingo master check book, metal drop box, video camera, and twenty-one locking chip carrying case.
66. "Round" in poker is the cycle when players make their bet following the deal of a card or cards.
- 39- 67. "Shoe" in twenty-one means a card-dealing box, capable of holding two hundred eight regular playing cards, which is constructed of a transparent material except that the face of the shoe may be opaque.
68. "Showdown" in poker means the revealing of each player's hand by the player after the last bet to determine which player is the winner of the pot.

69. "Site authorization" means an authorization issued by the local governing body of a city or county to an organization which is eligible to conduct games of chance and which is required to have a class A or B license.
70. "Stake" in poker means the value of the chips with which a player enters a game.
- 40- 71. "Supplies" --see gaming equipment means any item of a minor nature such as bingo daubers, bingo crayons, and glue sticks that are usable in the play of games of chance. The organization's revenue from the sale of these items to the player must be classified as nongaming revenue.
72. "Tipboard" means a board or placard to which is attached tickets, arranged in columns or rows, which tickets contain concealed numbers. When a ticket is purchased and opened, players having certain predesignated numbers can sign the board at the place indicated by the number on the ticket. When the predesignated numbers are all purchased, a seal is removed to reveal a number indicating which of the predesignated numbers is the winning number.
- 41- 73. "Veterans organization" - refer to subsection 17 20 of North Dakota Century Code section 53-06.1-01.
74. "Wild card" in poker is a special card, such as a joker, that a player can use to form a hand by making the card any value the player desires.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-17

10-04.1-02-02. Civic and service clubs.

1. An organization is a civic and service club only if its primary purpose of being is a civic and service purpose. A "civic and service purpose" is the promotion of the common good and social welfare of the community and public at large (i.e., affecting an indefinite number of people). Purposes which benefit only a portion of the community, which are limited to one or a few substantive activities, or which are otherwise narrow in scope are not civic or service purposes. Private athletic, social, hobby, trade, business, professional, or other similar clubs or associations are generally not civic and service clubs.
2. Before passing a resolution recognizing an organization as a civic and service club, a city or county governing body shall determine the primary purpose of being of the organization, the manner in which this purpose has been carried out in the

past, and the intended uses of the net proceeds generated by the contemplated games of chance. The following items must be examined by the governing body in order to make these determinations:

- a. Statements of receipts and expenditures for at least the two previous years which specifically outline the projects and other activities to which all of the organization's funds have been devoted and which are attested to by the financial officer and the president or other similar officer of the organization.
 - b. A copy of the organization's charter, constitution, bylaws, articles of incorporation, or similar documents which help to establish its primary purpose of being and its date of origin.
 - c. A copy of the minutes of the organization's meetings which includes a resolution which specifically states the intended uses of funds generated by games of chance and which is attested to by the secretary or other similar officer of the organization.
 - d. Any other relevant materials submitted by the organization or by any other party.
3. The resolution passed by the city or county governing body recognizing an organization as a civic and service club must include the following findings of the governing body:
- a. A statement of the primary purpose of being of the organization and the specific items relied upon in concluding that the purpose is a "civic and service purpose" as defined by subsection 1 of section 10-04.1-02-02.
 - b. A statement which specifically outlines the manner in which this primary purpose of being has been achieved in the past and how the purpose will be achieved by the granting of the games of chance ~~license~~ site authorization or local permit.
 - c. A statement which specifically outlines the intended uses of the net proceeds generated by the contemplated games of chance and the conclusion that all of these uses are eligible uses under subsection 6 of North Dakota Century Code section 53-06.1-01, and the rules issued thereunder.
 - d. A statement of the organization's date of origin and the conclusion that the organization has actively existed in North Dakota for at least the two previous years.

- e. A statement that the governing body has examined all of the materials which are required to be examined.
 - f. A clause recognizing the organization as a civic and service club.
4. Organizations recognized by resolution as "civic and service clubs" shall devote the net proceeds of games of chance only to those eligible uses specifically outlined in the resolution.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-02, 53-06.1-17

10-04.1-02-03. Other public-spirited organizations.

1. For the purpose of administering subsection 15 of North Dakota Century Code section 53-06.1-01, the term "other public-spirited organization" does not include veterans, charitable, educational, religious, fraternal organizations, or civic and service clubs. Therefore, "other public-spirited organization" does not include an organization which would satisfy any of the definitions of these terms in North Dakota Century Code section 53-06.1-01, except for its failure to meet a requirement of two years of existence or functioning or its failure to obtain the resolution required under subsection 4 of North Dakota Century Code section 53-06.1-01. Private athletic, social, hobby, trade, business, professional, or other similar clubs or associations are generally not other public-spirited organizations.
2. For the purpose of administering subsection 15 of North Dakota Century Code section 53-06.1-01, the term "other public-spirited organization" means an organization whose primary purpose of being is consistent with subdivision c, e, f, g, h, or i of subsection 6 of North Dakota Century Code section 53-06.1-01.
3. An organization whose primary purpose of being is consistent with subdivision h or i of subsection 6 of North Dakota Century Code section 53-06.1-01 must have one or more individuals affected by a specific event which has transpired as of the time of the application for a license site authorization or local permit.
4. In order to allow a city or county to protect and promote the public interest, an organization, except one whose primary purpose of being is consistent with subdivision h or i of subsection 6 of North Dakota Century Code section 53-06.1-01, must have actively been in existence in North Dakota and maintained its same qualifying primary purpose of being for at

least the two previous years before it can be ~~licensed~~ granted a site authorization or local permit as an other public-spirited organization.

5. Before passing a resolution recognizing an organization as a public-spirited organization which is eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1; a city or county governing body shall determine the primary purpose of being of the organization, the manner in which its purpose has been carried out, and the intended uses of the net proceeds generated by games of chance. The following items must be examined by the governing body in order to make these determinations:
 - a. Statements of receipts and expenditures for at least the two previous years, except for organizations whose primary purpose of being is consistent with subdivision h or i of subsection 6 of North Dakota Century Code section 53-06.1-01, which specifically outline the projects and other activities to which all of the organization's funds have been devoted and which are attested to by the financial officer and president or other similar officer of the organization.
 - b. A copy of the organization's charter, constitution, bylaws, articles of incorporation, or similar documents which help to establish its primary purpose of being and its date of origin.
 - c. A copy of the minutes of the organization's meetings which includes a resolution which specifically states the intended uses of funds generated by games of chance and which is attested to by the secretary or other similar officer of the organization.
 - d. Any other relevant materials submitted by the organization or by any other party.
6. The resolution, passed by the city or county governing body, recognizing an organization as a public-spirited organization which is eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1 must include the following findings of the governing body:
 - a. A statement that the organization is not a veterans, charitable, educational, religious, or fraternal organization, or a civic and service club.
 - b. A statement of the primary purpose of being of the organization.
 - c. A statement specifying the specific provision of subdivision c, e, f, g, h, or i of subsection 6 of North

Dakota Century Code section 53-06.1-01, with which the primary purpose of being of the organization is consistent.

- d. A statement which specifically outlines the manner in which this primary purpose of being has been achieved and how the purpose will be achieved by the granting of the games of chance ~~license~~ site authorization or local permit.
 - e. A statement which specifically outlines the intended uses of the net proceeds generated by the contemplated games of chance and the conclusion that all of these uses are eligible uses under subdivision c, e, f, g, h, or i of subsection 6 of North Dakota Century Code section 53-06.1-01, and the rules issued hereunder.
 - f. A statement that the governing body has examined all of the materials which are required to be examined.
 - g. A clause recognizing the organization as public-spirited and eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1.
7. If the resolution states that the primary purpose of being of the organization is within subdivision g of subsection 6 of North Dakota Century Code section 53-06.1-01 (lessening the burden of government), it must also state either that the city or county (as applicable) operated and funded the project the organization intends to benefit or that it is a project the city or county wants to undertake but that it cannot do so without receiving financial help from the organization. Copies of city or county records sufficient to establish either of these statements will be sent to the attorney general by the organization.
8. Organizations recognized by resolution as public-spirited organizations eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1 shall devote the net proceeds of games of chance only to those eligible uses specifically outlined in the resolution.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-02, 53-06.1-17

10-04.1-02-04. Processing of city and county resolutions.

1. A copy of the "civic and service club" or "other public-spirited organization" resolution passed by the city or county governing body, along with copies of all the materials which must be examined by the governing body under section

10-04.1-02-02 or 10-04.1-02-03, will be sent to the attorney general by the organization applying for a class A or B license.

2. As the final licensing authority, the attorney general shall review the resolution, the materials submitted with it, the license application, and any other evidence concerning the organization. The attorney general may also examine any other materials concerning an organization which the attorney general determines are necessary in order to process the application. If the attorney general determines that the findings made by the governing body are not supported by the available facts, that the resolution does not meet the requirements of the law or is incorrect or internally inconsistent, that the governing body has failed to undertake a sufficient examination of the organization or has acted in an arbitrary or capricious fashion, or that any other requirement of the law has not been complied with, the attorney general shall return the resolution to the city or county governing body.
3. If, after the organization has received a license to conduct games of chance, the attorney general determines at any time that the organization's primary purpose of being is not equivalent to the statement of its primary purpose of being contained in the resolution or that a use of the net proceeds generated by games of chance is outside the uses outlined in the resolution, the attorney general shall revoke that organization's license.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-02, 53-06.1-03, 53-06.1-17

10-04.1-03-01. Licenses.

1. Every organization eligible for a license must first receive an authorization for a gaming site or sites within a city from the city governing body or for a gaming site or sites within a county, exclusive of city limits, from the county governing body. The eligible organization shall then apply to the attorney general for a separate license for each city or county, or both, for which it holds an authorization for a gaming site or sites.
 - 1.1. Every eligible organization desiring to conduct the game of poker must first receive a class E license from the attorney general. The application must be on a form prescribed by the attorney general and must contain such necessary and reasonable information as the attorney general requires.

2. A class A organization wishing to obtain a special permit from the attorney general for an alternate location, pursuant to subdivision a of subsection 3 of North Dakota Century Code section 53-06.1-03, shall first obtain a site authorization from the governing body of the location of the alternate site. No fee may be charged for this authorization by the governing body. The class A organization shall then apply to the attorney general for a special permit.
3. All class A and class B applications are subject to the approval of the attorney general. At the discretion of the attorney general, temporary permits, revocable on demand, may be issued pending review or investigation, or both, of the application.
4. The information provided on the license application by the organization must meet all the requirements of the administrative rules and law, otherwise the license application may be denied.
5. Class A and class B licenses are effective for a period of one year beginning July first and ending June thirtieth.
6. There may be no proration of the fees set out in subsection 1 of North Dakota Century Code section 53-06.1-03, for any organization commencing a game of chance after July first.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-06, 53-06.1-11, 53-06.1-15.1, 53-06.1-17

10-04.1-03-02. Site authorizations.

1. Site authorizations are issued at the discretion of the city or county governing body. Site authorizations may have certain restrictions applied to them by the governing body. Such restrictions may include types of games of chance, days of the week, and designation of an area at a site where games of chance will be conducted. An applicant has no absolute right to receive a site authorization from the governing body. The governing body, therefore, may reject or may not approve reapplications for a site authorization or may restrict a site authorization in order to limit the gaming activity within its jurisdiction. However, nothing in this rule may be construed as allowing the governing body to restrict the disbursement of gaming net proceeds.
2. No applicant may be denied approval of a site authorization on the grounds of the race, color, religion, sex, or national origin of the membership of the applicant.

3. The local governing body may enact ordinances to allow a revocation or suspension of an issued site authorization.
4. A separate site authorization is required for each site at which games of chance have been authorized.
5. It is recommended that the local governing body act on the site authorizations by June first for each licensing period July first through June thirtieth.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-05.1, 53-06.1-17

10-04.1-03-03. Closely connected organizations prohibited.

1. Organizations closely connected to a licensed an organization licensed by the attorney general may not be licensed nor receive a local authorization permit for the conduct of bingo, raffles, or professional sports pools except as specifically authorized by the attorney general. Such authorization must be based on the conditions set forth by the attorney general. However, college fraternities and sororities that may receive a local permit under North Dakota Century Code section 53-06.1-05 are exempt from this rule.
2. An otherwise eligible organization is determined to be connected to another eligible organization if any one or more of the following conditions are present:
 - a. Membership in one organization automatically qualifies an individual as a member of another organization.
 - b. Membership in one organization is dependent upon membership in another organization, including social memberships.
 - c. The existence of an organization is dependent upon the existence of another organization.
3. Any affiliation of two or more organizations, contractual or otherwise, the substance of which is the circumvention of North Dakota Century Code chapter 53-06.1 regarding the required use of net proceeds or payment, ~~or both,~~ of the tax, or both, is prohibited.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-17

10-04.1-03-04. License application information. The application must be on a form prescribed by the attorney general and must contain such necessary and reasonable information as the attorney general requires. The application must include at least the information required by this section on or attached to the application.

1. **Acknowledgment of local law enforcement.** Every eligible organization shall notify the city chief of police or county sheriff, as appropriate, of the intended site or sites at which games of chance are to be conducted and obtain local law enforcement acknowledgment. Every eligible organization shall also consent in advance that local law enforcement officers or the attorney general and the attorney general's agents may, at any time games of chance are being conducted, enter upon the site to observe the playing of games of chance and to enforce the law for any unauthorized game or practice. The acknowledgment by the chief of police or sheriff and the consent by the eligible organization must be completed on forms provided by the attorney general.
2. **Rental agreements.** Copies of all rental agreements between the organization and the legal owner or person who has the express responsibility and authority to execute such ~~contracts~~ rental agreements for the ~~premises~~ site upon which the gaming activity will be conducted.
3. **Sources of funds.** The general sources and approximate amount of funds available to the organization to reimburse the general gaming bank account for any excess gaming expenses.
4. **Acknowledgment of games of chance committee governing board.** The games of chance committee governing board form must be signed by each member of the games of chance committee governing board. Each member shall acknowledge that the member understands the member's legal responsibility for the fair and lawful operation of all licensed gaming activities that the organization conducts.
5. **Authorization to inspect bank records.** An "authorization to inspect bank records" of the general gaming bank account, all other accounts controlled by the organization, and, for appropriate class B organizations, the charitable gaming trust fund bank account, must be completed on forms provided by the attorney general. The organization shall grant the attorney general a consent in accordance with North Dakota Century Code sections 6-08.1-03, 6-08.1-04, and 6-08.1-05 to enable a financial institution to disclose customer information to the attorney general.
6. **Articles of incorporation and bylaws.** Copy of corporate articles of incorporation and bylaws or, if not a corporation, a copy of any bylaws and other documents which set out the organizational structure and purposes of the organization.

7. **Internal revenue service tax exemption letter.** For organizations that use the gaming net proceeds for uses benefiting their own organization as provided by subdivision a of subsection 6 of North Dakota Century Code section 53-06.1-01, copy of an internal revenue service letter that evidences exemption from federal taxation under section 501(c)(3) of the Internal Revenue Code. If a tax exemption letter has not been obtained, attach an explanation.
8. **Secretary of state solicitation license.** If applicable, copy of a current solicitation license issued by the North Dakota secretary of state that evidences registration to solicit contributions under North Dakota Century Code chapter 50-22.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-17

10-04.1-03-05. Required training orientation for newly licensed organizations. An organization first licensed by the attorney general to conduct games of chance on November 1, 1986, and thereafter, shall within the first quarter of the commencement of conducting games of chance request training orientation from the attorney general. Any organization licensed by the attorney general to conduct games of chance shall, when requested by the attorney general, participate in orientation. The training orientation must take place at a location chosen by the attorney general and must include games of chance administrative rules and law, recordkeeping requirements, internal control, and preparation of the gaming tax return. The organization shall provide the attorney general with a copy of its written internal accounting and administrative control system as provided by section 10-04.1-05-02. At a minimum, the organization's games of chance committee governing board or the person responsible for the recordkeeping, or both, must shall participate in the training orientation.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-03-06. Required training orientation for new bookkeepers. An organization that employs, for compensation or not, a new bookkeeper who is principally responsible for complying with the recordkeeping requirements of North Dakota Century Code chapter 53-06.1 and of these rules, shall within ninety days of the date of the bookkeeper's employment request training orientation from the attorney general. The training orientation must take place at a location chosen by the attorney general and must include games of chance administrative rules and law, recordkeeping requirements, internal control, and preparation of the gaming tax return. At a minimum, the

organization's new bookkeeper shall participate in the ~~training~~ orientation.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-03-09. Bingo - ~~Authorization~~ Local permit by local governing body only. No organization may receive more than two local permits by local governing bodies during the fiscal year beginning July first and ending June thirtieth to conduct bingo, raffles, professional sports pools, or any combination thereof, as authorized by sections 10-04.1-03-09, 10-04.1-03-10, and 10-04.1-03-11. The provisions of chapter 10-04.1-06 apply to the conduct and play of bingo unless otherwise exempted by these rules.

1. In order to protect and promote the public interest, ~~license~~ a local permit issued by a city or county governing body for the purpose of conducting bingo shall apply only when all of the following criteria are met:
 - a. The organization is an eligible organization.
 - b. The organization will conduct only bingo, raffles, professional sports pools, or any combination thereof, throughout the entire fiscal year beginning July first and ending June thirtieth.
 - c. The frequency of the bingo session does not exceed once per week, unless the ~~license~~ local permit is issued for a single specific session which does not last over two weeks.
 - d. The ~~market value~~ current retail price of a single bingo merchandise prize or cash prize for each game of each session does not exceed one thousand dollars, and the total ~~market value~~ current retail price of the aggregate of the bingo merchandise prizes and cash prizes for the ~~entire locally authorized period~~ local permit does not exceed two thousand dollars.
 - e. The bingo session is conducted upon a site which either does not have a retail alcoholic beverage licensee thereon, or does have a retail alcoholic beverage licensee thereon but the licensee is not dispensing alcoholic beverages during the conduct of the bingo session or the conduct of the bingo session is in an area of the site which is physically separated from the area where retail alcoholic beverages are being dispensed.
2. An applicant failing to comply with any of the items in subdivisions b through e of subsection 1 may not conduct bingo

without first obtaining a class A or class B license unless exempted by the attorney general.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-07, 53-06.1-17

10-04.1-03-10. Raffles - ~~Authorization~~ Local permit by local governing body only. No organization may receive more than two local permits by local governing bodies during the fiscal year beginning July first and ending June thirtieth to conduct bingo, raffles, professional sports pools, or any combination thereof, as authorized by sections 10-04.1-03-09, 10-04.1-03-10, and 10-04.1-03-11. The provisions of chapter 10-04.1-07 apply to the conduct and play of raffles unless otherwise exempted by these rules.

1. In order to protect and promote the public interest, ~~license~~ a local permit issued by a city or county governing body for the purpose of conducting raffles shall apply only when all of the following criteria are met:
 - a. The organization is an eligible organization.
 - b. The organization will conduct only raffles, bingo, or professional sports pools, or any combination thereof, throughout the entire fiscal year beginning July first and ending June thirtieth.
 - c. The frequency of the raffle drawing occasion does not exceed once per week, unless the ~~license~~ local permit is issued for a single specific occasion which does not last over two weeks.
 - d. The ~~market value~~ current retail price of a single merchandise prize for a raffle does not exceed one thousand dollars, and the total ~~market value~~ current retail price of the aggregate of the merchandise prizes and cash prizes for a raffle, including a calendar raffle, for the local permit does not exceed two thousand dollars. Cash prizes for a raffle may not exceed five hundred dollars in the aggregate during one day.
 - e. The raffle drawing occasion is conducted upon a site which either does not have a retail alcoholic beverage licensee thereon, or does have a retail alcoholic beverage licensee thereon but the licensee is not dispensing alcoholic beverages during the conduct of the raffle drawing occasion, or the raffle drawing occasion is in an area of the site which is physically separated from the area where retail alcoholic beverages are being dispensed.

2. An applicant failing to comply with any of the items in subdivisions b through e of subsection 1 may not conduct raffles without first obtaining a class A or class B license unless exempted by the attorney general.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-07, 53-06.1-10.1, 53-06.1-17

10-04.1-03-11. Professional sports pools -Authorization Local permit by local governing body only. No organization may receive more than two local permits by local governing bodies during the fiscal year beginning July first and ending June thirtieth to conduct bingo, raffles, professional sports pools, or any combination thereof, as authorized by sections 10-04.1-03-09, 10-04.1-03-10, and 10-04.1-03-11. The provisions of chapter 10-04.1-09 apply to the conduct and play of professional sports pools unless otherwise exempted by these rules.

1. In order to protect and promote the public interest, license a local permit issued by a city or county governing body for the purpose of conducting professional sports pools shall apply only when all of the following criteria are met:
 - a. The organization is an eligible organization.
 - b. The organization will conduct only professional sports pools, bingo, or raffles, or any combination thereof, throughout the entire fiscal year beginning July first and ending June thirtieth.
 - c. The maximum wager on any professional sports pool is five dollars per square.
 - d. The total wagers do not exceed five hundred dollars for each professional sports pool.
 - e. The amounts paid to professional sports-pool participants in prizes may not exceed ninety percent of the gross proceeds.
 - f. The sports-pool board is conducted upon a site which either does not have a retail alcoholic beverage licensee thereon, or does have a retail alcoholic beverage licensee thereon but the licensee is not dispensing alcoholic beverages during the conduct of the sports-pool board or the conduct of the sports-pool board is in an area of the site which is physically separated from the area where retail alcoholic beverages are being dispensed.

2. An applicant failing to comply with the items in subdivisions b and f of subsection 1 may not conduct professional sports pools without first obtaining a class A or class B license unless exempted by the attorney general.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-09, 53-06.1-17

10-04.1-04-03. Games of chance committee Governing board.

- 1- Every eligible organization shall establish as an integral part of its organizational structure, a committee which consists of no less than three individuals all of whom must be bona fide members whose association with the organization is not for purposes of conducting or assisting in games of chance only.
- 2- 1. The committee is the organization's responsible governing board is responsible for all phases of gaming activity conducted by the eligible organization including its members, auxiliary components, employees, and agents. Gaming activity includes the use of the net proceeds.
- 3- 2. The minutes or other proper records of the organization must annually reflect the name and address and title of each member of this committee governing board.
- 4- 3. It is recommended that members of this committee governing board not conduct or assist in the conduct of their organization's games of chance. However, members of this committee governing board are prohibited from conducting or assisting in the conduct of their organization's games of chance if it is determined by the attorney general that the organization's permissive policy has resulted in questionable activity.
- 5- 4. In order to preserve the integrity of the administration of the games of chance law, the attorney general may determine that the provisions of North Dakota Century Code section 53-06.1-16 are applicable to this committee governing board or any member thereof.
- 6- 5. Each organization shall have its games of chance committee governing board make available in writing to its membership and board of directors, at least once a quarter, the organization's total adjusted gross proceeds; cash long or short; net proceeds; excess expenses, if any; reimbursement of excess expenses, if applicable; and eligible use contributions. Such information must also be included in the minutes or other proper records of each organization.

6. It is recommended that the governing board establish a games of chance committee. This committee should be comprised of only bona fide members of the organization and serve as an advisory committee to the governing board. The governing board may assign the governing board's supervisory duties to a games of chance committee; however, the governing board is still ultimately responsible. The particular provisions of the administrative rules, law, or formal directives issued by the attorney general as applied to the governing board also apply to the games of chance committee.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-17

10-04.1-04-05. Organizations to purchase only from licensed distributors. An organization licensed by the attorney general or authorized which has been issued a local permit by the local governing body shall purchase gaming equipment and supplies only from North Dakota licensed distributors. However, the purchase of a jar bar or poker table is exempt from this requirement.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-06. Equipment acquisitions.

1. Eligible organizations are prohibited from renting, lending, ~~ex~~ exchanging, or otherwise providing gaming equipment with any licensed organization, organization which has been issued a local permit, or person (person includes any entity - refer to North Dakota Century Code sections 1-01-28 and 53-06.1-01).
2. An eligible organization anticipating the printing, manufacture, or construction of any gaming equipment, excluding jar bars and poker tables, for games of chance shall first notify the attorney general of its intention and shall have the finished product approved by the attorney general before being placed in service.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-14

10-04.1-04-07. Promotion of games of chance. Free games, ~~deer prizes, discounts to certain age groups,~~ alcoholic drinks, twenty-one chips, or poker chips, transportation to the gaming site, or other inducements given directly or indirectly to players to participate in games of chance, are prohibited. ~~Binge cards or~~

packages discounted up to fifty percent are not considered inducements.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-08. Lessor of gaming site - Restrictions.

1. Any advertising done, by the lessor or any other person, related to games of chance at a site must contain a statement identifying the organization licensed to conduct games of chance at that site. This requirement includes, for example, napkins, advertising signs, and billboards.
2. The lessor, lessor's spouse, management, officers, or any employee or agent of the lessor who is in a position, individually or collectively, to approve or deny the lease, may not directly or indirectly participate in the ~~selling, distributing, conducting, assisting, or playing play~~ of games of chance at the site leased. If the site is a public building, this prohibition applies to the building manager and staff and all officials in a position, individually or collectively, to approve or deny the lease. It is recommended that all employees of the lessor not be allowed to play games of chance at the site leased.
3. ~~It is recommended that all employees of the lessor not be allowed to play games of chance at the site leased. However, in~~ In no instance may any employee of the lessor, lessor's spouse, management, officers, or any employee or agent, directly or indirectly, participate in the selling, distributing, conducting, or assisting in the conduct of games of chance at the site leased.
4. No game of chance may be set up or otherwise operated in conjunction with the conduct of the lessor's business operations.
5. No officer or board member of a licensed organization may have any financial interest in any site leased by that organization.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-10. Rental agreements.

1. Every eligible organization conducting games of chance at a site that is not owned by that organization shall have in

writing the conditions under which it is permitted the use and occupancy of that site. Such agreement must be attested to by both the ~~grantor~~ lessor and ~~grantee~~ the organization.

2. At a minimum, every such agreement entered into pursuant to this section must contain, by affirmative or negative statement, the following information:

- a. Name of grantor or lessor, whichever is applicable, who must be the legal owner of the site. Name of lessor if either of the following two conditions exist:

(1) If the lessor is the legal owner of the site and the site has not been leased to a lessee.

(2) If the site has been leased to a lessee and the lessee does not have the express responsibility and authority to execute rental agreements for the site.

Otherwise, the name of the lessee of the site if the lessee has the express responsibility and authority to execute such rental agreements for the site. If the organization is to be a sublessee, then the lessee name must also be included.

- b. Name of the eligible organization.

- c. Term of the agreement which must be either on a fiscal year basis from July first to June thirtieth or, if the organization is licensed for a period shorter than a fiscal year, on the shorter period. The agreement may be for one or more years. However, if the provisions of the agreement become inconsistent with North Dakota Century Code chapter 53-06.1 and any amendments thereto, or any administrative rules adopted or formal directives issued by the attorney general, the term of the agreement shall end on the date of the inconsistency.

- d. Monetary consideration, if any.

- e. Brief description of the general area being ~~granted or~~ leased within the facility.

- f. The inclusion of the following statement with appropriate selections made for class B licensee applicants: "The ~~(grantor, lessor)~~ does hereby agree that ~~(he, she,)~~ ~~(his, her)~~ the (lessor), (lessor's) spouse, management, officers, and any employee or agent of the ~~(grantor, lessor)~~ who is in a position, individually or collectively, to approve or deny the lease shall not, directly or indirectly, participate in the selling,

distributing, conducting, assisting, or playing of games of chance at the site herein ~~(granted, leased)~~."

- g. A statement that the game of bingo is or is not the primary game of chance conducted on the site.
 - ~~g-~~ h. A statement that the game of twenty-one is or is not conducted on the site. The number of twenty-one tables, if any, upon which the monthly rent is based.
 - i. A statement that the game of charitable gaming tickets is or is not conducted on the site.
3. Payment of rent pursuant to the agreement must be for a fixed dollar rate per month ~~or~~ for the duration of the agreement, other agreed upon duration, or for a one-time event. However, if bingo is the primary game of chance conducted on the site and the organization's fixed dollar rate per month covers seasonal expenses, such as snow removal, air-conditioning, and heating, the lessor and organization may make a rate adjustment for the last month of the term of the agreement.
- a. Graduated rate arrangements are prohibited.
 - b. Other remuneration, in lieu of money, such as capital improvements, is prohibited.
 - c. Percentage rates are prohibited.
 - d. If the game of bingo is the primary game of chance conducted on the site, there is no limit on the monthly rent except that the amount be reasonable.
- ~~d-~~ e. If the game of bingo is not the primary game of chance conducted on the site, the following applies:
- (1) ~~For~~ If the game of twenty-one is conducted, for purposes of enforcing the maximum monthly rent of one hundred fifty dollars for each table on which the game of twenty-one is played, the phrase "the number of tables on which the game of twenty-one is played" (see North Dakota Century Code section 53-06.1-03.2) means the maximum number of tables set up and necessary for the playing of the game of twenty-one at that site. If the number of tables necessary changes, so as to necessitate a change in the maximum rent which may be charged, the appropriate change must be made in the lease and a copy of the amended lease sent to the attorney general. There may be no additional rent for any other purpose such as capital improvements, office space,

and storage space associated directly or indirectly with games of chance at the site.

- (2) If the game of charitable gaming tickets is conducted, the maximum monthly rent may not exceed:
 - (a) If the game of twenty-one is conducted, in addition to the rent allowable for the game of twenty-one, fifty dollars.
 - (b) If the game of twenty-one is not conducted, one hundred fifty dollars.
- (3) If the games of twenty-one is played and charitable gaming tickets are conducted by licensed organizations at special occasions for five days or less per month and the site is a public or private building, the maximum rent the lessor can charge is twenty-five dollars per twenty-one table and ~~fifty~~ ten dollars per jar bar for the charitable gaming ticket activity, per special occasion. If only the game of charitable gaming tickets is conducted under such circumstances, the maximum rent the lessor can charge is twenty-five dollars for the charitable gaming ticket activity, per special occasion.
- (4) If the game of poker is conducted in conjunction with the games of bingo, twenty-one and/or charitable gaming tickets, no additional rent is allowed. Otherwise, the rent amount for a poker occasion must be reasonable.

f. Except as provided by subdivision d of subsection 2 of section 10-04.1-05-07, the organization may pay no additional amount or rent from any source to the lessor of the site for any other purposes, such as office space, storage space, snow removal, janitorial service, equipment, and capital improvements, including signs, lighting, decorating, or any other item normally classified as a fixed asset, associated, directly or indirectly, with games of chance on the site.

4. ~~Renegotiated~~ If the game of bingo is no longer the primary game of chance conducted on the site, the number of twenty-one tables necessary changes, or the game of charitable gaming tickets discontinued so as to necessitate a change in the maximum rent which may be charged, the appropriate change must be made in the lease. A copy of the amended lease or any renegotiated agreements must be furnished to the attorney general on or before fourteen days prior to the effective date of the new agreement.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-03.1, 53-06.1-03.2,
53-06.1-03.3, 53-06.1-06, 53-06.1-17

10-04.1-04-11. Person in charge. Every licensed organization shall designate an individual at each site location as the person in charge. The ~~games of chance committee~~ governing board specified in section 10-04.1-04-03 is responsible for being aware of the conduct of the games at that site and the adherence to the law and regulations by the employees, lessor, members, and participants. Violation of the law and regulations must be made known immediately by the person in charge to the attorney general or a local enforcement agency if circumstances dictate.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-18. Currency of play. All playing of games of chance must be in United States of America currency ~~or coinage~~. The exchange of foreign currency ~~or coinage~~ into United States of America currency ~~or coinage~~ must be done in advance of any play. The exchange rate must be that rate at which the foreign currency ~~or coinage~~ is exchanged for United States of America currency ~~or coinage~~ at the bank where the organization established the general gaming bank account for that licensed site. The organization may account for the exchange rate by rounding to the nearest nickel.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-19. Credit play prohibited. All playing of games of chance must be on a cash basis. Cash includes checks. Credit may not be extended to any player. The consideration to play a game of chance must be collected in full, by cash or check, in advance of any play. No organization may grant a loan or gift of any kind at any time to a player. Organizations may establish policy concerning acceptance of checks, and need not accept checks. No organization may ~~hold checks,~~ ~~or~~ accept postdated checks, allow a player to alter a check, permit a deferred payment (for example - the organization accounting for the value of charitable gaming tickets played and winning tickets opened, then, at the end of play settling the difference with the player), or engage in any similar practice. The organization may allow a player to buy back a check with cash; however, the organization may not unnecessarily delay the bank deposit of that check to accommodate the buy back. The organization may return a player's check to the player as part of a prize payout; however, this may only occur on the specific day in which the check was written.

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-04-21. Use of twenty-one or poker chips as payment for drinks may be allowed. The organization and the lessor of the gaming site may mutually agree to allow players to use twenty-one or poker chips as payment for drinks. The organization shall redeem those twenty-one or poker chips for cash in accord with either subsection 5 of section 10-04.1-10-10 or subsection 4 of section 10-04.1-10.1-09.

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-04-22. Employees or volunteers should not be restricted in the play of games of chance. It is recommended that the organization not allow any employee or volunteer to play games of chance at the organization's sites.

1. No organization may allow any employee or volunteer to play games of chance while on duty. For purposes of this rule, an employee or volunteer taking a temporary break is still considered on duty. Furthermore, for single games of charitable gaming tickets only, no organization may allow any jar operator to play games of chance until after four hours of active play have occurred since the jar operator was off duty.
2. An organization that does allow any employee or volunteer to play games of chance at other times a time other than the time allowed by subsection 1 shall post that fact on the site in a form that is clear and legible, and at a location that is easily visible to the players.
3. It is recommended that the organization not allow any employee or volunteer to play games of chance at any of the organization's sites.

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-04-24. Employees and volunteers prohibited from providing any inside information. No employee or volunteer of the organization may provide any inside information to any person, by any means whatsoever, related to any game of chance, ~~including tipoffs, buyables, and dumpables.~~

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-27. Policies and procedures. Every eligible organization shall have a current written policies and procedures manual regarding its conduct of games of chance readily available for inspection by law enforcement officials at each site licensed to conduct games of chance. This manual may be the organization's written system of internal control prescribed by section 10-04.1-05-02.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-05-02. System of internal control. In order to adequately determine its liability for taxes under North Dakota Century Code section 53-06.1-12, and the proper determination of net proceeds to be devoted under subsection 7 of North Dakota Century Code section 53-06.1-06, the games of chance committee governing board of every licensed organization shall, prior to the commencement of the actual operation of games of chance, establish and have available for review, a written system of internal accounting and administrative controls relative to gaming operations. When requested by the attorney general, an organization shall file a copy of their internal accounting and administrative control system with the attorney general. The attorney general may require that the organization revise its internal accounting and administrative control system if the system does not meet the internal control objectives provided by section 10-04.1-05-03.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-05-03. Internal control objectives.

1. The system of accounting control relative to gaming operations must provide a plan of organization and a description of the procedures and records which are designed to provide reasonable assurance that the following general objectives will be attained:
 - a. Transactions are executed in accordance with management's general or specific authorization.
 - b. Transactions are recorded as necessary to properly record gaming proceeds, and to maintain accountability for assets.
 - c. Access to assets is permitted only in accordance with management's authorization.

- d. The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to differences.
2. The system of administrative control relative to gaming operations must provide a plan of organization which includes appropriate segregation of functional responsibilities and sound practices to be followed in the performance of these duties by competent and qualified personnel. The plan of organization must be **diagrammatic and narrative in describing** describe the interrelationship of functions and the division of responsibilities upon which the system of internal control relative to gaming operations is based.
3. Should the attorney general determine that a system of internal control or any amendment thereto is inadequate, the attorney general shall give written notice to the organization of such inadequacy. Upon receipt of such notice the organization shall take immediate steps to remedy the inadequacy and shall notify the attorney general in writing of such steps, including the filing of any necessary amendments to the system. Should the organization fail to remedy the inadequacy within sixty days following receipt of such notice, it is deemed to be in violation of this article and is subject to disciplinary actions in accordance with the rules and law. The attorney general shall publish and make available to the licensed organizations general guidelines for the organizations' use in developing internal control systems.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-05-04. General gaming bank account - Class A and class B.

1. Every eligible organization shall maintain one checking account at a financial institution, located within the state of North Dakota for each license issued.
2. Every organization shall furnish an "authorization to inspect bank records" to the attorney general (subsection 5 of section 10-04.1-03-04).
3. Interest earned on this account's funds must be included in gross proceeds.
4. **Service fees are an eligible expense within subdivision d of subsection 1 of section ~~10-04.1-05-07~~ As provided by subsection 1 of North Dakota Century Code section 53-06.1-11, no organization may deposit nongaming funds into the general gaming bank account.**

However, an organization may deposit nongaming funds into the general gaming bank account if such deposit is a reimbursement of excess gaming expenses (section 10-04.1-05-08).

5. Class A organizations must maintain the general gaming bank account for the devotion of net proceeds for the actual eligible uses. These disbursements are subject to the time limitation provided by subsection 2 of section 10-04.1-12-01. Transfers may not be made to the general fund of the organization but must be made to the ultimate use. Gaming expenses ~~or capital costs~~ associated with gaming activity are not an eligible use.
6. Class B organizations must also maintain a charitable gaming trust fund bank account. See section 10-04.1-05-05.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-05-05. Charitable gaming trust fund bank account - Class B.

1. In order to ensure that the entire net proceeds are devoted to eligible uses, class B organizations that file a tax return under section 10-04.1-11-01 shall establish a charitable gaming trust fund bank account as a separate bank account. This account must receive the only those transfers from the special gaming bank account established for each license number (section 10-04.1-05-04). Such transfers constitute the devoting of net proceeds (section 10-04.1-12-01). From this account the disbursements for the actual eligible uses must be made and in no instance may the balances of this account be used for any other purpose. These disbursements are not subject to any time limitations provided that the organization reapplies for a license to conduct games of chance before July first of each year or does not relinquish the license; otherwise, the disbursements must occur within ninety days of the expiration or relinquishment of the license unless an extension is requested in writing of the attorney general and an extension is granted. Transfers may not be made to the general fund of the organization but must be made to the ultimate use. Gaming expenses ~~or capital costs~~ associated with gaming activity are not an eligible use.
2. Interest earned on this account's funds must be included in the account and disbursed for eligible uses.
3. Service fees must be an adjustment to the account.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-02, 53-06.1-11, 53-06.1-17

10-04.1-05-06. Method of accounting.

1. Every eligible organization shall determine its gross proceeds for games of chance on the cash following basis:
 - a. Cash basis - bingo, twenty-one, poker, and rafflewheel ticket games.
 - b. Accrual basis - charitable gaming tickets, punchboards, professional sports pools, and raffles (excluding rafflewheel ticket games).
2. Every eligible organization shall determine its expenses on either the cash or accrual basis which must be consistently applied, except:
 - a. Punchboards Inventory items of punchboards, rafflewheel tickets, sports-pool boards, deals of charitable gaming tickets, including club specials, tip boards, and seal boards, and paper bingo cards must be determined on the accrual basis. Every licensed organization shall furnish a listing of state gaming stamps, respective game serial numbers, and other relevant game information related to the deals of charitable gaming tickets, punchboards, and sports-pool boards removed from play or otherwise disposed of during the tax return reporting period to the attorney general.
 - b. The tax imposed by North Dakota Century Code section 53-06.1-12 must be deducted on the accrual basis.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-05-07. Expenses Special expense restrictions.

1. For the purpose of administering subsection 4 of section 53-06.1-11, for an organization that uses any of the net proceeds for that organization's own purposes, the following terms found in that subsection have the following meaning:
 - a- "The purchase of necessary goods, wares, and merchandise" means the reasonable cost of all equipment for games of chance, except capital costs, for the conduct of any game of chance permitted in accordance with chapter 10-04.1-02.

Items of a minor nature such as pencils, crayons, tickets, envelopes, and paper clips, necessary to conduct such games and all sales taxes paid herewith are included in this term. Capital cost items which are leased or rented may not be expensed but are considered as a capital cost.

b. "The securing of services reasonably necessary for repair of equipment, and for operating or conducting games of chance" means:

- (1) The reasonable labor and material charges for the repair of equipment for games of chance.
- (2) The reasonable compensation, employer paid benefits, and payroll taxes paid for employees directly or indirectly engaged in conducting or assisting in conducting games of chance. Compensation includes wages, salaries, bonuses, and all other forms of remuneration for services rendered, and reasonable and necessary traveling expenses incurred in the course of duty, which benefits only the organization. The organization may pay bonuses through an incentive program. Where the employee performs other services unrelated to gaming activities, an allocation based on hours worked in each activity must be made. The payment to any employee of compensation which is other than reasonable based upon the local prevailing wage scale for a similar position creates a presumption of a violation of this section.

Every licensed organization is allowed a forty-five percentage limitation of total adjusted gross proceeds for expenses incurred in the conduct of games of chance. The dollar amount of the forty-five percentage limitation may be used for any purpose, provided that such use does not violate North Dakota Century Code chapter 53-06.1 and any amendments thereto, or any administrative rules adopted or formal directives issued by the attorney general. However, the organization shall report the total dollar amount of its actual gaming expenses on the North Dakota gaming tax return to enable the attorney general to determine if the organization's actual expenses were greater than the forty-five percentage limitation for expenses on a quarterly basis.

- (3) 2. No organization may conduct any gaming activity if the compensation to any employee taking part in the

management or operation of such gaming activity is based upon base any employee's compensation on a percentage of the adjusted gross proceeds or net proceeds. Compensation includes wages, salaries, bonuses, and all other forms of remuneration for services rendered. The organization may pay bonuses through an incentive program.

3. In addition to the rent restrictions provided by subsection 3 of section 10-04.1-04-10, the following apply:

e- "The rent if the premises or equipment are rented, or for janitorial services if premises are not rented" means:

a. The rent must be reasonable. Factors to consider in determining reasonable rent are time, floor space, local prevailing rates, availability of space, and available services.

(1) b. The reasonable rent for a particular site location as shown in the rental agreement, except that no No rent can be paid by an organization determined to be closely connected in accordance with section 10-04.1-03-03. Factors to consider in determining reasonable rent are time, floor space, local prevailing rates, availability of space, and available services.

(2) c. The reasonable rental fee organization may pay rent for equipment used to conduct games of chance on a specific occurrence. (For example, tables and chairs at a bingo event.) This expense does not include the rental fee for equipment used exclusively in the conduct of games of chance.

(3) d. The reasonable rental fee To other than a lessor of the organization's gaming site, the organization may pay rent for additional office and storage space, the use of which is directly attributable to the ancillary functions necessary for the conduct of games of chance, including purchasing of equipment and supplies, the paying of expenses and donations, and the preparation and maintenance of required records. This rule may be waived if the organization requests, in writing, approval from the attorney general and approval is granted.

4. For any advertising done, by the lessor or any other person, related to games of chance at a site, the organization's share of expense, if any, may not exceed a reasonable prorated amount of the total expense based on the ratio that the advertisement advertises gaming in relation to the whole advertisement. Any payment for advertising by an organization

that is other than reasonable will create a presumption of a circumvention by the organization of the rent restrictions of this section.

5. The amount of any player check returned by a bank to the organization as unpaid for whatever reason, including nonsufficient funds, and is uncollectible by the organization is an expense towards the forty-five percentage limitation.
6. The forty-five percentage limitation for expenses or any other source of funds may not be used by the organization for any purpose to circumvent the rent restrictions of North Dakota Century Code sections 53-06.1-03.1, 53-06.1-03.2, 53-06.1-03.3, or subsection 3 of section 10-04.1-04-10, or of this section.
7. If a door prize is awarded as a promotion of games of chance, the organization's cost of the door prize may be either a gaming expense towards the forty-five percentage limitation or a nongaming expense. The cost of the door prize may not be deducted as a prize towards the adjusted gross proceeds.

d. "For accountant's fees" means the reasonable accounting and bookkeeping fees, directly attributable to games of chance accounting and administrative functions.

e. "For license fees" means the fees paid to the attorney general by eligible organizations applying for a gaming license pursuant to subsection 1 of North Dakota Century Code section 53-06.1-03.

f. "Additional overhead expenses not to exceed the sum of two hundred dollars per month" means the general continuing expenses incurred involving administrative and operational activities associated with games of chance. The expenses are incidental to the conduct of games of chance and can be attributable to gaming by factors such as time, floor space, and usage. The overhead expense is limited to two hundred dollars per organization per month.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-11, 53-06.1-17

10-04.1-05-08. Expense limitation. If the dollar amount of the forty-five percentage limitation for expenses is less than the actual expenses for a fiscal year, the excess of the actual expenditures is required to be reimbursed to the general gaming bank account by the

general operating account of the licensed eligible organization by the due date of the North Dakota gaming tax return for the quarter ended June thirtieth. Funds given to the licensed eligible organization by its own gaming operation, or any other gaming operation in this state, may not be used to pay the excess of expenses over the percentage limitation. The organization is ultimately liable for any unreimbursed excess gaming expenses.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-05-09. Payment and reconciliation of expenses. Where ~~allowable gaming~~ expenditures are not paid directly from the general gaming bank account, as in the case of the allocation of salary expenses, reimbursement to the disbursing fund from the general gaming bank account must be made by the due date of the North Dakota gaming tax return. Such reimbursement must be supported by a detailed reconciliation ~~of the difference.~~

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-05-10. Reconciliation of net proceeds carryover and trust fund carryover.

1. In order for the organization to timely identify and resolve any imbalance between the organization's general gaming bank account check register balance and the net proceeds carryover, the organization shall do a reconciliation ~~on at least an annual basis~~ which must be filed with the gaming tax return for the quarter ended June thirtieth. ~~The attorney general organization shall provide use a reconciliation form to the organization for the organization's optional use prescribed by the attorney general.~~
2. For a class B organization, in order to timely identify and resolve any imbalance between the organization's charitable gaming trust fund bank account check register balance and the trust fund carryover, the organization shall do a reconciliation ~~on at least an annual basis~~ which must be filed with the gaming tax return for the quarter ended June thirtieth. ~~The attorney general organization shall provide use a reconciliation form to the organization for the organization's optional use prescribed by the attorney general.~~
3. The amount of any imbalance, caused by any reason whatsoever, determined by subsections 1 and 2 must be deposited in the respective general gaming bank account or charitable gaming

trust fund bank account by the general operating account of the licensed eligible organization by the due date of the North Dakota gaming tax return for the quarter ended June thirtieth. Funds given to the licensed eligible organization by its own gaming operation, or any other gaming operation in this state, may not be used to pay the imbalance. The organization is ultimately liable for any imbalance.

- 3- 4. When requested by the attorney general, the organization shall file do a copy of the reconciliation as provided by subsections 1 and 2 of section 10-04.1-05-10 with the attorney general on a more frequent basis than annually.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-05-12. Use of net proceeds - Reports. Every class A licensee Each organization shall file a quarterly report reflecting all contributions of gaming funds made to eligible uses. Every class B licensee shall file a quarterly report reflecting the activity of the charitable gaming trust fund bank account. These reports must be filed with the attorney general record of eligible use contributions with the quarterly tax return.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-02, 53-06.1-11, 53-06.1-17

10-04.1-06-01. Bingo. "Bingo" is that game of chance in which each player receives one or more cards, for which consideration has been paid, each of which is marked off into squares arranged in vertical and horizontal rows. Each playing square is designated by a preprinted number, letter, or combination of numbers and letters. The organization preannounces announces the prize prior to the start of each game unless a fixed schedule of games and their prizes is posted on the site in a form that is clear and legible and at a location that is easily visible to the players. Except for the conduct of "bonanza bingo" (see subsection 20 of section 10-04.1-06-03), the players cover squares as the operator of such game announces the number, letter, or combination of numbers and letters either displayed by an electronic random number generator or appearing on a ball selected by chance, either manually or mechanically, from a receptacle in which have been placed balls bearing numbers, letters, or combinations of numbers and letters corresponding to the system used for designating the squares. The winner of each game is the player or players first properly covering a predetermined pattern of squares on a card being used by the player or players. In the event that The organization shall conspicuously post a notice on the site containing the organization's special policies related to a sharing of the designated prize is required as a result of multiple winners on

the last immediately called number on identically priced or differently priced bingo cards (for example, the sales value and prize payout of gold colored bingo cards being greater than the sales value and prize payout of green colored cards), including the following governs:

1. If the designated prize consists of cash, the total amount of the prize must be divided equally between or among the verified winners, provided, however, that the organization has the option of rounding fractional dollars to the next higher dollar.
2. If the designated prize consists of an item of tangible personal property, merchandise, or other things other than cash, the bingo organization shall award, if the designated prize cannot be divided, substitute prizes to each verified winner; provided, however, that the substitute prizes must, insofar as possible, be of equal value to each other and as a whole, equal the current retail price of the original prize. No merchandise prize is Merchandise prizes may be redeemable or convertible into cash directly or indirectly at the discretion of the organization. Except for gift certificates provided by subsection 5 of section 10-04.1-06-03, no bingo prize may be a chance in the entry in any game of chance.
3. Notwithstanding the foregoing, an organization may establish minimum prizes.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-07, 53-06.1-17

10-04.1-06-02. Bingo equipment to be used. The conduct of bingo must include the following items:

1. A machine or other device from which balls are withdrawn or an electronic random number generator.
2. If an electronic random number generator is not used, a set of balls bearing the numbers, letters, or combinations of numbers and letters corresponding to the bingo cards in play, either seventy-five or ninety balls. The balls must be available for inspection by the players before a bingo session begins to determine that all are present and in operating condition. Each numbered ball must be essentially equal as to size, weight, shape, and balance and as to all other characteristics that may control their selection and all must be free from any defects and be present in the receptacle before each game is begun.
3. **Hard cards and paper bingo cards (synonymous with specials, throwaways, and disposables) must be**

preprinted, manufactured cards- Paper bingo cards (synonymous with specials, throwaways, and disposables) that provide a player with the opportunity to select and print the numbers on the card may be used; provided, that at least all of the following requirements are met:

- a. The cards must be at least two-part carbonless and contain a control number.
 - b. The card must have at least twenty-five squares arranged in vertical and horizontal rows with a maximum of one free space.
 - c. All the squares must have a number printed therein by the player; however, the middle space may be a free space.
 - d. The numbers must be printed clearly using a ballpoint pen by the player.
 - e. A number cannot be repeated on the card.
 - f. After the card is completed, the player shall provide the organization with the duplicate part of the card prior to the start of the game. The player retains the original part of the card.
 - g. The organization shall verify the winning card by matching the original part of the card to the duplicate part.
 - h. The card must be voided if it is unclear or altered.
4. Other equipment may be used for the purpose of displaying numbers and letters called to the public, and such furniture and sound amplification system as is necessary for the convenience and comfort of the players and the organization.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-03. Manner of conducting bingo. The conducting of a bingo session must be according to the following rules:

1. The organization shall post a clear and legible sign on the site where bingo is played containing the rules governing the conduct of bingo.
2. No organization may reserve, or allow to be reserved, any bingo card for use by players except braille cards or other cards for use by legally blind or disabled players.

3. Legally blind players may use their personal braille cards when an organization does not provide such cards. The organization has the right to inspect, and to reject, any personal braille card. A legally blind or disabled person may use a braille card or reserved hard card in place of a purchased paper bingo card.
4. If an organization does not restrict duplicate hard cards or duplicate paper bingo cards from being in play for a game, regardless of the series number for paper bingo cards, the organization shall conspicuously post that fact or notify all players prior to their purchase of bingo cards for a game or number of games that there is a possibility that duplicate bingo cards will be in play possibly resulting in multiple winners for a game. Duplicate hard cards are cards with the same series number (card number) regardless of the color of the cards. Duplicate paper bingo cards are cards with the same series number (card number) regardless of the color of the cards or manufacturer assigned serial number.
5. No organization may have advance sales of bingo cards, sell gift certificates towards the purchase of bingo cards, or award gift certificates as prizes unless at least all of the following requirements are met:
 - a. The advance sales and gift certificates must be accounted for by the organization.
 - b. The organization shall issue a receipt to the purchaser or bingo winner to evidence the sale or win.
 - c. The player shall redeem the receipt and the receipt must be retained by the organization.
 - d. The player is issued the bingo cards when the receipt is redeemed (subsection 6 of section 10-04.1-06-03).
6. All issuances of bingo cards to the players must take place upon the site immediately preceding or during the bingo session for which the cards were purchased.
7. Two or more sets of paper bingo cards may not intentionally be used at the same time if they have identical series manufactured assigned serial numbers when paper bingo cards are being used for receipting gross proceeds for a particular bingo game.
8. Bingo cards must be sold and paid for prior to the start of a specified game or specified number of games when they are progressive. Cards may not be sold for a game in progress after the first number of that game is called.

9. No player may separate a paper bingo card when there are two or more cards faces on one sheet (for example, a "three-on" which has three faces on one sheet).
10. No player may play more bingo cards than were actually paid for. This rule does not prohibit a player from sharing purchased cards with another person.
11. No bingo game may be conducted to include a prize winner determined other than by the matching of letters and numbers on a bingo card with letters and numbers called by the organization, in competition among all players in a bingo game.
12. The particular arrangement of numbers required to be covered in order to win a bingo game must be clearly described and announced to the players immediately before each game is begun unless the description of the game is the same as the preceding game.
 - 12.1. For a bingo game in which either a cash prize and/or the current retail price of a merchandise prize is five hundred dollars or greater, the organization shall document the winning cards by either of the following methods:
 - a. Use an electronic bingo card validator.
 - b. Tape record or maintain a written record of the called bingo numbers, including the winning series number stated aloud by an organization employee or volunteer (see subsection 17 of section 10-04.1-06-03). The organization shall retain the tape recording or written record for at least a period of thirty days.
13. Immediately following the drawing of each ball in a bingo game, the caller shall manually display the letter and number on the ball to the players in that room. If an electronic random number generator is used in a bingo game, the organization shall ensure that the letter and number displayed is physically visually seen by the players in that room.
14. The letter and number either on the ball or displayed by an electronic random number generator must be called out prior to the drawing of the next ball or prior to the display of the next letter and number by an electronic random number generator.
15. After the letter and number are called, the corresponding letter and number must be lit on the organization's flashboard for player viewing. The use of a flashboard is optional and the number and letter lit is not necessarily official.

16. A winner is determined when a specified pattern of called numbers appears on a card.
17. Immediately upon a bingo player declaring a winning combination of letters and numbers, the winning card series number must be stated aloud by an organization employee or volunteer. The winning card must be verified by an organization employee or volunteer and at least one neutral player unless an electronic bingo card validator is used.
18. Upon a bingo player declaring a winning bingo, if the next ball is out of the machine, it must be removed from the machine and must be the next ball to be called in the event the declared winning bingo is not valid.
19. Cash register receipts and ticket receipts for bingo must be kept in view at all times. A player's bingo is void if the player has more bingo cards than that represented by the cash register receipt or ticket.
20. No organization may conduct "bonanza bingo" unless at least all of the following requirements are met:
 - a. The organization calls a predesignated quantity of bingo numbers (for example - fifty numbers) before the actual playing of that bonanza bingo game.
 - b. Bonanza bingo cards shall be sealed when they are sold to the players.
 - c. Bonanza bingo cards can be sold throughout the bingo session. However, no bonanza bingo cards may be sold after the organization calls the next continuous number (for example - fifty-first number) during the actual bonanza bingo game, **following the certain quantity of bingo numbers first called.**
 - d. No player wins unless all the numbers for the predetermined bingo pattern on the player's bonanza bingo card have been called.
 - e. If a player bingos before the next continuous number (for example - fifty-first number) is called, the player or players must be awarded the designated prize. During the actual bonanza bingo game, the organization shall call the next continuous number, if necessary, (for example - fifty-first number) and so on until a player successfully bingos and is awarded the designated prize.
 - f. A bonanza bingo game may not extend overnight beyond a bingo session.

21. No floorworker may assist a player in the play of the player's bingo card. However, a special employee or volunteer whose sole function is to assist players may assist a player.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-04. Free games prohibited. No organization may allow a person to play in a bingo game for free. ~~No free bingo cards may be awarded or given to a person as a prize for, or conditioned upon, winning a bingo game.~~

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-06. Receipting method required for recording gross proceeds in bingo games.

1. All gross proceeds from bingo games must be receipted by the organization. Gross proceeds include admissions. Gross proceeds must be receipted by the use of either cash one or a combination of several of the following methods:

a. Cash register receipts, ticket.

b. Ticket receipts, paper.

c. Paper bingo cards, floorworker.

d. Floorworker sales report, checkers, or a combination of several receipting methods.

e. Checkers.

2. Written approval must be obtained from the attorney general for use of any alternate receipting method.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-06-07. Cash register receipts for recording gross proceeds. The cash register receipting method is normally used by an organization to record the bingo gross proceeds by the issuance of consecutively numbered cash register receipts to account for the sale of bingo card packages, bingo hard cards, and bingo paper cards, excluding any floorworker sales.

1. If a cash register is used, a consecutively numbered receipt containing at least the following information must be provided to the player:
 - a. Name of the organization.
 - b. Date of the bingo session.
 - c. Amount of money paid for the opportunity to play.
 - d. Type of bingo cards purchased sold (for example, a particular bingo package).
 - e. Consecutive customer receipt number.
2. The cash register must have at least a consecutive four digit customer receipt number which does not return to zero at the conclusion of any period of use. Further, any cash register used must retain its transaction count between uses whether or not its power source is interrupted.
3. The cash register must have sufficient keys to record separately each type of sale and must provide a total for each type of sale recorded.
4. All cash register receipts for voids, underrings, overrings, no sales, and any other related receipts must be retained with the daily bingo records.
5. All transactions, customer receipt numbers, and control totals must be recorded on the tape retained in the cash register. The internal tape, showing these transactions, must be retained with the daily bingo records. If the cash register is used by the organization for purposes other than recording the receipts from bingo, the internal cash register tapes from the other uses must also be retained for at least three years.
6. Written approval must be ~~first~~ obtained from the attorney general for use of a cash register which does not meet the requirements of this section but may contain adequate control features.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-08. Ticket receipts for recording gross proceeds.

The ticket receipting method is normally used by an organization to record the bingo gross proceeds by the issuance of consecutively numbered tickets as receipts to account for the sale of bingo card packages, bingo hard cards, and bingo paper cards, including any

floorworker sales. If tickets are used for receipting, the following conditions must be met:

1. All tickets on a roll must be preprinted with a consecutive number.
2. ~~Once a roll of tickets has been started, tickets~~ Tickets must be issued consecutively off of ~~that~~ a roll.
3. A log must be maintained, listing the date each roll of tickets is purchased or obtained by the organization, the color, the beginning ticket number, the ending ticket number, and the number of tickets on that roll. All tickets received must be entered in the log upon being received.
4. The organization shall record in its daily records, the color of the ticket, the value of the ticket, the lowest numbered ticket, and the highest numbered ticket issued as a receipt from each separate roll of tickets used. Tickets issued for each type of sale must be recorded separately. Any ticket not issued as a receipt during a session that bears a number falling below the highest numbered ticket issued along with any leftover tickets from the end of the roll which will not be sold must be retained by the organization as a part of its daily records, ~~along with any leftover tickets not issued from the end of a roll,~~ and must not be otherwise used or disposed of by the organization.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-09. Paper bingo cards for receipting gross proceeds.

The paper bingo card receipting method is normally used by an organization to record the bingo gross proceeds from the sale of paper bingo cards which are not accounted for by any other receipting method. Paper bingo cards themselves may be used as the receipt required by this rule provided that:

1. Each card must have printed on its face both its individual series number and the serial number assigned by the manufacturer. Each set of ~~paper bingo~~ cards must ~~be~~ have the individual series numbers consecutively numbered through the set, from the first card to the last card. ~~Each paper bingo card must have printed on its face both its individual card number and the series number assigned by the manufacturer.~~
2. Each ~~paper bingo~~ card sold represents a specific amount of money which has been paid to the organization.

3. Each paper bingo card from containing the same series manufacturer assigned serial number is consecutively issued and sold for the same price as each other card ~~in~~ with the same series being used during manufacturer assigned serial number sold for any particular bingo game.
4. A log must be maintained, listing the date each set of paper bingo cards is purchased or obtained by the organization, series manufacturer assigned serial number, color, number of faces per card, beginning card series number, and number of cards per set. All paper bingo cards received must be entered in the log upon being received.
5. The organization shall record in its daily records the information required by either of the following daily records contain information as prescribed by either of the following methods:
 - a. The number of paper bingo cards taken from inventory and issued for the bingo session which must be physically counted and verified by at least two persons who shall sign or initial such verification, the color of the paper bingo cards, and the selling price of the card cards. Paper bingo All cards issued for each type of sale must be recorded separately. The number of paper bingo cards issued but not sold must, prior to the bingo cards being returned to inventory, be physically counted and verified by at least two persons who shall sign or initial such verification prior to the cards being returned to inventory. The daily records must include the total number of paper bingo cards issued, returned to inventory, sold, and the total amount of actual gross proceeds and cash long or short.
 - b. The series manufacturer assigned serial number, the color of the paper bingo card, the selling price of the card, the beginning card series number, and the ending card series number issued as a receipt for each separate set of paper bingo cards used. Paper bingo cards Cards issued for each type of sale must be recorded separately. Provided, that However, when more than one individual card number appears there are two or more faces on one sheet (for example, a "three-on") and therefore, two or more series numbers appear on a paper bingo card issued, then the lowest card series number must be used to determine the beginning number sold and the ending number sold. Each time the series numbering of the paper bingo cards breaks in the series, a separate entry must be made in the records. Paper bingo cards Cards which were not issued as receipts during a session, that bear a number below the highest numbered card issued must be retained by the organization as a part of its daily records, and must not be otherwise

used or disposed of by the organization. Any leftover cards not issued from the ~~end of a series set~~ must be accounted for by the organization.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-10. Floorworker sales report for receipting gross proceeds. The floorworker sales report receipting method is normally used by an organization to record the gross proceeds from the sale of paper bingo cards, by floorworkers, which are not accounted for by any other receipting method. A floorworker sales report must be ~~completed~~ controlled for each game receipted by this method by an employee or volunteer who is not a floorworker and the report shall at least contain all the following information:

1. Game number.
2. Floorworkers' names or assigned numbers.
3. Sales value of each ~~paper bingo~~ card "single" and "packet".
4. Number of ~~paper bingo~~ card "singles" and "packets" issued to each floorworker for sale, including signing or initialing by each floorworker to evidence the issuance. However, if an organization sells several ~~paper bingo~~ card "singles" to a player at a discount (for example, three "singles" for the price of two "singles"), the number of discounted sets must be predetermined and separately accounted for when issued to the floorworker for sale.
5. Number of ~~paper bingo~~ card "singles" and "packets" returned by each floorworker as unsold.
6. Number of ~~paper bingo~~ card "singles" and "packets" sold by each floorworker computed as the difference between the number issued and returned.
7. Value of the number of "singles" and "packets" sold by each floorworker.
8. Amount of ~~actual gross proceeds returned cash~~ turned in to the cashier by each floorworker, including signing or initialing by each floorworker to evidence the amount.
- 8- 9. Amount of cash long or short by each floorworker computed as the difference between the value of the number of "singles" and "packets" sold and the ~~actual gross proceeds returned~~ cash turned in to the cashier.

9- 10. Total number of paper bingo card "singles" and "packets" issued, returned, sold, and the total amount of actual gross proceeds cash turned in to the cashier and cash long or short.

~~±0-~~ 11. The counts as required by this section must be done by both the floorworker and an employee or volunteer who is not a floorworker.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-11. Use of checkers for recording gross proceeds.

The checker receipting method is normally used by an organization that sells each bingo hard card or bingo paper card prior to the start of each individual bingo game and that does not record the bingo gross proceeds by any other receipting method. When using the checker system to account for bingo gross proceeds, at least one checker must be engaged for each bingo session.

1. When using the checker system to account for bingo gross proceeds, at least one checker must be engaged for each bingo session. The A checker shall record on a control report must be completed for each session by a checker who is not a floorworker and the report must contain at least the following information:
 - a. Number of cards played in each game Game numbers.
 - b. Prizes awarded to the recorded cards for each game Number of bingo card "singles" and "discounted singles" (for example, three "singles" for the price of two "singles") counted in play by each game number.
 - c. Sales value of each bingo card "single" and "discounted singles" by each game number.
 - d. Amount of actual gross proceeds computed as the total number of bingo card "singles" and "discounted singles" counted in play multiplied by the sales value of each bingo card "single" and "discounted singles" by each game number and totaled for the bingo session.
 - e. Certification by the checker that the report is correct, including the checker's signature and date.
2. The checker must certify that the figures are correct to the best of the checker's knowledge. A cashier receipting report must be completed for each session by a cashier who is not a floorworker and the report must contain at least the following information:

- a. Game numbers.
 - b. Floorworkers' names.
 - c. Amount of cash turned in to the cashier by each game number.
 - d. Amount of prizes paid by the cashier by each game number.
 - e. Amount of actual cash profit computed as the amount of cash turned in minus prizes paid by each game number and totaled for the bingo session.
 - f. Amount of total adjusted gross proceeds computed as the difference between the actual gross proceeds from the checker control report and the total amount of actual prizes from the prize register (see section 10-04.1-06-12).
 - g. Amount of cash long or short for the bingo session computed as the difference between the total amount of actual cash profit computed by subdivision e of this subsection and the total adjusted gross proceeds computed by subdivision f of this subsection. Any cash long or short must be explained in the organization's daily records.
 - h. Certification by the cashier that the report is correct, including the cashier's signature and date.
3. The gross proceeds and prizes of each bingo session must be compared to the checker's records by an employee or volunteer of the organization who did not sell cards or pay prizes for the bingo session. Any variance must be explained in the organization's daily records. The organization may be required to use a checker control report and a cashier receipting report that account for each bingo session's gross proceeds and cash long or short by individual floorworker if it is determined by the attorney general that the organization's bingo activity has resulted in abnormal cash shortages.
 4. Written approval must be first obtained from the attorney general for use of a checker control report or a cashier receipting report, or both, which does not meet the requirements of this section but may contain adequate control features.

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-06-12. Register required for prizes.

1. All prizes issued in bingo games that use either cash register receipts, ticket receipts, paper bingo cards, or floorworker sales report must be accounted for by the organization on a register at the time the prize is issued to each player.
2. However, a prize register is not required if the organization uses checkers for recording gross proceeds (see section 10-04.1-06-11) when the total cash and merchandise prize values in aggregate for a session do not exceed three hundred dollars.

Each register for prizes must include at least the following information:

- 1- a. Name of the gaming site.
- 2- b. Date of the bingo session.
- 3- c. Game number.
- 4- ~~Type of game.~~
- 5- d. Amount of the cash prize or a description of the merchandise prize won.
- 6- e. Name and address of the winner.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-13. Record of the win.

1. When any player wins a cash prize greater than one hundred dollars, the organization shall make a record of the win. The record of the win must consist of a sequentially numbered check drawn from the general gaming bank account or a sequentially numbered receipt and the check or receipt must include at least the information required by section 10-04.1-06-12.
2. The organization shall determine the real identity of the payee and shall require such proof of identification from a reliable source as is necessary to establish the payee's identity prior to the payout of the cash prize. The check or receipt must include at least the information required on the prize register as prescribed by section 10-04.1-06-12.

3. If the payee is actually known by the organization, the record of the win must include the payee's driver's license number.
4. If the payee is not known by the organization, the record of the win must include the payee's driver's license number, including state of license registration. This information must be identified by the organization directly from the payee's driver's license. If the payee does not have a driver's license, the organization must indicate the payee's full name and correct address which will include the street address, city, and state, which must be taken from another form of identification. The organization shall determine the real identity of the payee and require such additional proof of identification from a reliable source as is necessary to properly establish the payee's identity. The organization may not pay out any prize unless and until the payee has fully and accurately furnished to the organization all information required by this section.
5. It is recommended that the organization also make a record of the win for cash prizes equal to one hundred dollars.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-06-14. Recordkeeping system required.

1. A licensed organization shall retain ~~specific~~ specific ~~daily~~ daily ~~accounting records or information, or both,~~ with regard to bingo games for a period of three years from the end of the quarter for which the records are kept unless the organization is released by the attorney general from this requirement ~~as to any particular record.~~ The records must be maintained in the state of North Dakota.
2. The recordkeeping system must include at least the following records for each bingo session:
 - a. The gross proceeds collected for each separate type of sale, of any kind, for bingo games including, but not limited to, regular games, early bird games, blackout games, or special games. These gross proceeds are to be supported by proper receipting records as required.
 - b. The amount paid out for prizes on each bingo game supported by the organization's prize register or checker control report.
 - c. Records documenting the starting and ending cash bank which shall be verified by at least two persons who shall sign or initial such verification.

- d. Records providing a reconciliation, by site, of gross proceeds, prizes (cash and merchandise), adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit.
- e. Inventory records documenting the date each set of paper bingo cards is purchased or obtained by the organization, including series number, color, number of faces per card, beginning card number, number of cards per set, and issuances to a site. Inventory records of paper bingo cards for maintaining accountability of the purchases and uses of such cards.
- f. Record of the win as required by section 10-04.1-06-13.
- g. The number of players in attendance, time the attendance count was taken, a copy of the schedule of games and their prizes, and the number and price of cards sold by type.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-15. Actual cash profit bank deposit required by licensed organizations. For bingo, the actual cash profit, less the increase or plus the decrease in the normal starting cash bank for the next session's activity, plus the amount of prizes paid by check that were not cashed at the site and the actual cost of any merchandise prizes previously paid by check, must be deposited intact in the organization's general gaming bank account no later than the fifth banking day following the day of the bingo session. The If the organization prepares a deposit slip for the deposit of actual cash profit from only one bingo session, the validated bank deposit slip or receipt representing the inclusion of bingo gaming activity must be included as part of the accounting records. The deposit slip or a reconciling schedule must contain a reference to bingo and the, date of the bingo session, deposit amount, and be included as part of the daily accounting records of that bingo session. If the organization prepares one deposit slip for the deposit of actual cash profit from more than one bingo session or other gaming activity, or both, the organization shall prepare a supporting schedule which lists, by each game activity, the information required to be referenced on the validated bank deposit slip or receipt in accordance with this section and sections 10-04.1-07-10 (raffles), 10-04.1-08-11 (charitable gaming tickets and punchboards), 10-04.1-09-04 (professional sports pools), 10-04.1-10-23 (twenty-one), and 10-04.1-10.1-25 (poker). The total of the deposit amounts listed on the supporting schedule must reconcile to the validated bank deposit slip or receipt amount. This supporting schedule or a copy must be included as part of the daily accounting records of each game activity.

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-07-01. Raffles. A "raffle" is a game of chance in which the prize or prizes are won by one or more of numerous persons buying raffle or rafflewheel tickets. The winner or winners is determined by either drawing a ticket stub or other detachable section from a receptacle holding the ticket stubs or other detachable sections corresponding to all tickets sold or, use of a rafflewheel for a raffle involving rafflewheel tickets. The conduct of a raffle is the date of the raffle drawing occasion.

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-07, 53-06.1-17

10-04.1-07-02. Raffle tickets - Limitations and requirements for use.

1. Tickets for entry into a raffle drawing ~~occasion~~ must be sold separately and each constitutes a separate and equal chance to win with all other tickets sold. No person may be required to purchase more than one ticket, or to pay for anything other than the ticket, in order to enter any such raffle. An organization may sell several raffle tickets to a person at a discount (for example, three tickets for the price of two tickets); however, a discounted ticket must be specifically designated as a discounted ticket and the number of discounted tickets must be predetermined and separately accounted for when issued to the ticket sellers for sale.
2. All tickets for use in any raffle must have a stub or other detachable section, be consecutively numbered, and be accounted for separately. The ticket stub or other detachable section of the ticket must bear a duplicate number corresponding to the number on the ticket and must contain the purchaser's name, complete address, and telephone number. Both parts must be imprinted with sequential numbers.
3. **No raffle ticket may be awarded or given to a person as a prize that would provide an opportunity to participate in the drawing of any other raffle.** Except as provided by subdivision d of subsection 3 of North Dakota Century Code section 53-06.1-03, no organization may sell raffle tickets on a site where a different eligible organization is licensed or is issued a local permit to conduct games of chance.
4. No person may be required to be present at a raffle drawing ~~occasion~~ in order to be eligible for the prize drawing. A

statement setting forth this condition must be set forth conspicuously on each raffle ticket and on all promotional material concerning the raffle.

5. In conducting a drawing in connection with any raffle, each ticket seller shall return to the organization the stub or other detachable section of all tickets sold. The organization shall then place each stub or other detachable section into a receptacle out of which the winning stubs or other detachable sections are to be drawn. Such receptacle must be designed so that each stub or other detachable section placed therein has an equal opportunity with every other stub or other detachable section to be the one withdrawn.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-07-02.1. Rafflewheel tickets - Limitations and requirements for use.

1. All rafflewheel tickets must be preprinted, detachable from the rafflewheel ticket card, and contain one or more numbers or symbols corresponding to the numbers or symbols on a rafflewheel. The ticket must bear a game serial number corresponding to the rafflewheel ticket card number.
2. The organization may not use rafflewheel tickets:
 - a. That do not have a state gaming stamp affixed to the flare of the series of rafflewheel ticket cards.
 - b. When the rafflewheel ticket card game serial number written on the state gaming stamp differs from the designated rafflewheel ticket card game serial number (see subsection 3 of section 10-04.1-14-18).
 - c. When the rafflewheel ticket card game serial number preprinted on the stub does not match the rafflewheel ticket game serial number preprinted on the card's rafflewheel tickets.
3. Tickets for entry into a rafflewheel ticket drawing must be sold separately and each constitutes a separate and equal chance to win with all other tickets sold. No person may be required to purchase more than one ticket, or to pay for anything other than the ticket, in order to enter any such raffle. All the tickets must be sold on the site.
4. All the rafflewheel tickets of a series of rafflewheel ticket cards must be sold for the same price.

5. All the rafflewheel tickets on a rafflewheel ticket card must be sold prior to the spinning of the rafflewheel. If all the rafflewheel tickets cannot be sold, the organization shall refund the gross proceeds to the players in exchange for the unplayed rafflewheel tickets.
6. The winner of a rafflewheel ticket game must always be determined by a spin of the rafflewheel.
7. The organization may have multiple spins of the rafflewheel to award multiple prizes for one rafflewheel ticket card.
8. The rafflewheel must make at least four revolutions before stopping at the winning number or symbol. If four revolutions are not made, a nonspin must be declared and the rafflewheel must be spun again.
9. Cash or merchandise prizes, or both, can be awarded.
10. The winner of a rafflewheel ticket game is not required to be immediately present when the rafflewheel is spun in order to be eligible for the prize.
11. All rafflewheel ticket cards of a series related to the same master flare must be reported on the gaming tax return in the quarter in which the series was first played. No organization may carry over a partial series of rafflewheel ticket cards into two or more quarters. Any rafflewheel ticket cards of a series which remain unplayed during a quarter when other rafflewheel ticket cards of that series were played must be retained by the organization as part of its daily records, and must not be otherwise used or disposed of by the organization.
12. The following rules must be posted in a clear, legible manner on the site:

RULES

A rafflewheel is used for selection of the winner.

All rafflewheel tickets of a card must be sold prior to spinning of the rafflewheel.

There may be multiple spins to award multiple prizes.

The rafflewheel must make at least four revolutions.

Cash or merchandise prizes may be awarded.

The winner is not required to be present when the rafflewheel is spun.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-07-05. Disclosure of prizes and rules. ~~The~~ Except for rafflewheel tickets, the following information, at a minimum, must be clearly printed upon each raffle ticket prior to their being sold:

1. Name of organization.
2. Ticket number.
3. Price of the ticket. If the ticket is a discounted ticket, the discounted price is necessary.
4. If the ticket is a discounted ticket, the phrase "discounted ticket" must be conspicuously printed on each ticket.
5. Prize or prizes to be awarded.
- ~~5-~~ 6. Name of the licensing or authorizing authority.
- ~~6-~~ 7. License or city or county permit number.
- ~~7-~~ 8. A statement that the purchaser is not required to be present at the raffle drawing in order to win.
- ~~8-~~ 9. Date and approximate time of the drawing. However, if the raffle is a calendar raffle and the drawings are held on a standard day of the week or month, the dates of the drawings are not necessary; rather, the standard day of the week or month is necessary.
- ~~9-~~ 10. Location of the drawing.

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-07-06. Prizes must be awarded.

1. All raffle prize winners must be determined on the date indicated on the raffle ticket unless a different date is requested in writing and approved by the attorney general. If a different date of the drawing is approved, the organization shall notify the purchasers of the raffle tickets of the change in the date either by contacting the purchasers individually or by making a public announcement. The attorney general may extend the date for the drawing if:
 - ~~1-~~ a. Weather has caused a postponement of the event at which the drawing was to occur; or

- 2- b. Not enough raffle tickets are sold to cover the cost of the prizes and an extension will make a material difference. The fact that a desired level of profit will not be attained is not a basis for an extension of the date of the drawing.
2. If a raffle prize remains unclaimed by the winner for thirty days following the date of the raffle drawing occasion and the organization has made a good faith effort to contact the winner for the redemption of the prize, the organization may retain the prize or award it in another game.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-07-07. Reporting of raffle gross proceeds and prizes, adjusted gross proceeds, and expenses.

1. When the sales price of a raffle ticket relates partly to admission for a meal, dance, or other such activity, the organization shall allocate the gross proceeds between the gaming and nongaming activity. The allocation to the nongaming activity may not exceed the organization's actual cost of the activity. The allocation to the gaming activity may not be less than the organization's actual cost of the raffle prizes in the following order:
 - a. An amount is allocated to the gaming activity to first recover the actual cost of the raffle prizes.
 - b. An amount not to exceed the actual cost of the nongaming activity is allocated to the nongaming activity.
 - c. The balance is allocated to the gaming activity.
2. When an organization conducts a raffle in which the raffle tickets are sold during one or more quarters and the raffle prize drawings occur in one quarter, the organization shall report that raffle's total actual gross proceeds, actual prizes, and actual adjusted gross proceeds in the one quarter in which the raffle prize drawings are held.
3. When an organization conducts a raffle in which the raffle tickets are sold during one or more quarters and the raffle prize drawings occur in more than one quarter, such as a calendar raffle, the organization shall report that raffle's total actual gross proceeds, actual prizes, and actual adjusted gross proceeds, and expenses as follows:

- a. Gross proceeds - Report the gross proceeds in the quarters in which the prize drawings are held. Gross proceeds must be computed as follows:

- (1) Calculate the amount of actual gross proceeds received to date from the sale of raffle tickets for the present and all previous quarters. Multiply this amount by the ratio of the actual prizes that have been drawn in the present and all previous quarters to the total prizes to be drawn in all the quarters. Then, from this balance subtract the amount of actual gross proceeds reported in all previous quarters. The result is the amount of actual gross proceeds to be reported for the present quarter.

EXAMPLE:

QUARTER	VALUE OF TICKETS SOLD		VALUE OF PRIZES DRAWN	
	This Quarter	To Date	This Quarter	To Date
1	\$500	\$500	\$100	\$100
2	300	800	100	200
3	100	900	100	300
4	<u>0</u>	900	<u>500</u>	800
Totals	\$900		\$800	

QUARTER	GROSS PROCEEDS RECEIVED TO DATE	RATIO OF PRIZES DRAWN TO DATE	BALANCE	ACTUAL GROSS PROCEEDS		ACTUAL PRIZES	ACTUAL ADJUSTED GROSS PROCEEDS
				Previous Quarters	Present Quarter		
1	\$500	$(100/800) =$	$\$ 62.50 -$	0	$= \$ 62.50$	\$100.00	(\$ 37.50)
2	\$800	$x (200/800) =$	$\$200.00 -$	62.50	$= 137.50$	100.00	37.50
3	\$900	$x (300/800) =$	$\$337.50 -$	200.00	$= 137.50$	100.00	37.50
4	\$900	$x (800/800) =$	$\$900.00 -$	337.50	$= \underline{562.50}$	<u>500.00</u>	<u>62.50</u>
Totals					\$900.00	\$800.00	\$100.00

- b. Prizes - Report the prizes in the quarters in which the prize drawings are held. The actual prizes reported for a quarter is the dollar value of all prizes drawn during that quarter.

c. Adjusted gross proceeds - Report the adjusted gross proceeds in the quarters in which the prize drawings are held. The actual adjusted gross proceeds reported for a quarter is calculated as the amount of actual gross proceeds minus actual prizes.

d. Expenses - Report the expenses in the quarters in which the prize drawings are held. Expenses must be computed as follows:

(1) Calculate the amount of expenses incurred to date for the present and all previous quarters. Multiply this amount by the ratio of the actual prizes that have been drawn in the present and all previous quarters to the total prizes to be drawn in all the quarters. Then, from this balance subtract the amount of expenses reported in all previous quarters. The result is the amount of expenses to be reported for the present quarter.

EXAMPLE:

QUARTER	EXPENSES		VALUE OF PRIZES DRAWN	
	This Quarter	To Date	This Quarter	To Date
1	\$400	\$400	\$100	\$100
2	100	500	100	200
3	50	550	100	300
4	0	550	500	800
Totals	\$550		\$800	

QUARTER	EXPENSES TO DATE	RATIO OF PRIZES DRAWN TO DATE		BALANCE	EXPENSES	
					Previous Quarters	Present Quarter
1	\$400	x	(100/800) =	\$ 25.00	-	0 = \$ 25.00
2	\$500	x	(200/800) =	\$125.00	-	25.00 = 100.00
3	\$550	x	(300/800) =	\$206.25	-	125.00 = 81.25
4	\$550	x	(800/800) =	\$550.00	-	206.25 = 343.75
Total						\$550.00

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-07-08. Record of the win.

1. When any player wins a cash prize greater than one hundred dollars, the organization shall make a record of the win. The record of the win must consist of a sequentially numbered check drawn from the general gaming bank account or a sequentially numbered receipt and the check or receipt must include at least the following information:
 - a. Date of the raffle drawing.
 - b. Amount of the cash prize won.
 - c. Winning raffle ticket number.
 - d. Name and address of the winner.
 - e. Driver's license number, including state of license registration. This information must be identified by the organization directly from the payee's driver's license. If the payee does not have a driver's license, the organization shall indicate the payee's full name and correct address which will include the street address, city, and state, which must be taken from another form of identification. The organization shall determine the real identity of the payee and require such additional proof of identification from a reliable source as is necessary to properly establish the payee's identity. The organization may not pay out any prize unless and until the payee has fully and accurately furnished to the organization all information required by this section.
2. The organization shall determine the real identity of the payee and shall require such proof of identification from a reliable source as is necessary to properly establish the payee's identity prior to the payout of the cash prize. It is recommended that the organization also make a record of the win for cash prizes equal to one hundred dollars.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-07-09. Recordkeeping system required.

1. A licensed organization shall retain ~~specific~~ specific daily accounting records ~~or information, or both,~~ with regard to raffles for a period of three years from the end of the

quarter for which the records are kept unless the organization is released by the attorney general from this requirement ~~as to any particular record~~. The records must be maintained in the state of North Dakota.

2. The recordkeeping system must include at least the following records for each raffle drawing occasion conducted:
 - a. Records documenting the distribution of raffle tickets for selling, including the ticket seller's name and the range of ticket numbers on the raffle tickets issued to that seller.
 - b. Records providing a reconciliation of the actual cash received from each ticket seller based on the number of raffle tickets sold, including discounted tickets.
 - c. Records providing sufficient detail to determine the cost of the prizes awarded.
 - d. Records providing a schedule of bank deposits for the raffle ticket sales.
 - e. A sample of the printed raffle ticket ~~and the ticket stubs of all sold tickets~~.
 - f. The ticket stubs of all sold tickets.
 - g. Record of the win as required by section 10-04.1-07-08.
 - g- h. Records providing a reconciliation, by site, of gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit.
 - i. For a series of rafflewheel ticket cards:
 - (1) The flare, with the state gaming stamp affixed, together with all unplayed and unsold rafflewheel ticket cards.
 - (2) Records documenting the daily starting and ending cash on hand. It is recommended that the count of the cash be verified by at least two persons who shall sign or initial such verification.
 - (3) Inventory records documenting the purchases, issuances to and from a site, playings, reportings on the gaming tax return, and disposals of games, by gaming stamp number and game serial number.

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-07-10. Actual cash profit bank deposit required by licensed organizations. For a raffle, the actual cash profit, plus the amount of prizes paid by check that were not cashed at the site and the actual cost of any merchandise prizes previously paid by check, must be deposited in the organization's general gaming bank account no later than the fifth banking day following the day of the raffle drawing. The If the organization prepares a deposit slip for the deposit of actual cash profit from only one raffle drawing occasion, the validated bank deposit slip or receipt representing the inclusion of raffle gaming activity must be included as part of the accounting records. The deposit slip or a reconciling schedule must contain a reference to a raffle and the, date of the raffle drawing occasion, deposit amount, include the respective state gaming stamp number of the series of rafflewheel ticket cards, and must be included as part of the accounting records of that raffle drawing occasion. If the organization prepares one deposit slip for the deposit of actual cash profit from more than one raffle drawing occasion or other gaming activity, or both, the organization shall prepare a supporting schedule which lists, by each game activity, the information required to be referenced on the validated bank deposit slip or receipt in accordance with this section and sections 10-04.1-06-15 (bingo), 10-04.1-08-11 (charitable gaming tickets and punchboards), 10-04.1-09-04 (professional sports pools), 10-04.1-10-23 (twenty-one), and 10-04.1-10.1-25 (poker). The total of the deposit amounts listed on the supporting schedule must reconcile to the validated bank deposit slip or receipt amount. This supporting schedule or a copy must be included as part of the daily accounting records of each game activity.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-01. Charitable gaming ticket and punchboard.

1. A "charitable gaming ticket", commonly referred to as a "paper slot", is a single-folded or banded ticket or is a card, the face of which is initially covered or otherwise hidden from view to conceal a number, symbol, or set of symbols, some of which numbers or symbols out of every deal have been designated in advance and at random as prize winners. A player buys a charitable gaming ticket from the licensed organization and opens it to determine if the charitable gaming ticket is an instant winner or a potential winner if the game includes the use of a seal such as club specials and tip boards which may then require the player to sign the player's name on numbered lines provided. The player with a winning charitable gaming ticket, or numbered line, receives the prize stated on the flare from the licensed organization. The prize must be clearly and fully described on the flare. The maximum price per charitable gaming ticket cannot exceed two dollars. Only cash prizes can be awarded. For deals of charitable gaming tickets, the maximum cash prize

is five hundred dollars. For deals of club specials and tip boards, the maximum seal prize value is one hundred dollars cash.

A seal board is a deal which is a card consisting of horizontal lines arranged in a column. ~~Numerical designations~~ Numbers are assigned consecutively to each of the lines. A seal conceals a number which has been designated in advance and at random as the prize winner. A player buys a "line" from the licensed organization and writes the player's name on it. When the seal is removed, if the player's line number corresponds to the winning number that was concealed by the seal, the player receives the prize stated on the flare (seal board) from the licensed organization. The prize must be clearly and fully described. The maximum price per line cannot exceed two dollars. Only merchandise prizes can be awarded. For a seal board, the maximum seal prize value, at retail, is one hundred dollars. There must be placed conspicuously on the seal board the following information which must be completed by the organization:

COST PER PLAY \$ _____

RETAIL VALUE OF PRIZE \$ _____

2. A "punchboard" may be either a paper-type or electronic punchboard.

a. A paper-type punchboard is a board or device containing a number of holes or receptacles of uniform size in which are placed mechanically and at random serially numbered slips of paper which may be punched or drawn from said hole or receptacle. A player upon payment of a consideration, may punch or draw such numbered slips of paper from such holes or receptacles and obtain the prize stated on the flare if the number drawn corresponds to a winning number or a potential winning number if the paper-type punchboard includes the use of a seal. The player would redeem a winning punch with the jar operator for the prize stated on the flare. No paper-type punchboard may be taken out of play once such paper-type punchboard has been offered for sale unless all of the highest denomination of winners have been ~~so~~ redeemed or chances for all the highest denomination of winners have been sold. However, if a paper-type punchboard has been in play for at least ninety days and all of the highest denomination of winners have not been redeemed or chances for all the highest denomination of winners have been sold, the paper-type punchboard may be taken out of play only if written approval is first obtained from the attorney general. For purposes of this section, a last sale feature may not be considered one of the highest denomination of winners if it is of equal value. The

value of the last sale may not exceed the value of the highest denomination of winners. The maximum price per punch cannot exceed two dollars. Cash or merchandise prizes can be awarded.

b. An electronic punchboard is a computerized device containing a replaceable punchcard placed over a permanent underlying matrix board of holes and a keyboard. The punchcard aligns and corresponds with a number of holes in the underlying matrix board. Hidden randomly within the matrix are several winners which may be of various prize denominations. A player upon payment of consideration, may press a peg through a hole in the punchcard, piercing the sheet of paper, and contact a position on the keyboard. The electronic punchboard will then compare the played position with the precomputed matrix of winner positions and determine if the play is a winner. If the play is not a winner, a ticket is printed by an internal printer indicating the number of unplayed holes remaining in the game. If the play is a winner, a winning ticket is printed by an internal printer which indicates a win designation, prize value, game serial number, and a customized security code. The player would redeem a winning ticket with the jar operator for the prize stated on the ticket and punchcard. No punchcard may be taken out of play once such punchcard has been offered for sale unless all of the highest denomination of winners have been redeemed or chances for all the highest denomination of winners have been sold. However, if a punchcard has been in play for at least ninety days and all of the highest denomination of winners have not been redeemed or chances for all the highest denomination of winners have been sold, the punchcard may be taken out of play only if written approval is first obtained from the attorney general. For purposes of this section, a last sale feature may not be considered one of the highest denomination of winners if it is of equal value. The value of the last sale may not exceed the value of the highest denomination of winners. The maximum price per punch cannot exceed two dollars. Cash or merchandise prizes can be awarded.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07, 53-06.1-08, 53-06.1-17

10-04.1-08-02. Single game.

1. For all single deal games, the flare, with the state gaming stamp attached, for the deal of charitable gaming tickets in play, must be affixed to the receptacle containing that deal of charitable gaming tickets. If a coin-operated dispensing

device is used, the flare must be affixed to the device in a manner that it cannot be easily removed by a player.

2. No single deal of charitable gaming tickets, including club specials and tip boards, ~~must~~ may be taken out of play once such deal has been offered for sale unless all the highest denomination of winners have been redeemed or all chances have been sold. However, if a single deal of charitable gaming tickets, including club specials and tip boards, has been in play for at least ninety days and all of the highest denomination of winners have not been redeemed or all chances have not been sold, the deal may be taken out of play only if written approval is first obtained from the attorney general. For purposes of this section, a last sale feature may not be considered one of the highest denomination of winners if it is of equal value. The value of the last sale may not exceed the value of the highest denomination of winners.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-03. **Commingled game.**

1. Deals of charitable gaming tickets may be commingled in one receptacle, including a coin-operated dispensing device, subject to all of the following provisions:
 - a. Two or more deals are placed in play at the same time at the start of a commingled game. Deals added to the commingled game must be intermixed in the receptacle with the deals in play.
 - b. The deals are identical as to a particular type, name of game, and number of charitable gaming tickets.
 - c. Only one deal of a commingled game may have a last sale feature.
 - d. Each deal is identified by its own flare displaying the state gaming stamp and game serial number.
- ~~d.~~ e. The flares applicable to each deal are identical as to:
 - (1) Price per ticket.
 - (2) Amount of prizes except for the one deal that may have a last sale feature.
 - (3) Denominations of prizes.

- e- f. The flares for all the deals inserted for which any charitable gaming tickets remain in play must be displayed in the immediate vicinity so that the state gaming stamp with the game serial number is readily available to the players.
- 2. The commingled game is placed into play and removed from play either at least at the end of each quarter when one hundred twenty or less deals in the aggregate have been placed in play during the quarter in one or more commingled games at a site, or at least ~~once a~~ at the end of each month when more than one hundred twenty deals in the aggregate have been placed in play during the quarter in one or more commingled games at a site. The reporting of the results of the commingled game must be made in the same quarter period gaming tax return.
- 3. The organization is prohibited from putting into play commingled games of charitable gaming tickets if it is determined by the attorney general that such play has resulted in abnormal cash shortages for that organization.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-04. State gaming stamp number and game serial number.

- 1. No deal of charitable gaming tickets, including club specials, tip boards, and seal boards, punchboards, or sports-pool boards, may be put out for play unless the flare has a North Dakota state gaming stamp attached which had been previously affixed thereto by a licensed distributor. Once affixed, such state gaming stamp may not be tampered with by any person.
 - 2. No organization may modify or otherwise change the game serial number that was written on the state gaming stamp by the distributor.
 - 3. No organization may intentionally place a deal, paper-type punchboard, or sports-pool board in play unless the game serial number of such deal, punchboard, or sports-pool board corresponds to the game serial number written on the state gaming stamp by the distributor. If the two numbers do not correspond, the organization shall immediately:
 - a. Notify the distributor from whom the game was purchased.
 - b. ~~Notify local law enforcement officials.~~
- e- Complete a standard form prescribed by the attorney general which must contain such necessary and reasonable

information as the attorney general requires. The organization shall attach this form to the flare of the deal or punchboard in play.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-05. Play of games - Restriction.

1. No organization may place a deal of charitable gaming tickets, including club specials and tip boards, or punchboard in play:
 - a. Unless the face of the flare of such deal or punchboard as received from the distributor describes the name of the game, cost per play, number of winners by denomination, and winning number, symbol, or set of symbols.
 - b. Which has been prohibited by the attorney general from play within this state.
 - c. Which had the seal broken on the manufacturer's games' package, box, or other container when such game was received from the distributor. The organization shall return such a game to the distributor who shall issue a credit memo to evidence the returned game.
2. No organization may, independent of a distributor, design a deal's or punchboard's ideal gross proceeds, ideal prizes, or ideal adjusted gross proceeds, including adding or deleting a last sale feature, or changing the payout structure of a game to other than that stated on the flare. However, this rule does not apply to seal boards.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-06. Gross proceeds and cash banks for single games - Restriction. Gross proceeds for single games must be separately maintained for each deal of charitable gaming tickets, including club specials, tip boards, and seal boards, or punchboard in play. Cash banks for single games must be used according to this section. No organization is exempt from this requirement unless approval for use of any alternate cash bank method ~~unless approval~~ is first requested in writing of the attorney general and approval is granted. An alternate cash bank method must meet the specific control objective of accurately determining each deal's or punchboard's actual cash profit. When a cash bank for a single game is used by the organization, it must meet either of the following three requirements:

1. A separate cash bank must be maintained for each deal or punchboard in play.
2. A central cash bank must be maintained for use by several deals or punchboards in play to determine each deal's or punchboard's actual cash profit. The central cash bank must be used as a source of cash for borrowing to each game.
3. A cash register must be used for one or more deals or punchboards in play.
 - a. The cash register must have the capability to issue consecutively numbered receipts containing at least the following information which must be provided to the player:
 - (1) Name of the organization.
 - (2) Date of the sale or prize redemption.
 - (3) Amount of money paid for the purchase of or received for the prize redemption of charitable gaming tickets, or punchboard punches.
 - (4) Code representing the type of sale or prize redemption.
 - (5) Consecutive customer receipt number.
 - b. The cash register must have at least a consecutive four-digit customer receipt number which does not return to zero at the conclusion of any period of use. Further, any cash register used must retain its transaction count between uses whether or not its power source is interrupted.
 - c. The cash register must have sufficient keys to record separately each type of sale and prize redemption, and must provide a total for each type of sale and prize redemption recorded.
 - d. All cash register receipts for voids, underrings, overrings, no sales, and any other related receipts must be retained with the daily deal and punchboard records.
 - e. All transactions, customer receipt numbers, and control totals must be recorded on the tape retained in the cash register. The internal tape, showing these transactions, must be retained with the daily deal and punchboard records. If the cash register is used by the organization for purposes other than recording the sales and prize redemptions of charitable gaming tickets, and punchboards,

the internal cash register tapes from other uses must also be retained for at least three years.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-07. Operation of the games.

1. Charitable gaming tickets may be dispensed from a coin-operated dispensing device provided that at least all of the following requirements are met:
 - a. The organization in using the device shall meet the requirements of this state's laws and rules, including formal directives of the attorney general, regarding the conduct and play of games of chance in regard to charitable gaming tickets. These must include, but not be limited to, requirements of:
 - (1) Affixing of flare to the coin-operated dispensing device (subsection 1 of section 10-04.1-08-02).
 - (2) Using proper cash banks (section 10-04.1-08-06).
 - (3) Placing an entire deal of charitable gaming tickets in play at the same time (subsection 9 of section 10-04.1-08-07).
 - (4) Establishing a time limitation for redeeming a winning charitable gaming ticket (subsection 11 of section 10-04.1-08-07).
 - (5) Not paying a prize to any player who is redeeming a charitable gaming ticket that has left the gaming site (subsection 18 of section 10-04.1-08-07).
 - (6) Maintaining a recordkeeping system (section 10-04.1-08-10).
 - b. The organization shall make a coin-operated dispensing device inoperable for use for any play unless both of the following requirements are met:
 - (1) An organization's employee is on the site and available to redeem winning charitable gaming tickets.
 - (2) Gaming activity is conducted only during the hours when alcoholic beverages may be dispensed in accordance with applicable regulations of the state or the political subdivision.

- c. The organization shall maintain key control of a coin-operated dispensing device.
- d. The organization may not allow a person under twenty-one years of age to purchase a charitable gaming ticket from a coin-operated dispensing device. This rule does not prohibit a device from being placed in a site where persons under the age of twenty-one may be present (for example, bingo site).

1.1. An electronic punchboard may be used provided that at least all of the following requirements are met:

- a. The organization in using the electronic punchboard shall meet the requirements of this state's laws and rules, including formal directives of the attorney general, regarding the conduct and play of games of chance in regard to punchboards. These must include, but not be limited to, requirements of:
 - (1) Requiring payment in full from the player prior to the player's play (section 10-04.1-04-19).
 - (2) Using proper cash banks (section 10-04.1-08-06).
 - (3) Establishing a time limitation for redeeming a winning ticket (subsection 11 of section 10-04.1-08-07).
 - (4) Not paying a prize to any player who is redeeming a ticket that has left the gaming site (subsection 18 of section 10-04.1-08-07).
 - (5) Maintaining a recordkeeping system (section 10-04.1-08-10).
- b. The organization shall make an electronic punchboard inoperable for use for any play unless both of the following requirements are met:
 - (1) An organization's employee is on the site and available to redeem winning tickets.
 - (2) Gaming activity is conducted only during the hours when alcoholic beverages may be dispensed in accordance with applicable regulations of the state or the political subdivision.
- c. The organization shall maintain physical control of an electronic punchboard.
- d. The organization may not allow a person under twenty-one years of age to play an electronic punchboard. This rule

does not prohibit an electronic punchboard from being placed in a site where persons under the age of twenty-one may be present (for example, bingo site).

2. No employee or volunteer of the organization may provide any inside information to any person, by any means whatsoever, related to deals of charitable gaming tickets, including club specials, tip boards, and seal boards, or punchboards, including tipoffs, buyables, and dumpables, except for only the following information that are special policies which must be posted in accordance with the provisions of subsection 10 of section 10-04.1-08-07:
 - a. For a single game, the specific denomination of winning charitable gaming tickets that is usually used by the organization as an indicator for removing a deal from play when winning charitable gaming tickets have been redeemed through that denomination. (This denomination is selected at the organization's discretion. No organization may, to any person, guarantee or indicate that according to the organization's best knowledge, a certain number of charitable gaming tickets remain in a game as unredeemed.)
 - b. For a commingled game:
 - (1) The minimum number of the highest denomination of winning charitable gaming tickets that remain in the game as unredeemed. (This number is usually used by the organization as an indicator for adding a deal to the game.)
 - (2) The actual number of the highest denomination of winning charitable gaming tickets remaining in the game as unredeemed. (There can be no guarantee.)
3. No organization may modify or otherwise change the flare, including a last sale feature, related to a deal or punchboard once the deal or punchboard has been received from a distributor, or use a flare that arrives in an altered or defaced condition.
 - 3.1. No organization may break the manufacturer's seal on a game of charitable gaming tickets' package, box, or other container until immediately prior to the game being placed into play.
4. No organization may permit the display or operation of any deal or punchboard which may have in any manner been marked, defaced, tampered with or otherwise placed in a condition, or operated in a manner, which may deceive the public or which affects the chances of winning or losing upon the taking of any chance thereon.

5. No deal or punchboard may be placed ~~out for~~ into play unless the cost ~~to the player~~ for each charitable gaming ticket or punchboard punch is clearly posted on the flare.
6. No deal or punchboard may be placed out for play where the value of the prizes to be awarded by the organization differs from the flare as received from the distributor.
7. No charitable gaming ticket or punchboard punch may be sold for a price different than the price stated on the deal's or punchboard's flare.
8. No deal may be placed out for play in the original packages, boxes, or other containers in which it was received from the distributor.
9. When a deal is received from the distributor in two or more packages, boxes, or other containers, all of the deal's charitable gaming tickets from the respective packages, boxes, or other containers must be placed out for play at the same time and in the same receptacle.
- 9.1. The receptacle containing a single game of charitable gaming tickets must be located on top of the jar bar while the game is in play.
10. The organization shall conspicuously post a notice on the site containing the organization's special policies related to the conduct of deals and punchboards. The notice must be clear and legible, and posted at a location that is easily visible to the players. The policies, ~~for example, may consist of~~ must include at least monetary limits on check writing, last sale feature prize payout when two or more players purchase the last charitable gaming ticket of a game, time limits on player redemptions of winning charitable gaming tickets (subsection 11 of section 10-04.1-08-07), and freezing games (subsection 12 of section 10-04.1-08-07). The organization's special policies must indicate ~~that either freezing of a game is allowed or freezing of a game is not allowed~~ at least:
 - a. That either freezing of the organization's games in play is allowed or freezing of the organization's games in play is not allowed.
 - b. The information, if any, authorized by subdivisions a and b of subsection 2 of section 10-04.1-08-07, that the organization is providing to all players. The organization shall post the specific information on a notice at the jar bar so that each player has an equal opportunity to read such information without having to ask the jar operator for the information.

- 10.1. The organization shall conspicuously post a notice on the site that states: "Providing any inside information to any person, by any means whatsoever, about games of charitable gaming tickets is a class A misdemeanor punishable by a one thousand dollar fine and one year in jail".
11. The organization shall establish a policy that requires a player to redeem a winning charitable gaming ticket within a maximum time limit of fifteen minutes from the time the charitable gaming ticket was purchased by the player.
12. No organization may allow the freezing of a game for a particular player unless at least all of the following requirements are met:
- a. There may be no freezing of the game unless the player has wagered at least double the amount of the highest denomination of the winner or winners of the game, or five hundred dollars, whichever is less, in continuous play.
 - b. There shall be no freezing of the game when two or more players are actively purchasing charitable gaming tickets from the game unless there is mutual agreement.
 - c. The organization ~~shall~~ may establish a special policy that ~~specifies the minimum dollar amount of charitable gaming tickets that must be purchased by the player from the game in order for the organization to allow the game to be frozen is~~ more strict than the provisions of this subsection. An example of a more strict special policy is to not allow freezing of the game unless the player has wagered at least triple, rather than double, the amount of the highest denomination of the winner or winners of the game, or five hundred dollars, whichever is less, in continuous play.
 - d. The player must be involved in continuous play in the game whereby that player is either opening charitable gaming tickets, or is in the process of purchasing charitable gaming tickets from the game.
 - e. There may be no freezing of the game overnight.
- 12.1. The organization is prohibited from freezing games of charitable gaming tickets if it is determined by the attorney general that such play has resulted in abnormal problems involving that organization.
13. No employee or volunteer may assist players in the opening of purchased charitable gaming tickets except in the assistance of a handicapped player.

14. No organization may purchase a merchandise prize for a cost that exceeds the usual cost to any normal customer.
15. All merchandise prizes must be displayed ~~in full view~~ in the ~~immediate~~ vicinity of the ~~deal seal board~~ or punchboard ~~and such merchandise~~. Such prizes must be in full view of any player prior to that player purchasing the opportunity to play. Upon a determination of a winner of a merchandise prize, the organization shall immediately remove that prize from any display and provide it to the winner.
16. The jar operator may not pay a prize to any player who is redeeming a winning charitable gaming ticket that has in any manner been marked, defaced, tampered with, or otherwise placed in a condition which may deceive the organization.
17. The Except as provided by subsection 21 of section 10-04.1-08-07, the jar operator may not pay a prize to any player unless the player redeems an actual winning charitable gaming ticket; however, for single games only, a prize payout may be made to a player for no more than the amount of one lost or unredeemed charitable gaming ticket from a single game provided that at least all of the following requirements are met:
 - a. The jar operator must delay the prize payout until a minimum time limit of fifteen minutes has elapsed from the time the game is bought out ~~or dumped~~ by the player. All charitable gaming tickets of the game must have been sold.
 - b. The jar operator must make a record of the win in accordance with section 10-04.1-08-08.
18. The jar operator may not pay a prize to any player who is redeeming a winning charitable gaming ticket that has left the gaming site where the deal is in play. The organization shall define the physical location of the "gaming site" in its posted special policies (subsection 10 of section 10-04.1-08-07).
19. The jar operator may not pay a prize to any player who is redeeming a winning charitable gaming ticket after the time limit set by the organization's policy (subsection 11 of section 10-04.1-08-07).
20. The jar operator shall deface the winning number, symbol, or set of symbols of each winning charitable gaming ticket redeemed, regardless of its denomination.
21. For single games only, the organization may make a prize payout to a player for more than the amount of one lost or unredeemed charitable gaming ticket, provided that the

attorney general has first determined that the game is defective and has notified the organization in writing of that fact.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-16.1, 53-06.1-17

10-04.1-08-08. Record of the win. When any player wins or players are paid for a last sale feature of any amount or win a cash prize greater than one hundred dollars from the play of any deal of charitable gaming tickets or punchboard, or, when subdivision b of subsection 17 of section 10-04.1-08-07 applies with respect to a prize payout for a lost or unredeemed charitable gaming ticket, the organization shall make a record of the win. The record of the win must consist of either a sequentially numbered check drawn from the general gaming bank account or a sequentially numbered receipt. The check or receipt must include at least the following information:

1. The jar operator shall legibly print, in ink, on the face or back of the check or receipt the following:
 - a. Name of the gaming site.
 - b. Gaming stamp number.
 - c. Game serial number.
 - d. Name of the game.
 - e. Month, day, and year represented by the check or receipt date.
 - f. Prize amount represented by the check or receipt amount.
 - g. If the payee is actually known by the jar operator, the payee's name and driver's license number.

If the payee is not known by the jar operator, the payee's name and driver's license number, including state of license registration. This information must be identified by the jar operator directly from the payee's driver's license. If the payee does not have a driver's license, the jar operator must indicate the payee's full name and correct address which will include the street address, city, and state, which must be taken from another form of identification. The organization shall determine the real identity of the payee and require such additional proof of identification from a reliable source as is necessary to properly establish the payee's identity. The organization may not pay out any prize unless and until the payee has

fully and accurately furnished to the organization all information required by this section.

2. The check or receipt must be either legibly signed or initialed, in ink, by the jar operator issuing the check. However, when subdivision b of subsection 17 of section 10-04.1-08-07 applies, it is recommended that at least a second gaming employee or volunteer also sign or initial, in ink, the check or receipt to acknowledge the prize payout.
3. The jar operator shall legibly print, in ink, the check or receipt number on the winning charitable gaming ticket or punchboard punch. However, this particular rule is not applicable to a payout for a last sale feature or when subdivision b of subsection 17 of section 10-04.1-08-07 applies.
4. It is recommended that the organization also make a record of the win for cash prizes equal to one hundred dollars.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-08-09. Disposal of games. The organization shall **manage and** control the disposal of played deals of charitable gaming tickets, including club specials, tip boards, and seal boards, and punchboards when the retention period expires. The disposal must be by a manner that will assure complete destruction such as shredding, burying, or burning.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-10. Recordkeeping system required.

1. Except as provided by subdivision a of subsection 2 of section 10-04.1-08-10, a licensed organization shall retain specific daily accounting records or information, or both, with regard to deals of charitable gaming tickets, including club specials, tip boards, and seal boards, and punchboards for a period of three years from the end of the quarter for which the records are kept unless the organization is released by the attorney general from this requirement as to any particular record. The records must be maintained in the state of North Dakota.
2. The recordkeeping system must include at least the following items for each deal or punchboard played:

- a. The flare, with the state gaming stamp affixed, together with all ~~player~~ redeemed opened winning charitable gaming tickets or punches and all unopened and unsold charitable gaming tickets or punches which must be segregated by game serial number, except, if these items relate to a commingled game of charitable gaming tickets, they are not required to be segregated by game serial number. However, for redeemed winning tickets of a commingled game of charitable gaming tickets, the organization shall account for each deal's highest denomination of redeemed tickets by game serial number by a method that provides the organization the capabilities of timely identifying a ticket redeemed by a player when that ticket was not sold by the organization and timely locating retained tickets upon request by the attorney general. The organization may not open any unsold or defective charitable gaming tickets, or punch any unsold or defective punchboard punches. The ~~specific~~ records ~~or information, or both,~~ referenced by this section must be retained by the organization for a period of one year from the end of the quarter for which the records are kept unless the organization is released by the attorney general from this requirement ~~as to any particular record.~~ The attorney general may require that the ~~specific~~ records ~~or information, or both,~~ be retained for an extended period if certain questionable conditions prevail.
 - b. Records documenting the daily starting and ending cash on hand. It is recommended that the count of the cash be verified by at least two persons who shall sign or initial such verification.
 - c. For commingled games, records documenting the daily activity of games placed and removed from play, by gaming stamp number and game serial number.
 - d. Inventory records documenting the purchases, issuances to and from a site, playings, reportings on the gaming tax return, and disposals of games, by gaming stamp number and game serial number.
 - e. Record of the win as required by section 10-04.1-08-08.
 - f. Records providing a reconciliation, by site, of each game's actual gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit.
3. All daily activity records must be retained at the site or be readily available as long as the deal or punchboard is in play.

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-08-11. Actual cash profit bank deposit required by licensed organizations.

1. For a single games game of charitable gaming tickets, including a club specials special, tip boards board, and seal boards board, and punchboards punchboard, the actual cash profit, less the increase or plus the decrease in the starting cash bank for the next deal, plus the amount of prizes paid by check that were not cashed at the site and the actual cost of any merchandise prizes previously paid by check, must be deposited in the organization's general gaming bank account no later than the fifth banking day following the day the deal or punchboard is removed from play. The If the organization prepares a deposit slip for the deposit of actual cash profit from only one deal of charitable gaming tickets or punchboard, the validated bank deposit slip or receipt representing the inclusion of charitable gaming ticket and punchboard gaming activity must be included as part of the accounting records. The deposit slip or a reconciling schedule must contain a reference to a the name of the deal or punchboard and, deposit amount, include the respective state gaming stamp numbers for each amount appearing thereon number, and must be included as part of the daily accounting records of the deal or punchboard.
2. For a commingled game of charitable gaming tickets, the ending cash on hand less the starting cash bank and less the increase or plus the decrease in the starting cash bank for the next day's activity, actual cash profit for a specific day of activity must be deposited intact in the organization's general gaming bank account no later than the fifth banking day following the that day a commingled game is out of play of activity. The If the organization prepares a deposit slip for the deposit of actual cash profit from only one day's commingled game activity, the validated bank deposit slip or receipt representing the inclusion of each commingled game of charitable gaming tickets must be included as part of the accounting records. The deposit slip or a reconciling schedule must contain a reference to a the name of the commingled game, and include the name of the game and the date of the commingled game gaming activity, deposit amount, and must be included as part of the daily accounting records of that commingled game. The actual cash profit to be deposited must be calculated by either of the following two requirements:

- a. The amount of ending cash on hand less the starting cash bank and less the increase or plus the decrease in the starting cash bank for the next day's activity.
- b. The amount of ending cash on hand in excess of the starting cash bank that can be divided equally by the ideal adjusted gross proceeds of the particular deal commingled.

EXAMPLE:

Ending cash on hand	\$960
Less: Starting cash bank	150
Actual cash profit available for deposit	\$810
Divided by: Ideal adjusted gross proceeds per particular deal	100

Number of deals' ideal adjusted gross proceeds 8
(disregard any remainder - for example, 8.1 must be accounted for as 8)

Ideal adjusted gross proceeds per deal	\$100
Multiply by: Number of deals' ideal adjusted gross proceeds	8
Actual cash profit to be deposited	\$800

Actual cash profit to be carried over to the next day's activity (\$810 - 800) \$ 10

3. For a single game and a commingled game of charitable gaming tickets, if the organization prepares one deposit slip for the deposit of actual cash profit from more than one single or commingled game or other gaming activity, or both, the organization shall prepare a supporting schedule which lists, by each game activity, the information required to be referenced on the validated bank deposit slip or receipt in accordance with this section and sections 10-04.1-06-15 (bingo), 10-04.1-07-10 (raffles), 10-04.1-09-04 (professional sports pools), 10-04.1-10-23 (twenty-one), and 10-04.1-10.1-25 (poker). The total of the deposit amounts listed on the supporting schedule must reconcile to the validated bank deposit slip or receipt amount. This supporting schedule or a copy must be included as part of the daily accounting records of each game activity.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-09-01. Sports pool. "Sports pool" is a sheet of paper, cardboard, or similar material on which is printed a square.

1. A sports-pool board may be either:
 - a. Ten number sports-pool board divided into ten horizontal lines arranged in a column. Along the left side of the column the numerical designations numbers zero, one, two, three, four, five, six, seven, eight, and nine are randomly assigned to each of the ten lines.
 - b. Twenty-five number sports-pool board divided equally into twenty-five squares consisting of five rows of squares running both horizontally and vertically. Along the exterior line on the top of the master square, the numerical designations numbers zero, one, two, three, four, five, six, seven, eight, and nine are randomly assigned, two numbers to each of the rows (for example, 4-7). The same procedure is applied to the left side of the master square for the horizontal rows.
 - c. One hundred number sports-pool board divided equally into one hundred squares consisting of ten rows of squares running both horizontally and vertically. Along the exterior line on the top of the master square, the numerical designations numbers zero, one, two, three, four, five, six, seven, eight, and nine are randomly assigned to each of the vertical rows. The same procedure is applied to the left side of the master square for the horizontal rows.
2. Each of the numbers assigned to the horizontal rows and vertical numerical assigns or column assigns columns are to be covered by a tape of such design so that once disturbed any other recovering is conspicuously noticeable.
3. The word "professional sports pool" is to be conspicuously headed at the top of the device. There must also be placed conspicuously on the sports-pool board the following information which must be completed by the organization unless the information has already been completed by the distributor:

COST PER PLAY	\$ _____
IDEAL PRIZES	\$ _____

4. A sports pool must be conducted for a "professional" sporting event only. A professional sporting event is one game. Each of the professional sports teams in the professional sporting event is designated along either the vertical columns or horizontal rows of numbers by the organization operating the gaming device. Each square or line constitutes a chance to win in the sports pool and each must be offered directly to prospective purchasers. The two professional sports teams must be designated before the squares or lines are sold. The squares or lines must be sold at a price not to exceed five dollars per square or line and such price is to be inserted in

the appropriate space on the device prior to selling such squares or lines. The purchaser of a square or line places the purchaser's name in that square or line. The tapes covering the numbers assigned each row may be removed when all the squares or lines are sold. If all the squares or lines are not sold, the organization shall advance the sports-pool board to the next professional sporting event. The organization shall conspicuously post a notice on the site containing the organization's special policy for advancing an unsold board.

5. The winner of a sports-pool board is determined, at the conclusion of each payout period and in accordance with the prize payout method, as follows:
 - a. For a ten number sports-pool board, by determining the line containing the numerical designation equalling which is assigned the last number (ones position) of the combined score of the two professional sports teams in the sporting event.
 - b. For a twenty-five number and one hundred number sports-pool board, by determining the square at the juncture of the horizontal row and vertical ~~row~~ column containing the numbers of the outcome of the sporting event.
6. The device so constructed must have a game serial number and be acquired only from licensed distributors.
7. No professional sports-pool board may be put out for play unless a North Dakota state gaming stamp has been affixed to the sports-pool board by a licensed distributor.
8. No organization may modify or otherwise change the game serial number that was written on the state gaming stamp by the distributor.
9. The organization operating the sports pool shall determine the method of prize payout to the players. The method of payout must be indicated on the sports-pool board in a form that is clear and legible, and must be done so prior to the start of the sports event associated with the sports pool. The total payout may not exceed ninety percent of the actual gross proceeds of the sports pool. (For example, winners of a sports pool conducted for a particular professional football game may be determined at the end of each quarter of the game according to the score at that point. The payout each quarter need not be in direct proportion to the total ninety percent payout.) Only cash prizes can be awarded.
10. Gross proceeds must be separately maintained for each sports-pool board in play in order to determine each sports-pool board's actual cash profit.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07, 53-06.1-09, 53-06.1-17

10-04.1-09-02. Record of the win.

1. When any player wins a cash prize greater than one hundred dollars, the organization shall make a record of the win. The record of the win must consist of a sequentially numbered check drawn from the general gaming bank account or a sequentially numbered receipt and the check or receipt must include at least the following information:
 - a. Name of the gaming site.
 - b. Gaming stamp number.
 - c. Game serial number.
 - d. Date of the professional sporting event.
 - e. Amount of the cash prize won.
 - f. Name and address of the winner.
 - g. Driver's license number, including state of license registration. This information must be identified by the organization directly from the payee's driver's license. If the payee does not have a driver's license, the organization shall indicate the payee's full name and correct address which will include the street address, city, and state, which must be taken from another form of identification. The organization shall determine the real identity of the payee and require such additional proof of identification from a reliable source as is necessary to properly establish the payee's identity. The organization may not pay out any prize unless and until the payee has fully and accurately furnished to the organization all information required by this section.
2. The organization shall determine the real identity of the payee and shall require such proof of identification from a reliable source as is necessary to properly establish the payee's identity prior to the payout of the cash prize. It is recommended that the organization also make a record of the win for cash prizes equal to one hundred dollars.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-09-03. Recordkeeping system required.

1. Except as provided by subdivision a of subsection 2 of section 10-04.1-09-03, a licensed organization shall retain specific daily accounting records or information, or both, with regard to professional sports-pool boards for a period of three years from the end of the quarter for which the records are kept unless the organization is released by the attorney general from this requirement as to any particular record. The records must be maintained in the state of North Dakota.
2. The recordkeeping system must include at least the following records for each professional sports-pool board played:
 - a. The completed, sold sports-pool board indicating the winning squares or lines. The sports-pool board must be retained by the organization for a period of one year from the end of the quarter for which the records are kept unless the organization is released by the attorney general from this requirement.
 - b. Records documenting the daily starting and ending cash on hand. It is recommended that the count of the cash be verified by at least two persons who shall sign or initial such verification.
 - c. Records providing a reconciliation, by site, of actual gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit.
 - d. Record of the win as required by section 10-04.1-09-02.
 - e. Inventory records documenting the purchases, issuances to and from a site, playings, reportings on the gaming tax return, and disposals of sports pools by gaming stamp number and game serial number.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-09-04. Actual cash profit bank deposit required by licensed organizations. For a professional sports-pool board, the actual cash profit plus the amount of prizes paid by check that were not cashed at the site, must be deposited in the organization's general gaming bank account no later than the fifth banking day following the day of the professional sporting event. The If the organization prepares a deposit slip for the deposit of actual cash profit from only one professional sports-pool board, the validated bank deposit slip or receipt representing the inclusion of professional sports-pool board gaming activity must be included as part of the

accounting records. The deposit slip or a reconciling schedule must contain a reference to a professional sports-pool board and, date of the professional sporting event, deposit amount, include the respective state gaming stamp number for each amount appearing thereon, and must be included as part of the daily accounting records of that sports-pool board. If the organization prepares one deposit slip for the deposit of actual cash profit from more than one professional sports-pool board or other gaming activity, or both, the organization shall prepare a supporting schedule which lists, by each game activity, the information required to be referenced on the validated bank deposit slip or receipt in accordance with this section and sections 10-04.1-06-15 (bingo), 10-04.1-07-10 (raffles), 10-04.1-08-11 (charitable gaming tickets and punchboards), 10-04.1-10-23 (twenty-one), and 10-04.1-10.1-25 (poker). The total of the deposit amounts listed on the supporting schedule must reconcile to the validated bank deposit slip or receipt amount. This supporting schedule or a copy must be included as part of the daily accounting records of each game activity.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-04. Twenty-one cards - Physical characteristics.

1. The cards used in the game of twenty-one must be four complete standard decks of fifty-two cards each, shuffled together and used as one, a total of two hundred eight cards dealt as a single packet from a card-dealing box called a shoe. Only four decks of the same size, shape, and design playing cards are to be used.
2. The color of the backs of the cards used at any twenty-one table must be either four decks of one predominate color on all four decks, or two decks must be of one predominate color and ~~two~~ the other two decks must be of one different predominate color.
3. The design on the backs of each card in the four decks must be identical and no card may contain any marking, symbol, or design that will enable a person to know the identity of any element printed on the face of the card or that will in any way differentiate the back of that card from any other card in the deck. The backs of the cards may contain a logo.
4. The backs of all cards in the deck must be designed so as to diminish as far as possible the ability of any person to place concealed markings thereon.
5. No organization may use cards that are taped, defaced, bent, crimped, or deformed in any other manner.

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-10-08. Procedure for distributing twenty-one chips to the twenty-one table.

1. A fill slip must be prepared for the distribution of twenty-one chips from the chip bank cashier to the twenty-one table. The fill slip must be at least a two-part carbonless form. Access to the fill slips must, prior to use, be restricted to authorized personnel.
2. Fill slips must be serially prenumbered forms and must be used in sequential order. The serial numbers of all fill slips in the possession of the organization must be accounted for by employees with no incompatible functions. All original and duplicate void fill slips must be marked "VOID" and require the signature of the preparer.
3. A fill slip must be prepared by the chip bank cashier, pit boss, or site manager whenever twenty-one chips are distributed to the twenty-one table from the chip bank cashier. However, if the dealer is the only gaming employee or volunteer on duty, the dealer shall prepare the fill slip.
4. On the original and duplicate fill slip, the following information, at a minimum, must be recorded:
 - a. The date and time.
 - b. The denomination of twenty-one chips.
 - c. The total dollar value, for each denomination, of twenty-one chips.
 - d. The grand total dollar value of the twenty-one chips.
 - e. The table number, if required by section 10-04.1-10-02.
 - f. The signature or initial of the chip bank cashier ~~unless~~. However, if the dealer is the only gaming employee or volunteer on duty, the dealer shall sign or initial in place of the chip bank cashier.
5. After preparation of the fill slip, the original copy of such fill slip must be retained by the chip bank cashier. However, if the dealer is the only gaming employee or volunteer on duty, the dealer shall retain the original copy of the fill slip with the twenty-one daily activity records.

6. The duplicate copy of the fill slip must be signed or initialed by the dealer assigned to the twenty-one table to which the twenty-one chips are to be received.
7. Unless exempted by subsection 6 of section 10-04.1-10-12, the duplicate copy of the fill slip must be deposited in the twenty-one drop box by the dealer.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-09. Procedure for removing twenty-one chips from the twenty-one table.

1. A credit slip must be prepared for the removal of twenty-one chips from the twenty-one table to the chip bank cashier. The credit slip must be at least a two-part carbonless form. Access to the credit slip must, prior to use, be restricted to authorized personnel.
2. Credit slips must be serially prenumbered forms and must be used in sequential order. The serial numbers of all credit slips in the possession of the organization must be accounted for by employees with no incompatible functions. All original and duplicate void credit slips must be marked "VOID" and require the signature of the preparer.
3. Unless exempted by subsection 8 of section 10-04.1-10-12, a credit slip must be prepared by the dealer, chip bank cashier, pit boss, or site manager whenever twenty-one chips are returned from the twenty-one table to the chip bank cashier.
4. On the original and the duplicate credit slip, the following information, at a minimum, must be recorded:
 - a. The date and time.
 - b. The denomination of twenty-one chips.
 - c. The total dollar value, for each denomination, of twenty-one chips.
 - d. The grand total dollar value of the twenty-one chips.
 - e. The table number, if required by section 10-04.1-10-02.
 - f. The signature or initial of the dealer assigned to the twenty-one table from which the twenty-one chips are to be removed.

5. After preparation of the credit slip and unless exempted by subsection 7 of section 10-04.1-10-12, the original copy of such credit slip must be deposited by the dealer in the twenty-one drop box.
6. The duplicate copy of the credit slip must be signed or initialed and retained by the chip bank cashier unless. However, if the dealer is the only gaming employee or volunteer on duty, the dealer shall retain the duplicate copy of the credit slip with the twenty-one daily activity records.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-11. Procedure for accepting cash at the twenty-one table. Each dealer of the organization who receives currency from a player at a twenty-one table for exchange for twenty-one chips shall observe the following procedures and requirements:

1. The currency must be spread on the top of the twenty-one table, by the dealer accepting it, in full view of the player who presented it.
2. The amount of currency must be verbalized by the dealer accepting it.
3. Immediately after an equivalent dollar amount of twenty-one chips has been given to the player, the currency must be taken from the top of the twenty-one table and placed by the dealer into the drop box.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-12. Use of a cash register may be authorized in lieu of a twenty-one drop box. The organization may use a cash register at a site in lieu of a twenty-one drop box to account for gross proceeds only if the organization's use of a cash register meets the requirements of the attorney general. These requirements include all of the provisions of this chapter unless otherwise exempted, including:

1. The cash register must have the capability to issue consecutively numbered receipts containing at least the following information which must be provided to the player:
 - a. Name of the organization.
 - b. Date of the sale of the twenty-one chips.

- c. Amount of currency paid for the twenty-one chips.
 - d. Consecutive customer receipt number.
2. The cash register must have at least a consecutive four-digit customer receipt number which does not return to zero at the conclusion of any period of use. Further, any cash register used must retain its transaction count between uses whether or not its power source is interrupted.
 3. It is recommended that the cash register have sufficient keys to record each twenty-one chip denomination of each sale and provide a total for each denomination of sale recorded.
 4. All cash register receipts for voids, underrings, overrings, no sales, and any other related receipts must be retained with the daily twenty-one records.
 5. All transactions, customer receipt numbers, and control totals must be recorded on the tape retained in the cash register. The internal tape, showing these transactions, must be retained with the daily twenty-one records. If the cash register is used by the organization for purposes other than recording the receipts from twenty-one, the internal cash register tapes from the other uses must also be retained for at least three years.
 6. The duplicate copy of the fill slip must be retained by the cash bank cashier.
 7. The original copy of the credit slip must be retained by the cash bank cashier.
 8. A credit slip must be prepared by the cash bank cashier, pit boss, or site manager whenever twenty-one chips are returned from the twenty-one table to the chip bank cashier.
 9. The organization shall sell twenty-one chips through the use of a cash register by the chip bank cashier who may not be the same person as the cash bank cashier.
 10. The organization shall redeem its own chips by the cash bank cashier who may not be the same person as the chip bank cashier. The chip redemption must be in accord with subsection 5 of section 10-04.1-10-10.
 11. The organization is not required to determine the win and loss results for each table.
 12. Written approval must be first obtained from the attorney general for use of a cash register ~~or alternate accounting controls~~ which ~~do~~ does not meet the

requirements of this section but may contain adequate control features ~~or procedures~~.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-13. Procedure for accounting for currency transactions at the twenty-one table in lieu of a two-member count team for counting the drop box cash - Use of a cash receipts/payout register. It is recommended that an organization that has only one gaming employee or volunteer on duty use a cash receipts/payout register for accounting for currency transactions at the twenty-one table (see also section 10-04.1-10-21). It is recommended that:

1. The cash receipts/payout registers be serially prenumbered forms and be used in sequential order. The organization should account for all used and unused registers.
2. A cash receipts/payout register should be completed each day, in ink, to account for all of the currency taken in on the sale of chips and for the cash paid out on chips redeemed during the twenty-one gaming activity. The register should contain at least the following information:
 - a. Name of the organization.
 - b. Date of the gaming activity.
 - c. Name of the dealer.
 - d. Time span of the gaming activity.
 - e. Amount of currency taken in on the sale of the chips, by player.
 - f. Amount of cash paid out on the redemption of the chips, by player.
 - g. Amount of cash paid out on the redemption of tips (chips) by the dealer.
3. The dealer should record the amount of currency taken in on the sale of chips and cash paid out on chips redeemed on the register.
4. When the player purchases chips, the player should either sign or initial, in ink, on the register to acknowledge the purchase of chips and evidence the amount of the drop box cash.

5. When the player redeems chips, the player should legibly sign and write the player's driver's license number, in ink, on the register to acknowledge the redemption of chips and the player's identity. Only the player who actually purchased chips should redeem the player's chips. When the dealer redeems tips (chips), the dealer should legibly sign, in ink, on the register to acknowledge the redemption of chips.
6. When the twenty-one gaming activity is concluded, the dealer should legibly sign or initial and date the register as a verification of the accuracy of the cash receipts/payout register.
7. The drop box cash should not be counted by the dealer, rather, by a person who is an authorized agent of the bookkeeper or is independent of the bookkeeper. The key to the lock securing the contents of the drop box should be maintained and controlled by this person.
8. If the drop box cash is counted by the dealer, the dealer should count the drop box cash and legibly sign or initial and date, in ink, the twenty-one drop box cash count report. This report along with the cash receipts/payout register should be forwarded to the bookkeeper.
9. If the drop box cash is counted by a person who is an authorized agent of the bookkeeper or is independent of the bookkeeper, at least the following requirements should be met:
 - a. The dealer should forward the cash receipts/payout register directly to the bookkeeper and in no instance should any of the information represented by the register be available to the person who actually counts the drop box cash.
 - b. The person who is an authorized agent of the bookkeeper or is independent of the bookkeeper should count the drop box cash and legibly sign or initial and date, in ink, the twenty-one drop box cash count report. This report should be forwarded to the bookkeeper.
10. The bookkeeper should verify the information provided by the cash receipts/payout register to that provided by the twenty-one drop box cash count report. Any variance should be explained in the organization's daily records.
11. The responsibilities of the players as stated by this section should be posted on the site in a form that is clear and legible, and at a location that is easily visible to the players.

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17

10-04.1-10-16. Betting.

1. Each original wager must either be one dollar or two dollars in the form of chips. A wager of one dollar must be accepted at each table. The original wager is the amount bet per hand and is exclusive of splitting, doubling-down, insuring, and tip betting. The original wager for each hand is made by placing a chip inside a betting space provided on the playing surface before the first card is dealt. Once the first card has been dealt to a betting space, the original wager may not be altered by any player.
2. Each separate wager must either be one dollar or two dollars, except tip bets which may not exceed two dollars and insurance bets which must be either fifty cents or one dollar. All wagers must be in the form of chips. Each split or double-down is a separate wager limited to the amount of the original wager which may not exceed two dollars. Each insurance bet is a separate wager equal to one-half of the original wager.
3. Splitting is permitted as follows:
 - a. On any pair or any two 10-count value cards.
 - b. When splitting, the player is allowed a maximum of four hands per betting space. The player's right-hand card in the split must be played to completion before the adjacent split hand is dealt a second card. The player must take at least one card on each split hand.
 - c. The wager on each hand must equal the player's wager on the player's original hand.
 - d. Split aces draw only one card each. Aces may not be resplit.
 - e. A two-card twenty-one after a split is not a natural twenty-one.
4. Doubling-down is permitted as follows:
 - a. On the first two cards dealt to a betting space or the first two cards of any split hand, except on split aces.
 - b. The additional wager must equal the original wager on that hand.
 - c. One additional card must be dealt to a hand on which a player has elected to double-down.

5. The eligible organization may determine whether or not to permit insurance betting. That determination must be posted. Insurance betting is permitted as follows:
 - a. The insurance bet is placed when the dealer's faceup card is an ace.
 - b. The player's wager must be half the player's wager on the player's own hand.
 - c. There may be no insurance bet on a tip wager.
6. The eligible organization may determine whether or not to permit tip betting. That determination must be posted. Tip betting does not preclude the player from awarding the dealer a regular tip. The wager for a tip bet is made by placing a chip outside the betting space, but with the chips touching the lower left edge of the betting space, from the dealer's perspective, on the playing surface before the first card is dealt. Tip betting is permitted as follows:
 - a. The tip bet is made by the player at the time the player makes the original wager.
 - b. Each betting space is limited to one tip bet regardless of splitting.
 - c. The tip bet does not have to equal the player's original wager. The tip bet must be either fifty cents, one dollar, one dollar and fifty cents, or two dollars.
 - d. The tip bet may not be increased beyond its original amount. It cannot be doubled-down.
 - e. There may be no insurance wager on a tip bet.
 - f. On a split hand, the tip bet is assigned to the specific split hand located at the foremost left of the player, from the dealer's perspective.
 - g. The payoff on all tip bets must be one-to-one regardless if the player has a natural twenty-one.
 - h. If a player's hand wins, the tip bet is paid off at an equal amount and the tip bet and the payoff become the possession of the dealer. If the dealer's hand wins, the tip bet becomes the possession of the organization. If a player's hand ties the dealer's hand, the tip bet is a standoff (push) and the player may either take back the tip bet or leave the tip bet on the playing surface for the next round of play.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10-17. The deal.

1. All cards used to play at twenty-one must be dealt from a dealing shoe specifically designed for such purpose and located on the table to the immediate left of the dealer.
2. After each stack of cards is placed in the dealing shoe, the dealer shall remove the first card therefrom face downwards and place it in the discard holder without showing its face value. The discard holder must be located on the twenty-one table to the immediate right of the dealer. Each new dealer who comes to the twenty-one table shall also burn one card as described herein before the new dealer deals any cards to the players.
3. Either of the following methods must be used for the deal of twenty-one at any twenty-one table:
 - a. Hole-card-no-peek. The dealer may not look at the face of the dealer's hole card until after all other cards requested by the players, pursuant to these rules, are dealt to them.
 - b. No-hole-card. The dealer may not deal a second card (hole card) to the dealer until after all other cards requested by the players, pursuant to these rules, are dealt to them.
4. ~~It is recommended that each~~ Each dealer shall remove cards from the dealing shoe with the dealer's left hand, turn them face upwards, and then, it is recommended, place them on the appropriate area of the playing surface with the dealer's right hand, and that the dealer have the option to deal cards to the first two betting spaces with the dealer's left hand. A player's second card and any hit card should be placed on top of the preceding card covering approximately the lower left-hand quarter of the preceding card, from the dealer's perspective. Exceptions to this recommended rule would apply to a handicapped dealer and an organization that establishes a standard procedure for use by all the twenty-one dealers at the site.
5. At the commencement of each round of play, or immediately after the first card has been drawn and either burned or used as the player's first card, the dealer shall, starting on the dealer's left and continuing around the table, deal the cards according to either of the two prescribed methods of dealing subsection 3.

- a. Hole-card-no-peek method of dealing. The cards must be dealt in the following order:
 - (1) One card face upwards to each betting space on the layout or diagram in which a wager is contained.
 - (2) One card either face upwards or face downwards (hole card) to the dealer.
 - (3) A second card face upwards to each betting space in which a wager is contained.
 - (4) A second card face upwards to the dealer if the card referenced in paragraph 2 was dealt face downwards; or, a second card face downwards (hole card) to the dealer if the card referenced in paragraph 2 was dealt face upwards.

- b. No-hole-card method of dealing. The cards must be dealt in the following order:
 - (1) One card face upwards to each betting space on the playing surface in which a wager is contained.
 - (2) One card face upwards to the dealer.
 - (3) A second card face upwards to each betting space in which a wager is contained.
 - (4) No second card is dealt to the dealer. See subsection 10 of section 10-04.1-10-18.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-18. The play.

1. After the first two cards have been dealt to each betting space in which a wager is contained and the dealer's faceup card is an ace, the dealer must ask the players if they desire to make an insurance bet. It is recommended that if a player does desire to make an insurance bet, the player should place a chip on the "insurance" line on the playing surface. The dealer should then reposition the chip on the playing surface at a location below the lower right-hand corner of the first card dealt and to the immediate right of the second card dealt, from the dealer's perspective. When the chips have been placed or repositioned, the dealer should announce "insurance bets are closed". However, this particular rule is not applicable to an organization that does not permit insurance betting.

2. The dealer shall announce, beginning from the dealer's left, **announce** the point total of each player's hand. It is recommended that as each player's hand point total is announced, such player should indicate whether the player desires to split or double-down, or both, by properly placing a chip as follows:
 - a. It is recommended that a wager for a split be made by placing a chip beside and horizontal to the original wager on that hand on the playing surface.
 - b. It is recommended that a wager for a double-down bet be made by placing a chip behind and vertical to the original wager on that hand on the playing surface.
 - c. It is recommended that, if the dealer is unsure of the player's intent to either split or double-down due to an improper chip placement by the player, the dealer should ask the player whether the player desires to split or double-down. Based on the player's response, the dealer should properly position the chip accordingly.
3. If a player has split or doubled-down, or both, the dealer shall play each hand as follows:
 - a. When a player places a wager for a split, the cards must be split by the dealer, not the player, side by side. If such a player has also placed a tip bet, the dealer shall assign the tip bet and reposition the tip bet on the playing surface to the specific split hand located at the foremost left of the player, from the dealer's perspective. Each split hand must be played separately starting with the specific split hand located at the foremost left of the player, from the dealer's perspective. If aces are split, only one additional card shall be dealt to each of the two split hands. In such circumstances, it is recommended that the one additional card be dealt face upwards and placed on the playing surface at a right angle to the first card dealt.
 - b. Each doubled-down hand must be dealt one additional card. It is recommended that the one additional card be dealt face upwards and placed on the playing surface at a right angle to the first two cards dealt.
4. The dealer may not take any hit card from the dealing shoe for a player until the player has first indicated the player's request for a hit card by hand signal, nor may the dealer bypass a player unless the player has first indicated the player's request to stand by hand signal.
5. The player shall indicate whether the player desires to stand or draw a hit card by hand signal. Hit cards are dealt only

to players indicating their request by hand signal - vertical motion toward themselves. Likewise, players must indicate their intention to stand by hand signal - horizontal motion away from themselves.

6. As each player indicates the player's decision to stand or draw a hit card on hands other than split aces or double-down, the dealer shall deal face upwards (see subsection 4 of section 10-04.1-10-17) whatever additional cards are necessary to effectuate such decision consistent with this chapter and shall announce the new point total of such player's hand after each additional card is dealt. It is recommended that each player at the twenty-one table be responsible for correctly computing the point total of the player's hand and no player should rely on the point total required to be announced by the dealer under this section without the player checking the accuracy of such announcement.
7. If a player did not split, did not double-down, nor place an insurance bet, and busts, that is, the player's count in the course of being dealt cards exceeds a count of twenty-one, the player loses the player's original wager and any tip bet, regardless of the value of the dealer's faceup card. The dealer must then immediately collect the player's chips, including any tip bet, and cards and place the chips in the chip tray and the cards in the discard holder.
8. If the dealer's faceup card is not an ace or a ten-count card and a player did split or double-down and busts, the player loses the player's wager for that split or double-down hand and any tip bet assigned to it. The dealer must then immediately collect the player's chips, including any tip bet, and cards and place the chips in the chip tray and the cards in the discard holder.
9. If the dealer's faceup card is an ace or a ten-count card and a player did split, double-down, or place an insurance bet and busts, the dealer shall then gather the player's cards of that hand and place them in the betting space under the player's wagered chips which must be kept in the same betting position. Any tip bet for such a split or double-down hand that busts is lost. The dealer must immediately collect the tip bet chips and place the chips in the chip tray.
10. After the decisions of each player have been implemented, all additional cards have been dealt, and the player's chips and cards of certain busted hands properly positioned according to subsection 9, the dealer shall either turn up the dealer's facedown card (hole-card-no-peek method) or deal a second card face upwards to the dealer provided, however, that such card must not be removed from the dealing shoe until the dealer has first announced "dealer's card" (no-hole-card method). The dealer shall play the dealer's hand as follows:

- a. If the dealer's faceup card is an ace and the dealer's hand is not a natural twenty-one (blackjack), the dealer must immediately collect all of the players' insurance bet chips and place the chips in the chip tray. Then the dealer must immediately collect all of the players' busted hands and related chips and place the chips in the chip tray and the cards in the discard holder.
- b. If the dealer's faceup card is a ten-count card and the dealer's hand is not a natural twenty-one (blackjack), the dealer must immediately collect all of the players' busted hands and related chips and place the chips in the chip tray and the cards in the discard holder.
- c. If the dealer's faceup card is an ace and the dealer's hand is a natural twenty-one (blackjack) and a player has insured the player's hand pursuant to subsection 5 of section 10-04.1-10-16, the player wins the insurance wager at the rate of two to one.
- d. If the dealer's faceup card is an ace or a ten-count card and the dealer's hand is a natural twenty-one (blackjack), the dealer wins all original wagers and tip bets (organization wins the tip bet), unless a player's original hand also is a natural twenty-one in which case a standoff exists between the dealer's hand and that player's hand. All other players lose.

If a player has doubled-down or split against the dealer's faceup card of an ace or a ten-count card and the dealer's hand is a natural twenty-one (blackjack), only the amount of the player's original wager is lost. All separate wagers resulting from splitting and doubling-down are voided and the dealer must return the players' separately wagered chips to the players.

- e. If the count of the dealer's hand is sixteen or under, the dealer must draw a hit card until such time as the count exceeds sixteen. It is recommended that any additional cards authorized to be dealt to the hand of the dealer be dealt face upwards to the immediate right of the dealer's first two cards dealt, from the dealer's perspective, and the dealer shall announce the total point count.
- f. If the count of the dealer's hand exceeds sixteen but does not exceed twenty-one, the dealer must stay, that is, the dealer's hand has ended. If the dealer's hand contains an ace and a count of seventeen, eighteen, nineteen, twenty, or twenty-one can be obtained by including the ace as an eleven, the dealer shall value the dealer's hand as such and must then stay.

- g. If the dealer's hand busts, the remaining players win their wagers.
11. If a player's original hand is a natural twenty-one (blackjack) and the dealer's faceup card is not an ace or a ten-count card, the player's hand wins and is paid off immediately at a rate of three to two, unless the player chooses to double-down. The dealer's chip payoff on the player's wager may occur either immediately or when the dealer compares the count of each player's hand with the dealer's hand. If the dealer's faceup card is an ace or a ten-count card, the player's natural twenty-one is not paid off until the dealer determines that the dealer does not have a natural twenty-one. Then, the dealer's chip payoff on the player's wager may occur either immediately or when the dealer compares the count of each player's hand with the dealer's hand.
 12. Wagers are won or lost on an individual hand basis by comparing the count of each player's hand with the dealer's hand. The dealer wins if the count of the dealer's hand exceeds the count of the player's hand. If the count of the dealer's hand is less than the count of the player's hand, the player wins. Wagers are paid off at an equal amount, including tip bets. All ties are a standoff (push), that is, no payoff is made, including tip bets.
 13. If the player's hand loses against the dealer's hand, the organization wins the tip bet. The dealer must immediately collect the player's chips, including any tip bet, and cards and place the chips in the chip tray and the cards in the discard holder.
 14. If the player's hand wins against the dealer's hand and the player placed a tip bet, the dealer wins the tip bet and the one-to-one payoff from the chip tray. The dealer then shall reposition the tip bet in the inner table area. The winning tip bets repositioned in this inner area are not to be stacked.
 15. If the player's hand wins against the dealer's hand, it is recommended that the dealer make the chip payoff of the players' winning wagers as follows:
 - a. Normal hand payoff - The chip should be placed beside the original wager in the betting space. The chip should not be placed on top of the original wager.
 - b. Split hand payoff - The chip should be placed beside the wager in the betting space. The chip should not be placed on top of the wager.

- c. Double-down hand payoff - The chips should be placed beside the two wagered chips in the betting space. The chips should not be placed on top of the wager.
 - d. Insurance bet payoff - The chip should be first placed beside the insurance bet, then placed on top of the insurance bet and both chips pushed in front of the player.
 - e. Tip bet payoff - The chip should be placed beside the tip bet. However, a winning tip bet must be placed in the inner table area prior to the dealer placing the winning wager in the dealer's tip receptacle.
 - f. Natural twenty-one (blackjack) payoff - The chips should be pyramided with the higher denomination chip placed beside the wager in the betting space and the smaller denomination chip placed on top over the center of the other two chips.
16. It is recommended that at the conclusion of a round of play, all cards still remaining on the playing surface be picked up by the dealer in order and in such a way that they can be readily rearranged to indicate each player's hand in case of question or dispute. The dealer should pick up the cards beginning with those of the player to the dealer's far right and moving counterclockwise around the table. After all the players' cards have been collected, the dealer should pick up the dealer's cards against the top of the players' cards and place them in the discard holder face downwards.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10-21. Drop box cash count by a two-member count team.

- 1. Except for organizations whose total actual gross proceeds for the previous fiscal year's four quarters, for which gaming tax returns were filed, averaged twenty-five thousand dollars or less per quarter, the drop box is to be opened by at least a two-member count team. For those organizations at or below twenty-five thousand dollars per quarter, it is recommended that the method in section 10-04.1-10-13 be utilized. For the two-member count team, it is recommended that the count team consist of one member who is from the organization's accounting department or an authorized agent of the accounting department and a second member who is independent of the accounting department a gaming employee or volunteer.

2. The key utilized to unlock the drop box from the twenty-one table must be maintained and controlled by the site manager or pit boss. It is recommended that the key to one lock securing the contents of the drop box be maintained and controlled by a member of the accounting department or an authorized agent of the accounting department. If there are two separate locks which secure the contents of the drop box, it is recommended that the key to the second lock of the drop box should be maintained and controlled by the independent member of the count team a gaming employee or volunteer.
3. The organization shall maintain daily records as provided by subdivisions c and d of subsection 2 of section 10-04.1-10-22.
4. The two-member count team shall count the drop box cash and legibly sign or initial and date in ink, the twenty-one drop box cash count report. This report must be forwarded to the bookkeeper.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-22. Recordkeeping system required.

1. A licensed organization shall retain specific daily accounting records or information, or both, with regard to twenty-one for a period of three years from the end of the quarter for which the records are kept unless the organization is released by the attorney general from this requirement as to any particular record. The records must be maintained in the state of North Dakota.
2. The recordkeeping system must include at least the following records for each day of twenty-one gaming activity:
 - a. Records documenting the starting and ending twenty-one cash bank and chip bank. It is recommended that the count of the cash bank and chip bank be verified by at least two persons who shall sign or initial such verification.
 - ~~b. Records providing sufficient detail to reconcile changes in the cash bank to the chip bank activity.~~
 - ~~c. Fill slips and credit slips containing verifying signatures or initials must document the transfer of twenty-one chips between the chip bank cashier and the twenty-one table.~~
 - ~~d. Records providing sufficient detail to determine the amount of currency in the drop box or cash register.~~

These records must include win and loss results for each table, unless exempted by subsection 11 of section 10-04.1-10-12.

- e- d. Records providing a reconciliation, by site, of gross proceeds, prizes, adjusted gross proceeds, cash long or short, and bank deposit.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-23. Actual cash profit bank deposit required by licensed organizations. For twenty-one, the actual cash profit, less the increase or plus the decrease in the starting cash bank for the next day's activity, must be deposited intact in the organization's general gaming bank account no later than the fifth banking day following the day of play. The If the organization prepares a deposit slip for the deposit of actual cash profit from only one day's twenty-one activity, the validated bank deposit slip or receipt representing the inclusion of twenty-one gaming activity must be included as part of the accounting records. The deposit slip or a reconciling schedule must contain a reference to twenty-one and the, date of the twenty-one activity, deposit amount, and be included as part of the daily accounting records of that day's twenty-one activity. If the organization prepares one deposit slip for the deposit of actual cash profit from more than one day's twenty-one activity or other gaming activity, or both, the organization shall prepare a supporting schedule which lists, by each game activity, the information required to be referenced on the validated bank deposit slip or receipt in accordance with this section and sections 10-04.1-06-15 (bingo), 10-04.1-07-10 (raffles), 10-04.1-08-11 (charitable gaming tickets and punchboards), 10-04.1-09-04 (professional sports pools), and 10-04.1-10.1-25 (poker). The total of the deposit amounts listed on the supporting schedule must reconcile to the validated bank deposit slip or receipt amount. This supporting schedule or a copy must be included as part of the daily accounting records of each game activity.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

STAFF COMMENT: Chapter 10-04.1-10.1 contains all new material but is not underscored so as to improve readability.

CHAPTER 10-04.1-10.1 POKER

Section
10-04.1-10.1-01 Poker

10-04.1-10.1-02	Limitations and Fees
10-04.1-10.1-03	Types of Poker Games Authorized - Tournaments Only
10-04.1-10.1-04	Ranking of Cards and Hands
10-04.1-10.1-05	Poker Cards - Physical Characteristics
10-04.1-10.1-06	Poker Chips - Value and Physical Characteristics - Tournaments Only
10-04.1-10.1-07	Wagers to be Made With Poker Chips Only - Tournaments Only
10-04.1-10.1-08	Persons Not to Bring Their Own Cards or Poker Chips
10-04.1-10.1-09	Chip Bank Services
10-04.1-10.1-10	Procedure for Accepting Cash at the Poker Table
10-04.1-10.1-11	Number of Players - Tournaments Only
10-04.1-10.1-12	Use of Device Prohibited
10-04.1-10.1-13	Special Policies
10-04.1-10.1-14	Organization Dealer Restriction
10-04.1-10.1-15	Restrictions of Players - Tournaments Only
10-04.1-10.1-16	Shuffle and Cut of the Cards
10-04.1-10.1-17	Ante
10-04.1-10.1-18	The Deal
10-04.1-10.1-19	The Play - Tournaments Only
10-04.1-10.1-20	Rake
10-04.1-10.1-21	Operation of the Games - Tournaments Only
10-04.1-10.1-22	Posting of Rules
10-04.1-10.1-23	Poker Tournament Restrictions
10-04.1-10.1-24	Recordkeeping System Required
10-04.1-10.1-25	Actual Cash Profit Bank Deposit Required by Licensed Organizations

10-04.1-10.1-01. Poker. Poker is a card game played by a minimum of two players and a maximum of ten players. Poker is dealt by one dealer on a poker table. A player bets on the cards (hand) the player holds. All the bets placed by the players are collected together in the center of the table which is known as the pot. There is an initial ante round. There may be a blind bet by the players. Then, after the players receive their starting cards there is a betting round and, after each round of new cards, there is a betting round. Each round the player decides whether to continue contending for the pot by calling or raising the bet to the player. After all the dealing of cards and betting has occurred for a pot and there are two or more players still in contention, there is a showdown to determine which player has the best hand. The object of the game is for a player to win the pot either by making a bet no other player is willing to match, or by the player having the most valuable hand after all the betting is over, as determined by classifying hands into categories ranked according to subsection 2 of section 10-04.1-10.1-04. Based on the type of poker game played, the winning player may be the player who holds the

hand of highest rank, lowest rank, or divided between the highest and lowest ranking hands.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07, 53-06.1-17

10-04.1-10.1-02. Limitations and fees.

1. The organization must first be separately licensed as a class A or class B organization.
2. The organization shall conduct the game of poker on not more than two occasions per year after receiving a class E license (see subsection 1.1 of section 10-04.1-03-01).
3. For tournament play, the organization must:
 - a. Provide the dealer.
 - b. Use poker chips.
 - c. Charge the player either a fixed fee of ten dollars or rake two percent of the pot in each game in accordance with subdivision b of subsection 5 of section 10-04.1-10.1-02.
 - d. Follow the administrative rules applied to tournament play.
4. For nontournament play, the organization:
 - a. Is not restricted to those types of poker games authorized by section 10-04.1-10.1-03. The organization may play any variation of poker.
 - b. When providing the dealer, must:
 - (1) Charge the player either a fixed fee of ten dollars or rake two percent of the pot in each game.
 - (2) Follow the administrative rules applied to tournament play.
 - c. When not providing the dealer, must:
 - (1) Either charge the player a fixed fee of ten dollars or ensure that the rake of each pot is done in accordance with subdivision b of subsection 5 of section 10-04.1-10.1-02.
 - (2) Have the players use cash for betting purposes.

- (3) Ensure that the players are complying with all applicable provisions of the law and administrative rules.
- d. Is recommended to follow the administrative rules applied to tournament play.
- 5. An organization shall charge a player to play in a game of poker either:
 - a. Ten dollars. However, if a player voluntarily relinquishes his seat at a poker table, other than either taking a temporary leave not exceeding a period of one hour or moving to another table as asked by the organization, that player may be charged another ten dollars by the organization should that player desire to again participate in the game of poker on that site. The organization may establish a more restrictive policy than the one-hour period (for example, fifteen minutes) and may terminate the player for excessive breaks. The fee schedule applicable to poker must be conspicuously posted on the site where it can be clearly seen by the poker players.
 - b. Two percent of the pot in each game if that game has a pot of at least ten dollars. However, for a game with a pot of less than ten dollars, a charge by the organization to the pot may be at the discretion of the organization. The rake may be:

POT VALUE	RAKE
Less than \$10.00	optional
\$10.00 - \$15.00	.25
\$15.05 - \$35.00	.50
\$35.05 - \$50.00	.75
Greater than \$50.00	1.00

- 6. The ante must be either five cents, ten cents, twenty-five cents, fifty cents, or one dollar per person per hand. No dealer or player may ante for any other player. The organization may, at its discretion, establish a minimum ante at any table or game.
- 7. For each round of bets, there may be no more than a total of three raises made among all the players. Each raise may be either five cents, ten cents, twenty-five cents, fifty cents, or one dollar; however, each raise must be equal to or greater than the original bet but cannot exceed one dollar.
- 8. A blind bet may be allowed at the organization's option.
- 9. The organization may set minimum table limits.

History: Effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-07.2, 53-06.1-17

10-04.1-10.1-03. Types of poker games authorized - Tournaments only. The organization may conduct only the following types of poker games in tournaments:

1. Texas hold'em.
2. Five-card low draw poker.
3. Five-card high draw poker.
4. Five-card high-low split draw poker.
5. Five-card stud poker.
6. Seven-card low stud poker.
7. Seven-card high stud poker.
8. Seven-card high-low split stud poker.

History: Effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-04. Ranking of cards and hands.

1. The cards in poker are ranked ace, king, queen, jack, ten, nine, eight, seven, six, five, four, three, deuce. The ace is the highest ranked card in high poker and is ranked lower than a deuce in low poker.
2. A poker hand at showdown consists of only five cards, usually the best five selected from a greater number, ranked according to the following from highest to lowest:
 - a. Five aces - four aces of different suits and the joker.
 - b. Straight flush - five cards of the same suit in sequence. An ace high straight flush is a "royal flush".
 - c. Four of a kind - four cards of the same rank.
 - d. Full house - three cards of the same rank and two cards of the same rank.
 - e. Flush - five cards of the same suit.

- f. Straight - five cards in sequence.
 - g. Three of a kind - three cards of the same rank.
 - h. Two pair - two cards of the same rank and two other cards of the same rank.
 - i. One pair - two cards of the same rank.
 - j. Highest card - the highest ranking card in the hand of five odd cards.
3. The joker card may be used in draw poker either as an ace, or as any card not already in the player's hand to complete a straight flush, flush, or straight. The joker card may be used in low poker as a card of the lowest rank not already in the player's hand.
 4. If two or more hands are tied in the ranking, the hand with the highest ranked card or cards (for example - three of a kind in a full house) wins. Otherwise, the tie must be broken by the rank of the unmatched cards in the hand. All suits are of equal value for determining hand rankings.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-05. Poker cards - Physical characteristics - Tournaments only.

1. The cards used in the game of poker must be one complete standard deck of fifty-two cards. However, a joker may be used in particular authorized types of poker.
2. The design on the backs of each card in the deck must be identical and no card may contain any marking, symbol, or design that will enable a player to know the identity of any element printed on the face of the card or that will in any way differentiate the back of that card from any other card in the deck. The backs of the cards may contain a logo.
3. The backs of all cards in the deck must be designed so as to diminish as far as possible the ability of any person to place concealed markings thereon.
4. No organization may use cards that are taped, defaced, bent, crimped, or deformed in any other manner.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-06. Poker chips - Value and physical characteristics - Tournaments only.

1. Each poker chip issued by an organization must be round in shape and clearly and permanently impressed, engraved, or imprinted on one side with the specific value of the chip and may at its discretion on the other side of the chip have the organization's name represented by a related design, symbol, abbreviation, or other identification which would differentiate the organization's chips from those being used by every other organization.
2. Poker chips must be issued by an organization in denominations of only five cents, ten cents, twenty-five cents, fifty cents, and one dollar.
3. Each denomination of a poker chip must have a different primary color from the other denominations of chips. Each organization may, at its discretion, utilize contrasting secondary colors for any inlays on each denomination of poker chip.
4. Poker chips must be designed so as to prevent to the greatest extent possible the counterfeiting of such chips.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10.1-07. Wagers to be made with poker chips only - Tournaments only. All wagers must be made with poker chips furnished by the organization. Currency must be exchanged for chips prior to the starting of play. No money, or other thing of value, may be used as wagers or tips.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10.1-08. Persons not to bring their own cards or poker chips. No person may bring onto a gaming site, nor introduce into any poker game, any playing card or cards, nor any poker chip or chips for use in wagering other than those obtained from the organization.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-09. Chip bank services.

1. The value at which the five colors of poker chips are sold and redeemed must be conspicuously posted and visible to each person prior to that person purchasing chips. However, if the organization does not use all five denominations in play, only those denominations actually used must be posted.
2. Poker chips must be sold for cash only and no credit of any nature may be extended by an organization to a person purchasing chips. Checks may not be accepted for purchase of chips at a poker table.
3. Cash taken in on poker chips sold must be kept completely separate and apart from all other cash received by the organization until such time as it is counted.
4. The organization shall redeem its own chips for cash at the value for which they were sold. The cash bank used by the organization to redeem its own chips must be kept completely separate and apart from all other cash of the organization.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10.1-10. Procedure for accepting cash at the poker table. Each dealer of the organization who receives currency from a player at a poker table for exchange for poker chips shall observe the following procedures and requirements:

1. The currency must be spread on the top of the poker table, by the dealer accepting it, in full view of the player who presented it.
2. The amount of currency must be verbalized by the dealer accepting it.
3. Immediately after an equivalent dollar amount of poker chips has been given to the player, the currency must be taken from the top of the poker table and placed by the dealer into a drop box or other container.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-11. Number of players - Tournaments only.

1. There must be two to ten players.
2. No outsiders may wager on a player's hand.

3. No player may wager on another player's hand.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10.1-12. Use of device prohibited. It is unlawful for any player to use any device to assist in keeping track of the cards played.

History: Effective October 1, 1987

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-13. Special policies. Each organization may establish rules of conduct for the players and spectators on its licensed site.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-14. Organization dealer restriction. Any dealer provided by the organization shall have no financial interest, directly or indirectly, in the outcome of any game dealt and may not otherwise participate or play in the game.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-15. Restrictions of players - Tournaments only.

1. No player in a poker game may play other than the player's own hand. A player shall only play one hand and the player shall make all decisions without advice from any person. Any communication between a player with a live hand and another player or a spectator is prohibited.
2. No player may provide any information to any person regarding the player's live or folded hand.
3. No player may allow a person to sit in on a poker game on the player's behalf. The organization may prohibit the player from further play for this violation.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-16. Shuffle and cut of the cards.

1. Immediately prior to commencement of play of each game, the dealer shall, in front of the players, shuffle all fifty-two or fifty-three (including the joker) cards so that they are randomly intermixed.
2. If the organization provides the dealer, the dealer shall cut the cards. The dealer shall restack the cards with the former bottom part of the deck on top. Then, the dealer shall place a cutting card on the bottom of the deck to conceal the last card which shall never be dealt.
3. The dealer, at least once per hour, shall count the cards in the deck and sort them on the table to verify that the deck is complete.
4. The organization shall have two separate decks of cards available at each table. The color of the backs of the cards of the two decks must be a different predominate color. Any player may request that the dealer change decks. If such a request is made, the dealer shall switch the use of decks at the end of that hand.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-17. Ante.

1. If there is an ante, the ante must either be five cents, ten cents, twenty-five cents, fifty cents, or one dollar in the form of chips.
2. The player shall ante for each hand by placing a chip in front of the player on the table before the first card of the game is dealt. Then, the dealer shall sweep the antes and place them in the pot. Once the first card has been dealt to any player, the ante may not be altered.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10.1-18. The deal.

1. All cards used to play at poker must be dealt out of the hand by the dealer.
2. If the organization provides the dealer, a button must be moved around the table clockwise player to player so that the

player who has the button receives the advantages of playing and betting last.

3. If the organization does not provide a dealer, the first dealer must be assigned by random selection such as dealing for the high card. The deal must be passed clockwise from player to player. No player who deals a game may deal another game until each other player at the table has dealt a game in the player's turn. However, any player may voluntarily waive the player's right to deal at the player's turn for any particular game.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.2, 53-06.1-17

10-04.1-10.1-19. The play - Tournaments only.

1. Texas hold'em must be played according to the following rules:
 - a. The dealer shall burn a card after every round of betting.
 - b. The dealer shall first deal two cards to each player, both cards facedown, and dealt one at a time. The first player to receive the card is the player to the left of the player who has the assigned button. The last player to get the player's card is the player assigned the button. After each player has received the player's two cards, there is a betting round. The player to the left of the dealer or button opens first by placing a bet, with each player having the opportunity to call the bet, raise it, or go out by folding the player's cards. No player may check on this round.
 - c. The dealer then deals three community cards from the deck and turns them faceup (flop) in the center of the table. Community cards are common to the hand of every active player in the pot.
 - d. After the flop, the betting continues for another round. The player who is closest to the left of the player assigned the button is the first player to bet. After the bet has been opened, any player may call, raise, or fold.
 - e. The dealer then deals another community card faceup in the center of the table. Another betting round occurs. Then, another community card is dealt faceup in the center of the table as the final betting round.
 - f. After all player bets are made on this round, and if there are two or more players remaining in the game, there is a showdown with the best high hand winning the pot.

2. The games five-card low draw poker, five-card high draw poker, and five-card high-low split draw poker must be played according to the following rules:

- a. The dealer shall deal each player five cards face downwards. The betting is started by the player to the immediate left of the player with the dealer-button. After the initial betting round, the players may either retain their pat hand or discard as many cards as the player chooses and be dealt a new card facedown for each card discarded. A card is burned. All of a player's discards are placed in the discard pile at the same time and all the player's newly dealt cards are received at the same time. Then, there is a betting round and the showdown.
- b. In the game five-card low draw poker, the lowest ranking hand wins the pot. If a joker is used, it is the lowest card in a player's hand that does not form a pair. Aces are low.
- c. In the game five-card high draw poker, the highest ranking hand wins the pot. Aces are either high or low, at the player's option. If a joker is used, it must be used according to the following:
 - (1) It must be an ace, unless it is used to complete a straight-flush, flush, or straight.
 - (2) It must be used as any specific card not already held that completes a straight-flush, flush, or straight.
- d. In the game five card high-low split draw poker, the player with the best high hand and the player with the best low hand split the pot. A player who wins one direction and ties one other player for the other direction would receive three-quarters of the pot. Aces may be used as either high or low. The joker may be used.

3. The game stud poker must be played according to the following rules:

- a. Five-card stud poker - the player shall receive one card facedown and one card faceup to form his initial hand. The player shall receive three more cards faceup dealt one at a time. There must be a total of four betting rounds, one after each new card has been dealt faceup. Five-card stud poker is only played at high poker. The dealer shall burn a card after every round of betting.
- b. Seven-card low stud poker and seven-card high stud poker - the player receives two cards dealt facedown and one card dealt faceup. The player with the low card opens first.

If two or more players have the same valued card, the first player with the lowest card begins. On all subsequent rounds, the player with the best hand faceup acts first. The players receive three more cards dealt faceup and a final card dealt facedown, with a betting round after each card. In seven-card stud high, the highest hand wins the pot. In seven-card stud low, the lowest hand wins the pot. The dealer shall burn a card after every round of betting.

- c. Seven-card high-low split stud poker - this game is played similar to seven-card high stud poker. The highest hand and the lowest hand split the pot. For example, a player who wins one direction and ties one other player for the other direction receives three-quarters of the pot and a player who wins both directions without a tie receives all of the pot. Aces may be used for either high or low. The dealer shall burn a card after every round of betting.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-20. Rake.

1. A rake shall only be pulled from the pot by the dealer in an obvious manner at the completion of the game. The rake must be placed in a designated rake area and must remain in the designated rake area until a player is declared the winner and paid. The rake must then be accounted for and placed in a segregated area near the dealer.
2. The designated rake area must be clearly visible to all players and must be positioned in a location on the table where it is near the dealer.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-21. Operation of the games - Tournaments only.

1. Play must always proceed in a clockwise direction, with each player's turn to act following the person on the player's immediate right.
2. The organization may set a minimum buy-in for each game. If the organization sets a minimum buy-in, a player returning to the game after an absence of less than one hour is still considered part of the same playing session and a buy-in is

not required unless the player had cashed out. Then, the player shall buy in for at least the amount he cashed out.

3. The table stakes rules of the game are:
 - a. Only poker chips on the table at the start of a game may be in play for that pot.
 - b. A player may not remove any of the player's chips from the table until the player quits the game.
 - c. Unless allowed by the organization, no player may purchase additional chips other than between games.
 - d. Concealed chips may not be used in play for a game.
4. A player is responsible for taking reasonable means to protect the player's hand by holding on to it or by placing one or more chips on it. A player who fails to take reasonable means to protect the player's hand shall have no relief if the player's hand becomes foul by contact with discarded cards or accidentally taken in by the dealer. Any contact whatsoever of an unprotected hand with a discarded card shall make it dead. A protected hand may not be ruled dead by accidental contact with discards, unless it is impossible to completely reconstruct. A player who has a protected hand taken in by the dealer or fouled by discards through no fault of the player is entitled to be refunded all the chips the player put in the pot on that game.
5. Each card dealt must be the top card of the deck. After the initial card of a hand has been dealt to a player, the deal continues in a clockwise direction. The order of future ownership of cards that will be in play is not to be disturbed at any time during the deal of a round.
6. A downcard dealt faceup or flashed as it is dealt so that a player might know its identity, or a downcard dealt off the table, is considered an exposed card. A card exposed by the player is not an exposed card. An exposed downcard is required to be replaced. The replacement of an exposed card must be according to subsection 5. The dealer shall determine whether a card has been exposed.
7. A misdeal shall cause all the cards to be returned to the dealer for a redeal. A misdeal may not be called once substantial action has taken place on a deal. "Substantial action" is defined as either three players acting (by either betting or folding) or two players acting, if one of them has raised the pot.
8. A player, confronted by a bet larger than the player's stack, may call for the amount of chips in front of the player. The

excess part of the bet is either returned to the bettor or used to form a side pot with another player or players by matching the amount called. There is no limitation on the number of side pots.

9. A player shall act on the player's hand, and shall notify the other players that the player has not yet acted if the betting action inadvertently bypasses the player.
10. When the dealer burns a card, it must be placed facedown on the table before dealing any round of cards after the players have received their starting cards. Burned cards must be kept separate from the discards throughout the hand. Any time the dealer burns a card and is unable to deal immediately, it is recommended that the dealer place the burned card back on top of the deck, and verbally announce that fact.
11. A player facing a bet who announces a fold shall have a dead hand. In stud poker, the dealer shall determine whether the picking up by the player of the player's upcards off the table shall be considered a fold if the next player takes action. A statement by a player of "call" or "raise", or of a specific size bet is binding. A player who verbally states a "call" or "raise" of a certain amount but puts a different value of chips in the pot must have the player's bet corrected to the stated amount if the next player has not acted. There may be no substitution by a gesture or irregular statement for a player's action in that a player must verbally state "check", "call", "raise", or "fold". A player who makes a bet and then decides incorrectly that the player has no live hand against the play and throws away the player's hand into the discards loses the pot, unless the player's hand is declared retrievable by the dealer.
12. A player who unintentionally puts less chips into the pot needed to call a bet shall either complete the call or withdraw the player's chips and fold. However, a player who shows he is unaware of the last raise by calling only the amount of the bet before that raise may also withdraw the player's chips and fold. However, an illegal small bet must stand once three players have called, a player has raised, or all players in the pot have acted. Otherwise, the action must back up to the player and any other action is nullified.
13. A player may assemble chips in front of the player before acting. A player shall be considered to have made a bet if the player pushes assembled chips forward or releases chips into the pot at a sufficient distance from the player to make it obvious that the player intends it as a bet. If the situation is unclear and a player allows the dealer to pull the player's chips into the pot without making an immediate objection, it must be considered a bet by the player.

14. A player shall place his entire bet in front of the player at one time. Unless a player has placed the required amount of chips to call a bet and to signify a raise, the player may not place additional chips for a raise.
15. If a player calls but places a value of chips into the pot that is larger than the bet to the player, it must be regarded as only a call unless the player announces a raise. However, the player may clarify the player's apparent call as a raise only if no other players behind this player has placed any chips in the pot or announced a call or raise. The dealer shall provide the player with change of chips at the time the bet is placed by the player.
16. If a player has a fouled hand by having too many cards, that hand is considered dead and cannot win any part of the pot. Except for games of low draw, low stud, and high-low split, a player could play with too few cards. A fouled hand is a hand that either has an improper number of cards (unless the player is short a card and due to get the top card of the deck) or the hand has come into contact with discards. If a player discovers his hand is foul, the player cannot recover any chips the player placed into the pot unless a misdeal can be called in accordance with subsection 7 of section 10-04.1-10.1-28. However, if a player makes a bet or raise and the next player has not yet acted, that player may call attention to the fact that the player's hand is fouled and be returned the uncalled amount. No player may deliberately foul the player's hand to recover a bet, or make an attempt to win the pot by betting or raising after the player has discovered the player's hand is foul. If the dealer determines that the player has done this, the dealer shall rule that the player's chips remain in the pot.
17. If two or more players remain in contention for the pot after all the cards have been dealt and the betting is over for that game, the remaining players show their cards to determine which player has the best hand and wins the pot. A player may discard a hand without showing it; however, any player remaining in the game may see a discarded hand upon request. If a player makes such a request, only the dealer can turn a discarded hand faceup. The following govern the showdown:
 - a. A hand with too many cards for that game is dead. However, for games of low draw, low stud, and high-low split, a player could play with too few cards.
 - b. A hand is ranked according to the actual cards it contains.
 - c. A hand prematurely discarded by a player that touches the discarded cards is dead.

- d. A verbal concession is not binding.
 - e. A player who leaves the table conceding the pot must discard the player's hand.
 - f. A hand discarded faceup is still a live hand, provided it has not become irretrievably mixed with the discards.
 - g. A hand discarded facedown may be retrieved only if the following conditions are met:
 - (1) The player retrieves it, or requests the dealer to turn it faceup.
 - (2) The hand has not touched any discards.
 - (3) Another player has not been induced to discard that player's hand.
 - (4) A hand discarded facedown that is not considered retrievable is dead even if it had been shown before being discarded.
 - h. A hand discarded by the dealer with the player's approval is dead.
 - i. If the dealer discards the winning hand without the player's approval, the player is still entitled to the pot, provided, it is claimed before being taken in by another player.
 - j. A player who remains silent has not given approval for the dealer to discard the player's hand. The player shall do something positive to indicate approval to the dealer.
18. If the dealer runs out of cards in the games of seven-card low stud poker, seven-card high stud poker, and seven-card high-low split stud poker, the dealer shall burn a card and then deal the seventh card faceup as a community card.
19. At the conclusion of the calls and raises, any player who thinks the player has a possible contending hand must immediately place it faceup on the table at the showdown. Otherwise, the order of revealing hands by the players at the showdown must be:
- a. If there has been a bet on the final round, the player who made this bet shall show first.
 - b. If there have been one or more raises on the final round, the player who last raised shall show first.

- c. If the final round has been checked by all the players, the player who acted first shows first.
 - d. The subsequent order of showing hands is clockwise around the table from the player who is required to show first.
20. Suits of cards do not count in the ranking of hands at the showdown.
 21. All pots are to be awarded by the dealer only. When the dealer has awarded a pot and it has been taken in by that player without a claim made against it, the award stands. No player may make an agreement with any other player regarding the pot. Each game must be played to conclusion and the pot awarded to the actual winning player.
 22. If a pot that is split by having tied hands at the showdown has an odd chip, this chip must be awarded to the player having the highest ranking card in the player's hand. However, this requirement does not apply to splits between the high and the low hands in high-low poker, in which the player with the high hand receives the odd chip. If the lowest denomination chips in the pot are unable to be used to split the pot evenly, the dealer shall exchange the chips in order to divide split pots as evenly as possible.
 23. If a defective deck (for example - containing two identical cards, a card of a different colored back, or missing a card) is inadvertently used, all chips in the pot must be returned to the players in the amount each contributed. However, any player that had the opportunity to realize the deck was defective and attempts to win the pot by a bet is not entitled to any chips in the pot. That player's chips must remain in the pot as forfeited money for the next game. However, a player who has already won a pot is entitled to keep it, even though the deck is subsequently found to be defective.
 24. If a card is improperly faced in the deck, it must be treated as a voided card and replaced by the next card below it in the deck. A joker dealt faceup when the joker is not being used in the game is a voided card. A joker dealt facedown to a player when the joker is not used in the game must be replaced by the top card of the deck after all the other players have received cards for that round.
 25. The organization may place a maximum time limit on a player for taking action on the player's hand. At the lapse of the time limit, if there has not been a bet to the player, the player shall check; or if there has been a bet to the player, the player's hand is dead. However, the dealer shall provide reasonable warning to the player prior to the application of this subsection.

History: Effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-07.2, 53-06.1-17

10-04.1-10.1-22. Posting of rules. The following rules must be posted in a clear, legible manner at each poker table or in such a conspicuous location so that the player at a poker table can readily read such rules.

HOUSE MUST

Use one deck of cards (fifty-two cards, except when a joker
joker may be used)
Use cut card to conceal the bottom card of the deck
Deal out of the hand
Provide a dealer (tournament play)
Allow blind bets (choose one when posting)
- or -
Not allow blind bets
Use "bet-or-check" policy (choose one when posting)
- or -
Not use "bet-or-check" policy
Use "check-and-raise" (choose one when posting)
- or -
Not use "check-and-raise"
Use a rake-off percentage of two percent of pots of ten dollars
or greater (choose one when posting)
- or -
Charge a fixed fee of ten dollars
May allow an ante of either five cents, ten cents,
twenty-five cents, fifty cents, or one dollar
Allow a maximum of three raises per round
May limit each raise per round to either five cents, ten cents,
twenty-five cents, fifty cents, or one dollar; however,
each raise must be equal to or greater than the original
bet but cannot exceed one dollar

PLAYER RULES

Must be twenty-one years of age or older
No side bets
No credit
Tipping the dealer permitted (choose one when posting)
- or -
Tipping the dealer not permitted

History: Effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-07.2, 53-06.1-17

10-04.1-10.1-23. Poker tournament restrictions.

1. A licensed organization may conduct a poker tournament, charge the participating players a fixed fee of ten dollars, and award prizes.
2. The organization may adopt special policies for poker tournaments. Provided, that the special policies must be consistent to the gaming law, regulations, and formal attorney general directives and posted in a conspicuous location where all tournament players can read the rules.
3. The organization shall maintain a record of all such fees collected and the number of players for each tournament conducted.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-24. Recordkeeping system required.

1. A licensed organization shall retain daily accounting records with regard to poker for a period of three years from the end of the quarter for which the records are kept unless the organization is released by the attorney general from this requirement. The records must be maintained in the state of North Dakota.
2. The recordkeeping system must include at least the following records for each occasion of poker gaming activity:
 - a. Records documenting the starting and ending poker cash bank and chip bank. It is recommended that the count of the cash bank and chip bank be verified by at least two persons who shall sign or initial such verification.
 - b. If the organization charged players a fixed amount, records for each table providing:
 - (1) The time that the fee was assessed.
 - (2) The amount of the fee.
 - c. If the organization charged players two percent of the pot, records for each table providing:
 - (1) The amount of rake from each pot by each game.
 - (2) The name, signature, and hours worked of the gaming employee or volunteer who was responsible for the collection of the rake.

- d. Records providing a reconciliation, by site, of adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-25. Actual cash profit bank deposit required by licensed organizations. For poker, the actual cash profit, less the increase or plus the decrease in the starting cash bank for the next occasion's activity, must be deposited intact in the organization's general gaming bank account no later than the fifth banking day following the day of play. If the organization prepares a deposit slip for the deposit of actual cash profit from only one day's poker activity, the validated bank deposit slip or receipt must contain a reference to poker, date of the poker activity, deposit amount, and be included as part of the daily accounting records of that day's poker activity. If the organization prepares one deposit slip for the deposit of actual cash profit from more than one day's poker activity or other gaming activity, or both, the organization shall prepare a supporting schedule which lists, by each game activity, the information required to be referenced on the validated bank deposit slip or receipt in accordance with this section and sections 10-04.1-06-15 (bingo), 10-04.1-07-10 (raffles), 10-04.1-08-11 (charitable gaming tickets and punchboards), 10-04.1-09-04 (professional sports pools), and 10-04.1-10-23 (twenty-one). The total of the deposit amounts listed on the supporting schedule must reconcile to the validated bank deposit

slip or receipt amount. This supporting schedule or a copy must be included as part of the daily accounting records of each game activity.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-11-03. Consolidated return.

1. Only one return per quarter may be filed for each eligible organization licensed by the attorney general.
2. Operations of an auxiliary, holding company, or other closely connected organization as defined in section 10-04.1-03-03 are subject to the supervision of the games of chance committee governing board of the licensed organization and the reporting by that organization.
3. Class B licensees with more than one gaming site shall file an attachment to the tax return disclosing the operations at each gaming site. The attachment

must use the format of the tax return a class B site accounting for each site.

4. Each organization shall file a quarterly record of state gaming stamp activity with the quarterly tax return.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-12, 53-06.1-17

10-04.1-11-05. Attorney general to determine accuracy of return.

The attorney general has the authority to verify and determine the accuracy of any or all items reported on the return; to ascertain the propriety of any or all prizes, expenses, deductions, and distributions of net proceeds; to determine the current tax liability; and to prepare ~~delinquent~~ necessary returns.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-12, 53-06.1-17

10-04.1-12-01. Period within which net proceeds are to be disbursed.

1. For purposes of administering subsection 7 of North Dakota Century Code section 53-06.1-06, the term "the date such proceeds were earned" found in that subsection means the last day of the quarter in which earned.
2. Net proceeds earned during any quarter must be devoted by the last day of the following quarter unless an extension is requested in writing of the attorney general and an extension is granted.
3. Quarters must be identified and begin and end as follows:

<u>QUARTER NUMBER</u>	<u>BEGINS</u>	<u>ENDS</u>
1	July 1	September 30
2	October 1	December 31
3	January 1	March 31
4	April 1	June 30

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06

10-04.1-13-02. Records subject to audit.

1. Any and all records of any organization operating any gaming activity authorized by North Dakota Century Code chapter 53-06.1, or any licensed distributor or manufacturer of gaming equipment, is subject to an audit by the attorney general, without notice, and performed either at the site, upon the premises of the organization or distributor where the records are located, in the attorney general's office, or at a location chosen by the attorney general.
2. In the event of an audit by the attorney general, the organization, distributor, or manufacturer shall immediately provide all such records to the attorney general, provide a place, including a work station, where such audit may be performed if necessary, provide a telephone, and render such assistance to the attorney general in auditing such records as may be requested.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-13, 53-06.1-17

10-04.1-13-03. Inspection of premises and records.

1. All sites licensed, ~~or~~ any premises in any way connected physically or otherwise with an organization, any distributor facilities, and any manufacturing facilities of any gaming equipment, must at all times be open to inspection by the attorney general.
2. At any time during which games of chance are being conducted at a site, the attorney general may enter upon the site without advance notice and:
 - a. Make a count of all moneys received during which games of chance are being conducted at a site, inspect all receipts for gross proceeds issued by the organization, and inspect all receipts for prizes which have been awarded by the organization.
 - b. Inspect any records of the organization, or of any member that directly participates in the management, operation, or promotion of the gaming activity, or of any employee or volunteer of the organization.
 - c. Inspect, including the dismantling of, all pieces of equipment or parts thereof, which are being used to conduct games of chance.
 - d. When the attorney general finds cause to believe that there is a reasonable probability that the provisions of North Dakota Century Code chapter 53-06.1, including any amendments thereto, or any of the administrative rules,

have been or are being violated by the organization, or its employees or volunteers, remove to another location or locations for further inspection and investigation, any and all records and any and all equipment, parts thereof, and devices of any nature located upon the premises related to the operation of the licensed gaming activity, or any other gaming activity.

3. A receipt must be issued to the organization licensed at the site which must list and describe each record and each piece of equipment, or part thereof, which has been removed from the site.
4. Each such record, piece of equipment, or part thereof, so removed must be returned to the site or to the address of the organization within a reasonable period of time after its removal in as good a condition as it was in when removed, unless the attorney general determines that the record or equipment so removed are necessary for an ongoing investigation of possible violations of the law or administrative rules of the attorney general by the organization.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-15.1, 53-06.1-17

10-04.1-13-04. Denial, suspension, or revocation of licenses.

The attorney general may deny a license to any applicant, or may suspend or revoke any and all licenses of any organization ~~or~~, distributor, or manufacturer when such organization ~~or~~, distributor, or manufacturer:

1. Has violated, failed, or refused to comply with the provisions, requirements, conditions, limitations, or duties imposed by North Dakota Century Code chapter 53-06.1 and any amendments thereto, or any rules adopted or formal directives issued by the attorney general pursuant thereto, or any other law of this state.
2. Knowingly causes, aids, abets, or conspires with another to cause, any person to violate any of the laws of this state or the rules of the attorney general.
3. Has falsified information on a license application or obtained a license by fraud, trick, misrepresentation, concealment, or through inadvertence or mistake.
4. Denies the attorney general access to any site where games of chance are conducted or to any facility where games of charitable gaming tickets are manufactured or who fails promptly to produce to the attorney general for inspection or

- audit any book, record, or document required by law or administrative rule or who fails to cooperate in any manner.
5. Fails to display its license on the site where games of chance are conducted at all times during the operation of the gaming activity.
 6. Makes a misrepresentation of, or fails to disclose, a material fact to the attorney general.
 7. Fails to provide at the office of the attorney general any information requested under the administrative rules or, law, or formal directives issued by the attorney general within the time required therefor by applicable administrative rule or, law, or formal directives issued by the attorney general, or if no maximum time has been established respecting the particular kind of information by other rule, then within fourteen days after receiving a written request therefor from the attorney general.
 8. Has engaged in any act, practice, or course of operation as would operate as a fraud or deceit on any person, or has employed any device, scheme, or artifice to defraud any person.
 9. ~~The organization has~~ Has again violated, failed, or refused to comply with any of the provisions, requirements, limitations, or duties imposed by North Dakota Century Code chapter 53-06.1 and any amendments thereto, or any administrative rules adopted or formal directives issued by the attorney general pursuant thereto, after having been previously notified by the attorney general or by local law enforcement officials, that a violation or violations of the same or similar provisions had been, or were being, committed by the organization, distributor, or manufacturer.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-14, 53-06.1-17

10-04.1-13-04.1. Special restriction on lessor. The attorney general may prohibit a lessor from having games of chance conducted at the lessor's site if the lessor:

1. Violates any law of this state that reflects on the lessor's good character, honesty, and integrity.
2. Has prior activities, criminal record, reputation, habits, and associations that pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities of gaming.

History: Effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-13-07. Return of license revoked. Upon revocation of any license issued by the attorney general, the organization ~~or~~, distributor, or manufacturer shall immediately return the license and site authorization to the attorney general.

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-14-01. License required.

1. No person may sell, offer for sale, or otherwise provide gaming equipment ~~and supplies~~ to licensed organizations or organizations which have been issued a local permit, for use in connection with games of chance in this state without first obtaining a distributor license from the attorney general.
2. A license or local permit may not be transferred to any other person.

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-14-04. Distributor personnel supplemental. The "distributor personnel supplemental" form must include at least the following information:

1. Name of person ~~completing the form.~~
2. Name of distributor.
3. Address, county of citizenship, date of birth, place of birth, and name of spouse ~~of person completing the form.~~
4. All other current occupations along with the employer's name, address, type of business, and the position held within that business.
5. List of all criminal convictions, if any.
6. List of all places of residence in the last ten years.
7. Information on this form must be submitted as an affidavit.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-14-05. Restrictions on distributorship interest.

1. No organization which is licensed or authorized which has been issued a local permit to conduct games of chance may be a distributor.
2. No person who is an officer, director, manager, gaming manager, or member of the games of chance committee governing board of any licensed or authorized eligible organization or any organization which has been issued a local permit may be an officer, director, shareholder, (directly or indirectly) proprietor, consultant, or employee of a distributorship, nor may such person have any financial interest whatsoever in such distributorship.
3. No person who is an officer, director, shareholder (directly or indirectly), partner, or proprietor of a wholesale alcoholic beverage business may be an officer, director, shareholder, partner, proprietor, or employee of a distributorship, nor may such person have any financial interest whatsoever in such distributorship.
4. No distributor or person having a financial interest in a distributorship may be a lessor of premises, directly or indirectly, to a licensee.
5. The distributor shall establish a permanent office in the state of North Dakota. The distributor's records required to be maintained by this article must be kept at that location.

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-14-07. Restrictions of distributor employee.

1. No employee of a distributorship may be a gaming employee, consultant, or volunteer of an organization unless such employee has first made a full written disclosure of the employee's distributorship employment to the organization.
2. No employee of a distributorship may be a law enforcement official.
3. It is recommended that no employee of a distributorship play games of chance at any of the sites of an organization if that organization is a customer of the distributorship.

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-14-09. Manufacture- Any person manufacturing equipment or supplies for games of chance within the state of North Dakota shall first register such manufacturing activity with the attorney general before selling, marketing, or otherwise distributing such equipment, in or out of state. Any licensed or authorized organization which manufactures equipment or supplies for games of chance for its own use shall also first register such manufacturing activity with the attorney general. Inventory control. Each distributor shall establish a written system of accounting control relative to inventory of deals of charitable gaming tickets, including club specials, tip boards, and seal boards, punchboards, and sports-pool boards. This system must provide a plan of organization and a description of procedures and records designed to provide reasonable assurance that the following general objectives will be attained:

1. Transactions are executed in accordance with management's general or specific authorization.
2. Transactions are recorded as necessary to properly record purchases, sales, returns, and other dispositions, and to maintain accountability for inventory.
3. Access to inventory is permitted only in accordance with management's authorization.
4. The recorded accountability for inventory is compared with the existing inventory at reasonable intervals and appropriate action is taken with respect to differences.

History: Effective November 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC ~~53-06.1-14~~, 53-06.1-17

10-04.1-14-10. Special purchases restrictions. A distributor may not purchase or be provided any deal of charitable gaming tickets, including club specials, tip boards, and seal boards, or paper-type punchboard from a manufacturer of deals or punchboards unless both of the following conditions are met:

1. The manufacturer has first registered its label or trademark with the attorney general.
2. **Each individual charitable gaming ticket or punchboard manufactured shall have conspicuously set forth thereon the name of the manufacturer or label or trademark which identifies its**

~~manufacturer.~~ The manufacturer has first been licensed by the attorney general. The distributor is responsible for determining whether a manufacturer is licensed.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-11. Special sales restrictions - Charitable gaming tickets and paper-type punchboard. No distributor, with knowledge or in circumstances where the distributor reasonably should have known, may possess, display, sell, or otherwise provide to any licensed organization any deal of charitable gaming tickets, including club specials and tip boards, and paper-type punchboard:

1. In which the winning charitable gaming tickets have not been completely and evenly distributed and mixed among all other charitable gaming tickets in the deal.
2. In which the location, or approximate location, of any of the winning charitable gaming tickets can be determined in advance of opening the charitable gaming tickets in any manner or by any device, including but not limited to, any pattern in the manufacture, assembly, or packaging of the charitable gaming tickets by the manufacturer, by any markings on the charitable gaming tickets or container, or by the use of a light.
3. Which does not conform in any other respect to the requirements of this article as sections 10-04.1-15-07 and 10-04.1-15-08 related to manufacture, assembly, or packaging the minimum quality standards for the manufacture of games of charitable gaming tickets and paper-type punchboards.
2. Which has the seal broken on the manufacturer's games' package, box, or other container.
3. Which contains tickets or punches that have winner protection features although such tickets or punches of that game are not winning tickets or punches.
4. Which has been prohibited by the attorney general from sale or play within this state.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-12. Special sales and rent restrictions - Coin-operated dispensing device.

1. A distributor may not sell or otherwise provide to any licensed organization any coin-operated dispensing device for the dispensing of charitable gaming tickets that does not conform to all requirements of this state's laws and rules, including formal directives of the attorney general. A coin-operated dispensing device sold or otherwise provided must:
 - a. Be constructed so as to allow a player to clearly see the majority of the charitable gaming tickets within the dispensing device prior to purchasing a charitable gaming ticket.
 - b. Be constructed with permanent lines or markings on the face of the device and which are clearly visible to the player and which effectively divides the charitable gaming tickets remaining in the dispensing device into divisions of approximately divide the face into sections, each of which approximate the thickness of twenty-five charitable gaming tickets, so that the player can determine how many charitable gaming tickets remain within the device.
 - c. Be constructed to enable an organization to easily render the dispensing device inoperable by the use of a locking device, security cover or latch, or any other control mechanism. See subdivision b of subsection 1 of section 10-04.1-08-07.
2. A distributor may not rent to any licensed organization any coin-operated dispensing device unless the payment of rent stipulated in the rental agreement is for a fixed dollar rate per month or other agreed duration. Graduated rate arrangements and percentage rates (for example, based on gaming activity) are prohibited.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-12.1. Special sales and rent restrictions - Electronic punchboards.

1. A distributor may not sell or otherwise provide to any licensed organization any electronic punchboard that does not conform to requirements of this state's laws and rules, including formal directives of the attorney general. An electronic punchboard sold or otherwise provided must:

- a. Be constructed with a low battery light and printer trouble light.
 - b. Be constructed to have a paper advance button, game accounting button, and game serial number set button.
 - c. Be constructed to have at least a consecutive four-digit game count number which does not return to zero at the conclusion of any period of use. Further, any electronic punchboard used must retain its transaction count between uses whether or not its power source is interrupted.
 - d. Be constructed to randomly precompute and assign winning positions on a keyboard.
 - e. Be constructed to enable the jar operator to set the game serial number.
 - f. Be constructed to use a consumable and replaceable punchcard that contains a certain number of punchable holes and a sheet of paper that covers the backside of the holes. This sheet of paper must be of a special color or design so as to prevent to the greatest extent possible its counterfeit reproduction and it must be permanently affixed to the backside of the punchcard.
 - g. Be constructed to print tickets containing at least the following information:
 - (1) For winning tickets:
 - (a) Win designation.
 - (b) Consecutive game number.
 - (c) Game serial number.
 - (d) Customized security code.
 - (2) For nonwinning tickets: Number of unplayed holes.
 - h. Be constructed to print a full accounting of the result of the play of each punchcard.
2. A distributor may not rent to any licensed organization any electronic punchboard unless the payment of rent stipulated in the rental agreement is for a fixed dollar rate per month or other agreed duration. Graduated rate arrangements and percentage rates (for example, based on gaming activity) are prohibited.

History: Effective October 1, 1987.
General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-13. Special sales restrictions - Twenty-one drop box.

No distributor may sell or otherwise provide to any licensed organization any twenty-one drop box that does not conform to the requirements of this section. A drop box must be metal and have:

1. A lock that secures the drop box to a twenty-one table, and a separate lock which secures the contents placed into the drop box. The key to each lock must be different from each the other.
2. It is recommended that the drop box have two separate locks which secure the contents placed into the drop box. The key to each lock must be different from each the other keys, including the key which secures the drop box to a twenty-one table. It is recommended that the drop box have two separate locks which secure the contents placed into the drop box.
3. A slot opening through which currency and forms can be inserted into the drop box. The slot of the drop box may not exceed three and one-half inches [88.90 millimeters] in length and one-half inch [38.10 millimeters] in width.
4. A spring-loaded mechanical device that will automatically close and lock the slot opening upon removal of the drop box from a twenty-one table. The spring-loaded mechanism may not be accessible from outside the drop box in a manner that would jeopardize the security of the drop box.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-15. Gifts from distributors prohibited. Distributors may not directly or indirectly give gifts, trips, prizes, loans of money (excluding credit), premiums, or other such gratuities to licensed organizations or organizations which have been issued a local permit, or their employees.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-16. Prices charged by distributors not to be fixed by agreement. No distributor may enter into any agreement, expressed or implied, with any other distributor to fix the price at which any gaming equipment or supplies for games of chance may be sold, or for which services in connection therewith may be rendered. The price of

these items in the competitive marketplace must be established by each distributor for the gaming equipment, ~~supplies~~, and services offered by each and must not be established, directly or indirectly, in concert with one another.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-17. Distributors to sell only to licensed or authorized organizations or organizations which have been issued a local permit. With the exception of section 10-04.1-14-19, no distributor may sell or otherwise provide any equipment or supplies for games of chance to any organization which has not first been licensed by the attorney general, or ~~authorized~~ has been issued a local permit by the local governing body to conduct bingo, raffles, or sports-pool boards in accordance with this article. The distributor is responsible for determining whether an organization is a licensed or ~~authorized~~ organization or an organization which has been issued a local permit.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-14-18. Marking and identification of equipment and supplies for games of chance.

1. The manufacturer's game serial number must appear on all gaming rafflewheel tickets, charitable gaming tickets, punchboards, and sports-pool boards. The name of the organization, organization post or lodge number, or other information may appear on such devices but only in addition to and not in replacement of, the manufacturer's game serial number. Game serial numbers may not be special ordered, but must be as provided by the manufacturer in its ordinary course of business.
2. Consecutively numbered state gaming stamps will be furnished to each distributor by the attorney general. The state gaming stamps must be maintained ~~in the state of North Dakota~~ at the distributor's North Dakota office and may not be taken out of state for any reason.
3. The distributor shall write in a legible manner the manufacturer's game serial number in ink in the space provided on the state gaming stamp. The game serial number to be written on the flare of a series of rafflewheel ticket cards must be the game serial number of the lowest numbered rafflewheel ticket card in the series. If the sports-pool board does not have a manufacturer's game serial number assigned to it, the distributor then shall assign a game

serial number to it. The distributor is responsible for placing a state gaming stamp directly upon the front of the flare of each deal of charitable gaming tickets, including club specials, tip boards, and seal boards, and upon the flare of each series of rafflewheel ticket cards, and upon the flare of each punchboard, and upon the sports-pool board that is sold or otherwise distributed to licensed organizations or organizations which have been issued a local permit. The affixing of the state gaming stamp must be done in the state of North Dakota ~~at a North Dakota~~ premise. This rule does not apply to sales by distributors to certain purchasers as provided by section 10-04.1-14-19.

4. A printed flare will be furnished to the organization with each deal of charitable gaming tickets, including club specials and tip boards, series of rafflewheel ticket cards, and punchboard. Each flare must fully describe the name of the game, cost per play, number of winners by each denomination, and winning number, symbol, or set of symbols. A last sale feature on a flare must be indicated either by a permanently affixed sticker containing a preprinted designation of last sale feature, prize value of the last sale feature, and distributor's name or license number, or both, or any other method prescribed by the attorney general.
- 4.1. For each game of charitable gaming tickets involving single-folded or banded tickets, the distributor shall provide a game information sheet containing:
 - a. Name of the game.
 - b. Ideal gross proceeds.
 - c. Ideal prizes, including a last sale feature.
 - d. Ideal adjusted gross proceeds.
5. The distributor shall indicate the following information on each deal of club specials and tip boards:
 - a. Cost per play.
 - b. Ideal prizes.
6. The distributor shall indicate the following information on each sports-pool board sold if such information is known to the distributor:
 - a. Cost per play.
 - b. Ideal prizes.

- 6.1. The distributor shall indicate the following on the flare of each series of rafflewheel ticket cards:
- a. Cost per play.
 - b. The phrase "amount of cash prize \$ _____" and/or "retail value of merchandise prize \$ _____".
 - c. Game serial number of the lowest numbered rafflewheel ticket card in the series.
 - d. Game serial number of the highest numbered rafflewheel ticket card in the series.
 - e. Type of rafflewheel tickets (for example, 40 x 3 x 120).
7. The phrases "cost per play \$ _____" and "retail value of prize \$ _____" are to be conspicuously printed on each seal board sold.
8. State gaming stamps must be placed by a distributor only on items which conform to all requirements of this state's laws and rules and may not be placed upon items prohibited by the attorney general from sale or play within this state.
9. State gaming stamps must be placed by the distributor only on items which the distributor sells or provides, and may not be transferred or provided to any other distributor.
10. No person other than a licensed distributor may obtain state gaming stamps from any source, ~~nor may the distributor.~~ Only licensed distributors may affix such a state gaming stamp stamps to any deal deals of charitable gaming tickets, punchboard, or punchboards, sports-pool board boards, or the master flare of rafflewheel ticket cards.
11. If and at the time of a liquidation, bankruptcy, or closing of a distributorship by any other means, including a nonrenewal of a license to be a distributor, or a relinquishment of the license, the distributor shall return any and all unused state gaming stamps in the distributor's possession to the attorney general within five days after cessation of business.
12. If a distributor is notified by an organization that the game serial number of a deal, punchboard, or sports-pool board does not correspond to the game serial number written on the state gaming stamp by the distributor, the distributor shall immediately:
- a. Correct the game serial number written on the state gaming stamp pursuant to established procedures of the attorney general.

- b. Sign ~~or initial~~ a form prescribed by the attorney general (see subdivision c of subsection 3 of section 10-04.1-08-04) acknowledging that the distributor corrected the game serial number written on the state gaming stamp.
- c. Notify the attorney general of the corrected game serial number corresponding to the respective state gaming stamp number pursuant to established procedures of the attorney general.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-14-20. Sales invoice required. ~~No distributor may sell or otherwise provide to a licensed organization or accept from an organization any gaming equipment or supplies without recording the transaction on a sales invoice.~~
[Reserved]

History: Effective November 1, 1986

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-23. Recordkeeping system required. Every licensed distributor shall maintain complete, accurate, and legible general accounting records with detailed, supporting, subsidiary records sufficient to furnish information regarding all transactions pertaining to the purchase and sale of gaming equipment and supplies. These records must be retained for a period of three years unless the distributor is released by the attorney general from this requirement ~~as to any particular record.~~ The records must be maintained in the state of North Dakota. These records must be prepared on the same basis as the distributor's federal income tax return, and must include the following records as a minimum by month:

1. Purchase invoices for all equipment and supplies for games of chance purchased for distribution to licensed ~~or authorized~~ organizations or organizations which have been issued a local permit.
2. Sales invoices for all equipment, supplies, and services for games of chance distributed or rendered to licensed ~~or authorized~~ organizations or organizations which have been issued a local permit. Gaming equipment and supplies provided to licensed ~~or authorized~~ organizations or organizations which have been issued a local permit at no charge must be recorded on a sales invoice. The sales invoices must be prepared legibly on a standard form prescribed by the attorney

generally and must include the following information as a minimum:

- a. License number of the distributor.
 - b. The complete business name and address of the licensed ~~or~~ authorized eligible organization or organization which has been issued a local permit.
 - c. License or permit number of the organization.
 - d. Invoice number.
 - e. Invoice date.
 - f. Date shipped.
 - g. Purchase order number, if available.
 - h. An indication for a credit memo.
 - i. Quantity (by the number of deals for charitable gaming tickets, by the number of boards for punchboards and sports pools, and by the number of series of rafflewheel ticket cards).
 - j. A complete description of each item of equipment or supplies sold.
 - k. Gaming stamp numbers.
 - l. The ideal gross proceeds for each different deal ~~or~~, board, or game of rafflewheel tickets.
 - m. The ideal adjusted gross proceeds for each different deal ~~or~~, board, or game of rafflewheel tickets.
3. Sales invoices must meet the following criteria:
- a. Prenumbered consecutively using a number not less than four digits/characters. The sales invoice number must be preprinted by automated printing equipment or printed by data processing equipment.
 - b. The sales invoice must be prepared in at least three parts and distributed and maintained as follows:
 - (1) One must be issued to the customer.
 - (2) One must be retained in an invoice file by customer name.

- (3) One must be sent to the attorney general in a manner that accounts for each invoice numerically, including voids.
- c. Credit memos for returned items must be prepared in the same detail as provided by subdivisions a and b of subsection 3. Credit memos must represent only returned items. No distributor may accept deals of charitable gaming tickets, including club specials, tip boards, and seal boards, games of rafflewheel tickets, punchboards, and sports-pool boards, unless that distributor initially sold those same items to the licensed or authorized organization.
4. Sales journal which must include at least the following as a **minimum by month**:
- The date of the sale.
 - The sales invoice number of the sale.
 - The name of the organization or distributor remitting the payment.
 - Total amount of the sales invoice.
5. Cash receipts journal which must record ~~in an original book of entry whether it be a sales journal, cash payments journal, or a separate cash receipts journal, a recording of~~ not only cash sales, but also cash received from all sources, and must include at least the following as a **minimum by month**:
- The date the payment was received.
 - The name of the organization or distributor remitting the payment.
 - The amount of payment received.
6. Cash payments journal (check register) which must include a recording of all checks issued by the distributor, cash payments made by the distributor, or payment made by any other means and must include at least the following as a **minimum by month**:
- The date the check was issued or payment made.
 - The number of the check issued.
 - The name of the payee.
 - Expenses ~~shall be~~ categorized by type.

All expenses by the distributor must be documented by ~~purchase~~ invoices or other appropriate supporting documents.

7. Gaming stamp log in which the North Dakota gaming stamp numbers and the manufacturer's game serial numbers are legibly recorded must be maintained on a standard form prescribed by the attorney general.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-24. Distributors' information reports. Each distributor shall file a copy of each sales invoice, as described in subsection 2 of section 10-04.1-14-23, along with the gaming stamp log described in subsection 7 of section 10-04.1-14-23, ~~with the attorney general~~ on a ~~semimonthly~~ time basis prescribed by the attorney general. They must be filed by the fifth business day of the week following the semimonthly period in which each sales invoice and gaming stamp log were prepared. A catalog of all equipment and supplies for games of chance offered to eligible organizations must be furnished to the attorney general and must be updated monthly by the distributors.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-25. Examination of books and records. The attorney general and the attorney general's agents have the power to examine or cause to be examined the books and records of any distributor to the extent that such books and records relate to any transaction connected to the sale of gaming equipment ~~and supplies~~ in the state of North Dakota or to information that is required to be furnished to the attorney general under the statutes and regulations pertaining to games of chance. No distributor may prohibit, interfere with, or otherwise impede such examination, but shall cooperate and assist with such examination, and provide such information to the attorney general as may be requested.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-15.1, 53-06.1-17

STAFF COMMENT: Chapter 10-04.1-15 contains all new material but is not underscored so as to improve readability.

**CHAPTER 10-04.1-15
RULES GOVERNING MANUFACTURERS**

Section	
10-04.1-15-01	License Required
10-04.1-15-02	License Application Information
10-04.1-15-03	License Fee and Reapplication Date
10-04.1-15-04	Manufacture
10-04.1-15-05	Special Sales Restriction
10-04.1-15-06	Manufacturers to Sell Only to Licensed Distributors
10-04.1-15-07	Minimum Quality Standards for the Manufacture of Games of Charitable Gaming Tickets
10-04.1-15-08	Minimum Quality Standards for the Manufacture of Paper-Type Punchboards
10-04.1-15-09	Prohibition of a Manufacturer From Transacting Business in This State
10-04.1-15-10	Sales Invoice Required
10-04.1-15-11	Rebate of Purchase Prices by Manufacturer
10-04.1-15-12	Manufacturer Appointed Agent
10-04.1-15-13	Inspection of Manufacturing Facility
10-04.1-15-14	Recordkeeping System Required
10-04.1-15-15	Examination of Books and Records

10-04.1-15-01. License required.

1. No manufacturer of charitable gaming tickets or any other person may sell, offer for sale, or otherwise provide games of charitable gaming tickets to licensed distributors, for use in connection with games of chance in this state, without first obtaining a manufacturer's license from the attorney general.
2. A manufacturer's license may not be transferred to any other person.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-15-02. License application information. Annual application must be made for a charitable gaming ticket manufacturer's license. The annual licensing period is from April first through March thirty-first. The application must be on a form prescribed by the attorney general and must contain such necessary and reasonable information as the attorney general requires, including the following information, as well as all other information required elsewhere in this article:

1. Name and address of any subsidiary company and a description of its general business.
2. Name and address of each of the manufacturer's separate locations manufacturing games of charitable gaming tickets.
3. A list of all distributors of games of charitable gaming tickets, and of all businesses or organizations located within the state of North Dakota with which the manufacturer transacts business. Include details of any financial interest with such distributors, businesses, or organizations.
4. A clear and legible example of the label or trademark printed on manufactured charitable gaming tickets.
5. A consent by the manufacturer to allow the attorney general or agents of the attorney general to enter and inspect the facility in which charitable gaming tickets are manufactured.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-15-03. License fee and reapplication date.

1. The annual manufacturer's license fee is two hundred fifty dollars.
2. All manufacturers' licenses must be reapplied for on April first of each year. There may be no proration of the license fee.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-15-04. Manufacture. Other than a manufacturer of charitable gaming tickets required to be licensed by the attorney general under subsection 1 of section 10-04.1-15-01, any person within the state of North Dakota manufacturing gaming equipment for games of chance for use in or out of this state shall first register such manufacturing activity with the attorney general before selling, marketing, or otherwise distributing such equipment. Any licensed organization or organization which has been issued a local permit which

manufactures gaming equipment for games of chance for its own use shall also first register such manufacturing activity with the attorney general.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-15-05. Special sales restriction.

1. A manufacturer may not sell or otherwise provide any deal of charitable gaming tickets, including club specials, tip boards, and seal boards, or punchboard to a distributor unless the manufacturer has first registered its label or trademark with the attorney general. A manufacturer of charitable gaming tickets shall register its label or trademark in accordance with subsection 4 of section 10-04.1-15-02.
2. A manufacturer may not sell or otherwise provide any deal of charitable gaming tickets to a licensed distributor unless the deal has affixed thereto a national association of fundraising ticket manufacturers (NAFTM) seal of approval or the manufacturer has been inspected either by the attorney general or on an annual basis by an independent testing organization selected by the attorney general.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-15-06. Manufacturers to sell only to licensed distributors. No manufacturer or any other person may sell or otherwise provide any gaming equipment for games of chance to any distributor unless that distributor has first been licensed by the attorney general. The manufacturer is responsible for determining whether a distributor is licensed.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-15-07. Minimum quality standards for the manufacture of games of charitable gaming tickets. Every licensed manufacturer of games of charitable gaming tickets for sale in the state of North Dakota shall manufacture such games according to the following standards to ensure that the games are honest and fair to all players and that the tickets are secure against invasion by any practical method:

1. **Construction.**

- a. The game must be designed, constructed, glued, and assembled in such a manner as to prevent the determination of a winning ticket without first removing the tabs or otherwise uncovering the symbols or numbers as intended.
- b. Each ticket in a game must bear the same game serial number. There may not be more than one game serial number in one game.
- c. The numbers or symbols must be fully visible in the window and must be centered so that no part of a symbol or number remains covered when the tab is removed.

2. **Opacity.** Concealed numbers or symbols must not be able to be viewed or winning numbers or symbols determined from the outside of the charitable gaming ticket using a high intensity lamp of five hundred watts. Protection must be provided by using opaque paper stock or by use of an aluminum foil laminate.

3. **Color.** It must not be possible to detect or pick out winning tickets from losing tickets through variations in printing graphics or colors, especially those involving different printing plates.

4. **Printed information.** The minimum information printed on a charitable gaming ticket must be as follows, except that subdivisions b, c, d, and e do not need to be applied to folded or banded jar tickets:

a. Name of manufacturer or its distinctive logo.

b. Name of game.

c. Manufacturer's form number.

d. Price for each charitable gaming ticket.

e. Number of winning tickets and respective winning numbers or symbols, and prize amounts, or a flare must be included with the game providing that information.

f. Unique minimum five-digit game serial number, printed on the game information side of the ticket. The same game serial number must not be repeated on the same form number for three years.

5. **Winner protection.** A unique symbol or printed security device, such as a specific number keyed to a particular winning ticket, or the name of the symbol or some of the symbol colors changed for a winner, or other similar

protection must be placed in the winning windows of winning tickets. This does not apply to numeral games.

6. **Randomization.** The game must be assembled so that no placement of winning or losing tickets exists that allows the possibility of prize manipulation, or "pick out".
7. **Guillotine cutting.** It must not be possible to isolate winning or potential winning tickets by variations in size or the appearance of a cut edge of the tickets comprising a particular game.
8. **Packaging.**
 - a. Each game's package, box, or other container must be sealed at the factory with a seal including a warning to the purchaser that the game may have been tampered with if the package, box, or container was received by the purchaser with the seal broken.
 - b. A game's serial number must be clearly and legibly placed on the outside of the game's package, box, or other container or be able to be clearly viewed from the outside of the package, box, or other container.
 - c. For games shipped to the state of North Dakota, the flare for the game must be located on the outside of each game's sealed package, box, or other container so that the seal on the package, box, or other container will not be broken to access the flare in order for the distributor to affix the state gaming stamp to the flare.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-15-08. Minimum quality standards for the manufacture of paper-type punchboards. Every manufacturer of paper-type punchboards shall manufacture, assemble, and package each paper-type punchboard so that the winning punches or approximate location of any winning punches cannot be determined in advance of punching the paper-type punchboard in any manner or by any device, including, but not limited to, any patterns in manufacture, assembly, packaging, or by markings. Winning punches must be distributed and mixed among all other punches in the paper-type punchboard. The paper-type punchboard must be manufactured with special care so as to eliminate any pattern as between paper-type punchboards, or portions of paper-type punchboards, from which the location or approximate location of the winning punches may be determined.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-15-09. Prohibition of a manufacturer from transacting business in this state. The attorney general may prohibit a manufacturer from transacting business in this state if that manufacturer's games of charitable gaming tickets or punchboards do not meet the minimum quality standards of these rules as determined by the attorney general.

History: Effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-15-10. Sales invoice required. No manufacturer may sell or otherwise provide to a licensed distributor, or accept from a distributor, any gaming equipment without recording the transaction on a sales invoice.

History: Effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-15-11. Rebate of purchase prices by manufacturer. Rebates of purchase prices or discounts allowed by a manufacturer must be separately stated on the original sales invoice or separately invoiced on a credit memo referenced to the original sales invoice.

History: Effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-15-12. Manufacturer appointed agent. Every licensed manufacturer shall appoint a North Dakota licensed distributor as the manufacturer's agent in this state prior to selling or otherwise providing games of charitable gaming tickets in this state.

History: Effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-15-13. Inspection of manufacturing facility. A manufacturer of charitable gaming tickets shall reimburse the attorney general, or agents of the attorney general, for reasonable costs of transportation, lodging, meals, and other incidental costs incurred in regard to the inspection of the facility in which charitable gaming tickets are manufactured.

History: Effective October 1, 1987.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-15-14. Recordkeeping system required. Every licensed manufacturer shall maintain complete, accurate, and legible general accounting records with detailed, supporting, subsidiary records sufficient to furnish information regarding all transactions pertaining to the sale of gaming equipment in this state. These records must be retained for a period of three years unless the manufacturer is released by the attorney general from this requirement as to any particular record.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-15-15. Examination of books and records. The attorney general and the attorney general's agents have the power to examine or cause to be examined the books and records of any manufacturer to the extent that such books and records relate to any transaction connected to the sale of gaming equipment in the state of North Dakota or to information that is required to be furnished to the attorney general under the statutes and regulations pertaining to games of chance. No manufacturer may prohibit, interfere with, or otherwise impede such examination but shall cooperate and assist with such examination and provide such information to the attorney general as may be requested.

History: Effective October 1, 1987.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-15.1, 53-06.1-17

CROSS REFERENCE

Law	Law Section Title	Administrative Rules
Section 53-06.1-01	Definitions	10-04.1-01-01, 10-04.1-02-02, 10-04.1-02-03, 10-04.1-02-04, 10-04.1-12-03
Section 53-06.1-02	Organizations Eligible Under Chapter - Use of Net Proceeds	10-04.1-02-01, 10-04.1-02-02, 10-04.1-02-03, 10-04.1-02-04, 10-04.1-05-05, 10-04.1-05-12
Section 53-06.1-03	Licensure - Exceptions for <u>Raffles, Sports Pools, and</u>	10-04.1-02-04, 10-04.1-03-01,

	Bingo - City and County <u>License Authorization</u> - Fees - Suspension and Revocation	10-04.1-03-02, 10-04.1-03-03, 10-04.1-03-04, 10-04.1-03-09, 10-04.1-03-10, 10-04.1-03-11, 10-04.1-04-02, 10-04.1-04-04, <u>10-04.1-04-10,</u> 10-04.1-13-04
<u>Section 53-06.1-03.1</u>	<u>Bingo Sites - No Limit on Rent</u>	10-04.1-04-10
<u>Section 53-06.1-03.2</u>	<u>Twenty-One Sites - Limit on Rent</u>	10-04.1-04-10
<u>Section 53-06.1-03.3</u>	<u>Pull Tabs or Jar Sites - Limit on Rent</u>	10-04.1-04-10
Section 53-06.1-04	College Fraternities and Sororities Allowed to Conduct Raffles and Bingo - Use of Net Proceeds	None
Section 53-06.1-05	Local Approval for Education Organizations, College Fraternities, and Sororities for Raffles and Bingo	None
Section 53-06.1-05.1	Regulation by City or County of Number of Twenty-One Tables Per Site and Number of Sites Per Eligible Organization	10-04.1-03-02
Section 53-06.1-06	Persons Permitted to Conduct Games of Chance - Premises - Equipment - Expenses - Compensation	10-04.1-03-01, <u>10-04.1-03-04,</u> <u>10-04.1-03-09,</u> <u>10-04.1-03-10,</u> <u>10-04.1-03-11,</u> 10-04.1-04-03, 10-04.1-04-06, 10-04.1-04-10, 10-04.1-05-07, 10-04.1-06-01, 10-04.1-12-01, 10-04.1-13-03
Section 53-06.1-06.1	Work Permits	None

Section 53-06.1-07	Games of Chance Allowed	10-04.1-03-09, 10-04.1-03-10, 10-04.1-04-01, 10-04.1-06-01, 10-04.1-07-01, 10-04.1-08-01, 10-04.1-09-01, 10-04.1-10-01, 10-04.1-10-19, <u>10-04.1-10.1-01</u>
Section 53-06.1-07.1	Limitations on Hours and Participation in Games of Chance	10-04.1-04-13
<u>Section 53-06.1-07.2</u>	<u>Draw Poker and Stud Poker - Limited Authorization</u>	<u>10-04.1-10.1-02, 10-04.1-10.1-18, 10-04.1-10.1-21, 10-04.1-10.1-22</u>
Section 53-06.1-08	Punchboards and Jars - Sale of Chances - Maximum Price Per Ticket	10-04.1-08-01
<u>Section 53-06.1-08.1</u>	<u>Limitation on Pull Tab and Jar Prizes</u>	<u>10-04.1-08-01</u>
Section 53-06.1-09	Sports Pools - Control by Licensee - Rules Posted - Limitation on Prizes	10-04.1-03-11, 10-04.1-09-01
Section 53-06.1-10	Twenty-One - Sale of Chips - Redemption - Wager - Limit - Rules of Play	10-04.1-10-01, 10-04.1-10-05, 10-04.1-10-06, 10-04.1-10-10, 10-04.1-10-14, 10-04.1-10-16, 10-04.1-10-18, 10-04.1-10-19, <u>10-04.1-10.1-06,</u> <u>10-04.1-10.1-07,</u> <u>10-04.1-10.1-09,</u> <u>10-04.1-10.1-11,</u> <u>10-04.1-10.1-17</u>
Section 53-06.1-10.1	Raffles - Limitation - Prizes	10-04.1-03-10, 10-04.1-07-03
Section 53-06.1-11	Statement of Receipts - Expenses	10-04.1-03-01, 10-04.1-05-04, 10-04.1-05-05,

		10-04.1-05-07, 10-04.1-05-08, 10-04.1-05-09, 10-04.1-05-12, 10-04.1-06-06, 10-04.1-06-13, 10-04.1-07-08, 10-04.1-08-08, 10-04.1-09-02, 10-04.1-12-02, 10-04.1-12-03
Section 53-06.1-12	Tax Based on Adjusted Gross Proceeds	10-04.1-11-01, 10-04.1-11-03, 10-04.1-11-04, 10-04.1-11-05
Section 53-06.1-12.1	Allocation of Games of Chance Tax - <u>Appropriation</u>	None
Section 53-06.1-13	Examination of Books and Records	10-04.1-13-01, 10-04.1-13-02
Section 53-06.1-14	Distributors <u>and</u> <u>Manufacturers</u> - Licensure	10-04.1-04-06, 10-04.1-13-04, <u>10-04.1-14-01,</u> <u>10-04.1-14-02,</u> 10-04.1-14-03, 10-04.1-14-05, 10-04.1-14-06, 10-04.1-14-09, 10-04.1-14-17, 10-04.1-14-18, <u>10-04.1-15-01,</u> <u>10-04.1-15-02,</u> <u>10-04.1-15-03,</u> <u>10-04.1-15-04,</u> <u>10-04.1-15-06,</u> <u>10-04.1-15-12</u>
Section 53-06.1-15	Form and Display of License	None
Section 53-06.1-15.1	Powers and Duties of the Attorney General	10-04.1-03-01, 10-04.1-03-03, <u>10-04.1-13-03,</u> <u>10-04.1-14-25,</u> <u>10-04.1-15-15</u>
Section 53-06.1-15.2	Attorney General May Bring Action for Collection of Fees and Tax and to Force Compliance	None

Section 53-06.1-16	Violation of Chapter or Rule - Misdemeanor - Forfeiture of Licensure - Ineligibility	None <u>10-04.1-13-04</u>
Section 53-06.1-16.1	Bogus Chips, Marked Cards, Cheating Devices, or Fraudulent Schemes Unlawful - Penalty	10-04.1-08-07
Section 53-06.1-16.2	License Suspension or Revocation by Attorney General - Ineligibility for Local Authorization	None
Section 53-06.1-17	Rules	10-04.1-01-01, 10-04.1-02-02, 10-04.1-02-03, 10-04.1-02-04, 10-04.1-03-01, <u>10-04.1-03-02,</u> 10-04.1-03-03, 10-04.1-03-04, 10-04.1-03-05, <u>10-04.1-03-06,</u> <u>10-04.1-03-07,</u> 10-04.1-03-08, 10-04.1-03-09, 10-04.1-03-10, 10-04.1-03-11, 10-04.1-04-02, 10-04.1-04-03, 10-04.1-04-05, 10-04.1-04-07, 10-04.1-04-08, 10-04.1-04-09, 10-04.1-04-10, 10-04.1-04-11, 10-04.1-04-12, 10-04.1-04-13, 10-04.1-04-14, 10-04.1-04-15, 10-04.1-04-16, 10-04.1-04-17, 10-04.1-04-18, 10-04.1-04-19, 10-04.1-04-20, 10-04.1-04-21, 10-04.1-04-22, 10-04.1-04-23, 10-04.1-04-24, 10-04.1-04-25,

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NOVEMBER 1987

STAFF COMMENT: Article 10-13 contains all new material but is not underscored so as to improve readability.

ARTICLE 10-13

CRIMINAL HISTORY RECORD INFORMATION

Chapter	
10-13-01	Reporting of Criminal History Record Information
10-13-02	Collecting Criminal History Record Information
10-13-03	Maintaining Criminal History Record Information
10-13-04	Exchanging Criminal History Record Information
10-13-05	Disseminating Criminal History Record Information
10-13-06	Security of Criminal History Record Information
10-13-07	Inspection and Challenge of Criminal History Record Information by a Record Subject
10-13-08	Auditing of Criminal History Record Information
10-13-09	Agreements Between the Bureau and Criminal Justice Agencies
10-13-10	Use of Criminal History Record Information for Research and Statistics
10-13-11	Purging and Sealing of Criminal History Record Information
10-13-12	Agency Responsibility for Reporting Criminal History Record Information
10-13-13	Time Requirement for Reporting Criminal History Record Information
10-13-14	Definitions

CHAPTER 10-13-01
REPORTING OF CRIMINAL HISTORY RECORD INFORMATION

Section	
10-13-01-01	Reporting Forms
10-13-01-02	Reporting to Federal Bureau of Investigation Prohibited
10-13-01-03	Fingerprint Cards
10-13-01-04	Reporting Check Offenses

10-13-01-01. Reporting forms. Criminal justice agencies required by statute to report criminal history record information to the bureau shall adhere to such procedures and use such forms as shall be promulgated by the bureau.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-01-02. Reporting to federal bureau of investigation prohibited. Arresting agencies may not report arrest information directly to the federal bureau of investigation, but shall allow all arrest information to be forwarded to the federal bureau of investigation by the bureau.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-01-03. Fingerprint cards. Arresting agencies, or agencies acting on behalf of an arresting agency, shall prepare one fingerprint card on the multipart form, and one federal bureau of investigation fingerprint card, for submission to the bureau for each arrest for a reportable event. Arrests for check offenses are excluded from this requirement.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-01-04. Reporting check offenses. Convictions for check offenses included in North Dakota Century Code sections 6-08-16 and 6-08-16.1 must be reported to the bureau on forms prescribed by the bureau. These forms may require a single print of the right index finger in lieu of a complete set of fingerprints.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

**CHAPTER 10-13-02
COLLECTING CRIMINAL HISTORY RECORD INFORMATION**

Section
10-13-02-01 Bureau Responsibility

10-13-02-01. Bureau responsibility. The bureau shall establish procedures and forms for collecting criminal history record information from criminal justice agencies. Such procedures must include methods for facilitating the collection of disposition information or reportable events relating to initial arrest reports.

History: Effective November 1, 1987.
General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

**CHAPTER 10-13-03
MAINTAINING CRIMINAL HISTORY RECORD INFORMATION**

Section
10-13-03-01 Rules Apply to Manual and Automated Systems
10-13-03-02 Local Criminal History Records
10-13-03-03 Rules Governing Local Criminal History Records

10-13-03-01. Rules apply to manual and automated systems. Criminal history record information may be maintained in manual files or in computerized criminal history files.

History: Effective November 1, 1987.
General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

10-13-03-02. Local criminal history records. Local criminal justice agencies may compile and maintain criminal history records, as defined by North Dakota Century Code section 12-60-16.3, based on information generated within and by actions of an agency or agencies as in the case of joint or shared record systems.

History: Effective November 1, 1987.
General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

10-13-03-03. Rules governing local criminal history records. Criminal history records maintained by local criminal justice agencies are subject to the standards established by North Dakota Century Code section 12-60-16.3 and this article and may be audited by the bureau for compliance.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

CHAPTER 10-13-04 EXCHANGING CRIMINAL HISTORY RECORD INFORMATION

Section

10-13-04-01	Limitation on Use of Exchanged Information
10-13-04-02	Exchange Log
10-13-04-03	Disclosure Under the Security Clearance Information Act of 1985 - Public Law No. 99-169, 99 Stat. 1009, Codified in Part at 5 U.S.C. Section 801

10-13-04-01. Limitation on use of exchanged information. Criminal history record information exchanged between criminal justice agencies for criminal justice purposes may not be used or disseminated for purposes other than those for which it was originally obtained.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-04-02. Exchange log. Criminal justice agencies shall maintain a transaction log of requests received for criminal history record information and their response to those requests. Such log must include:

1. Name of record subject.
2. Requesting agency.
3. Officer name or unit number.
4. Date of request.
5. Type of response (indicating record exchange or no record).

Exchange logs must be retained for a minimum of three years.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-04-03. Disclosure under the Security Clearance Information Act of 1985 - Public Law No. 99-169, 99 Stat. 1009, codified in part at 5 U.S.C. Section 801. Criminal justice agencies shall release criminal history record information to the department of defense (DOD), central intelligence agency (CIA), and the office of personnel management (OPM) as required by the Security Clearance Information Act of 1985 (SCIA) if the following requirements are met:

1. The subagency within the three authorized agencies is in fact authorized to make requests for criminal history records (local agencies or the bureau may ask the requesting agency for its authorization under the Security Clearance Information Act of 1985).
2. The request relates to an individual under investigation by the department of defense, central intelligence agency, or the office of personnel management for the purpose of determining eligibility for (a) access to classified information (a security clearance); or (b) assignment to or retention in sensitive national security duties.
3. The requesting agency has received a written consent from the individual under investigation authorizing release of criminal history record information for the purposes specified above.
4. The request for record check is written and contains:
 - a. The name of the record subject.
 - b. At least two items of information used to retrieve criminal history records, including:
 - (1) The fingerprints of the record subject.
 - (2) The state identification number assigned to the record subject by the bureau.
 - (3) The social security number of the record subject.
 - (4) The date of birth of the record subject.
 - (5) A specific reportable event identified by date and either agency or court.
5. The information has not been purged or sealed.
6. The identifying information supporting a request for a criminal history record does not match the record of more than one individual.

7. The information to be disclosed is information relative to a reportable event initiated within that agency, in accordance with section 10-13-04-01.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

CHAPTER 10-13-05 DISSEMINATING CRIMINAL HISTORY RECORD INFORMATION

Section

10-13-05-01	Criminal Justice Agency Response to Dissemination Requests
10-13-05-02	Bureau Handling of Dissemination Requests
10-13-05-03	Fee for Record Check
10-13-05-04	Dissemination Log

10-13-05-01. Criminal justice agency response to dissemination requests. Criminal justice agencies receiving requests for criminal history record information from noncriminal justice sources shall refer those requests to the bureau by providing the requestor with a request form supplied by the bureau.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-05-02. Bureau handling of dissemination requests. The bureau shall provide forms and establish procedures for noncriminal justice entities to acquire criminal history record information and shall make those procedures known to inquiring agencies. Request forms will be provided through criminal justice agencies and directly to noncriminal justice entities upon request.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-05-03. Fee for record check. Requests from noncriminal justice agencies for record checks must be accompanied by a check, money order, cash, or government purchase order in the amount of twenty dollars to cover the authorized fee. Checks, money orders, or purchase orders should be made payable to the "Attorney General's Office". Any request not accompanied by the twenty dollar fee will be returned to the requesting party unprocessed. A receipt for payment of the fee will be returned to the requesting party.

History: Effective November 1, 1987.
General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

10-13-05-04. Dissemination log. The bureau shall maintain a transaction log of all requests for criminal history record checks, and in those cases where criminal history record information is released, the details of the release must be recorded. In those cases where dissemination is prohibited, in accordance with North Dakota Century Code section 12-60-16.7, the reason for not disseminating must be recorded. Such dissemination log must be retained by the recording agency for a minimum of three years.

History: Effective November 1, 1987.
General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

CHAPTER 10-13-06 SECURITY OF CRIMINAL HISTORY RECORD INFORMATION

Section	
10-13-06-01	Policies and Procedures Required
10-13-06-02	Facilities
10-13-06-03	Automated Systems

10-13-06-01. Policies and procedures required. All criminal justice agencies maintaining criminal history record systems, whether manual or automated must have written policies and procedures to protect criminal history data from unauthorized access. Written policies and procedures will include at a minimum:

1. Designation of personnel authorized access to criminal history files.
2. Screening of personnel authorized access.
3. Screening of noncriminal justice personnel with indirect access or work proximity to criminal history files (such as computer programmers, maintenance personnel, and nonagency janitorial personnel).
4. Supervision of personnel with direct or indirect access or proximity to criminal history files.

History: Effective November 1, 1987.
General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

10-13-06-02. Facilities. All criminal justice agencies maintaining criminal history record systems, whether manual or automated, must have adequate facilities to protect criminal history data from unauthorized access. Buildings and rooms used for file maintenance should be constructed and utilized so as to prevent unrestricted physical access by unauthorized persons.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-06-03. Automated systems. Criminal justice agencies operating automated criminal history record systems must provide the following:

1. Protection against unauthorized access.
2. Protection against tampering or destruction.
3. Detection and logging of unauthorized access attempts.
4. Protection of software.
5. Assurance of restricted access in a shared computer system.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

CHAPTER 10-13-07 INSPECTION AND CHALLENGE OF CRIMINAL HISTORY RECORD INFORMATION BY A RECORD SUBJECT

Section	
10-13-07-01	Inspection
10-13-07-02	Record Subject Identification
10-13-07-03	Inspection by Representative
10-13-07-04	Inspection of Local and State Central Repository Records
10-13-07-05	Request for Inspection From Out-Of-State
10-13-07-06	Notification of Record Availability
10-13-07-07	Negative Response to Request for Inspection
10-13-07-08	Record Copies Restricted
10-13-07-09	Challenge of Denial to Inspect
10-13-07-10	Challenge of Completeness and Accuracy
10-13-07-11	Forwarding Challenge Forms to Originating Agency
10-13-07-12	Notification of Corrections to a Criminal History Record

10-13-07-01. Inspection. Any record subject shall, upon submission of a written request and satisfactory verification of his identity, be entitled to review, without undue burden to either the criminal justice agency or the record subject, any criminal history record information maintained by any criminal justice agency about the record subject.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-07-02. Record subject identification. Satisfactory verification of identity may consist of fingerprint comparison or presentation of photo-identification such as a driver's license or passport. If fingerprint comparison is required for positive identification, the record subject may be required to return at a later date to the agency where the inspection was requested.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-07-03. Inspection by representative. A representative of a record subject must satisfactorily establish his identity as representative and present evidence of power of attorney or notarized authorization before being allowed to view the information on file for the record subject.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.1(7), 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-07-04. Inspection of local and state central repository records. A record subject may make a request at any criminal justice agency in North Dakota to inspect his criminal history record, if any, retained by that agency and by the bureau. The agency receiving that request will prepare a form provided by the bureau containing information necessary to comply with that request and will forward that request form to the bureau within five working days. Upon confirmation of the record subject's identity, the bureau will return a copy of any record information to the requesting agency within twenty working days.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-07-05. Request for inspection from out-of-state. Any request for inspection of a criminal history record must be made in person at a criminal justice agency by the record subject or a duly

authorized representative. Any requests made by mail or any other means from out-of-state cannot be processed by either the receiving agency or the bureau.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-07-06. Notification of record availability. Criminal justice agencies shall notify the record subject when the individual's record is available for review and shall establish a time within normal working hours when that review can take place.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-07-07. Negative response to request for inspection. A criminal justice agency or the bureau may deny inspection of a record if the record subject is not satisfactorily identified. Agencies or the bureau will also respond negatively if no record is found for the individual. In either situation, the individual will be informed in

writing of the reason for the negative response and will be advised of his right to challenge the denial.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-07-08. Record copies restricted. Persons inspecting criminal history records may make notes of the information but will not be provided a copy of the information except when the person inspecting intends to challenge the information. If a challenge is indicated, the criminal justice agency will limit the copy to those portions to be challenged.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-07-09. Challenge of denial to inspect. If an individual is denied the right to inspect his criminal history record, he may challenge this denial by submitting a challenge form and a complete set of fingerprints, within ten days of the denial, to the administrator of the agency which has issued the denial.

The administrator must, within thirty days, either allow inspection of the records requested, or respond to the individual in writing with his findings as to why the denial is upheld.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-07-10. Challenge of completeness and accuracy. Any record subject may challenge, in writing, the completeness or accuracy, or both, of specific criminal history record entries pertaining to the individual and request that incomplete or inaccurate entries be corrected. Upon challenge, the criminal justice agency originating the record entries shall conduct an administrative review of the alleged incomplete or incorrect entries, and shall notify the record subject, in writing, of the results of the review within twenty working days of the receipt of the challenge.

The record subject must specify the incomplete or inaccurate entries and indicate what he deems to be the complete or correct entries.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-07-11. Forwarding challenge forms to originating agency. If the reviewing agency is not also the originating agency, the original challenge form and any related documents must be forwarded to the originating agency, or, in the case of challenges claiming incompleteness, to the agency that can verify the notations which, according to the record subject, should be included in the record. The reviewing agency shall retain a copy of the original challenge form.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-07-12. Notification of corrections to a criminal history record. In the event that corrections of criminal history record entries are made by the originating criminal justice agency, the originating agency shall notify all criminal justice and noncriminal justice agencies that have received the erroneous information within the year preceding the challenge of said corrections.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

CHAPTER 10-13-08
AUDITING OF CRIMINAL HISTORY RECORD INFORMATION

Section	
10-13-08-01	Auditing Local Criminal History Record Systems
10-13-08-02	Auditing of Bureau

10-13-08-01. Auditing local criminal history record systems. The bureau shall conduct annual audits of a representative sample of local criminal justice agencies to ensure completeness and accuracy of criminal history record information and to ensure compliance with legal requirements for the reporting, collection, maintenance, and dissemination of such information. Such audits must be conducted to ascertain compliance with North Dakota Century Code sections 12-60-16.1 through 12-60-16.10 and this article. Upon completion of each audit, the bureau shall submit to the attorney general a written report setting forth the audit methodology and a summary of findings and recommendations.

The audits of state and local agencies will include an inspection of facilities and equipment; observation of equipment and procedures; interviews with management and staff personnel; examination of files, documents, and other material; analysis of record samples; and review of all relevant written standards, guidelines, regulations, manuals, and training materials.

History: Effective November 1, 1987.
General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

10-13-08-02. Auditing of bureau. The bureau shall conduct an annual audit of the state central repository for criminal history record information. This audit will examine compliance with North Dakota Century Code sections 12-60-16.1 through 12-60-16.10, this article, and the policies and procedures established for operation of the bureau's central repository. The results of such audit must be reported to the attorney general.

History: Effective November 1, 1987.
General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

CHAPTER 10-13-09
AGREEMENTS BETWEEN THE BUREAU AND CRIMINAL
JUSTICE AGENCIES

Section	
10-13-09-01	Agreements Between the Bureau and Criminal

Justice Agencies

10-13-09-01. Agreements between the bureau and criminal justice agencies. Any formal agreement required by state or federal law or regulation between criminal justice agencies will be prescribed as needed by the bureau.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

CHAPTER 10-13-10 USE OF CRIMINAL HISTORY RECORD INFORMATION FOR RESEARCH AND STATISTICS

Section

10-13-10-01	Purposes Warranting Disclosure
10-13-10-02	Disclosure of Personal Identifiers
10-13-10-03	Written Agreement Required

10-13-10-01. Purposes warranting disclosure. Disclosure of criminal history record information for research and statistics is authorized for bona fide studies and analyses of such matters as the incidence of crime, recidivism, demographic trends, or the administration of criminal justice.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-10-02. Disclosure of personal identifiers. Criminal history records may be disclosed in a form that identifies record subjects, for the purposes authorized in section 10-13-10-01, only if the results will be released to the public in statistical, aggregate, and anonymous form and published information does not disclose the identity of record subjects. If the purposes of the study and analysis can be accomplished without access to personal identifiers, the required data will be made available without personal identifiers.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-10-03. Written agreement required. The recipient of criminal history record information for research and statistical purposes shall execute a written agreement that defines the purposes of the study or analysis, and the intended use of the information, and

establishes safeguards to assure the integrity, confidentiality, and security of the information. The recipient may not use the information for purposes other than those specified in the agreement, or disclose information in a form that identifies the record subject, without the express written authorization of the record subject.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

CHAPTER 10-13-11 PURGING AND SEALING OF CRIMINAL HISTORY RECORD INFORMATION

Section

10-13-11-01	Court Order Required
10-13-11-02	Purging Limited
10-13-11-03	Access to Sealed Records
10-13-11-04	Methods of Sealing

10-13-11-01. Court order required. Criminal history records, or portions thereof, may be purged or sealed only when expressly authorized by state or federal law and pursuant to a court order.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-11-02. Purging limited. Purging must be accomplished so as to retain records or portions of records which are not the direct objective of a purge order. Agencies may destroy an entire record, including fingerprints, photos, and arrest and disposition data, or they may destroy only specific portions of a record to accomplish the required purge.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-11-03. Access to sealed records. Criminal justice agencies may access sealed records for the following purposes:

1. Records management.
2. Review by the record subject.
3. Authorized research and statistical purposes.

4. Upon court order.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-11-04. Methods of sealing. Records may be sealed by attaching a special marking to sealed files, or by removal from the general record file and storage in a separate, secured file. In automated systems, sealing will be accomplished by limiting access to the sealed records or portions thereof to specific terminals or specifically authorized persons, or both.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

**CHAPTER 10-13-12
AGENCY RESPONSIBILITY FOR REPORTING CRIMINAL
HISTORY RECORD INFORMATION**

Section

10-13-12-01	Law Enforcement and Arresting Agencies
10-13-12-02	Prosecuting Attorneys
10-13-12-03	Local Correctional Facilities
10-13-12-04	State Penitentiary
10-13-12-05	Board of Pardons and Parole Board

10-13-12-01. Law enforcement and arresting agencies. Law enforcement and arresting agencies shall report to the bureau the following events and information:

1. Arrests.
 - a. Fingerprints.
 - b. Physical description.
 - c. Charges.
2. Decisions not to refer arrests for prosecution.
3. Fingerprints ordered by the court after determination that defendant has not been previously fingerprinted for the current charge.

The arresting agency retains responsibility for ensuring that the required information is reported to the bureau even though another agency is under agreement to provide fingerprinting services.

History: Effective November 1, 1987.
General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.2, 12-60-16.3

10-13-12-02. Prosecuting attorneys. Prosecuting attorneys shall report to the bureau the following events and information:

1. Charges filed.
2. Charges added subsequent to the filing of a criminal court case.
3. Decisions not to file charges after a reported arrest.
4. Judgments of not guilty.
5. Judgments of guilty including sentence imposed.
6. Dismissal of charges.
7. Reversal of conviction.
8. Remand.
9. Vacation of sentence.
10. Sentence modification.
11. Judgment terminating probation.
12. Judgment revoking probation including resentencing.
13. Deferred imposition of sentence or suspended sentence.
14. Death of defendant prior to trial.
15. Conviction of misdemeanor check offenses.

History: Effective November 1, 1987.
General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.2, 12-60-16.3

10-13-12-03. Local correctional facilities. Local correctional facilities shall report to the bureau the following events and information:

1. Receipts.
2. Escape.
3. Death.

4. Release.

This information shall be reported only for those offenders actually sentenced to the custody of the sheriff or local correctional facility for reportable offenses. It does not apply to those offenders who happen to be in custody awaiting trial or transfer to another facility, except in the event of their escape or death.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.2, 12-60-16.3

10-13-12-04. State penitentiary. The state penitentiary shall report to the bureau the following events and information:

1. Receipt.
2. Escape.
3. Death.
4. Release.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.2, 12-60-16.3

10-13-12-05. Board of pardons and parole board. The board of pardons and parole board, through the department of parole and probation, shall report to the bureau the following events and information:

1. Pardon.
2. Parole.
3. Commutation of sentence.
4. Discharge from custody or supervision.

The preceding events and information must be reported for each sentence assigned to a record subject for each reportable offense.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.2, 12-60-16.3

**CHAPTER 10-13-13
TIME REQUIREMENT FOR REPORTING CRIMINAL HISTORY
RECORD INFORMATION**

Section
10-13-13-01 Time Limits

10-13-13-01. Time limits. Reports and substantiating documents of reportable events must be submitted to the bureau within the following time limits after the completion of the event:

1. Arrest - within twenty-four hours.
2. Decision not to refer - within forty-eight hours.
3. Decision not to file charges - within forty-eight hours.
4. All other reportable events - within thirty days.

History: Effective November 1, 1987.
General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

**CHAPTER 10-13-14
DEFINITIONS**

Section
10-13-14-01 Definitions As Used in This Article

10-13-14-01. Definitions as used in this article. Certain terms used in this article are defined as follows:

1. "Challenge" means to formally, in writing, call into question the completeness, contents, accuracy, dissemination, or denial of access to a criminal history record.
2. "Collect" means to solicit and receive information pertaining to reportable events.
3. "Exchange" means to disclose criminal history record information, by any means, to another criminal justice agency or to a court.
4. "Maintain" means to file or store criminal history record information and to combine information on related reportable events for identified record subjects.

5. "Originating agency" means the criminal justice agency which recorded and reported a reportable event.
6. "Personal identifiers" means an individual's name, social security number, other number, or descriptive information which is sufficiently unique to identify one individual.
7. "Purge" means destroying, blotting out, striking out, or effacing a record so that no trace of the individual identification remains.
8. "Report" means to submit to the bureau information pertaining to reportable events.
9. "Reviewing agency" means the criminal justice agency at which a record subject has appeared to request an inspection of his criminal history record.
10. "Seal" means retaining a record, but prohibiting access or dissemination except as provided by section 10-13-11-03.

History: Effective November 1, 1987.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

TITLE 13

Banking and Financial Institutions, Department of

NOVEMBER 1987

13-01-01-01. Organization and functions of the department of banking and financial institutions.

1. Organization of department.

a. Scope. The department of banking and financial institutions is responsible for the organization and regulation of all state financial institutions, excluding the Bank of North Dakota. The following types of state-chartered or state-licensed financial institutions are dependent upon the department in their organization, and are subject to its continued regulation:

- (1) Banks.
- (2) Trust companies.
- (3) Savings and loan associations.
- (4) Mutual savings corporations.
- (5) Credit unions.
- (6) Agents for deposit.
- (7) Small loan companies.
- (8) Consumer finance companies.
- (9) Collection agencies.
- (10) Sale of checks.
- (11) Money brokers.

The department is also responsible for the examination of the Bank of North Dakota.

- b. Divisions. The department consists of the following three divisions, based on scope of authority and responsibility as delegated by the legislative assembly.
 - (1) Those responsibilities entrusted to the state banking board.
 - (2) Those responsibilities entrusted to the state credit union board.
 - (3) Those responsibilities entrusted to the department and the commissioner of banking and financial institutions.

- c. Board composition and department personnel.
 - (1) The commissioner of banking and financial institutions is appointed by the governor, with confirmation by the senate, for a term of four years. In addition to other qualifications, the commissioner must be a skilled accountant.
 - (2) The state banking board consists of the commissioner and six other members, with the commissioner as chairperson. The six members are appointed by the governor for a term of five years with one member's term expiring every year. Four of the members must have five or more years experience in an executive capacity in the management of a state bank, one must have the five or more years of experience in an executive capacity in the management of a state or national bank, and one member shall be a lay member from the public at large. The banking board holds regular meetings in January, March, May, July, September, and November, with special meetings at the call of the commissioner.
 - (3) The state credit union board consists of the commissioner and four other members, with the commissioner as chairperson. The members are appointed by the governor from a panel of five names furnished by the North Dakota credit union league. Two of the members must have three or more years experience as an officer, director, or committee member of a state-chartered credit union, one member of the board shall have had at least three years of experience as an officer, director, or committee member of a federally chartered credit union, and one member of the board shall be a lay member from the public at large. The credit union board holds

regular meetings in March, June, September, and December of each year, and special meetings at the call of the commissioner.

- (4) By statute, the commissioner may designate one deputy examiner as chief deputy examiner, now entitled assistant commissioner. The assistant commissioner has authority to act during the absence or disability of the commissioner. The assistant commissioner, by statute, serves as the secretary of the banking board and the credit union board.
- (5) The attorney general of North Dakota is the ex officio attorney for the department and the boards.
- (6) The department employs a chief examiner who is responsible for the examination of financial institutions in subdivision a of subsection 1.
- (7) The department employs an administrative officer responsible for the operations and administrative detail of the department.
- (8) The department's examining staff consists of deputy examiners who are now entitled financial institution examiners and supervisory examiners, who the commissioner appoints, and who are under the direct supervision of the chief examiner.
- (9) In addition, the department staff consists of secretaries, who are under the direct supervision of the administrative officer.

2. Functions.

- a. The banking board is responsible for the organization and regulation of banks, trust companies, savings and loan associations, mutual investment corporations, banking institutions, and other financial institutions. A grant of authority from the board is necessary prior to the establishment and operation of any of the above organizations. The board reviews all examinations of institutions under its control and has the power and responsibility to ensure compliance with the statutes, regulations, and sound banking principles, and to protect the depositors, creditors, and the public.
- b. The credit union board is responsible for the supervision of credit unions. This power concerns the operation of established credit unions and includes the review of examinations and bylaws. The board is responsible for ensuring compliance with the statutes, regulations, and sound operational principles.

- c. The commissioner has the authority to grant or deny approval for the organization of a credit union.
- d. The department, headed by the commissioner, has the responsibility of administering all other functions within its jurisdiction.
 - (1) The department licenses and regulates small loan companies, consumer finance companies, collection agencies, check sellers, ~~and~~ agents for deposit, and money brokers.
 - (2) The department is charged with the responsibility of examining all financial institutions within its control, and the Bank of North Dakota. The examination process involves the inspection and analysis of all business affairs and the financial condition of the institutions it is charged with examining. This includes analysis of the assets, liabilities, methods of operation, management, recordkeeping, accounting systems, and compliance with all applicable laws and regulations.

3. **Inquiries.** All inquiries regarding the department of banking and financial institutions may be addressed to the administrative officer. All requests for hearings, declaratory rulings, and for participating in rulemaking may be addressed to the administrative officer, unless specific public notice directs otherwise.

Address correspondence as follows:

Department of Banking and Financial Institutions
State Capitol
Bismarck, North Dakota 58505-0139
(701) 224-2253

History: Amended effective November 1, 1981; August 1, 1983; November 1, 1985; November 1, 1987.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

TITLE 16.5
Centennial Commission

SEPTEMBER 1987

STAFF COMMENT: Title 16.5 contains all new material but is not underscored so as to improve readability.

ARTICLE 16.5-01

GENERAL ADMINISTRATION

Chapter
16.5-01-01 Organization of Commission

CHAPTER 16.5-01-01
ORGANIZATION OF COMMISSION

Section
16.5-01-01-01 Organization and Functions of the North Dakota
Centennial Commission

16.5-01-01-01. Organization and functions of the North Dakota centennial commission.

1. The 1981 session of the North Dakota legislative assembly (forty-seventh legislative assembly) created the North Dakota centennial commission and established a termination date of June 30, 1983. The powers and duties of the commission were to:
 - a. Plan, promote, and designate park, sites, and activities in North Dakota for special purposes and development

during the 1989 centennial celebration of North Dakota statehood; and

- b. Conduct and promote studies, investigations, and research into the development of centennial activities.
2. In 1983, the legislative assembly established a termination date of June 30, 1991, which stated that the commission shall "plan and promote activities in North Dakota for the 1989 centennial celebration of North Dakota statehood" and added two ex officio members to the commission.
3. The 1985 session of the North Dakota legislative assembly increased the number of commission members from eleven to fifteen.
4. In 1987, the fiftieth legislative assembly of the state of North Dakota, in its action on House Bill number 1222, "appropriated out of the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much thereof as may be necessary, to the North Dakota centennial commission for the purpose of making grants, to be allocated among the counties in the state for distribution for projects within the county, to finance centennial projects for the biennium beginning July 1, 1987, and ending June 30, 1989." This fund is referred to as the "North Dakota centennial communities grant program".
5. In the same session, the legislative assembly, in its action on Senate Bill number 2259, section 3, funded a general centennial grant program: "a centennial celebration fee is imposed on every vehicle subject to registration under section 39-04-19. The fee is one dollar and twenty-five centers per vehicle. The fee is payable when the registration fee under section 39-04-19 is payable. Each month the registrar of motor vehicles shall transfer to the centennial commission the celebration fee collected in accordance with this Act. The centennial commission shall place the fees in the centennial commission revolving fund". This fund is referred to as the "centennial legacies grant program".
6. Inquiries. Any inquiries concerning the North Dakota centennial commission may be addressed to:

North Dakota Centennial Commission
North Dakota Heritage Center
Bismarck, ND 58505

History: Effective September 1, 1987.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

ARTICLE 16.5-02

NORTH DAKOTA CENTENNIAL COMMUNITIES GRANT PROGRAM

Chapter
16.5-02-01 Administration of North Dakota Centennial
Communities Grant Program

CHAPTER 16.5-02-01
ADMINISTRATION OF NORTH DAKOTA CENTENNIAL
COMMUNITIES GRANT PROGRAM

Section
16.5-02-01-01 Definitions
16.5-02-01-02 Interpretation of Legislative Action on
House Bill Number 1222 and Application
Guidelines

16.5-02-01-01. Definitions.

1. "Commission" means the North Dakota centennial commission as defined in section 1 of chapter 554 of the 1981 Session Laws and section 1 of chapter 583 of the 1983 Session Laws.
2. "Committees" means county or city centennial coordinating committees defined in North Dakota Century Code sections 11-11-66 and 40-05-21.
3. "North Dakota centennial community" refers to a special designation created by the North Dakota centennial commission in January 1986. A city or county may achieve this designation by fulfilling all of the following requirements:
 - a. A centennial coordinating committee must be formed and officially recognized by the governing body or individual of a given county or city.
 - b. A plan must be developed for the city or county's celebration of the North Dakota centennial.
 - c. Application for designation must be made to the North Dakota centennial commission on a form entitled "Application for Sanctioning of a Centennial Community, Centennial Association, or Centennial Business" with accompanying supporting documents.

History: Effective September 1, 1987.

General Authority: NDCC 28-32-02
Law Implemented: 1987 Session Laws, Chapter 30

16.5-02-01-02. Interpretation of legislative action on House Bill number 1222 and application requirements.

1. County and city centennial coordinating committees may apply for support of projects which will begin after August 1, 1987, and end by December 31, 1989.
 - a. Only those committees which have been designated a North Dakota centennial community are eligible to apply for support under the program.
 - b. Only projects and tasks included in approved master plans are eligible for support.
 - c. Projects shall be supported at a level of no more than one-third of the total cash cost of the proposed project or activity.
2. The total funds which shall be distributed within a county shall be limited to the amount determined by the following formula: percent of state population residing in a county (as determined by the office of intergovernmental assistance) which qualifies for support times one hundred thousand dollars.
 - a. All applications from committees must be submitted to the commission no later than July 1, 1988.
 - b. The commission shall determine the amount awarded to each of the communities within counties at a meeting in August 1988.
 - c. The commission shall make individual awards to qualifying committees in the following way:
 - (1) The commission shall first determine the total funds available for grants within each county by applying the formula.
 - (2) If the total request from qualifying committees within a county is less than the formula provides, the total unrequested amount must be distributed equally among qualified counties.
 - (3) If the requests from committees within a qualified county exceeds the total amount available under paragraphs 1 and 2, the commission shall make individual awards within the county according to the following formula: percent of total requests from

county represented by individual request times total funds available to county under paragraphs 1 and 2.

History: Effective September 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: 1987 Session Laws, Chapter 30

ARTICLE 16.5-03

CENTENNIAL LEGACIES GRANT PROGRAM

Chapter
16.5-03-01 Administration of Centennial Legacies
Grant Program

CHAPTER 16.5-03-01 ADMINISTRATION OF CENTENNIAL LEGACIES GRANT PROGRAM

Section
16.5-03-01-01 Interpretation of Legislative Action on
Senate Bill Number 2259 and Application
Requirements

16.5-03-01-01. Interpretation of legislative action on Senate Bill number 2259 and application requirements.

1. **Anticipated revenue for grants.** Between January 1, 1988, and January 1, 1989, the commission anticipates approximately eight hundred fifty thousand dollars will be transferred to its revolving fund for the purpose of making grants.
2. **Organizations and institutions eligible to apply for grants.**
 - a. **Eligible.** All nonprofit organizations and institutions licensed by the secretary of state of North Dakota or operating as a governmental unit under North Dakota law may apply for a centennial legacies grant.
 - b. **Ineligible.** Neither individuals nor profitmaking corporations may apply for grants under this program.
3. **Deadlines for applications.** The commission shall consider applications for grants according to the following schedule:

DEADLINE	BEGINNING DATE
February 1, 1988	March 1, 1988
June 1, 1988	July 1, 1988
September 1, 1988	October 1, 1988
December 1, 1988	January 1, 1989

4. Activities eligible for commission grants.

- a. Eligible. All activities, except those listed under subdivision b of this subsection, which will lead to better public understanding of the history and cultural heritage of the people of North Dakota shall be considered by the commission.
- b. Ineligible. The following costs are not eligible for support by the commission under this program:
 - (1) Restoration of historical buildings and other structures, except historic and long-term use sites owned by public or private nonprofit organizations which are renovated under paragraph 5 of subdivision b of subsection 7.
 - (2) Building and construction projects not allowed under paragraph 1 of this subdivision.
 - (3) General operation costs of the applying organization which are not directly related to the project proposed.
 - (4) Any attempt to influence legislation or to promote one point of view on political and social issues of current interest to the people of North Dakota.

5. Copyright of materials produced with legacies grants. The copyright for all materials produced with grants under this program shall abide with the person or organization which produced the material. The centennial commission shall have the right in perpetuity to use for nonprofit purposes any material produced, including the right to authorize use by nonprofit organizations and institutions after 1989.

6. Matching requirements for legacies grants. The commission expects that all applicants will offer matching of at least twenty percent of the total cash cost of the project as well as donated time and facilities.

7. Grant categories for centennial legacies program.

a. Designated programs.

- (1) The centennial traveling exhibit. All organizations and institutions in the state capable of coordinating a statewide traveling exhibit may apply for a matching award of up to one hundred twenty-five thousand dollars. The applicant shall provide for an exhibit which will travel throughout the state beginning in November 1988, in Bismarck, and ending in December 1989. The centennial traveling exhibit shall include an interpretive overview of North Dakota history and culture with appropriate historical artifacts, photographs, paintings, sculpture, and other artistic and cultural expression from the past. Applicants for this award shall provide for installation of the entire exhibit in self-contained vans or semitrailers or propose an alternative format which makes the exhibit available to any community in the state. Applicants for this award shall meet the February 1, 1988, deadline.
- (2) The centennial drama. The commission shall invite proposals to coordinate a grant of up to forty thousand dollars for the selection on a competitive basis of a drama to commemorate the centennial and the selection of a touring company to present the drama selected throughout North Dakota during 1989. The drama shall be selected from scripts submitted to a panel of five appointed by the chairman of the commission which includes two commission members and three North Dakota citizens whose experience and education in theater qualify them to judge the scripts submitted. Jury members shall not be eligible to submit scripts to this competition. All scripts shall be for a drama no shorter than one hour or longer than one and one-half hours. The scripts must be submitted to the panel without any identification of the author. The author selected shall be paid a fee of ten thousand dollars and shall retain copyright to the script, except the commission shall have access to the script under subsection 5. Applicants for this award shall meet the June 1988 deadline.
- (3) Centennial symphonic or operatic composition. The commission shall award a grant of up to ten thousand dollars for the composition and publication of an original symphonic or operatic composition. The composer shall retain copyright except as noted in subsection 5. The composer shall be selected by a jury of three composers appointed by the chairman of the commission. All jury members shall have the experience and education necessary to select the

North Dakota centennial musical composer. None of the jury members shall be eligible to apply under this competition. Applicants for this award shall meet the February 1988 deadline.

- (4) North Dakota touring musical and dance groups. The commission will make awards of up to five thousand dollars to groups of musicians and dancers, not all of whom need to be North Dakota residents, to tour the state during the centennial celebration beginning in November 1988, and ending December 1989. All applicants for these grants shall meet the September 1988 deadline. No more than thirty thousand dollars total shall be available for support of touring musical and dance groups.
 - (5) Centennial bookshelf. The commission will make awards of up to ten thousand dollars toward the printing and distribution of books which interpret North Dakota heritage and culture or commemorate the North Dakota centennial. Applications for these grants shall meet the February 1988 deadline. The total grants awarded by the commission may not exceed one hundred thousand dollars.
 - (a) The commission will award grants of up to five thousand dollars to subsidize the publication of out-of-print books.
 - (b) The commission will award grants of up to ten thousand dollars for publishing or translating and publishing manuscripts which have never before been published.
- b. General programs. In addition to the designated programs, the commission will accept, at all deadlines unless otherwise noted, requests for grants to support projects which interpret and make available to the general public the cultural heritage of the state of North Dakota. All requests to this general programs area must provide for at least fifty percent of the total cash cost of the projects in addition to donated time, facilities, and equipment. Programs eligible for support include, but are not limited to, the following:
- (1) Film, video, and audio productions. In general, the commission anticipates funding no more than one-third the total cash costs and no more than fifty thousand dollars for a single production or series and no more than sixty thousand dollars total for media productions. In the interest of fairness, the commission shall consider all media applications at

its March 1988 meeting. All media applications must apply by the February 1, 1988, deadline.

- (2) Traveling or permanent exhibits and displays. Such interpretive projects will be supported at levels ranging from two thousand five hundred dollars to thirty thousand dollars. No more than one hundred thousand dollars will be available for such projects.
 - (3) Interpretive projects for North Dakota schools. Eligible projects include development of curricula materials, visiting humanities scholars and artists, and circulating exhibits. No more than thirty-five thousand dollars will be available for such projects.
 - (4) Festivals and celebrations. The commission recognizes the importance of celebration as well as interpretation and analysis during the centennial. But because other funds will be available for support of local celebrations under article 16.5-02, the commission shall award no more than two thousand dollars to any single celebration and no more than fifty thousand dollars total for such projects.
 - (5) General interpretive projects. The commission expects a wide range of projects to be eligible for support under this category, including, but not limited to, centennial speakers' bureaus; series of newspaper feature articles; statewide festivals and other events; publication of interpretive brochures about historic or long-term use sites in the state; construction, renovation, and restoration of sites with historic or long-term use significance which are owned by public or private nonprofit organizations; and projects which include several of the categories outlines above. The funds available for such projects will be at least three hundred thousand dollars. More will be available if acceptable proposals are not submitted in the other categories. All applicants for the general interpretive projects shall meet the June 1988 deadline.
8. **Projects which produce income.** If a project supported by a centennial legacies grant produces income above the cost of distributing materials, at least fifty percent of the profits must be returned to the commission for distribution to other projects.
- a. Distribution of profits during tenure of commission. At the time it makes each grant, the commission shall determine if the project funded has the potential of making a profit above the cost of distribution. Upon making a determination that a project is profitmaking, the

commission shall then determine if such profits will be available for distribution to other projects before December 1989. Those profits which are not available before December 1989 will be allocated to an appropriate state agency or organization for the purpose of furthering public understanding of and appreciation for North Dakota heritage and culture.

- b. Distribution of profits after commission disbands. Upon termination of the centennial commission on June 30, 1991, or on such later date as determined by the North Dakota legislative assembly, the centennial commission revolving fund shall terminate and any remaining balance or proceeds of the fund shall be deposited in the state general fund unless otherwise directed by the legislative assembly.

History: Effective September 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: 1987 Session Laws, Chapter 453, § 3

TITLE 24
Electrical Board

OCTOBER 1987

24-01-01-01. Organization of electrical board.

1. **History and functions.** In 1917 legislation was approved which created a state board of electricians. In 1949 the name of the board was changed to the state electrical board. The board is charged with the responsibility to examine applicants and issue licenses to those having the necessary qualifications and knowledge in the laws of electricity and electrical codes. The board has jurisdiction over all electrical installations. Electrical inspectors authorized by the board may condemn installations hazardous to life and property and order electric service to be discontinued.
2. **Board membership.** The board consists of five members appointed by the governor for terms of five years. Terms are arranged so that one term expires each year. To provide equal representation on the board, one member is selected from the master electricians, one from the journeymen electricians, another from the investor-owned utilities, the fourth must be a consumer member of a rural electric cooperative, and the fifth member represents the public and cannot be directly associated with the electrical industry.
3. **Executive director.** The executive director has full responsibility for directing and supervising the operation of the department under the direction of the board.
4. **Director of inspections.** The director of inspections supervises electrical inspectors to carry out an effective inspection program. The director is responsible for reviewing plans and specifications that are submitted on various projects.

5. **Inspection districts.** The state is divided into ~~seven~~ four districts. Each electrical inspector is assigned to a district. A map showing the ~~seven~~ four districts is attached as an appendix to this chapter and by this reference is herein incorporated.
6. **Inquiries.** All inquiries and communication relating to licensing, electrical wiring, and inspections shall be directed to:

State Electrical Board
Box 857
Bismarck, North Dakota 58502

Inquiries or proposals for amendments to the rules and wiring standards shall be directed to the executive director.

History: Amended effective November 1, 1981; January 1, 1984; October 1, 1987.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

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

1. **Apprentice electricians.** There are two categories of apprentice electricians.
 - a. Apprentice electricians under the joint apprenticeship training committee training program approved by the department of labor.
 - b. Electrician trainees who may not be eligible for the joint apprenticeship training committee program and other persons desiring to accumulate a sufficient time and capability in the electrical trade to qualify them to apply for permission to take the examination for journeyman electrician's license.

Any person may work as an apprentice under a licensed master electrician, but the master electrician ~~shall~~ may not allow an apprentice to work on any installation without direct constant supervision by a North Dakota licensed electrician working with the apprentice at the worksite.

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

2. **Purpose and scope.** The purpose of these standards is the practical safeguarding of persons and of buildings and their

contents, from electrical hazards arising from the use of electricity for light, heat, and power. It covers the electrical conductors and equipment installed within or on public and private buildings and other premises, including yards, carnival and parking lots, also the conductors that supply streetlighting, together with the associated equipment necessary to its safe operation.

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

All requirements contained herein ~~shall~~ must be given careful consideration to ensure greatest permanence, convenience, and safety. These standards do not constitute a design specification for any particular installation, nor an instruction manual for untrained persons. Skill and experience are necessary factors for a safe and adequate wiring installation. In cases where these requirements differ or are in conflict with the requirements of the ~~1984~~ 1987 edition, National Electrical Code and the ~~1981~~ 1985 edition, Life Safety Code NFPA no. 101, the more restrictive requirements shall be the minimum.

3. **Administrative powers and duties.** The executive director of the North Dakota state electrical board, under the direction of the board, shall administer laws, rules, and wiring standards of this state, the electrical requirements of the ~~1984~~ 1987 edition, National Electrical Code, and the ~~1981~~ 1985 edition, Life Safety Code NFPA no. 101. In all cases where any action is taken by the executive director to enforce the provisions of any sections contained in these electrical regulations, the ~~1984~~ 1987 edition, National Electrical Code, and the ~~1981~~ 1985 edition, Life Safety Code NFPA no. 101, such acts ~~shall~~ must be done in the name of and on behalf of the state and the executive director, in so acting for the state, shall not render the executive director liable for any damages that may accrue to persons or property as a result of any such act committed in good faith in the discharge of the executive director's duties, and any suit brought against the executive director by reason thereof, ~~shall~~ must be defended by the state until final termination of proceedings contained therein.

The electrical regulations of these standards, the ~~1984~~ 1987 edition, National Electrical Code, and the ~~1981~~ 1985 edition, Life Safety Code NFPA no. 101, may be modified or waived by special permission in particular cases where such modification or waiver is specifically permitted or in particular cases where an advancement in the technology of electricity makes such modification or waiver advisable in the best interest of

the people of North Dakota. Such "special permission" ~~shall~~ must, in all cases, be obtained from the executive director in writing prior to the commencement of the work.

The executive director or the electrical inspector shall have the power to enter any building or premises at any reasonable hour in the discharge of their duties, and it shall be competent for them, when necessary, to remove any existing obstructions such as laths, plastering, boarding, or partitions, which may prevent a perfect inspection of electrical wiring and equipment; they shall also have the power to enter any building used in whole or in part for the purpose of public assemblage at any time when occupied by the public in order to examine electrical wiring and equipment in such building and it shall be unlawful for any person to interfere with them in the performance of their duties.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987.

General Authority: NDCC 43-09-05

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

24-02-01-03. General requirements. Electrical installations ~~shall~~ must be planned to provide adequate capacity for the load.

1. Wiring systems shall have conductors of sufficient capacity to furnish each outlet without excessive line loss or voltage drop. The voltage drop ~~shall~~ may not exceed five percent at the farthest outlet of power, heating and lighting loads, or combinations of such loads.
2. All wiring materials ~~shall~~ must be listed by underwriters' laboratories, incorporated, or other accepted testing laboratories to safeguard life and property. It ~~shall~~ be is the duty of the electrical installer to secure permission from the executive director to use materials, devices, and methods of installation not specifically covered by these standards.
3. All installations ~~shall~~ must be made in a workmanlike manner with special attention paid to the mechanical execution of work. All conductors ~~shall~~ must be rigidly supported and all fittings securely fastened.
4. When wiring public school buildings, approval ~~shall~~ must be received from the department of public instruction and the state electrical board.
5. Overhead conductors ~~shall~~ may not cross over water wells or known sites where water wells may be drilled. A minimum distance of twenty feet [6.10 meters] in all directions ~~shall~~ must be maintained for overhead conductors.

6. Buildings moved must have an electrical wiring certificate before service is reconnected.
7. Hospitals, nursing homes, homes for the aged, and dormitories which house more than ~~twenty~~ sixteen people ~~shall~~ must be wired in metal raceway. Portable cleaning equipment receptacle outlets ~~shall~~ must be installed in corridors and located so that no point in the corridor along the floorline, measured horizontally, is more than twenty-five feet [7.62 meters] from an outlet. Spacing of receptacle outlets for dormitories and homes for the elderly ~~shall~~ must be in conformity with section 210-52(a), ~~1984~~ 1987 edition, National Electrical Code.

Exception: By special permission from the state electrical board, receptacles in dormitories and homes for the elderly may be located conveniently for the permanent fixture layout.

8. In the wiring of nursing homes and hospitals, reference ~~shall~~ must be made to the state department of health and consolidated laboratories for special requirements pertaining to operating rooms, delivery rooms, and emergency lighting.
9. Aluminum conductors in sizes smaller than no. 6 ~~shall~~ may not be used. Aluminum conductors installed and all corresponding materials ~~shall~~ must be underwriters' laboratories listed. All materials used ~~shall~~ must be installed according to the requirements of the National Electrical Code. Connections ~~shall~~ must be made with the type approved for aluminum. Consideration ~~shall~~ must be given to the use of different types of metal.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987.

General Authority: NDCC 43-09-05

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

24-02-01-04. Places of assembly. This section covers all buildings, structures, or portions of buildings designed or intended for the assembly of one hundred or more persons.

Places of assembly include, but are not limited to: assembly halls, auditoriums, including auditoriums in schools; mercantile, business and other occupancies; exhibition halls; armories; dining facilities, including restaurants; church chapels; dancehalls; mortuary chapels; museums; skating rinks; gymnasiums and multipurpose rooms; bowling lanes; poolrooms; clubrooms; places of awaiting transportation; courtrooms; drinking establishments; and conference rooms.

Occupancy of any room or space for assembly purposes by less than one hundred persons in a building of other occupancy, and incidental to

such other occupancy, ~~shall~~ must be classed as part of the other occupancy and subject to the applicable provisions.

When such building structures or ~~portion~~ portions thereof ~~contains~~ contain a projection booth or stage platform or area for the presentation of theatrical or musical production, either fixed or portable, the wiring for that area ~~shall~~ must comply with all applicable provisions of article 520, ~~1984~~ 1987 edition, National Electrical Code.

(For methods of determining population capacity, see occupant load value table, section 24-02-01-16).

1. **Hazardous (classified) locations.** Hazardous areas located in any assemblage occupancy ~~shall~~ must be installed in accordance with article 500, ~~1984~~ 1987 edition, National Electrical Code, hazardous locations.
2. **Temporary wiring.** In exhibition halls used for display booths, as in trade shows, the temporary wiring ~~shall~~ must be installed in accordance with article 305, ~~1984~~ 1987 edition, National Electrical Code - temporary wiring, except approved portable cables and cords shall be permitted to be laid on floors where protected from contact by the general public.
3. **Wiring methods.** The fixed wiring method ~~shall~~ must be metal raceway or nonmetallic raceway encased in not less than two inches [5.08 centimeters] of concrete.

Adjacent areas separated by a firewall ~~shall~~ must be considered a separate building and may be wired in nonmetallic cable. (For the purpose of this section, a firewall is defined as a wall constructed of solid masonry or of hollow masonry units or of reinforced concrete. The wall shall start at the foundation and extend continuously through all floors to and above the roof, except where the roof is of fire-resistive construction and the wall is carried up tightly against the underside of the roof slab).

Exception: As provided in article 640, ~~1984~~ 1987 edition, National Electrical Code, sound reproduction and similar equipment; in article 800, ~~1984~~ 1987 edition, National Electrical Code, communication circuits, and in article 725, ~~1984~~ 1987 edition, National Electrical Code, for class 1, class 2, and class 3 remote control and signaling circuits, and in article 760, ~~1984~~ 1987 edition, National Electrical Code, for fire protective signaling systems.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987.

General Authority: NDCC 43-09-05

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

24-02-01-05. Class II locations. Electrical wiring in grain elevators ~~shall~~ must conform with code requirements, class II, division 1 under article 500, ~~1984~~ 1987 edition, National Electrical Code. All enclosures and electrical equipment mounted in rooms containing grinders, cleaners, roller mills, hoppers, open conveyors or spouts, mixers, and other dust producing machinery ~~shall~~ must be labeled and approved for class II, division 1 location, including motor controllers of the type in which starting and running contractors are oil immersed. General purpose enclosures may only be installed in dustfree locations.

1. Surge protective capacitors ~~shall~~ must be provided for all services in grain elevators receiving power from an exterior overhead line. Surge protective capacitors may be located inside or outside a building. If located within a building each capacitor ~~shall~~ must be protected with a fuse of proper voltage rating for the circuit and an ampere rating not less than twenty nor more than thirty amperes.
2. Where necessary to employ flexible connections in grain elevators, dusttight flexible connectors and conduit ~~shall~~ must be used.
3. Receptacles and switches installed in grain elevators ~~shall~~ must be labeled and approved for a class II, division 1 dusty location.
4. Electrical wiring and equipment installed in a grain elevator which is not used commercially and having a total capacity of less than ten thousand bushels [352.39 cubic meters] and located in a rural district ~~shall~~ must conform to class II, division 2, under article 500, ~~1984~~ 1987 edition, National Electrical Code.
5. Electrical wiring and equipment in buildings or rooms other than a grain elevator where grain is handled or processed on a commercial basis such as rooms containing grinders, augers, open spouts, roller mills, or similar dust producing machinery, ~~shall~~ must be labeled and approved for class II, division 1 under article 500, ~~1984~~ 1987 edition, National Electrical Code.
6. In buildings or rooms where grain is handled or processed not on a commercial basis, such as rooms containing grinders, augers, open spouts, roller mills, or similar dust producing machinery, the electrical wiring and equipment ~~shall~~ must conform to class II, division 2, under article 500, ~~1984~~ 1987 edition, National Electrical Code.

Exceptions: Rooms where grain is handled or processed occasionally on a limited basis, general purpose equipment may be used if approved by the local inspection authority.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987.

General Authority: NDCC 43-09-05

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

24-02-01-06. Grounding. Grounding ~~shall~~ must conform to article 250, ~~1984~~ 1987 edition, National Electrical Code. ~~in no case shall resistance to ground exceed twenty-five ohms.~~

1. The equipment grounding conductor ~~shall~~ must be spliced in the same manner as branch circuit conductors except that solder ~~shall~~ may not be used.
2. The neutral conductor ~~shall~~ may not be used as the equipment grounding conductor and ~~shall~~ must be insulated except as provided in section 250-60, ~~1984~~ 1987 edition, National Electrical Code.
3. All metal boxes in structures containing metal lath, tinfoil insulation, or other metallic barrier ~~shall~~ must be grounded.
4. At motor connections, a bonding jumper sized in accordance with table 250-95, ~~1984~~ 1987 edition, National Electrical Code, ~~shall~~ must be provided around all flexible conduit in sizes one-half inch [12.70 millimeters] and larger. The bonding jumper is not required where a separate grounding conductor is included.
5. Grounding of metal streetlighting standards. ~~The maximum resistance to ground from any standard shall be twenty-five ohms.~~
 - a. Circuits run in nonmetallic conduit or buried directly in the ground: the ornamental metal standard ~~shall~~ must be grounded by use of a grounding conductor, not the neutral conductor. This grounding conductor ~~shall~~ must be run continuously throughout the system and properly bonded to each standard by use of lugs. It ~~shall~~ must be connected to a one-half inch [12.70 millimeters] by ten foot [3.0 meters] copperweld ground rod at each metal standard. The ten foot [3.0 meters] ground rod is driven in the center of the metal standard base and projecting slightly above the base. Both ground rod and grounding conductor ~~shall~~ must be connected to the metal standards. The grounding conductor ~~shall~~ must be in accordance with the ~~1984~~ 1987 edition, National Electrical Code and in no case smaller than no. 8 copper or no. 6 aluminum.
 - b. Because of different characteristics of copper and aluminum, devices such as pressure terminal or pressure splicing connectors and soldering lugs ~~shall~~ must be suitable for the material of the conductor and ~~shall~~ must

be properly installed and used. Conductors of dissimilar metals ~~shall~~ may not be intermixed in a terminal or splicing connector where physical contact occurs between dissimilar conductors (such as copper and aluminum, copper and copper-clad aluminum, or aluminum and copper-clad aluminum), unless the device is suitable for the purpose and conditions of use. Consideration ~~shall~~ must also be given to dissimilar metals when grounding aluminum light standards.

- c. When circuits are run in metal conduit the ornamental metal streetlighting standard ~~shall~~ must be grounded to the metal conduit. No ground rod is required.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987.

General Authority: NDCC 43-09-05

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

24-02-01-07. Branch circuits and feeders. Branch circuits and feeders ~~shall~~ must comply with articles 210 and 215, ~~1984~~ 1987 edition, National Electrical Code.

1. The total connected load ~~shall~~ must be divided as evenly as practicable, between the two ungrounded conductors of a three-wire system and three conductors of a four-wire wye (120-208 volts) system.
2. A separate circuit with disconnect switch ~~shall~~ must be provided for the purpose of operating or controlling electrical equipment on heating plants. Wiring requirements for fixed electrical space heating equipment is provided under article 424, ~~1984~~ 1987 edition, National Electrical Code.
3. Dwelling occupancies having built-in baking or cooking units installed separately ~~shall~~ must have an individual disconnect and overcurrent protective device. Conductors supplying these units ~~shall~~ must have a carrying capacity according to nameplate rating.
4. A minimum of six appliance circuits ~~shall~~ must be installed in kitchens that may be used to serve public gatherings such as schools, churches, lodges, etc.
5. Dwelling type occupancies. Receptacle outlets ~~shall~~ must be installed in accordance with section 210-52, ~~1984~~ 1987 edition, National Electrical Code.
 - a. Lighting outlets in dwelling type occupancies ~~shall~~ must be installed in accordance with section 210-70, ~~1984~~ 1987 edition, National Electrical Code.

- b. A minimum of three circuits ~~shall~~ must be installed to supply receptacle outlets in kitchen, pantry, dining room and breakfast room. These circuits ~~shall~~ may not supply other outlets and ~~shall~~ must have conductors not smaller than no. 12. Such circuits ~~shall~~ must be provided with overcurrent devices rated at twenty amperes and ~~shall~~ must be known as appliance circuits. Two of these circuits ~~shall~~ must supply receptacle outlets on or near work counter area and so arranged that adjacent receptacles are not on the same circuit.
 - c. In laundry at least one 20-ampere branch circuit ~~shall~~ must be provided to supply laundry receptacles. See exceptions 1 and 2, section 210-52(e), and ~~220-3(e)~~ 220-4(c), ~~1984~~ 1987 edition, National Electrical Code.
 - d. Ground-fault protection for personnel ~~shall~~ must comply with section 210-8, ~~1984~~ 1987 edition, National Electrical Code.
6. Branch circuit and feeder calculations ~~shall~~ must comply with article 220, ~~1984~~ 1987 edition, National Electrical Code. Voltage drop must be taken into consideration when figuring size of feeder or branch circuit.

Formulas for determining voltage drop or conductor size are:

$$\text{Voltage drop} = \frac{21.6 \times L \text{ ft.} \times I}{\text{C.M.A.}}$$

or

$$\text{C.M.A.} = \frac{21.6 \times L \text{ ft.} \times I}{\% \text{ drop} \times \text{voltage}}$$

L = length in ft., one way

I = load in amps

E = volts

C.M.A. = Circular-mil area 21.6 multiplying factor for copper 35 multiplying factor for aluminum

Percent drop = permissible voltage drop times voltage of circuit as follows:

- ~~3% of 208 = 208 X .03 = 6.24 volts~~
- ~~3% of 115 = 115 X .03 = 3.45~~
- ~~3% of 230 = 230 X .03 = 6.9 volts~~
- ~~5% of 230 = 230 X .05 = 11.5 volts~~
- 3% of 208 = 208 X .03 = 6.24 volts
- 3% of 120 = 120 X .03 = 3.6 volts
- 3% of 240 = 240 X .03 = 7.2 volts
- 5% of 240 = 240 X .05 = 12.0 volts

Example:

~~230~~ 240 volts, 1,000 ft. distance, 10 ampere load, 5% drop
 $21.6 \times 1,000 = 21,600.0 \times 10 = 216,000$
216,000 divided by 26,250 (C.M.A. of No. 6) = 8.2 volts (less than 5%)
216,000 divided by 16,510 (C.M.A. of No. 8) = 13 volts (more than 5%)
~~115~~ 120 volts, 8 ampere load, 100 ft. distance, 3% drop
 $21.6 \times 100 = 2,160 \times 8 = 17,280$
17,280 divided by 6530 (C.M.A. of No. 12) = 2.64 volts (less than 3%)
17,280 divided by 4,107 (C.M.A. of No. 14) = 4.2 volts (more than 3%)
or
 $21.6 \times 8 \text{ amps} \times 100 \text{ ft.} = 17,280$
17,280 divided by ~~3-45~~ 3.6 (volts representing 3%) = 5,008 C.M.A. (No. 12)
For 3-phase circuits, use formula, then multiply the results by .86

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987.

General Authority: NDCC 43-09-05

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

24-02-01-08. Services. Electrical services ~~shall~~ must comply with article 230, ~~1984~~ 1987 edition, National Electrical Code.

1. In general, the point of attachment of a service drop to a building ~~shall~~ must be not less than ten feet [3.0 meters] above the ground and ~~shall~~ must be at a height to permit a minimum clearance of service conductors of ten feet [3.0 meters] above walks and eighteen feet [5.48 meters] above driveways or public roads. Where the form of the building will not permit placing the attachment ten feet [3.0 meters] or more above the ground, a mast or other suitable means ~~shall~~ must be used to obtain the ten feet [3.0 meters] clearance.
2. Perpendicular mast used for support of a service drop to low buildings ~~shall~~ must be not less than two-inch [5.08-centimeter] galvanized rigid steel conduit or intermediate metal conduit fitted with storm collar flashing and offset reducer if needed, at the lower end to accommodate a meter socket.
3. A span of one hundred ten feet [43.48 meters] ~~shall~~ must be considered a maximum distance for a one hundred amp service drop to a mast unless the mast is substantially guyed.

4. To eliminate moisture condensation, service raceways ~~shall~~ must have provisions to prevent circulation of air from a warmer to a colder section of the raceway (see section 300-7, ~~1984~~ 1987 edition, National Electrical Code).
5. Where the service conduit enters a switch, cabinet, or trough through a knockout, the conduit must be bonded.
6. Switch location. A service switch or a manually operable circuit breaker ~~shall~~ must be provided for each set of service entrance conductors and located at a readily accessible point not more than six and one-half feet [1.98 meters] above the floor level and as near as possible to the entrance of the conductors either inside or outside the building or structure. If outside, this equipment ~~shall~~ must be approved for outside location. In no case ~~shall~~ may the equipment be mounted lower than ~~eighteen inches~~ two feet [~~45.72 centimeters~~ .6096 meters] above grade level. Switch cabinets should preferably be of the dead front type. All service equipment and panels to be mounted on inside of outside walls of buildings housing livestock ~~shall~~ must be mounted at least two inches [5.08 centimeters] away from such outside walls by means of a substantial backboard or frame. It is recommended that the service entrance switch in residences be located in the basement or on the first floor. In no case ~~shall~~ may overcurrent devices be located in bathrooms, clothes closets, or stairways.
7. Rating of service switch. Any new or old dwelling where service is altered, or where the dwelling is rewired, a minimum one hundred amp service and rated panel ~~shall~~ must be installed.
 - a. A one hundred ampere service ~~shall~~ must be installed using conductors rated at one hundred amperes ~~with no reduction in size for the grounded (neutral) conductor up to one hundred amperes.~~ The panel ~~shall~~ must contain provisions for four double pole two hundred forty volt three-wire circuits, one of which may be used as a disconnect for not less than ten 2-wire one hundred twenty volt circuits.
 - b. A pole top disconnecting means in rural areas ~~shall~~ be is mandatory on all overhead pole top meter installations. Disconnect switches with an overcurrent protective device is optional to the supplier of electric current.
 - c. Where a single stack service is used on a yard pole, it must be considered only as a meter loop and the load conductor must be treated as service conductors to buildings.

8. Clearance from ground. Conductors ~~shall~~ must have a clearance of not less than ten feet [3.0 meters] from the ground or from any platform or projection from which they might be reached. See section 225-18, ~~1984~~ 1987 edition, National Electrical Code.
9. Clearances from buildings for conductors not over six hundred volts. See section 225-19, ~~1984~~ 1987 edition, National Electrical Code. Conductors ~~shall~~ must have a clearance of not less than thirty-six inches [.914 meters] from windows, doors, porches, fire escapes, or similar locations. Conductors run above the top level of a window are considered out of reach from that window.
10. Temporary service. Temporary service ~~shall~~ must be granted to any contractor and this temporary service can be moved from place to place with one certificate issued for the first installation and the same certificate will suffice for all future locations. It ~~shall be~~ is the responsibility of the contractor to maintain the temporary service in good condition and electrically safe at all times. If the power supplier finds these conditions not being complied with, the supplier may refuse hookup and notify the inspector covering that area who has full authority to determine whether it be condemned or rebuilt. At the expiration of ninety days it may be considered a permanent service and all wiring connected ~~shall~~ must comply with the provision pertaining to permanent wiring.
 - a. Each temporary service ~~shall~~ must be provided with the electrical wiring certificate number, name, and license number of electrician that issued the certificate. This information ~~shall~~ must be applied in such a manner that it will withstand the elements of weather.
 - b. Minimum requirements for temporary services. Outdoor equipment must be weatherproof. (Wood enclosures are unsatisfactory and should not be used.) Temporary service must be grounded. (Butt pole ground is acceptable.) A minimum clearance of ten feet [3.0 meters] above finished grade ~~shall~~ must be provided for overhead service conductors.
 - c. Temporary wiring is not permitted without approval from the state electrical board or local inspector, however, this ~~shall~~ does not apply to a temporary pole service or wiring for construction purposes.
11. Underground services: Underground service ~~shall~~ must comply with article 230, part D, ~~1984~~ 1987 edition, National Electrical Code.
 - a. Cables or individual conductors on outside of buildings or poles ~~shall~~ must be protected where subject to mechanical

injury. Where rigid metal conduit is used, a bushing ~~shall~~ must be used on both ends. Sufficient slack conductor ~~shall~~ must be left to allow for ground settling next to foundations. Past experience indicates that the ground next to a foundation has settled as much as three feet [.914 meters]. Where conduit is used on a pole to protect such conductors, it must terminate just below the ground surface adjacent to the pole. Metal conduit protecting underground conductors on a pole or building ~~shall~~ must be grounded.

b. Underground service conductors ~~shall~~ must be protected against physical damage in accordance with section 300-5, ~~1984~~ 1987 edition, National Electrical Code.

12. High voltage installations over six hundred volts. All wiring installations containing circuits and equipment operated at more than six hundred volts ~~shall~~ must comply with article 710, ~~1984~~ 1987 edition, National Electrical Code, along with the following requirements:

a. All ducts, pull boxes, junction boxes, and equipment ~~shall~~ must be clearly marked with signs having white background and red lettering by word "DANGER" and value of operating voltage.

b. All wiring and equipment ~~shall~~ must be bonded and grounded as per article 250, ~~1984~~ 1987 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987.

General Authority: NDCC 43-09-05

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

24-02-01-09. Overcurrent protection. Overcurrent protection ~~shall~~ must comply with article 240, ~~1984~~ 1987 edition, National Electrical Code.

1. Weatherproof sockets, pigtail sockets, or lampholders ~~shall~~ may not be considered as cutout bases for plug fuses.

2. Overcurrent devices ~~shall~~ must be located at a height of no less than eighteen inches [45.72 centimeters] above grade level.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987.

General Authority: NDCC 43-09-05

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

24-02-01-10. **Wiring methods.** Nonmetallic sheathed cable type NM, NMC, and UF ~~shall~~ must be supported at intervals not to exceed ~~two feet [-608 meters]~~ three feet [.914 meters] for two conductor cable and ~~three feet [-914 meters]~~ four feet [1.21 meters] for three conductor cable and within twelve inches [30.48 centimeters] from each cabinet, box, or fitting. For additional installation requirements, see articles 336 or 339, ~~1984~~ 1987 edition, National Electrical Code.

1. Agricultural buildings. This section covers all buildings housing livestock, poultry, and other areas of similar or like nature. All electrical wiring devices and equipment ~~shall~~ must be installed in accordance with the provisions of article ~~547~~, ~~1984~~ 1987 edition, National Electrical Code.
2. Electric metallic tubing ~~shall~~ may not be used in concrete below grade, in concrete slab or masonry in direct contact with earth. (A vapor barrier, if used, will have no effect on the requirements of the section.) Electric metallic tubing ~~shall~~ may not be embedded in earth or fill.
3. Aluminum conduit ~~shall~~ may not be installed in contact with earth or embedded in concrete.
4. Rigid metal conduit may be used under all atmospheric conditions and occupancies, except that ferrous raceways and fittings protected from corrosion solely by enamel may be used only indoors and in occupancies not subject to severe corrosive influences. Conduits and fittings exposed to severe corrosive influences ~~shall~~ must be of corrosion-resistant material suitable for the conditions. Where practicable, the use of dissimilar metals throughout the system ~~shall~~ must be avoided to eliminate the possibility of galvanic action.
5. The installation of rigid nonmetallic conduit ~~shall~~ must comply with the provision of article 347, ~~1984~~ 1987 edition, National Electrical Code.
6. Fertilizer rooms, meatpacking plants, salt processing plants, and similar locations are judged to be occupancies where severe corrosive conditions are likely to be present. It is recommended that nonmetallic conduit with nonmetallic boxes and fittings be used as the wiring method for such occupancies. Ferrous and nonferrous metal raceways may be used providing the raceway, boxes, and fittings are properly protected against corrosion. Wherever rigid nonmetallic conduit is used as the wiring method, provisions ~~shall~~ must be made for expansion. (Approximately one inch [2.54 centimeters] of expansion per thirty feet [9.10 meters] of conduit per fifty degrees Fahrenheit [28 degrees Celsius] temperature change.)

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987.

General Authority: NDCC 43-09-05
Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-11. Motors, motor circuits, and controllers. Section 430-1, ~~1984~~ 1987 edition, National Electrical Code, is a guide to general requirements.

1. For motor running protection, all three-phase motors ~~shall~~ must be provided with three running overcurrent units.
2. The motor branch circuit overcurrent device ~~shall~~ must be capable of carrying the starting current of the motor but ~~shall~~ may not exceed two hundred twenty-five percent of the full load current of the motor.

Exception: Where the two hundred twenty-five percent is not sufficient for starting the motor, a higher rating or setting overcurrent device may be used if approved by the state electrical board.

3. All other wiring for motors, motor circuits, and controllers ~~shall~~ must comply with article 430, ~~1984~~ 1987 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987.

General Authority: NDCC 43-09-05
Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-12. Boxes and fittings. Boxes ~~shall~~ must be of sufficient size to provide free space for all conductors enclosed in the box in accordance with article 370, ~~1984~~ 1987 edition, National Electrical Code.

1. All unused openings ~~shall~~ must be effectively closed with metal plugs or plates.
2. Not more than one extension ring ~~shall~~ may be used on outlet boxes unless special permission has been obtained from the electrical inspector having jurisdiction.
3. Boxes ~~shall~~ must be installed at each opening.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987.

General Authority: NDCC 43-09-05
Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-13. Seasonal dwellings. Electrical wiring installation in all seasonal dwellings ~~shall~~ must comply with the North Dakota

wiring standards and the ~~1984~~ 1987 edition, National Electrical Code, with the following exceptions:

1. Buildings without basements may be wired with a minimum of sixty ampere service providing it is adequate for the load.
2. A minimum of two appliance circuits ~~shall~~ must be provided to supply outlets in kitchen, dining room, and breakfast room.
3. ~~Receptable~~ Receptacle outlets ~~shall~~ must be installed in accordance with section 210-52(a), ~~1984~~ 1987 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987.

General Authority: NDCC 43-09-05

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

24-02-01-14. Mobile home parks and recreational vehicle parks.

The electrical wiring in mobile home parks ~~shall~~ must comply with part B, article 550, ~~1984~~ 1987 edition, National Electrical Code. Mobile home service equipment ~~shall~~ may not be mounted in or on the mobile home and ~~shall~~ must be located at a height of no less than ~~eighteen inches~~ fourteen inches ~~{45-72 centimeters}~~ [.6096 meters] above finished grade level.

1. The electrical wiring in recreational vehicle parks ~~shall~~ must comply with part B, article 551, ~~1984~~ 1987 edition, National Electrical Code. Lot service equipment ~~shall~~ must be located not less than two feet [.608 meters] nor more than six and one-half feet [1.98 meters] above the ground.
2. Electrical enclosures located outdoors in mobile home parks or recreational vehicle parks that house bare bus bars or terminals ~~shall~~ must be provided with covers requiring a tool for removal of such covers. Overhead conductors ~~shall~~ must have a clearance above ground of not less than eighteen feet [5.48 meters] except in areas where it is impractical for movement of vehicles or mobile homes, the clearance above ground ~~shall~~ may not be less than twelve feet [3.66 meters].

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987.

General Authority: NDCC 43-09-05

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

24-02-01-15. Athletic field lighting.

All lighted athletic and sport fields supplied from a primary system ~~shall~~ must be provided with a fused disconnect switch on the primary side. The switch ~~shall~~ must have proper ratings with a lockable manual control handle. The installation of primary conductors installed underground ~~shall~~ must

conform to section 24-02-01-08. The secondary conductors are considered service conductors. For installation of service conductors, see article 230, parts D, E, and F, ~~1984~~ 1987 edition, National Electrical Code. A main disconnect switch on the secondary side is optional. A disconnecting means at each pole or tower is not mandatory. Branch circuit panel boards having a rating of no less than one hundred twenty-five percent of the total connected load ~~shall~~ must be provided at each tower or pole. The panel may be located at the top of pole or tower. Conductors supplying panel ~~shall~~ must be calculated on the basis of one hundred twenty-five percent of the total connected load. Wiring installed on pole or tower ~~shall~~ must be in raceway; except, for flexibility at lamps, approved cable assemblies will be permitted. All metal towers ~~shall~~ must be grounded to a one-half inch [12.7 millimeter] by ten foot [3.0 meter] ground rod. The grounded conductor on the secondary side ~~shall~~ must be grounded to the grounding electrode. Metal boxes, raceways, cabinets and fittings, or noncurrent-carrying metal parts of other fixed electrical equipment ~~shall~~ must be grounded when required. (See article 250, ~~1984~~ 1987 edition, National Electrical Code.)

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987.

General Authority: NDCC 43-09-05

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

24-02-01-16. Exit marking, illumination of means of egress, and emergency lighting. The purpose of this section is to provide exit and emergency lighting requirements in accordance with Life Safety Code NFPA 101, ~~1981~~ 1985 edition, in simple and condensed form. For occupancies or items not covered in this condensed version, refer to NFPA 101, ~~1981~~ 1985 edition, for complete details. In the wiring of institutional occupancies, governmental agencies may use other codes, which may be more stringent, especially where federal funds are involved.

1. **Exit marking.** All required exits and access to exits ~~shall~~ must be marked by readily visible signs with letters not less than six inches [15.24 centimeters] high and arrows indicating direction to exits. Every sign ~~shall~~ must be suitably illuminated. See section 5-10.3, Life Safety Code NFPA 101, ~~1981~~ 1985 edition.
2. **Illumination of means of egress.** Illumination of means of egress ~~shall~~ must provide continuous, dependable, illumination of not less than one foot-candle at floor level for all areas such as corridors, stairways, and exit doorway, providing a lighted path of travel to the outside of the building and public way during all times that the means of egress is available for use. Illumination ~~shall~~ must be from a source of reasonable assured reliability and may be supplied from normal lighting circuits or special circuits with switching controlled by authorized personnel. Illumination required for exit marking may also serve for illumination of

means of egress and ~~shall~~ must be so arranged that failure of a single unit such as burning out of a single bulb will not leave any area in darkness.

3. **Emergency lighting.** Emergency lighting systems ~~shall~~ must be so arranged to provide the required illumination automatically in event of any interruption or failure of the normal power supply. An acceptable alternate source of power may be an electric generator or approved battery. In occupancies where emergency lighting is required, the circuits supplying exit marking and illumination of means of egress ~~shall~~ must be supplied by the emergency system. Other areas of the facilities only requiring exit marking and illumination of means of egress may be supplied by the normal source.
4. **Classification of occupancy.**

Assembly

- Theaters
- Motion picture theaters
- Assembly halls
- Auditoriums
- Exhibition halls
- Libraries
- Museums
- Skating rinks
- Gymnasiums
- Bowling lanes
- Poolrooms
- Armories
- Conference rooms
- Restaurants
- Churches
- Dancehalls
- Clubrooms
- Passenger stations and terminals of
air surface, underground, and marine
public transportation facilities
- Recreation piers
- Courtrooms
- Mortuary chapels
- Drinking establishments
- College and university classrooms,
fifty persons and over

Educational

- Schools twelfth grade and under
- Instructional building - Business occupancy
- Classrooms under fifty persons - Business occupancy
- Classrooms fifty persons and over - Place of assembly
- Laboratories, instructional - Business occupancy
- Laboratories, Noninstructional - Industrial
- ~~Child day~~ Day care facilities

- Academies
- Nursery schools
- Kindergartens

Health care

- Health care facilities
 - Hospitals
 - Nursing homes
- Residential-custodial care
 - Nurseries
 - Homes for the aged
 - Mentally retarded care institutions

Detention and correctional occupancies

- Residential-restrained care
 - Penal institutions
 - Reformatories
 - Jails
- Detention centers
- Correctional centers

Residential

- Hotels
- Motels
- Apartments
- Dormitories
- Orphanages for age six years and older
- Lodging or roominghouses
- One-family and two-family dwellings

Mercantile

- Supermarkets
- Department stores
- Shopping centers
- Drugstores
- Auction rooms

Business

- Doctors' offices
- Dentists' offices
- City halls
- General offices
- Townhalls
- Courthouses
- Outpatient clinics, ambulatory
- College and university - instructional buildings, classrooms under 50 persons, and instructional laboratories

Industrial

- Factories of all kinds
- Laboratories
- Drycleaning plants

- Power plants
- Pumping stations
- Smokehouses
- Laundries
- Creameries
- Gas plants
- Refineries
- Sawmills
- College and university
- Noninstructional laboratories

Storage

- Warehouses
- Cold storage
- Freight terminals
- Truck and marine terminals
- Bulk oil storage
- Parking garages
- Hangars
- Grain elevators
- Barns
- Stables

5. Occupant load value table.

Occupancy	Square Feet Per Person
Places of assembly	15 net *
Areas of concentrated use	
without fixed seating	7 net
Waiting space	3 net
Libraries. In stack areas	100 net
In reading rooms	50 net
Mercantile building, street floor	
and sales below street floor	30 gross **
Upper floors	60 gross
Mall	
Street level and below	30 gross
Upper floor	60 gross
Storage, shipping	300 gross
Offices only	100 gross
Educational occupancies	
Classroom area	20 net
Shops and other vocational areas	50 net
Day nurseries with sleeping	
facilities	35 net
Business, industrial	100 gross
Hotels, motels, apartments, and	

dormitories 200 gross

Health care

Sleeping departments 120 gross
 Inpatient departments 240 gross

* Net floor area ~~shall be~~ is the actual occupied area, not including accessory unoccupied areas or thickness of walls.

** Gross floor area ~~shall be~~ is the floor area within the inside perimeter of the outside walls of the building under consideration with no deduction for hallways, stairs, closets, thickness of interior walls, columns, or other features.

Notes to occupant load table.

- (a) An assembly area of concentrated use without fixed seats such as an auditorium, church, chapel, dance floor, or lodge room - seven square feet [.65 square meters] per person.
- (b) An assembly area of less concentrated use such as a conference room, dining room, drinking establishment, exhibit room, gymnasium, or lounge - fifteen square feet [1.39 square meters] per person.
- (c) Standing room or waiting space - three square feet [.28 square meters] per person.
- (d) Bleachers, pews, and similar bench type seating - eighteen linear inches [45.72 centimeters] per person.

6. Building classification table.

x - indicates required
 o - indicates not required

Occupancy	Exit Marking	Illumination of Means of Egress	Emergency	Notes
Places of assembly				
Class A-1000 persons or more	x	x	x	6&7
Class B- 300 to 1000 persons	x	x	x	
Class C- 50 to 300	x	x	x	
All windowless or underground places of assembly	x	x	x	
Churches - Class C (exclusively for religious worship)	x	x	o	
Class A & B	x	x	x	

Educational

Note 4

All educational occupancies including administrative area, general classrooms, mechanical rooms, and storage rooms	x	x	o	
(a) All interior stairs and corridors	x	x	x	
(b) All normally occupied spaces except administrative areas, general classrooms (but not shop and laboratories), and mechanical rooms and storage areas				
Shop and laboratories	x	x	x	
(c) In flexible and open plan buildings	x	x	x	
(d) In all portions of buildings that are interior or windowless	x	x	x	
Child Day care centers - (More than 12 persons under 6 years) 6 years and over	x	x	x	e
Group day care centers <u>homes</u> 7 to including 12 persons	x	x	o	
Family child day care homes Fewer than 7 children persons	x	x	o	
Health care occupancies Hospitals and nursing homes (for complete details see article 517 of NEC or NFPA standard <u>56A and 76A</u> 99	x	x	x	Note 1
Detention and correctional occupancies These occupancies	x	x	x	

include residential -
 restrained care, ~~penal~~
~~institutions~~, reformatories,
 jails, detention centers,
 and correctional centers

Residential

Hotels and motels				
<u>25 rooms and less</u>				
More than 16 and				
<u>less than 26</u>				
rooms	x	x		o
Over 25 rooms				
More than 25				
rooms	x	x	x	Note 2
Apartment buildings				
12 or less				
apartments	x	x		x o Note 3
Over More than 12				
apartments or				
four or more				
floors	x	x	x	Note 3
<u>Lodginghouses or</u>				
<u>roominghouses</u>				
less than 16	x	x		o
Dormitories - same as hotels				

Mercantile

Class A - over				
30,000				
square feet	x	x		x
Class B - 3000 to				
30,000				
square feet	x	x		x
Class C - under				
3000				
square feet	x	x		o

Business

Under 1000 persons,				
1 floor	x	x		o
2 or more stories				
above exit discharge	x	x		x
100 or more persons				
above or below level				
of exit discharge	x	x		x
1000 or more persons	x	x		x
All windowless, and				
underground with				
<u>only upward travel</u>				
exit	x	x		x

Industrial			
All	x	x	x
When occupied during daylight hours only with skylights or windows	x	o	o
Storage			
All	x	x	x *
When occupied during daylight hours only with windows	x	o	o

* Storage occupancies do not require emergency lighting when not normally occupied.

Special provisions			
Underground or windowless buildings or structures	x	x	x

Swimming pools (other than single family residential)	x	x	x
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Combined facility Note 5

NOTES:

Note 1: ~~Exit lighting and emergency lighting~~ must be powered per NFPA No. 76A. Power supply for exit and emergency lighting must conform to chapter 8 NFPA 99.

Note 2: Where each guestroom on ground floor has direct exit to outside, no emergency lighting need be provided (motels).

Note 3: Buildings with only one exit need not be provided with exit signs.

Note 4: Small schools familiar to occupants need not be provided with exit signs.

Note 5: Where the same means of egress serve multiple-use or combined occupancies, exit lighting, exit signs, and emergency lighting shall be provided for the occupancy with the most stringent lighting requirements. The occupant load of each type of occupancy shall be added to arrive at the total occupant load.

Note 6: Exit lighting on floor of motion picture theaters may be reduced to one-fifth foot-candle during period of performance.

Note 7: See occupant load value table.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987.

General Authority: NDCC 43-09-05

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

24-02-01-17. Carnivals. This section provides standards for temporary installations of electrical wiring for carnivals and celebrations consisting of overhead and underground installations for lighting and power to tents, stands, concessions, and amusement rides.

1. Circuit wires of adequate size may be a twisted pair or run parallel and taped together, and ~~shall~~ must be attached to a messenger by approved insulators at intervals of five feet [1.52 meters].
2. Sockets or receptacles, including their individual conductors, ~~shall~~ must be of the standard molded "pigtail" weatherproof type; ~~connections.~~ Connections of these socket wires to the cabled circuit wires ~~shall~~ must be staggered and splices made in an approved manner.
3. Cutouts and switches installed outdoors ~~shall~~ must be in standard weatherproof cabinets. Cabinets less than eight feet [2.43 meters] above the ground ~~shall~~ must be kept locked when accessible to the public.
4. All metal stands, concessions, amusements, rides, trailers, etc., that are supplied with current ~~shall~~ must be grounded in an approved manner. All electrical equipment and motors ~~shall~~ must be effectively grounded.
5. All feeders and circuits ~~shall~~ must be fused properly.
6. Each ride or concession ~~shall~~ must be provided with a disconnect switch.
7. Splices and taps ~~shall~~ must be accomplished in an approved weatherproof box or cabinet and ~~shall~~ may not be accessible to the public. Splices or taps ~~shall~~ may not be buried in the ground.
8. Cable must be in good condition, in continuous length from box to box and approved outdoor cord connectors ~~shall~~ must be used.
9. All temporary installations ~~shall~~ must be approved by the electrical inspector before usage.
10. Inspection and fees for carnivals and concessions. Each outdoor amusement enterprise or carnival operating or intending to operate in North Dakota shall notify the North Dakota state electrical board, box 857, Bismarck, North

Dakota, each year of its itinerary and make application for the initial inspection on or before the first engagement in the state.

- a. Fees - \$ ~~5.00~~ 8.00 each ride or concession
\$ ~~5.00~~ 8.00 reinspection fee on each unit,
if required
~~\$15.00~~ 25.00 each transformer or
generator truck
- b. The fee must be paid to the inspector at the first engagement or inspection. Each ride or concession will be issued a certification of inspection so that "en route" inspection may be recorded by each inspector.
- c. Each ride or concession wired properly will be issued a certification of compliance, serving for an entire carnival season, subject to subsequent inspections.
- d. Each ride or concession having minor code violations will be issued a correction order with instructions to correct the same, before a following engagement, which will require a ~~five~~ eight dollar reinspection fee.
- e. The electrical inspector ~~shall be~~ is empowered to write a correction order for immediate compliance should the inspector find a condition dangerous to life and property.

History: Amended effective October 1, 1987.

General Authority: NDCC 43-09-05

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

24-02-01-19. Inspection fees.

1. All electrical installations, including new jobs and additional work on old installations, made in this state, ~~shall~~ must have an electrical wiring certificate properly executed by the master or class "B" electrician in charge where the installation is made. The state electrical board shall prescribe such form, and shall have on hand a supply of such certificates for distribution to master and class "B" electricians. Such certificate ~~shall~~ must consist of the original and four copies.
2. Upon completion, use, or occupancy, whichever is foremost, of any electrical installation where a new entrance is installed, an existing entrance is altered, or where the cost of repair work or additional installation exceeds three hundred dollars, the master or class "B" electrician supervising such installation shall execute an electrical wiring certificate and distribute the various copies as directed. The original and duplicate of the certificate must be forwarded at once to

the state electrical board, Bismarck, North Dakota. The triplicate copy ~~shall~~ must be sent to the power company, municipal plant, or to the person or persons or concern providing the electric current for the installation. The fourth copy ~~shall~~ must be retained by the master or class "B" electrician and the fifth copy ~~shall~~ must be submitted to the owner.

3. The electric wiring certificates shall be available from the state electrical board at Bismarck, North Dakota, upon request of any master or class "B" electrician holding a current license from the electrical board.
4. A copy of an electrical wiring certificate ~~shall~~ must be filed with the power supplier before an electrical installation may be energized.
5. Inspection fees shall be as follows:

Job Cost	Inspection Fee
Up to \$100.00	\$10.00 (minimum fee)
Up to \$300.00	\$15.00 (minimum fee)
\$100.00 to \$2,000.00	\$10.00 for the first \$100.00 plus 2% on balance up to \$2,000.00
\$300.00 to \$2,000.00	\$15.00 for the first \$300.00 plus 2% on balance up to \$2,000.00
\$2,000.00 to \$10,000.00	\$48.00 for first \$2,000.00 plus 1% on balance up to \$10,000.00 \$49.00 for first \$2,000.00 plus 1.5% on balance up to \$10,000.00
\$10,000.00 to \$100,000.00	\$128.00 for first \$10,000.00 plus 1/2 of 1% on balance up to \$100,000.00
\$10,000.00 to \$15,000.00	\$169.00 for first \$10,000.00 plus 1% on balance up to \$15,000.00
\$15,000.00 to \$100,000.00	\$219.00 for the first \$15,000 plus 1/2 of 1% on balance up to \$100,000.00
Over \$100,000.00	\$578.00 for the first \$100,000.00 plus 1/4 of 1% on balance \$644.00 for the first \$100,000.00 plus 1/4 of 1% on balance

Inspection fee must accompany the copies of wiring certificates which ~~shall~~ must be forwarded to the state electrical board, box 857, Bismarck, North Dakota 58502.

6. Whenever an electrical installation made by or under the supervision of a master or class "B" electrician is connected and in use without the issuance of an electrical wiring certificate, the normal inspection fee, as required under this section ~~shall be,~~ is increased in the amount of ~~fifteen~~ twenty-five dollars.
7. Corrections. Whenever a correction order is written and corrections are not completed within the allotted time, there shall be an administration charge of twenty-five dollars, which ~~shall~~ must be paid to the board by the master or class "B" electrician.
8. All reinspections ~~shall~~ must be paid for by the electrical contractors at a cost of ~~fifteen~~ twenty-five dollars each.
9. The electrical inspection fee ~~shall~~ must be based on the total amount of the electrical contract or total cost to the owner including extras.
10. The following items need not be included in the cost:
 - a. Appliances, including dishwashers, heat pumps, air-conditioners, disposals, etc.
 - b. Electric heating panels, including heating and air-conditioning units.
 - c. Electric motors.
 - d. Trenching, concrete basis for streetlighting and traffic signal standards.
11. The electrical contractor is responsible to collect the proper inspection fee on each installation. When the owner furnishes the material and the electrical contractor furnishes the labor, the owner shall provide the electrical contractor with the total amount expended for electrical materials used in connection with the installation, and the electrical contractor shall then calculate and collect the necessary inspection fee from the owner. Whenever electrical materials are removed from an existing installation and placed at another location, the electrical contractor shall estimate the cost of these materials and include the amount in the job cost for the purpose of calculating the proper inspection fee.
12. The inspection fee for all motor-driven passenger or freight elevators and dumbwaiters installed in North Dakota shall be as follows:

Elevators and dumbwaiters having horsepower rating
up to 5 horsepower - ~~\$10.00~~ \$20.00
Elevators and dumbwaiters having horsepower rating
5 horsepower through 15 horsepower - ~~\$20.00~~ \$40.00
Elevators and dumbwaiters having horsepower rating
over 15 horsepower - ~~\$30.00~~ \$60.00

The master electrician having supervision of elevator or dumbwaiter installations shall obtain electrical wiring certificates from the state electrical board. The certificate form ~~shall~~ must be completed, signed by the master electrician, and forwarded to the state electrical board, Bismarck, North Dakota with the inspection fee.

13. Electrically driven irrigation machines. Each center pivot system, a flat fee of ~~forty~~ fifty dollars. All other types, the fee ~~shall~~ must be based on cost of electric material and labor (see section 24-02-01-19).
14. Requested inspections. For inspections not covered in this section or special services, the fee ~~shall~~ must be fifteen twenty dollars per man hour, including traveltime, plus twenty cents per mile traveled.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987.

General Authority: NDCC 43-09-05

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

TITLE 30
Game and Fish Department

SEPTEMBER 1987

30-02-03-03. Application and fees. The application shall must be made at least sixty days prior to the desired effective date of the permit, and may be made by the applicant, the applicant's agent, or the applicant's attorney in such a form as the commissioner may prescribe. The If leased land is used in the shooting preserve, the application shall must be accompanied by a surety bond of two thousand dollars as required in section 30-02-03-04, and by a fee determined as follows-

- 1- If the shooting preserve consists of an area of six hundred forty acres {256 hectares} or less, the fee shall be one hundred dollars-
- 2- If the shooting preserve consists of an area of more than six hundred forty acres {256 hectares}, the fee shall be one hundred dollars plus fifty cents per acre {-40 hectare} for each acre over six hundred forty acres {256 hectares}.

Acreage amounts shall include any lands used for hatching, game production, or headquarters. Upon receipt of an application for a shooting preserve permit, the commissioner shall make investigations of the area, facilities, and applicant in accordance with North Dakota Century Code section 20-1-12-03. The permit shall ~~expire~~ expires on June thirtieth following the date of issuance. Renewal may be granted annually upon payment of the proper fee and renewal of any surety bond that may have expired or shall expire before the end of the next permit term.

History: Amended effective September 1, 1987.
General Authority: NDCC 20.1-12-08
Law Implemented: NDCC 20.1-12-02, 20.1-03-12

30-02-03-09. Birds to remain unharvested. Twenty percent of the upland game birds released on the shooting preserve must remain unharvested. When eighty percent of the upland game birds released on the shooting preserve have been harvested, the operation of the shooting preserve shall cease until additional birds have been released.

General Authority: NDEC 20-1-12-08
Law Implemented: NDEC 20-1-12-08

Repealed effective September 1, 1987.

30-02-03-11. Hunting wild upland game birds. Certain species of wild upland game birds may be taken on a legal shooting preserve during the regular hunting season for such species of wild upland game birds as proclaimed by the governor. To take wild upland game birds, the resident hunter must have a resident general game license and a resident small game stamp; the nonresident hunter must have a nonresident general game license and a nonresident small game stamp. Wild birds need not be tagged with the preserve operator's tag as described in section 30-02-03-12; but such birds must be taken only within the daily limits prescribed by the governor's proclamation. ~~Nonresidents must tag any wild upland game birds taken with the tags furnished with their nonresident small game stamp.~~ If a wild upland game bird of the same species as hunted on the shooting preserve is accidentally taken out of the regular hunting season proclaimed by the governor, or is taken by a hunter not in possession of a proper small game stamp, it must be immediately turned over to the shooting preserve operator and a record made of the shooter's name, address, and date of kill. The bird shall be turned over to a representative of the game and fish commissioner as soon as possible. In this case no violation of a game law shall be deemed to have occurred, and no prosecution will be made. If a species of wild upland game bird other than those allowed by the shooting preserve operator's permit is taken by any hunter out of season, or by a hunter not in possession of a proper small game stamp when in season as proclaimed by the governor's proclamation, a violation of the game laws will have occurred. It shall be the duty of the shooting preserve operator to report to the commissioner or the commissioner's representative any violation of a game law occurring on the shooting preserve. Wild waterfowl may only be taken in a manner conforming to federal regulations.

History: Amended effective September 1, 1987.
General Authority: NDCC 20.1-12-08
Law Implemented: NDCC 20.1-12-08

30-05-03-23. Department work. These rules do not apply to activities by department personnel and other persons designated by the department which are necessary for law enforcement or for development, management, or maintenance of the areas affected by this chapter.

History: Effective September 1, 1987.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-24. Ibsen Lake. Boats are prohibited on the waters of Ibsen Lake in Benson County during the annual waterfowl hunting seasons as set in the governor's hunting proclamation.

History: Effective September 1, 1987.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

TITLE 37
HIGHWAY DEPARTMENT

NOVEMBER 1987

37-06-02-01. Combination permitted - Limitation. Two implements of husbandry or two liquid fertilizer tanks may be towed by a pickup, truck, or farm tractor operated by resident farmers, ranchers, dealers, or commercial fertilizer companies between sunrise and sunset at a speed limit not to exceed twenty-five miles [40.25 kilometers] per hour. A packer-drill combination shall be considered one implement of husbandry. Such combination may not exceed seventy-five feet [22.86 meters] in length.

History: Effective October 1, 1983; amended effective November 1, 1987.

General Authority: NDCC 39-12-04

Law Implemented: NDCC 39-12-04

37-06-03-01. Authorized combinations of vehicles - Routes of operation. The following combinations of vehicles may be operated on all North Dakota highways provided the overall length does not exceed seventy-five feet [22.86 meters]:

1. Any combination of two units.
2. A truck-tractor and semitrailer may draw a trailer or semitrailer converted to a trailer by use of a converter dolly and fifth wheel. This combination of vehicles is commonly referred to as a double bottom.
3. A truck-tractor and semitrailer may draw a semitrailer. This combination of vehicles is commonly referred to as a B-train.
4. A truck properly registered and designed to legally carry a gross weight of more than twenty-four thousand pounds [10886.22 kilograms] may draw two trailers or semitrailers provided both trailers or semitrailers are designed to legally carry gross weights of more than

twenty-four thousand pounds {10886-22 kilograms}, provided both trailers are equipped with safety chains and brakes adequate to control the movement of and to stop and hold such trailers or semitrailers. The brakes shall be designed as to be applied by the driver of the truck from the cab. The brakes shall be designed and connected so that in case of an accidental breakaway the brakes shall be automatically applied on the trailer or semitrailer that breaks loose.

5. A combination of four units consisting of a truck-tractor, semitrailer, and two trailers. A semitrailer used with a converter dolly is considered to be a trailer. This combination of vehicles is commonly referred to as triple trailers or a triple bottom.
6. A motor vehicle drawing three motor vehicles attached to the towing motor vehicle by a triple saddle mount. In such a mount, the front wheels of the towed motor vehicle are mounted upon the bed of the towing vehicle, with any other towed motor vehicle being mounted in a like manner on the preceding motor vehicle.

History: Effective October 1, 1983; amended effective November 1, 1987.

General Authority: NDCC 39-12-04

Law Implemented: NDCC 39-12-04

37-06-03-02. Limited combinations of vehicles. A ~~truck, pickup truck, or truck-tractor~~ motor vehicle may draw two trailers or two vehicles subject to the following conditions:

1. ~~The first drawn vehicle shall be of a fifth wheel or gooseneck design.~~
 2. ~~The towed vehicles, in addition to brakelights, stoplights, and turn signals, shall be equipped with front and rear clearance lights, and side marker lights, and reflectors as prescribed by North Dakota Century Code chapter 39-12.~~
 3. ~~The hitch on the rear of the first drawn vehicle shall be attached to the frame. Such hitch shall be a ball and socket type with a locking device or a pintle hook.~~
2. All hitches must be of a load-bearing capacity capable of bearing the weight of the towed vehicles.
 - a. The towing vehicle must have a hitch commonly described as a fifth wheel or gooseneck design, or one that is attached to the frame.

- b. The hitch on the rear of the vehicle connected to the towing vehicle must be attached to the frame of the towed vehicle.
- c. All hitches, other than a fifth wheel or gooseneck, must be of a ball and socket type with a locking device or a pintle hook.
- 4- 3. The ~~first~~ drawn ~~vehicle~~ vehicles shall be equipped with brakes and ~~the second drawn vehicle shall be equipped with~~ safety chains and brakes, adequate to control the movement of, and to stop and hold, such vehicles. When the drawn vehicle is of a fifth wheel or gooseneck design, safety chains are not required. If the gross weight of the second drawn vehicle is three thousand pounds [1360.78 kilograms] or less, brakes are not required on the second vehicle. When brakes are required, the brakes shall be so designed as to be applied by the driver of the truck or motor vehicle from the cab. The brakes shall be so designed and connected so that in case of an accidental breakaway the brakes shall be automatically applied on the drawn vehicle that breaks loose.

History: Effective October 1, 1983; amended effective November 1, 1987.

General Authority: NDCC 39-12-04

Law Implemented: NDCC 39-12-04

37-06-04-02. Routes of operation. Authorized combinations of vehicles may be operated on all four-lane divided state highways and on those state highways designated by the commissioner as shown on Exhibit I attached to this chapter and made a part of this section special highway maps available at the highway patrol and highway department headquarters in Bismarck and at the respective district offices in Williston, Minot, Devils Lake, Grand Forks, Fargo, Valley City, Jamestown, and Dickinson. Authorized combinations of vehicles may travel for off the designated system a distance of ten miles [16.09 kilometers] on a state highway, that is not a four-lane divided highway or part of the designated routes for the purpose of procuring food, fuel, repairs, obtaining sleeping quarters (rest), or going to a terminal or points of loading or unloading.

History: Effective October 1, 1983; amended effective November 1, 1987.

General Authority: NDCC 39-12-04

Law Implemented: NDCC 39-12-04

TITLE 43
Industrial Commission

SEPTEMBER 1987

43-02-03-35. Wells to be used for freshwater. When the well to be plugged may safely be used as a freshwater well and such utilization is desired by the surface owner, the well need not be filled above a sealing plug set below the freshwater formation; provided, that if authority and assumption of liability for such use and plugging shall be secured from the surface owner in affidavit form and filed with the enforcement officer, the operator shall be relieved of the operator's responsibility under this chapter. Conversion of mineral wells to freshwater wells. Any person desiring to obtain approval from the commission for a conversion of a mineral well to a freshwater well, as provided by North Dakota Century Code section 61-01-27, shall file an application for approval with the commission. The application must include, but is not limited to, all of the following:

1. If the well is to be used for other than individual domestic and livestock use, a conditional water permit issued by the state water commission.
2. An affidavit by the person desiring to obtain approval for the conversion stating that such person has the authority and assumes all liability for the use and plugging of the proposed freshwater well.
3. The procedure which will be followed in converting the mineral well to a freshwater well.
4. An affidavit executed by the operator of the well indicating that the parties responsible for drilling and plugging the mineral well have no objection to the conversion of the mineral well to a freshwater well.

If the commission, after notice and hearing, determines that a mineral well may safely be used as a freshwater well, the commission may approve the conversion.

History: Amended effective April 30, 1981; January 1, 1983; September 1, 1987.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-62. Carbon dioxide and nitrogen. Insofar as is applicable, the provisions of this chapter relating to gas, gas wells, and gas reservoirs shall also apply to carbon dioxide, nitrogen, carbon dioxide wells, and nitrogen wells, carbon dioxide reservoirs, and nitrogen reservoirs used for the development of oil and gas resources.

History: Amended effective January 1, 1983; September 1, 1987.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

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

History: Amended effective April 30, 1981; January 1, 1983; September 1, 1987.

General Authority: NDCC 38-08-13

Law Implemented: NDCC 38-08-13

43-02-08-01. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 38-08 and 57-51.1, except:

1. "Commercial quantities" means production exceeding in value current operating costs.
2. "Condensate recovered in nonassociated production" means a liquid hydrocarbon recovered from a well classified as a gas well by the commission.
- 2- 3. "Maximum efficient rate" means the maximum economic rate of production of oil which can be sustained under prudent operations, using sound engineering practices, without loss of ultimate recovery.

- 3- 4. "Operator" means any person who owns a fee interest or an interest in an oil and gas leasehold, and has the right to produce oil therefrom.
- 4- 5. "Qualifying period" means any preceding consecutive twelve-month period beginning after December 31, 1972, that ~~oil~~ the qualified maximum total production from a property did not exceed an average of ten barrels of oil per day per well the production levels as specified in subsection 2 of section 43-02-08-03.
6. "Well depth" means the depth of the midpoint between the highest and lowest perforations (measured in feet from ground level) producing from the pool during the qualifying period. In the event there is more than one well on a property producing from the same pool during the qualifying period, "well depth" means the average depth of the midpoints between the highest and lowest perforations of all wells in the property.

History: Effective August 1, 1986; amended effective September 1, 1987.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-02. Application for stripper well property determination.

Any operator desiring to classify a property as a stripper well property for purposes of exempting production from the imposition of the oil extraction tax as provided under North Dakota Century Code chapter 57-51.1, shall file an application for stripper well property determination with the enforcement officer and obtain a determination certifying the property as a stripper well property. The applicant has the burden of establishing entitlement to stripper well property status and shall submit all data necessary for a determination by the enforcement officer.

The application must include, but is not limited to, the following:

1. A fee in an amount to be set by the commission.
2. The name and address of the applicant and the name and address of the person operating the well, if different.
3. The legal description of the property for which a determination is requested.
4. The well name and number and legal description of each oil-producing well on the property during the qualifying period and at the time of application.
5. **Certification from the state tax commissioner that the property the applicant desires to classify as a**

stripper well property constitutes a property as specified under subsection 3 of North Dakota Century Code section 57-51.1-01. The depth of all perforations (measured in feet from ground level) from each producing well on the property during the qualifying period which produces from the same pool.

6. Designation of the property which the applicant requests to be certified as a stripper well property. Such designation must be accompanied by sufficient documentation for the enforcement officer to determine (as set forth in section 43-02-08-02.1) that the property the applicant desires to be certified as a stripper well property constitutes a property as specified in subsection 3 of North Dakota Century Code section 57-51.1-01.
7. The monthly production of each oil-producing well on the property during the qualifying period.
- 7- 8. An affidavit stating that all working interest owners of the property, and all purchasers of the crude oil produced from the property have been notified of the application by certified or registered mail.

If the application does not contain sufficient information to make a determination, the enforcement officer may require the applicant to submit additional information.

History: Effective August 1, 1986; amended effective September 1, 1987.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-02.1. Property determination. For purposes of this chapter, property will be determined by reference to the geographical boundaries of the right to produce crude oil as such right existed on January 1, 1972, provided such right was in production in commercial quantities on that date. If such right was not in production in commercial quantities on January 1, 1972, the determination of property will be made by reference to the geographical boundaries of the right to produce crude oil when crude oil is first produced thereafter in commercial quantities. For purposes of determining what constitutes a property, the enforcement officer shall recognize as separate properties the following:

1. A unit, where the unit is the aggregation of separate interests into a single right to produce. For the purposes of property determination, a unit means the total geographical area incorporated in a unitization agreement approved by order of the commission. In cases where a property has been unitized, portions of the property outside the unit boundary are separate properties.

2. Separate and distinct reservoirs, as defined by orders of the commission.
3. Noncontiguous tracts. (Tracts abutting solely at a corner are considered noncontiguous tracts.)
4. A single well, or any portion of a property which has been developed and produced separately. Any well or portion of a property previously qualified as a stripper well property may not be redesignated to be included in another property.

History: Effective September 1, 1987.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-03. Enforcement officer shall determine stripper well property status.

1. Upon receipt of an application for stripper well property determination, the enforcement officer shall review the application, information, or comments submitted by any interested person and all relevant information contained in the books, files, and records of the commission.
2. Stripper well property status will be determined on the basis of the qualified maximum total production of oil from the property. In order to qualify production from a property as maximum total production, each oil-producing well on the property must have been maintained at the maximum efficient rate of production throughout the twelve-month qualifying period. A property meets the requirements of a stripper well property if the qualified maximum total production of oil from the property excluding condensate did not exceed the following:
 - a. Production from a well with a well depth of six thousand feet [1828.8 meters] or less did not exceed an average of ten barrels per day;
 - b. Production from a well with a well depth of more than six thousand feet [1828.8 meters] but not more than ten thousand feet [3048.0 meters] did not exceed an average of fifteen barrels per day; or
 - c. Production from a well with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of twenty barrels per day.
3. Within thirty days of the receipt of a complete application for stripper well property status, or a reasonable time thereafter, the enforcement officer shall either grant or deny the application.

4. If an application for stripper well property status is denied, the enforcement officer shall in writing enter a determination denying the application and specify the basis for the denial. If an application for stripper well property status is granted, the enforcement officer shall in writing enter a determination granting the application. A copy of the determination either granting or denying the application must be forwarded by the enforcement officer by mail to the applicant, ~~the state tax commissioner,~~ and all other persons submitting written comments. It is the obligation of the applicant to notify and advise the state tax commissioner, all other operators in the property, and the purchaser of the crude oil of the determination of the enforcement officer.

History: Effective August 1, 1986; amended effective September 1, 1987.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-04. Applicant adversely affected may submit amended application - Procedure. Any applicant adversely affected by a determination of the enforcement officer made under ~~this chapter~~ sections 43-02-08-02 through 43-02-08-03 may within thirty days after the entry of such a determination submit an amended application. If an amended application is submitted, the enforcement officer shall issue a determination of stripper well property status within thirty days of the receipt of the amended application or a reasonable time thereafter.

History: Effective August 1, 1986; amended effective September 1, 1987.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-05. Person adversely affected may petition the commission - Procedure. Any person adversely affected by a determination of the enforcement officer of either an application or an amended application for stripper well property status made under ~~this chapter~~ sections 43-02-08-02 through 43-02-08-03 may within thirty days after the entry of such a determination petition the commission for a hearing in accordance with the provisions of North Dakota Century Code chapter 38-08 and North Dakota Administrative Code chapter 43-02-03.

History: Effective August 1, 1986; amended effective September 1, 1987.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-06. Expiration date. This chapter is effective through June 30, 1989, and after that date is ineffective.

History: Effective August 1, 1986-

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

Repealed effective September 1, 1987.

43-02-08-07. Application to certify a qualifying secondary recovery project. Any unit operator desiring to certify a secondary recovery project as a "qualifying secondary recovery project" for purposes of eligibility for a reduction in tax as provided under North Dakota Century Code chapter 57-51.1 shall submit to the commission an application for certification of a qualifying secondary recovery project. The unit operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether the project qualifies as a "qualifying secondary recovery project".

History: Effective September 1, 1987.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-08. Commission certification of secondary recovery project. Upon the filing of an application for certification of a qualifying secondary recovery project, the commission shall promptly fix a date for hearing in accordance with the provisions of North Dakota Century Code chapter 38-08 and North Dakota Administrative Code chapter 43-02-03. In determining whether a secondary recovery project shall be certified as a "qualifying secondary recovery project", the commission shall determine:

1. Whether the secondary recovery project was unitized after April 27, 1987;
2. The amount of crude oil which would have been recovered from the area of the unit source of supply if the secondary recovery project had not been created; and
3. Whether the secondary recovery project has achieved for six consecutive months an average production level of at least twenty-five percent above the amount of production which would have been recovered from the area of the unit source of supply (as determined in subsection 2) if the secondary recovery project had not been created.

History: Effective September 1, 1987.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-09. Application to certify a qualifying tertiary recovery project. Any unit operator desiring to certify a tertiary recovery project as a "qualifying tertiary recovery project" for purposes of eligibility for a reduction in tax as provided under North

Dakota Century Code chapter 57-51.1 shall submit to the commission an application for certification of a qualifying tertiary recovery project. The unit operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether the project qualifies as a "qualifying tertiary recovery project".

History: Effective September 1, 1987.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-10. Commission certification of tertiary recovery project. Upon the filing of an application for certification of a qualifying tertiary recovery project, the commission shall promptly fix a date for hearing in accordance with the provisions of North Dakota Century Code chapter 38-08 and North Dakota Administrative Code chapter 43-02-03. In determining whether a tertiary recovery project shall be certified as a "qualifying tertiary recovery project", the commission shall determine:

1. Whether the tertiary recovery project meets the requirements of the tertiary recovery methods specified in subsection 6 of North Dakota Century Code section 57-51.1-01;
2. The amount of crude oil which would have been recovered from the area of the unit source of supply if the tertiary recovery project had not been created; and
3. Whether the tertiary recovery project has achieved for at least one month an average production level of at least fifteen percent above the amount of production which would have been recovered from the area of the unit source of supply (as determined in subsection 2) if the tertiary recovery project had not been created.

History: Effective September 1, 1987.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

NOVEMBER 1987

43-02-06-01. Royalty owner information statement. 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. Total corrected volume of oil and gas sold measured in barrels and standard thousand cubic feet (MCF).
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; November 1, 1987.

General Authority: NDCC 38-08-06.3

Law Implemented: NDCC 38-08-06.3

43-02-06-03. Annual stored gas information statement. Any person required to submit information, as provided by this chapter, to a royalty owner shall, if gas either wholly or partially owned by a royalty owner is being placed into storage off the leased premises, provide the royalty owner with an annual statement containing the following information:

1. Total corrected volume of gas measured in standard thousand cubic feet (MCF) in storage at the beginning of the calendar year;
2. Total corrected volume of gas measured in thousand cubic feet added to storage during the calendar year;
3. Total corrected volume of gas measured in thousand cubic feet removed from storage during the calendar year; and
4. Total corrected volume of gas measured in thousand cubic feet in storage at the end of the calendar year.

The information required by this section must be supplied for all royalty owner gas placed into storage after December 31, 1986, and must be mailed to the royalty owner annually no later than March thirty-first immediately following each calendar year covered by the statement.

History: Effective November 1, 1987.

General Authority: NDCC 38-08-06.3

Law Implemented: NDCC 38-08-06.3

TITLE 45
Insurance, Commissioner of

NOVEMBER 1987

45-02-02-14.1. Client loans to licensed agents, brokers, and consultants prohibited - Exceptions. A licensed insurance agent, broker, or consultant may not solicit or accept a loan from an individual with whom the agent, broker, or consultant came into contact in the course of their insurance business, or sold an insurance policy to, within the past ten years. This does not prohibit a licensed agent, broker, or consultant from accepting loans from financial institutions; immediate family members, which shall mean only a spouse, parents, siblings, and children; or other loans upon the prior written approval of the commissioner of insurance.

History: Effective November 1, 1987.

General Authority: NDCC 26.1-25-49

Law Implemented: NDCC 26.1-26-42(6)

45-02-02-14.2. Agents and brokers indebtedness to companies. An agent or broker who is personally liable and indebted to an insurance company for the payment of commissions, premiums, or other debts incurred in the agent's or broker's insurance business with the company and who fails to timely pay that debt is financially irresponsible within the meaning of subsection 6 of North Dakota Century Code section 26.1-26-42. A civil judgment entered against an agent or broker in favor of an insurance company for the collection of such a debt creates a presumption that subsection 6 of North Dakota Century Code section 26.1-26-42 has been violated.

History: Effective November 1, 1987.

General Authority: NDCC 26.1-25-49

Law Implemented: NDCC 26.1-26-42(6)

STAFF COMMENT: Chapter 45-04-09 contains all new material but is not underscored so as to improve readability.

CHAPTER 45-04-09
REGULATION ON THE USE OF CLEARING CORPORATIONS AND FEDERAL
RESERVE BOOK-ENTRY SYSTEM BY INSURANCE COMPANIES

Section

45-04-09-01	Definitions
45-04-09-02	Custody of Agreement - Requirements
45-04-09-03	Deposit with Affiliates - Requirements

45-04-09-01. Definitions. As used in this chapter, unless the context requires otherwise, the term:

1. "Agent" means a national bank, state bank, or trust company which maintains an account in its name in a clearing corporation or which is a member of the federal reserve system and through which a custodian participates in a clearing corporation or the federal reserve book-entry system; except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "agent" may include a corporation which is organized or existing under the laws of any foreign country and which is legally qualified under such laws to accept custody of securities.
2. "Clearing corporation" means a corporation as defined in subsection 2 of North Dakota Century Code section 41-08-02 which is organized for the purpose of effecting transactions in securities by computerized book-entry; except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "clearing corporation" may include a corporation which is organized or existing under the laws of any foreign country and which is legally qualified under such laws to effect transactions in securities by computerized book-entry.
3. "Custodian" means a national bank, state bank, or trust company which has at all times aggregate capital, surplus, and undivided profits of not less than one million dollars and which is regulated by either state banking laws or is a member of the federal reserve system and which is legally qualified to accept custody of securities in accordance with the standards set forth below; except that with respect to securities issued by institutions organized or existing under the laws of any foreign country, or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "custodian" may include a bank, trust company, or similar institution

which has at all times aggregate capital, surplus, and undivided profits or not less than the equivalent of one million dollars and which is legally qualified to accept custody of securities.

4. "Federal reserve book-entry system" means the computerized systems sponsored by the United States department of the treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and such agencies and instrumentalities, respectively, in federal reserve banks through banks which are members of the federal reserve system or which otherwise have access to such computerized systems.
5. "Securities" means certificated securities and uncertificated securities as defined in subdivisions a and b of subsection 1 of North Dakota Century Code section 41-08-02.

History: Effective November 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-05-35

45-04-09-02. Custody of agreement - Requirements.

1. An insurance company may provide, by written agreement with a custodian, for the custody of its securities with a custodian, which securities may be held by the custodian or its agent or in a clearing corporation or in the federal reserve book-entry system. Securities so held, whether held by the custodian or its agent or in a clearing corporation or in the federal reserve book-entry system, are referred to herein as "custodied securities".
2. Any such agreement must be in writing and must be authorized by the resolution of the board of directors of the insurance company or of an authorized committee thereof. The terms of the agreement must comply with the following:
 - a. Certified securities held by the custodian must be held either separate from the securities of the custodian and of all of its other customers or in a fungible bulk of securities as part of a filing of securities by issue (FOSBI) arrangement.
 - b. Securities held in a fungible bulk by the custodian and securities in a clearing corporation or in the federal reserve book-entry system must be separately identified on the custodian's official records as being owned by the insurance company. Said records must identify which custodied securities are held by the custodian or by its agent and which securities are in a clearing corporation or in the federal reserve book-entry system. If the

securities are in a clearing corporation or in the federal reserve book-entry system, said records must also identify where the securities are and, if in a clearing corporation, the name of the clearing corporation and, if through an agent, the name of the agent.

- c. All custodied securities that are registered must be registered in the name of the company or in the name of a nominee of the company or in the name of the custodian or its nominee or, if in a clearing corporation, in the name of the clearing corporation or its nominee.
- d. Custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company, except that custodied securities used to meet the deposit requirements set forth in North Dakota Century Code section 26.1-05-23 must, to the extent required by that section, be under the control of the insurance commissioner and must not be withdrawn by the insurance company without the commissioner's approval.
- e. The custodian shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. In addition, the custodian shall be required to furnish the insurance company with reports of holdings of custodied securities at such times and containing such information as may be reasonably requested by the insurance company.
- f. During the course of the custodian's regular business hours, any officer or employee of the insurance company, any independent accountant selected by the insurance company, and any representative of an appropriate regulatory body shall be entitled to examine, on the premises of the custodian, the custodian's records relating to custodied securities.
- g. The custodian and its agents shall be required to send to the insurance company (a) all reports which they receive from a clearing corporation or the federal reserve book-entry system on their respective systems of internal accounting control; and (b) any reports prepared by outside auditors on the custodians or its agent's internal accounting control of custodied securities that the insurance company may reasonably request.
- h. The custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules and information

required in any audit of the financial statements of the insurance company.

- i. The custodian shall provide, upon written request from an appropriate officer of the insurance company, the appropriate affidavits, substantially in the form attached hereto, with respect to custodied securities.
- j. The custodian shall be obligated to indemnify the insurance company for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers or employees, or burglary, robbery, holdup, theft, or mysterious disappearance, including loss by damage or destruction.
- k. In the event that there is a loss of custodied securities for which the custodian shall be obligated to indemnify the insurance company as provided in subsection 10, the custodian shall promptly replace the securities or the value thereof and the value of any loss of rights or privileges resulting from said loss of securities.
- l. The agreement may provide that the custodian will not be liable for any failure to take any action required to be taken under the agreement in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including existing wars), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, laws, regulations, orders, or other acts of any governmental authority, or any other cause whatever beyond its reasonable control.
- m. In the event that the custodian gains entry in a clearing corporation or in the federal reserve book-entry system through an agent, there shall be an agreement between the custodian and the agent under which the agent shall be subject to the same liability for loss of custodied securities as the custodian; provided, however, that, if the agent shall be subject to regulation under the laws of a jurisdiction which is different from the jurisdiction the laws of which regulate the custodian, the commissioner of insurance of the state of domicile of the insurance company may accept a standard of liability applicable to the agent which is different from the standard of liability applicable to the custodian.

History: Effective November 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-05-35

45-04-09-03. Deposit with affiliates - Requirements.

1. Nothing prevents an insurance company from depositing securities with another insurance company with which the depositing insurance company is affiliated, provided that the securities are deposited pursuant to a written agreement authorized by the board of directors of the depositing insurance company or an authorized committee thereof and that the receiving insurance company is organized under the laws of one of the states of the United States or of the District of Columbia. If the respective states of domicile of the depositing and receiving insurance companies are not the same, the depositing insurance company shall have given notice of such deposit to the insurance commissioner in the state of its domicile and the commissioner shall not have objected thereto within thirty days of the receipt of said notice.
2. The terms of such an agreement must comply with the following:
 - a. The insurance company receiving the deposit shall maintain records adequate to identify and verify the securities belonging to the depositing insurance company.
 - b. The receiving insurance company shall allow representatives of any appropriate regulatory body to examine records relating to securities held subject to the agreement.
 - c. The depositing insurance company may authorize the receiving insurance company (a) to hold the securities of the depositing insurance company in bulk, in certificates issued in the name of the receiving insurance company or its nominee, and to commingle them with securities owned by other affiliates of the receiving insurance company; and (b) to provide for such securities to be held by a custodian, including the custodian of securities of the receiving insurance company or in a clearing corporation or the federal reserve book-entry system.

History: Effective November 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-05-35

policy or subscriber contract contains definitions or terms which conform to the requirements of this section.

1. "Accident", "accidental injury", or "accidental means" must employ "result" language and may not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.
 - a. The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."
 - b. The definition may provide that injuries may not include injuries for which benefits are provided under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.
2. "Benefit period" or "medicare benefit period" may not be defined as more restrictive than as that defined in the medicare program.
3. "Convalescent nursing home", "extended care facility", or "skilled nursing facility" must be defined in relation to its status, facilities, and available services.
 - a. The definition of such home or facility may not be more restrictive than one requiring that it:
 - (1) Be operated pursuant to law;
 - (2) ~~Be approved for payment of medicare benefits or be qualified to receive such approval, if so requested;~~
 - ~~(3)~~ Be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;
 - ~~(4)~~ (3) Provide continuous twenty-four hours a day nursing service by or under the supervision of a registered graduate professional nurse; and
 - ~~(5)~~ (4) Maintains a daily medical record of each patient.
 - b. The definition of such home or facility may provide that such term may not be inclusive of:

- (1) Any home, facility, or part thereof used primarily for rest.
 - (2) A home or facility for the aged or for the care of drug addicts or alcoholics (subject to North Dakota Century Code chapter 26.1-36).
 - (3) A home or facility primarily used for the care and treatment of mental diseases, or disorders, or custodial or educational care (subject to North Dakota Century Code chapter 26.1-36).
4. "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the joint commission on accreditation of hospitals.
- a. The definition of hospital may not be more restrictive than one requiring that the hospital:
 - (1) Be an institution operated pursuant to law;
 - (2) Be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic, and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which a charge is made; and
 - (3) Provide twenty-four hour nursing service by or under the supervision of registered graduate professional nurses.
 - b. The definition of hospital may state that such term may not be inclusive of:
 - (1) Convalescent homes, convalescent, rest, or nursing facilities.
 - (2) Facilities primarily affording custodial, educational, or rehabilitatory care.
 - (3) Facilities for the aged, drug addicts, or alcoholics.
 - (4) Any military or veterans hospital or soldiers home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.

5. "Medicare" must be defined in the policy. Medicare may be substantially defined as "The Health Insurance for the Aged Act, title XVIII of the Social Security Amendments of 1965 as then constituted or later amended", or "Title I, part I of Public Law No. 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.
6. "Medicare eligible expenses" means health care expenses of the kinds covered by medicare, to the extent recognized as reasonable by medicare. Payment of benefits by insurers for medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to medicare claims.
7. "Mental or nervous disorders" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.
8. "Nurses" may be defined so that the description of nurse is restricted to a type of nurse, such as registered graduate professional nurse (RN), a licensed practical nurse (LPN), or a licensed vocational nurse (LVN). If the words "nurse", "trained nurse", or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualified under such terminology in accordance with the applicable statutes or administrative rules of the licensing or registry board of the state.
9. "Physician" may be defined by including words such as "duly qualified physician" or "duly licensed physician". The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.
10. "Sickness" may not be defined to be more restrictive than the following: "Sickness means sickness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force."

The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

History: Effective January 1, 1982; amended effective November 1, 1987.

General Authority: NDCC 26.1-36-32, 26.1-36-33, 26.1-36-34,
26.1-36-35, 26.1-36-38
Law Implemented: NDCC 26.1-36

45-06-01-07. Required disclosure provisions.

1. General rules.

- a. Medicare supplement policies shall include a renewal, continuation, or nonrenewal provision. The language or specifications of the provision must be consistent with the type of contract to be issued. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.
- b. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured or exercises a specifically reserved right under a medicare supplement policy, all riders or endorsements added to a medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.
- c. A medicare supplement policy which provides for the payment of benefits based on standards described as "usual and customary", "reasonable and customary", or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.
- d. If a medicare supplement policy contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations".
- e. Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder or certificate holder shall have the

right to return the policy or certificate within ten days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare shall have a notice prominently printed on the first page or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

- f. Insurers issuing accident and sickness policies, certificates, or subscriber contracts which provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to a person eligible for medicare shall provide to all applicants a medicare supplement "buyer's guide". Delivery of the buyer's guide shall be made whether or not such policies, certificates, or subscriber contracts are advertised, solicited, or issued as medicare supplement policies as defined in this chapter. Except in the case of direct response insurers, delivery of the buyer's guide shall be made to the applicant at the time of application and acknowledgment of receipt of the buyer's guide shall be obtained by the insurer. Direct response insurers shall deliver the buyer's guide to the applicant upon request but not later than at the time the policy is delivered.
 - g. Except as otherwise provided in section 45-06-01-07, the terms "medicare supplement", "medigap", and words of similar import shall not be used unless the policy is issued in compliance with section 45-06-01-05.
2. **Outline of coverage requirements for medicare supplement policies.**
- a. Insurers issuing medicare supplement policies for delivery in this state shall provide an outline of coverage to all applicants at the time application is made and, except for direct response policies, shall obtain an acknowledgment of receipt of such outline from the applicant.
 - b. If an outline of coverage is provided at the time of application and the medicare supplement policy or certificate is issued on a basis which would require revision of the outline of coverage delivered at the time of application, a substitute outline of coverage properly describing the policy or certificate actually issued must accompany such policy or certificate when it is delivered

and contain the following statement, in no less than twelve point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

- c. The outline of coverage provided to applicants pursuant to this subsection shall be in the form prescribed below:

(COMPANY NAME)
OUTLINE OF MEDICARE
SUPPLEMENT COVERAGE

- (1) Read your Policy Carefully -- This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!
- (2) Medicare Supplement Coverage -- Policies of this category are designed to supplement medicare by covering some hospital, medical, and surgical services which are partially covered by medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by medicare, and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing, and taking medicine (delete if such coverage is provided).
- (3) (a) (for agents):
Neither (insert company's name) nor its agents are connected with medicare.
(b) (for direct responses):
(insert company's name) is not connected with medicare.
- (4) (A brief summary of the major benefit gaps in medicare Parts A and B with a parallel description of supplemental benefits, including dollar amounts, provided by the medicare supplement coverage in the following order):

<u>SERVICE</u> <u>PAYS</u>	<u>PAYS</u>	<u>BENEFIT</u> <u>YOU PAY</u>	MEDICARE	THIS POLICY
HOSPITALIZATION... semiprivate room and board, general nursing, and miscellaneous hospital services and supplies.	First 60 days		All but \$ ()	
	61st to 90th day		All but \$ () a day	
	91st to 150th day		All but \$ () a day	
Includes meal, special care units, drugs, lab tests, diagnostic x-rays, medical supplies, operating and recovery room, anesthesia, and rehabilitation services.	Beyond 150 days		Nothing	
POSTHOSPITAL SKILLED NURSING CARE... In a <u>skilled or</u> <u>intermediate nursing</u> <u>care facility</u> approved by medicare, you must have been in a hospital for at least three days and enter the facility within fourteen days after hospital discharge.	First 20 days		% of costs	
	Additional 80 days		All but \$ () a day	
	Beyond 100 days		Nothing	
MEDICAL EXPENSES		Physician's services inpatient and outpatient medical services and supplies at a hospital, physical and speech therapy, and ambulance.	% of reasonable charge (after \$ () deductible)	

(5) (Statement that the policy does or does not cover the following:)

(a) Private duty nursing.

- (b) Skilled nursing home care costs (beyond what is covered by medicare).
 - (c) Custodial nursing home care costs.
 - (d) ~~Intermediate nursing home care costs.~~
 - ~~(e)~~ Home health care above number of visits covered by medicare.
 - ~~(f)~~ (e) Physician charges (above medicare's reasonable charge).
 - ~~(g)~~ (f) Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay).
 - ~~(h)~~ (g) Care received outside of United States of America.
 - ~~(i)~~ (h) Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for the cost of eyeglasses or hearing aids.
- (6) (A description of any policy provision which excludes, eliminates, resists, reduces, limits, delays, or in any other manner operates to qualify payments of the benefits described in paragraph 4, including conspicuous statements:)
- (a) (That the chart summarizing medicare benefits only briefly describes such benefits.)
 - (b) (That the health care financing administration or its medicare publications should be consulted for further details and limitations.)
- (7) (A description of policy provisions respecting renewability or continuation of coverage, including any reservation or rights to change premium.)
- (8) The amount of premium for this policy.
- (*Substitute "Certification" for "policy" where appropriate.)

3. Notice regarding policies or subscriber contracts which are not medicare supplement policies.

Any accident and sickness insurance policy, other than a medicare supplement policy; disability income policy; basic, catastrophic, or major medical expense policy; single premium

nonrenewable policy; or other policy defined in subsection 2 of section 45-06-01-01, issued for delivery in this state to persons eligible for medicare by reason of age shall notify insureds under the policy or subscriber contract that the policy or subscriber contract is not a medicare supplement policy. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy or subscriber contract, or if no outline of coverage is delivered, to the first page of the policy, certificate, or subscriber contract delivered to insureds. Such notice shall be in no less than twelve point type and shall contain the following language:

THIS (POLICY, CERTIFICATE, OR SUBSCRIBER CONTRACT) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CERTIFICATE). If you are eligible for medicare review the medicare supplement buyer's guide available from the company.

History: Effective January 1, 1982; amended effective November 1, 1987.

General Authority: NDCC 26.1-36-35

Law Implemented: NDCC 26.1-36-35

STAFF COMMENT: Chapter 45-06-03 contains all new material but is not underscored so as to improve readability.

CHAPTER 45-06-03 STANDARD HEALTH INSURANCE PROOF OF LOSS FORMS

Section	
45-06-03-01	Acceptance of Standard Claim Forms Required
45-06-03-02	Standard Proof of Loss and Claim Forms

45-06-03-01. Acceptance of standard claim forms required. Insurers shall accept as proof of loss the forms described in section 45-06-03-02. This does not prohibit insurers from requesting more detailed information or an itemized listing of charges.

History: Effective November 1, 1987.

General Authority: NDCC 26.1-36-38

Law Implemented: NDCC 26.1-36-37.1

45-06-03-02. Standard proof of loss and claim forms. The following forms must be accepted by all insurance companies as standard claim forms:

1. Uniform hospital billing form, UB 82 or its most recent revision.

2. Standard attending physician's statement, HCFA 1500 or its most recent revision.

History: Effective November 1, 1987.

General Authority: NDCC 26.1-36-38

Law Implemented: NDCC 26.1-36-37.1

45-09-01-09. Statement of taxable premiums. Surplus lines brokers are required by North Dakota Century Code section 26.1-44-06 to file annually a statement of taxable premiums received by that broker (Appendix V).

History: Effective January 1, 1982.

General Authority: NDCC 26.1-44-09

Law Implemented: NDCC 26.1-44-06

APPENDIX III

Categories of Acceptable Surplus Lines Coverage

The following categories of surplus lines coverage are not the only lines which may be written in North Dakota. Other lines of coverage not on this list may be acceptable because of special underwriting considerations. Any exceptions must be fully explained on the surplus lines affidavit and approved by the commissioner of insurance.

There is a presumption that the insured is unable, after diligent search, to procure the insurance, indemnity contract, or surety bond desired from a company authorized to do business in this state if the coverage written is in an approved category.

These categories may be changed from time to time at the discretion of the commissioner of insurance subject to provisions of North Dakota Century Code chapter 28-32, the Administrative Agencies Practice Act.

1. Fiduciary liability.
2. Professional liability (E & O) except for hospitals.
3. Directors and officers.
4. Ocean marine cargo, liability and hull.
5. Hazardous cargo and short-term trip transit.
6. Bridges (large).
7. Heavy woodworking property (unprotected, high value sawmills).
8. Product liability (hazardous).
9. Ski lifts and tows' liability.
10. Fireworks, ammunition, fuse, cartridges, power, nitroglycerine, explosive gases.
11. Environmental impairment - pollution.
12. Kidnap ransom.
13. Oil and gas liability and marine.
14. Livestock mortality (high values and unusual).
15. Short tail (hole-in-one, 300 bowling score, etc.).
16. Large utilities (generation, transmission).

17. Building demolition and moving.
18. Mono line liquor legal liability.
19. Surcharged fire and allied lines excluding uncontrolled marine.
20. High value substandard private passenger auto.
21. Commercial auto physical damage coverage in excess of rating organizations' filed rates.
22. Any excess liability coverages.
23. Day care liability insurance coverages.

History: Amended effective February 1, 1983; November 1, 1987.

General Authority: NDCC 26.1-44-09

Law Implemented: NDCC 26.1-44-02

TITLE 48
Livestock Sanitary Board

NOVEMBER 1987

48-03-01-04. Removal of livestock from markets. Written clearance is required prior to removal of all livestock from markets and must accompany livestock to destination. The forms are to be issued by the board or its agent. Repealed effective November 1, 1987.

General Authority: NDCE 36-05-11
Law Implemented: NDCE 36-05-11

TITLE 54
Nursing, Board of

OCTOBER 1987

54-02-01-02. Passing score. The passing score shall be a standard score of sixteen hundred for the registered nurse licensing examination.

The passing score will be a standard score of three hundred fifty for the licensed practical nurse examination.
Repealed effective October 1, 1987.

History: Amended effective June 17 1982, March 17 1986.

General Authority: NDCS 43-12-1-08

Law Implemented: NDCS 43-12-1-10

STAFF COMMENT: Article 54-04.1 contains all new material but is not underscored so as to improve readability.

ARTICLE 54-04.1

NURSING SCHOLARSHIP OR LOANS

Chapter	
54-04.1-01	Nursing Scholarship or Loan Program
54-04.1-02	Qualifications
54-04.1-03	Disbursements
54-04.1-04	Repayment By Employment
54-04.1-05	Monetary Repayment

**CHAPTER 54-04.1-01
NURSING SCHOLARSHIP OR LOAN PROGRAM**

Section

54-04.1-01-01 Nursing Scholarship or Loan Program

54-04.1-01-02 Program Continuation

54-04.1-01-01. Nursing scholarship or loan program. The board of nursing shall create a nursing scholarship or loan program. The program must be funded by:

1. Four dollars of each registered nurse and licensed practical nurse renewal fee.
2. Principle and interest payments from scholarship or loan recipients.
3. Donations and bequests from individuals wishing to further the intent of the scholarship or loan program.
4. Additional funds as may from time to time be designated by the board.

History: Effective October 1, 1987.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-04.1-01-02. Program continuation. Individuals awarded a scholarship or loan prior to July 1, 1987, shall have the following options:

1. Individuals continuing in the nursing education program may apply for additional funds as provided in chapter 54-04.1-03. If additional funds are granted, repayment of the entire award must be according to chapter 54-04.1-04 or 54-04.1-05.
2. Individuals continuing in the nursing education program who do not apply or who are not awarded additional funds shall be required to repay according to chapter 54-04.1-04 or 54-04.1-05.
3. Individuals who are in the process of repaying by employment may continue repayment according to article 54-04 or choose to repay according to article 54-04.1.
4. Individuals who are in the process of making monetary repayments shall continue repayment according to article 54-04. The note will continue to bear interest at the rate of three percent per annum.

History: Effective October 1, 1987.
General Authority: NDCC 43-12-27
Law Implemented: NDCC 43-12-27

CHAPTER 54-04.1-02 QUALIFICATIONS

Section
54-04.1-02-01 Qualifications

54-04.1-02-01. Qualifications. To qualify for a nursing scholarship or loan, the applicant must:

1. Be a United States citizen and a North Dakota resident.
2. Demonstrate financial need, which will be determined solely by the board.
3. Have been accepted into a board-approved nursing education program or be enrolled in a board-approved nursing education program for practical nurses or registered nurses.
4. Have been accepted into or be enrolled in an educational program for graduate nurses that is acceptable to the board.
5. Have all necessary application forms completed and on file in the board office by March first of the year in which they wish to be considered for practical nurse or registered nurse student scholarship loans.
6. Have all necessary application forms completed and on file in the board office by July first of the year in which they wish to be considered for a graduate nurse scholarship loan.

History: Effective October 1, 1987.
General Authority: NDCC 43-12-27
Law Implemented: NDCC 43-12-27

CHAPTER 54-04.1-03 DISBURSEMENTS

Section
54-04.1-03-01 Amount of Awards
54-04.1-03-02 Note Required
54-04.1-03-03 Disbursements
54-04.1-03-04 Subsequent Disbursements
54-04.1-03-05 Disbursements - Where Made

54-04.1-03-01. Amount of awards. To the extent funds are available, scholarship loan awards will be made in the following amounts:

1. Practical nurse students may receive an award of no more than one thousand dollars for each year of the nursing program.
2. Licensed practical nurse students who plan to complete studies for an associate degree in nursing may receive an award of no more than one thousand dollars.
3. Registered nurse students and graduate nurse students who plan to complete studies for a baccalaureate degree in nursing may receive an award of no more than one thousand dollars a year for the last three years of the nursing program.
4. Graduate nurse students may receive an award of no more than five thousand dollars to complete studies for a master's degree in nursing or a doctorate.
5. Licensed practical nurses or registered nurses may receive an award of no more than one thousand dollars for study in a nursing specialty program.

History: Effective October 1, 1987.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-04.1-03-02. Note required. Before disbursements are made, recipients must be required to sign a note to the North Dakota board of nursing for repayment of the award. The note must be signed by the recipient and a cosigner who is acceptable to the board.

History: Effective October 1, 1987.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-04.1-03-03. Disbursements. Disbursements of the awards will be made as follows:

1. For programs leading to initial licensure as a licensed practical nurse or a registered nurse, the total award will be divided into equal payments for each academic term needed to complete the program.
2. For licensed practical nurses who plan to complete studies for an associate degree and licensed registered nurses who plan to complete studies for a baccalaureate degree, the total award will be divided into equal payments for each academic term needed to complete the program.

3. For graduate nurse students, who plan to complete studies leading to academic degrees beyond the baccalaureate degree, the total award will be made in one payment.

History: Effective October 1, 1987.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-04.1-03-04. Subsequent disbursements. Subsequent disbursements of the awards, to be made beyond the initial disbursements made under the formula set out in section 54-04.1-03-03, will be made if the recipient provides the board with proof of maintaining a satisfactory grade for progression in the program as determined by the faculty of the nursing program.

History: Effective October 1, 1987.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-04.1-03-05. Disbursements - Where made. For practical nurse students and registered nurse students, the disbursements will be made to the school they are attending. For graduate nurse students and registered nurse or licensed practical nurses attending specialty courses, the disbursements will be made directly to the student. A receipt of payment signed by the scholarship loan recipient will be required when the award is made directly to the recipient.

History: Effective October 1, 1987.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

CHAPTER 54-04.1-04 REPAYMENT BY EMPLOYMENT

Section

54-04.1-04-01	Conversion of Loan to Scholarship
54-04.1-04-02	Notification of Employment
54-04.1-04-03	Termination of Employment
54-04.1-04-04	Employment Affidavits Required
54-04.1-04-05	Leave of Absence

54-04.1-04-01. Conversion of loan to scholarship. The loan may be converted to a scholarship through nursing employment in North Dakota after graduation. The conversion rate will be one dollar per hour of employment.

History: Effective October 1, 1987.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-04.1-04-02. Notification of employment. Within sixty days after graduation, recipients must provide the board of nursing with the name and address of their employer or notify the board if they are unemployed.

History: Effective October 1, 1987.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-04.1-04-03. Termination of employment. If employment in North Dakota is terminated before the complete conversion of the loan to scholarship, interest will begin to accrue on the unpaid balance from the date of termination of employment.

History: Effective October 1, 1987.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-04.1-04-04. Employment affidavits required. Employment credit will be given for those scholarships qualifying for loan conversion under section 54-04.1-04-01 when a completed, notarized employment affidavit is received from an employer. Upon receipt of the required employment credit, the notes will be canceled and returned to the recipient.

History: Effective October 1, 1987.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-04.1-04-05. Leave of absence. A leave of absence during the employment period may be granted at the discretion of the board of nursing.

History: Effective October 1, 1987.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

CHAPTER 54-04.1-05 MONETARY REPAYMENT

Section

54-04.1-05-01	Repayment Requirements
54-04.1-05-02	Demand for Payment
54-04.1-05-03	Cancellation of Note Due to Disability

or Death

54-04.1-05-01. Repayment requirements. Repayment of the loan must meet the following requirements:

1. Payments must begin within sixty days after graduation or withdrawal from the nursing program unless such period is extended by the board.
2. Pay a rate of nine percent annual interest which will accrue on the unpaid balance until the note is canceled.
3. Payments of at least fifty dollars per month must be made to the North Dakota board of nursing by the fifth day of each month until the note is canceled.

History: Effective October 1, 1987.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-04.1-05-02. Demand for payment. Demand for payment will be made on delinquent accounts. If the account is not brought up to date within thirty days of receipt of the demand for payment, the account will be referred to the collection agency.

History: Effective October 1, 1987.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-04.1-05-03. Cancellation of note due to disability or death. In the event of total disability, as defined for social security benefits, or death of the recipient, the notes and accrued interest shall be canceled.

History: Effective October 1, 1987.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

TITLE 58
Parks and Recreation Department

SEPTEMBER 1987

CHAPTER 58-02-08
PARK USE RULES

Section	
58-02-08-01	Authority
58-02-08-02	Definitions
58-02-08-03	Rules Enforcement Policy
58-02-08-04	Public Behavior
58-02-08-05	Limitation of Cabin, Dormitory, or Campsite Occupancy
58-02-08-06	Camping and Camping Equipment
58-02-08-07	Park Roads, Trails, and Vehicle Use
58-02-08-08	Sanitation
58-02-08-09	Animals
58-02-08-10	Destruction of Property
58-02-08-11	Building Fires
58-02-08-12	Firearms, Bows and Arrows, Slingshots, BB Guns, and Fireworks
58-02-08-13	Fees and Permits
58-02-08-14	Closed Areas and Closing Hours
58-02-08-15	Hunting and Harassing Wildlife
58-02-08-16	Metal Detectors
58-02-08-17	Advertising, Special Events, and Authorized Concession Operations
58-02-08-18	Swimming Areas, Boat Ramps, and Marinas

58-02-08-01. Authority. These state park use rules apply to all those areas which are under the control of or operated by the North Dakota parks and recreation department. The authority to make and enforce these rules is granted pursuant to North Dakota Century Code sections 55-08-03 and 55-08-05.

History: Effective September 1, 1987.
General Authority: NDCC 55-08-03, 55-08-05
Law Implemented: NDCC 55-08-03, 55-08-05

58-02-08-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "All-terrain vehicle" means that term as defined by North Dakota Century Code section 39-29-01.
2. "Camping unit" means any vehicle or shelter specifically used for sleeping in or upon a portion of state land or water designated as a campsite.
3. "Campsite" means any area so designated by the department for the express purpose of camping. A campsite will normally include the following items: parking pad, picnic table, and fireplace.
4. "Department" means the North Dakota parks and recreation department.
5. "Director" means the director of the North Dakota parks and recreation department.
6. "Occupied campsite" means a campsite where a valid camping permit is affixed to the campsite marker and a camping unit is onsite. If a camping unit is not onsite, a campsite is not occupied unless specific permission for leaving the campsite has been given by park personnel.
7. "Park manager" means the individual responsible for the administration of a state park.
8. "Snowmobile" means that term as defined in North Dakota Century Code section 39-24-01.
9. "State park" or "park" includes and embraces all land and water under the supervision of the North Dakota parks and recreation department.
10. "Swimming area" means an area, marked by buoys, ropes, floats, or other United States Coast Guard approved devices, in which swimming is allowed.

History: Effective September 1, 1987.
General Authority: NDCC 55-08-03
Law Implemented: NDCC 55-08-03

58-02-08-03. Rules enforcement policy. All rules of the department will be enforced within the state park boundaries.

Individuals violating these rules will receive either a verbal or written warning, an administrative complaint, a civil summons and complaint, a criminal complaint and warrant or summons, or loss of park privileges.

History: Effective September 1, 1987.

General Authority: NDCC 55-08-03

Law Implemented: NDCC 55-08-03, 55-08-04, 55-08-04.1, 55-08-16, 55-08-17

58-02-08-04. Public behavior. The hours between one-half hour after sunset and seven a.m. are designated as quiet hours.

History: Effective September 1, 1987.

General Authority: NDCC 55-08-03, 55-08-05

Law Implemented: NDCC 55-08-03, 55-08-05

58-02-08-05. Limitation of cabin, dormitory, or campsite occupancy.

1. A person or group of persons may not occupy any cabin, dormitory, or campsite for more than fourteen days within any thirty-day period without the written permission of the park manager.
2. Daily vehicle permits used for day use activity expire one-half hour after sunset on the day of purchase.
3. Vehicle permits purchased with camping permits are valid until noon on the date of expiration.
4. Only one camping unit with a maximum of six persons or the immediate family members shall be permitted on each designated single campsite except with the permission of the park manager.
5. Children under the age of eighteen must be accompanied by an adult in order to occupy a campsite in a state park, unless written permission is granted by the park manager.

History: Effective September 1, 1987.

General Authority: NDCC 55-08-03, 55-08-05

Law Implemented: NDCC 55-08-03, 55-08-04, 55-08-05

58-02-08-06. Camping and camping equipment.

1. A person may not camp in an area not designated as a campsite.
2. No person may take or attempt to take possession of a campsite when it is an occupied campsite, or when informed by a ranger

that such site is an occupied campsite, or when the site is posted with a "Reserved" sign.

3. All nonreserved campsites are available on a first-come-first-serve basis. Campers must immediately establish an occupied campsite following purchase of a camping permit, unless special provisions are made with park personnel.
4. All camping sites are restricted to one camping unit per campsite unless designated as a multiple or group site.

History: Effective September 1, 1987.

General Authority: NDCC 55-08-03, 55-08-05

Law Implemented: NDCC 55-08-03, 55-08-04, 55-08-05

58-02-08-07. Park roads, trails, and vehicle use.

1. Unless otherwise specified, in statute or rule, the use of motor vehicles in state parks, including, but not limited to, automobiles, trucks, all-terrain vehicles, motorcycles, trail bikes, snowmobiles, and minibikes, is governed under North Dakota Century Code title 39.
2. All traffic control devices posted within the park, including those located at entrance stations, must be obeyed.
3. No person may operate a vehicle at speeds exceeding the posted speed limit, or at a speed greater than is reasonable and prudent for the conditions.
4. No person may operate any vehicle, including, but not limited to, automobiles, trucks, minibikes, bicycles, mountain trail bikes, mopeds, motorcycles, trail bikes, snowmobiles, and all-terrain vehicles beyond the roads and trails built and maintained for the operation of vehicles.
5. Unless specifically designated, all-terrain vehicles are not permitted within state parks or on state snowmobile trails.
6. Trails built to accommodate snowmobiles, all-terrain vehicles, and cross-country skiing may be closed for public use at the discretion of department personnel. It is a violation of these rules to operate a snowmobile or all-terrain vehicle, or to cross-country ski on trails closed by department personnel.
7. No person may park any vehicle, camper, or trailer in any area not specifically designated for parking.

History: Effective September 1, 1987.

General Authority: NDCC 55-08-03, 55-08-05

Law Implemented: NDCC 55-08-03, 55-08-04, 55-08-05

58-02-08-08. Sanitation. No person may dispose of any refuse or waste except in places or receptacles provided for disposal.

History: Effective September 1, 1987.

General Authority: NDCC 55-08-03, 55-08-05

Law Implemented: NDCC 55-08-03, 55-08-04, 55-08-05

58-02-08-09. Animals.

1. Any person who is the owner or handler of any animal must keep the animal on a leash and under physical control at all times while within a state park. The leash may not exceed six feet [1.83 meters] in length.
2. No person may keep a noisy, vicious, or dangerous dog or other animal, or one which is disturbing to other persons, in a state park.
3. Animals are not allowed on any designated swimming areas in a state park.
4. No person may bring saddle or pack animals onto a site which has not been developed and maintained to accommodate saddle or pack animals.
5. No person may tie or hitch any animal to a tree or plant.

History: Effective September 1, 1987.

General Authority: NDCC 55-08-03, 55-08-05

Law Implemented: NDCC 55-08-03, 55-08-04, 55-08-05

58-02-08-10. Destruction of property.

1. No person may destroy, deface, or remove, in any manner, any native, wild, or domesticated trees, shrubs, or wildflowers.
2. No person may destroy, deface, or remove, or disturb, in any manner, any real, personal, or public property, including, but not limited to, geological formations or features, historical and cultural artifacts.

History: Effective September 1, 1987.

General Authority: NDCC 55-08-03, 55-08-05

Law Implemented: NDCC 55-08-03, 55-08-04, 55-08-05

58-02-08-11. Building fires. No person may build a fire outside of stoves, grills, fireplaces, or other places provided for building a fire. All fires must be attended by a person eighteen years of age or older at all times. Upon abandonment of the fire, it must be completely extinguished.

History: Effective September 1, 1987.

General Authority: NDCC 55-08-03, 55-08-05

Law Implemented: NDCC 55-08-03, 55-08-04, 55-08-05

58-02-08-12. Firearms, bows and arrows, slingshots, BB guns, and fireworks.

1. No person, with the exception of a duly authorized peace officer, may possess a firearm in a state park unless it is contained in a gun case and unloaded both in barrel and magazine, or unless otherwise authorized by the director.
2. No person may discharge or set off within a state park any firearm, bow and arrow, slingshot, BB gun, or any form of fireworks, unless authorized by the director.

History: Effective September 1, 1987.

General Authority: NDCC 55-08-03, 55-08-05

Law Implemented: NDCC 55-08-03, 55-08-04, 55-08-05

58-02-08-13. Fees and permits.

1. No person may evade or attempt to evade any fee or other charge that may be levied for admission to or use of any state park or facility contained therein.
2. When no park staff is on duty at the entrance station, park visitors must use the department's self-registration system.
3. While in the park, visitors must have their daily entrance permits, annual entrance permits, or senior citizen "passports" affixed to the lower left-hand corner of their vehicle or camping unit windshield to be considered validly registered for admission.
4. Camping permits must be placed on the campsite marker specifically provided for that purpose. If no campsite marker is provided, the permit must be conspicuously displayed on the camping unit or on a vehicle parked on the campsite.

History: Effective September 1, 1987.

General Authority: NDCC 55-08-03, 55-08-05

Law Implemented: NDCC 55-08-03, 55-08-04, 55-08-05, 55-08-06

58-02-08-14. Closed areas and closing hours.

1. No person may enter or use a campsite or other area which is closed to public use.

2. No person may be admitted or allowed to remain in any state park after the designated closing hour except for the purpose of dormitory rentals or camping, unless the person has written permission from the park manager.

History: Effective September 1, 1987.

General Authority: NDCC 55-08-03, 55-08-05

Law Implemented: NDCC 55-08-03, 55-08-04, 55-08-05

58-02-08-15. Hunting and harassing wildlife. No person may hunt, trap, pursue, catch, or kill any wild bird or wild animal in a state park unless specifically allowed by regulation or proclamation.

History: Effective September 1, 1987.

General Authority: NDCC 55-08-03

Law Implemented: NDCC 55-08-03, 55-08-04

58-02-08-16. Metal detectors. No person may use any device for the purpose of locating or removing any metallic object or any other objects of value from a state park without receiving prior written permission from the director.

History: Effective September 1, 1987.

General Authority: NDCC 55-08-03, 55-08-05

Law Implemented: NDCC 55-08-03, 55-08-04, 55-08-05

58-02-08-17. Advertising, special events, and authorized concession operations.

1. No person may erect, post, or hand out any sign, notice, or literature, unless prior authorization is obtained from the park manager.
2. No organization or group may hold any event that charges an admission or registration on lands owned or leased by the department without prior written permission from the director.
3. No person, firm, or corporation may operate any concessions, business, enterprise, or sell personal property in a state park without prior written permission from the director.

History: Effective September 1, 1987.

General Authority: NDCC 55-08-03, 55-08-05

Law Implemented: NDCC 55-08-03, 55-08-04, 55-08-05

58-02-08-18. Swimming areas, boat ramps, and marinas.

1. No person may swim, bathe, or wade at a state park, except within designated swimming areas.
2. It is unlawful in a state park designated swimming area:
 - a. To possess glass containers.
 - b. To use the beach or designated swimming area between one-half hour after sunset and seven a.m.
 - c. To enter with any boat, canoe, or raft.
 - d. To fish.
 - e. To engage in any hazardous activity which could cause injury to others.
 - f. To use any soap, detergent, or shampoo.
 - g. To change clothes except in structures that may be provided by the park for that purpose.
3. Swimming is not allowed in state parks by children under the age of twelve years, unless they are supervised by a swimmer eighteen years of age or older.
4. No person may give or transmit a false signal or alarm of drowning.
5. Any person swimming at a state park or recreation swimming areas under the control of or operated by the North Dakota parks and recreation department shall do so at the person's own risk.
6. Any person using any designated beach, designated swimming area, boat ramp, or marina shall obey all posted rules and instructions given by lifeguards, rangers, or other state park employees.
7. All watercraft operating in state park marinas or near boat ramps must be restricted to idle speed.

History: Effective September 1, 1987.

General Authority: NDCC 55-08-03

Law Implemented: NDCC 55-08-03, 55-08-04

TITLE 62
Plumbing, Board of

SEPTEMBER 1987

62-01-01-01. Organization of board of plumbing.

1. **History.** The 1941 legislative assembly passed a state plumbing law, codified as North Dakota Century Code chapter 43-18. The chapter was intended to promote and protect the public health through the regulation of the business of plumbing by creating a state board of plumbing and empowering the board and the state department of health to adopt rules governing the practice of plumbing and establishing a code of minimum standards of plumbing work. The 1973 legislative assembly passed legislation, codified as North Dakota Century Code chapter 43-18.1, which regulates the installation of water conditioning equipment. The 1987 legislative assembly passed legislation, codified as North Dakota Century Code chapter 43-18.2, which regulates the installation of sewer and water services.
2. **Board membership.** The board of plumbing consists of the chief sanitary engineer of the state department of health, and four persons appointed by the governor: one a master plumber; one a journeyman plumber; one a registered professional engineer; and one a representative of the consuming public. The four appointed members of the board serve four-year terms, with one term expiring each year.
3. **Secretary and chief inspector.** The secretary and chief inspector of the board is appointed by the board and is responsible for administration of the board's activities.
4. **Inquiries.** Inquiries regarding the board may be addressed to the secretary and chief inspector:

Mr. ~~E- F- Welch~~ Robert J. Leingang
State Plumbing Board

204 West Thayer Avenue
Bismarck, North Dakota 58501

History: Amended effective November 1, 1981; September 1, 1987.
General Authority: NDCC 28-32-02.1
Law Implemented: NDCC 28-32-02.1

**CHAPTER 62-02-03
SEWER AND WATER CONTRACTOR AND INSTALLER LICENSURE**

Section	
62-02-03-01	Application for Sewer and Water Installer or Contractor License
62-02-03-02	Examination Fee for Each Examination
62-02-03-03	Reexamination of Apprentice Sewer and Water Installer
62-02-03-04	Renewal of Expired License

62-02-03-01. Application for sewer and water installer or contractor license. No applicant is entitled to take the examination for either the sewer and water contractor or sewer and water installer's certificate and license unless and until the applicant furnishes to the board proof that the applicant possesses sufficient practical experience to enable the applicant to perform satisfactorily the duties of the classification for which the applicant has made application. If the applicant fails to appear for examination, the application will expire after a period of six months from date of verification of the application. The board will consider the following as sufficient practical experience.

1. A one-year term of practical experience is defined as one thousand seven hundred hours.
2. Graduates of a plumbing course of an accredited trade school having at least a nine-month (one thousand twenty hours) course in plumbing shall satisfy the apprentice requirements and be eligible to make application for a sewer and water installer's examination and license.
3. Apprentice plumbers registered with this state and having two years' experience are eligible to make application for a sewer and water installers examination and license. A one-year term of apprenticeship is defined as not less than one thousand seven hundred hours.

History: Effective September 1, 1987.
General Authority: NDCC 43-18.2-02(2)
Law Implemented: NDCC 43-18.2-02(3)

62-02-03-02. Examination fee for each examination. An applicant for examination is entitled to one examination only for each examination fee paid.

History: Effective September 1, 1987.

General Authority: NDCC 43-18.2-02

Law Implemented: NDCC 43-18.2-08

62-02-03-03. Reexamination of apprentice sewer and water installer. An apprentice sewer and water installer who has written and failed the sewer and water installer's examination must rewrite the examination at the end of a three-month period. During the three-month period the sewer and water installer apprentice may work under the direct supervision of a licensed sewer and water installer.

History: Effective September 1, 1987.

General Authority: NDCC 43-18.2-02

Law Implemented: NDCC 43-18.2-04

62-02-03-04. Renewal of expired license. Any person may renew his license without examination if renewal occurs within one year following expiration. The board shall require that a holder of a license which has been expired for one year or more submit to a new examination.

History: Effective September 1, 1987.

General Authority: NDCC 43-18.2-02

Law Implemented: NDCC 43-18.2-09

TITLE 69
Public Service Commission

OCTOBER 1987

69-03-01-02. Application for certificates or permits. All motor transportation companies desiring to operate as common or contract carriers under a certificate of public convenience and necessity, or permit, shall file with the commission, on blank forms to be furnished by the commission, a verified application for authority to operate, such application to be accompanied by Anyone wanting to obtain motor carrier operating authority must apply to the commission. The application must be made on forms provided by the commission and must be accompanied by:

1. Remittance in the form of a money order, bank draft, or certified check, in proper amount and form, payable to the public service commission. The application fee.
2. If an original application is made by partnership, a A copy of the partnership agreement if the applicant is a partnership.
3. If an original application is made by a corporation, a A copy of the articles of incorporation and a list of the directors, officers, and major stockholders if the applicant is a corporation.

History: Amended effective September 1, 1981; October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-12, 49-18-20

69-03-01-02.1. Application for temporary authority. All motor transportation companies desiring temporary authority to operate as common or contract carriers shall file with the commission a verified application for temporary authority to operate. Such application must be accompanied by Anyone

wanting temporary motor carrier operating authority must file a request with the commission. The request must be accompanied by:

1. An application ~~for a certificate of public convenience and necessity or contract permit pursuant to~~ under section 69-03-01-02.
2. Supporting statements ~~designed to establish~~ showing an immediate and urgent need for service which cannot be met by existing carriers.

History: Effective September 1, 1981; amended effective September 1, 1985; October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-12, 49-18-20

69-03-01-02.2. Statement in support of temporary authority.

Each statement in support of an application for temporary motor carrier operating authority to operate as a common or contract carrier must be signed by the a person (or an authorized representative ~~thereof~~) having such the immediate and urgent need for motor carrier service. Any such Each supporting statement must contain at least the following information:

1. When the transportation of property is involved, a description of the specific commodity ~~or commodities~~ to be transported.
2. Points or areas to, from, or between which such commodities or passengers are to be transported- (if service is needed to or from a territory or area rather than a specific point or points, clearly describe such territory or area and furnish evidence of a broad need to justify the territorial grant of authority requested-) Points or areas to be served.
3. Volume of traffic involved, frequency of movement, and how transported now and in the past.
4. How soon the service must be provided is needed and the reasons for such this time limit.
5. How long the need for such the service likely will continue, and whether or not if the persons person supporting the temporary application will support a the permanent service application.
6. Recital of the The consequences if service is not made available.

7. The circumstances which created creating an immediate and urgent need for the requested services service.
8. Whether or not If efforts have been made to obtain the service from existing motor carriers, and the dates and results of such these efforts.
9. Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for any such the failure or refusal.
10. If the person supporting the application has supported any prior application for permanent or temporary authority covering all or any part of the desired service, give the carrier's name, address and motor carrier docket number, if known, and state whether such application was granted or denied and the date of such and commission action, if known.

History: Effective September 1, 1981; amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-12, 49-18-20

69-03-01-04. Nonresident applicant. If the applicant is a nonresident ~~operator~~, the applicant must file an appointment of a North Dakota resident agent.

History: Amended effective September 1, 1981; October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-12, 49-18-20

69-03-01-05. Form of remittances to commission. All remittances Remittances must be in the form of cash, money order, bank draft, or certified check payable to the public service commission.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-32, 49-18-41

69-03-01-06. Refunds. Where, subsequent to the filing of any application or petition with the appropriate fee, a carrier withdraws the application or petition If an application is withdrawn, the commission may retain as much of the portion of the application fee therefor as is commensurate with necessary to cover the cost of processing the application or petition prior to the withdrawal.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-32

69-03-01-07. Identification card. All A commission identification card must be carried in all vehicles operated under a certificate or permit authority issued by the public service commission must post in the cab an identification card as prescribed by the commission.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-41

69-03-01-08. Certificates and permits displayed. All holders of certificates and permits A copy of the evidence of authority issued by the commission for common and contract motor carrier service shall carry an original or a certified or photostatic copy of such authority in their respective vehicles, so that the same may be must be carried in each vehicle operated under that authority and be available for inspection by authorized persons at all times.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-08, 49-18-19

69-03-01-09. Time requirement for filing evidence of insurance, bonds, and tariffs. Whenever When the issuance or transfer of a certificate is approved by the commission, the carrier shall have has sixty days to file the necessary evidence of insurance, bonds, and tariffs, as required by law, prior to the issuance of any certificate. A failure to comply with this section will be deemed is a waiver or and abandonment of the carrier's right to such certificate.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-26

69-03-01-10. Termination for nonrenewal. Any certificate or permit not properly renewed as required by North Dakota Century Code section 49-18-32 pursuant to this article on or before April fifteenth each year may be terminated and canceled by the commission giving upon notice of such termination or cancellation to the grantee or holder thereof.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-26, 49-18-32

69-03-01-13. Sale or transfer of certificates authority. No certificate or permit shall may be sold, transferred, assigned, or encumbered through acquisition of stock or otherwise without approval of the commission. An application Any party may apply to the commission for sale, assignment, or mortgage transfer or encumbrance of a certificate or permit, in good standing, may be made to the commission by any party interested, and must be accompanied by the. The original certificate or permit, with all current receipts attached thereto, to be held by the commission, pending decision must accompany the application.

History: Amended effective September 1, 1981; October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-26

69-03-01-14. Revocation for noncompliance. Failure on the part of any owner, driver, or operator of a motor vehicle After hearing, the commission may revoke a certificate or permit for failure to comply with the rules, regulations, and laws governing motor transportation will be sufficient cause for the commission, in its discretion, to revoke the certificate or permit after hearing upon due notice.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-07, 49-18-16, 49-18-17, 49-18-22, 49-18-24, 49-18-33

69-03-01-15. Vehicle inspection. The commission, or any of its officers, or employees, specifically designated, shall have the authority to or agents, may stop, at any place upon the public highways of North Dakota, and inspect any motor vehicle transporting persons or property, or both, for the purpose of inspection and determination as to whether or not to determine if the vehicle is being operated illegally legally.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-09, 49-18-19

Law Implemented: NDCC 49-18-45

69-03-01-16. Commercial zones. The transportation of persons and property by motor carrier within the commercial zone of each city in the state is exempt when not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone. A commercial zone shall be deemed to consist of Transportation solely within the commercial zone of a city is exempt from this chapter.
A commercial zone is:

1. The city itself, hereinafter called the base city-
("base city");
2. ~~All~~ cities which are Cities contiguous to the base city;
and
3. ~~All other~~ Other cities and ~~all~~ unincorporated areas ~~within~~
the state which are adjacent to the base city as follows:
 - a. When the base city has a population less than two thousand five hundred, all unincorporated areas within three miles [4.8 kilometers] of its corporate limits and all of any other city any part of which is within three miles [4.8 kilometers] of the corporate limits of the base city.
 - b. When the base city has a population of two thousand five hundred but less than twenty-five thousand, all unincorporated areas within four miles [6.4 kilometers] of its corporate limits and all of any other city any part of which is within four miles [6.4 kilometers] of the corporate limits of the base city.
 - c. When the base city has a population of twenty-five thousand or more, all unincorporated areas within six miles [9.6 kilometers] of its corporate limits and all of any other city any part of which is within six miles [9.6 kilometers] of the corporate limits of the base city.

History: Effective September 1, 1981; amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-02

69-03-02-01. Insurance minimums. The commission, ~~in its~~
~~discretion,~~ may require insurance coverage above the minimum amounts set forth in this chapter.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-33

69-03-02-02. Compliance required. No certificate or permit will be forwarded to the applicant until all insurance policies and bonds are filed with and ~~have the approval of~~ approved by the commission and the applicant complies with all other requirements of the law.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-33

69-03-02-03. Additional vehicles. ~~All additional~~ Additional vehicles placed in service must be covered by liability and property damage insurance, or bond, as required by law, and reported to the commission ~~before placing the vehicles in service, or within twenty-four hours thereafter~~ within twenty-four hours after placement. The report of additional vehicles must be accompanied by ~~a draft in the proper amount and form~~ the proper registration fee.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-32, 49-18-33

69-03-02-04. Minimum insurance - Carrier of property.

1. Each ~~common or contract~~ carrier of property authorized to transport hazardous materials (as defined by the United States secretary of transportation), oil or hazardous substances (as defined by the administrator of the environmental protection agency), or hazardous wastes (as defined by the administrator of the environmental protection agency) shall file and maintain evidence of insurance, guarantee, surety bond, or qualification as a self-insurer on each vehicle used for such transportation covering public liability, property damage, and environmental restoration in an amount not less than ~~such amount as the United States secretary of transportation prescribes pursuant to, or is required by,~~ the provisions of ~~section 30 of the Act of Congress entitled the Motor Carrier Act of 1980~~ {Pub. L. 96-296, 94 Stat. 793, 49 U.S.C. 10927} as amended.
2. Each ~~common or contract~~ carrier of property (except property referred to in subsection 1) or passengers shall file and maintain evidence of insurance, guarantee, surety bond, or qualification as a self-insurer on each vehicle used for such transportation covering public liability, property damage, and environmental restoration in an amount not less than five hundred thousand dollars. The security ~~shall~~ must be conditioned to pay all final judgments arising out of one accident recovered against such motor carrier for bodily injuries to, or the death of, any person resulting from the negligent operation, maintenance, or use of motor vehicles under the certificate or permit, or for loss or damage to property (except property referred to in subsection 3), or both.
3. Each ~~common or contract~~ carrier of property shall file and maintain insurance or a surety bond on each vehicle used for such transportation covering direct physical loss of or physical damage to property of a shipper or consignee placed in the possession of the carrier as the result of transportation provided pursuant to the carrier's certificate

or permit in an amount not less than ~~fifteen~~ ten thousand dollars. A carrier required by law to pay a shipper or consignee for loss, damage, or default for which a connecting motor carrier is responsible is subrogated, to the extent of the amount paid, to the rights of the shipper or consignee under any such security.

History: Amended effective January 1, 1982; October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-33

69-03-02-07. Period of effectiveness. All motor carrier insurance policies or surety bonds required by the commission ~~under the laws and rules governing motor transportation companies shall~~ must be so written that the policies or bonds will to continue in full force and effect unless and until canceled by fifteen days' written notice served on to the public service commission of North Dakota. The fifteen days' ~~written notice is to begin on~~ shall commence from the date written notice is actually received by the commission.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-33

69-03-03-01. Class A certificates Fees. A fee of one hundred fifty dollars will be required for application for a class A certificate of public convenience and necessity. For an extension or relocation of a class A certificate a fee of seventy-five dollars will be charged.

For the renewal of a class A certificate, a fee of one hundred dollars will be required. The following fees must accompany motor carrier filings with the commission:

<u>Application for or extension of operating authority</u>	<u>\$125.00</u>
<u>Renewal of certificate or permit</u>	<u>100.00</u>
<u>Tariff filings other than those necessitated by a commission order</u>	<u>50.00</u>
<u>Submittals intended to cause the commission to issue an order reinstating suspended or revoked authority</u>	<u>50.00</u>

History: Amended effective September 1, 1981; October 1, 1987.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-32

69-03-03-02. Special certificates. A fee of one hundred dollars will be required for application for a special certificate of public convenience and necessity. For an extension or relocation of a special certificate, a fee of fifty dollars will be charged.

For the renewal of a special certificate, a fee of seventy-five dollars will be required. Repealed effective October 1, 1987.

History: Amended effective September 1, 1981.
General Authority: NDCC 49-18-08
Law Implemented: NDCC 49-18-32

69-03-03-03. Contract permits. A fee of seventy-five dollars will be required for application for a contract permit. For an extension or relocation of a contract permit, a fee of fifty dollars will be charged.

For the renewal of a contract permit, a fee of fifty dollars will be required. Repealed effective October 1, 1987.

History: Amended effective September 1, 1981.
General Authority: NDCC 49-18-08
Law Implemented: NDCC 49-18-32

69-03-03-04. Duplicate certificate or permit. Application Requests for issuance of a duplicate certificate of public convenience and necessity, or permit, or official receipt must be accompanied by an affidavit of the owner thereof setting forth that a written statement indicating the original has been lost or destroyed.

History: Amended effective September 1, 1981; October 1, 1987.
General Authority: NDCC 49-18-08, 49-18-19
Law Implemented: NDCC 49-18-32

69-03-04-01. Class A carriers - Time schedule. At least one copy of a class A carrier's time schedule shall be posted in a conspicuous place, easily accessible for public inspection, at each station or regular stopping place on the line of route, and a copy shall be in the possession of each operator or driver. Class A motor freight and passenger carriers must adhere to time schedules as filed with the commission and posted for the information of the public. A copy of the schedule must be carried in each vehicle used to provide Class A service. Class A passenger carriers shall post schedules for public inspection in a conspicuous place at every regular stopping place.

History: Amended effective September 1, 1981; October 1, 1987.

General Authority: NDCC 49-18-08
Law Implemented: NDCC 49-18-08

69-03-04-02. Class A carriers - Changes in time schedules service. Changes in time schedule affecting the time of arrival or departure of any motor vehicle at any station or stopping place on its line or route, or which will affect, stopping place, or a reduction in the number of motor service vehicles operating over any line or route, or which will affect a reduction in the capacity of vehicle service rendered at any terminal or intermediate stop, must be made as follows: filed with the commission at least fifteen days before the proposed effective date. Proposed changes must be similarly posted at regular stopping places.

1. A new time schedule must be issued bearing bear the next consecutive number, and shall show reference refer to the number of the time schedule canceled thereby. Thus, if time schedule No. 1 is desired to be corrected changed, time schedule No. 2 shall must be issued, showing that it is canceling time schedule No. 1, as follows:

Time Schedule No. 2
Cancels
Time Schedule No. 1

2. Three copies of such time schedule shall be filed with the commission and notice must be given to the public by posting a copy in a conspicuous place at each station or stopping place affected at least fifteen days before the effective date thereof.
- 3- The commission may, on its own motion, or on the filing of a sufficient protest by any person or persons affected, order such the time schedule withdrawn, modified, or suspended.
4. 3. In case of actual emergency, or when real merit If good cause is shown, the commission may, in its discretion, permit such the time schedule to become effective on less than fifteen days' notice.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-08

69-03-04-03. Carriers of passengers - Interruption of service.

1. All interruptions of regular service, where such interruptions are likely to continue for more than twenty-four hours, shall must be promptly reported to the affected public along the route, with full a statement of the cause of such the interruption, and its probable duration.

2. When a bus run is terminated en route, the carrier must ~~do~~ all of the following:
 - a. Provide ~~or procure~~ alternate service, food, and shelter for its onboard passengers and provide feed and shelter for them until they are able to resume their journey.
 - b. Immediately notify all up-route depots of such cancellation the termination.
 - c. Provide ~~or procure~~ alternate service for all passengers who were waiting at depots to board the bus at the time of its cancellation termination and shelter them until it does.
3. Subsection 2 is mandatory when the run is terminated or delayed because of breakdown ~~or mechanical defect~~ of carrier's equipment and advisory when the run is terminated due to acts of God, acts of public enemy, or acts of public authority.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-08

69-03-04-05. Accommodations for handicapped, disabled, blind, and elderly.

1. **Transportation.** No carrier ~~shall~~ may deny transportation to any person on the basis of a handicap, physical disability, or blindness, or because that person cannot board the transportation vehicle without assistance. A guide or seeing-eye dog or other guide dog specially trained for that purpose shall must be provided free passage when accompanied by a blind handicapped person. Upon request by the carrier, guide dogs shall be muzzled so as to not constitute a hazard to other passengers.
2. **Assistance.** All carriers Carriers shall, when reasonable under existing transportation circumstances, provide assistance to reasonably assist handicapped, disabled, blind, and elderly passengers, in boarding transportation vehicles. Such assistance shall include all of the following Assistance includes:
 - a. Ensuring the stability of mobility devices, such as wheelchairs and walkers, of individuals during entering and exiting maneuvers.

- b. ~~Proper storing of~~ Storing mobility devices during travel.
 - c. Having ~~available~~ notepad and pencil available for communication with deaf.
 - d. Offering guide assistance to ~~proper~~ doorways ~~for the~~ blind.
 - e. ~~Advance~~ Offering advance boarding and seating, ~~when requested upon request~~.
 - f. Assisting in the use, on request, of terminal accommodations and baggage service.
3. ~~Notice. At all~~ All terminals ~~there~~ shall be prominently ~~displayed~~ display a notice stating where ~~and from whom~~ such assistance may be obtained.

History: Effective December 1, 1978; amended effective October 1, 1987.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-08

69-03-04-06. Provision for nonsmoking area.

- 1- All common motor carriers of passengers which desire to permit smoking of cigars, cigarettes, or pipes, shall provide a nonsmoking area, consisting of a number of seats in the front of the motor vehicle, of not less than twenty-five percent of the capacity of the vehicle. Smoking of cigars, cigarettes, or pipes shall not be permitted in the designated nonsmoking area of the motor vehicle, provided, however, that the provisions of this subsection shall not apply to charter operations performed by common motor carriers of passengers.
- 2- In the event of any unusual circumstances, the operator of the motor vehicle may exercise reasonable discretion to the extent permitted by the carrier, by making minor modification in the designation of the nonsmoking area in order to assure the comfort of all passengers and the provision of safe, adequate, and expeditious transportation service. Repealed effective October 1, 1987.

History: Effective July 1, 1983-

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-08

69-03-05-01. Records to be maintained. All motor transportation companies shall keep file in their main office, subject to inspection by the commission, a record of motor vehicles used, showing:

- 1- The complete description of each vehicle used-
- 2- The number of trips and to what point each of said vehicles was operated-
- 3- A statement showing miles traveled, gallons of gas and oil consumed, and cost of same, together with miscellaneous expenses-

Repealed effective October 1, 1987.

General Authority: NDEC 49-18-08, 49-18-19

Law Implemented: NDEC 49-18-08, 49-18-19

69-03-05-02. Uniform system prescribed. Accounts and statistics shall be kept in accordance with the uniform system of accounts for motor transportation companies prescribed by the commission. A copy of the uniform classification of accounts shall be secured from the commission by each motor transportation company:

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-08, 49-18-19

69-03-05-03. Filing. Each motor transportation company shall file with the commission on or before the fifteenth day of the fourth month following the close of its accounting year (calendar or fiscal) such report as the commission shall require covering each carrier shall file an annual report with the commission. The report must be in a form required by the commission and must cover the operation of the company during the preceding year. Reports not filed by the due date shall be deemed delinquent, and, unless the carrier may request for an extension of time for good cause. If no extension is granted, the commission will suspend the certificate or permit of the delinquent carrier and upon not less than. The certificate or permit of a delinquent carrier may be revoked by the commission after five days' notice, and, on opportunity to be heard, may revoke the certificate or permit.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-08, 49-18-19

69-03-05-04. Report of discontinuance. Each motor transportation company that discontinues operations for any reason during the year shall secure report blanks from the commission and make a report immediately following discontinuance covering its operations from the beginning of the calendar year or date that operations began to the date of discontinuance. Repealed effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19
Law Implemented: NDCC 49-18-08, 49-18-19

69-03-05-05. Daily trip records. Each motor transportation company carrier shall keep daily trip records, giving complete statistics. These records shall must be placed on file in the general office of the transportation company, in order that so the commission may ascertain at all times determine the amount of freight, express, or passengers transported and revenue derived therefrom, between any two or more points and for any period.

History: Amended effective October 1, 1987.
General Authority: NDCC 49-18-08, 49-18-19
Law Implemented: NDCC 49-18-08, 49-18-19

69-03-06-00.1. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Authorized carrier" means a person ~~or persons~~ authorized to engage in the transportation of property or passengers as a common or contract carrier under the provisions of North Dakota Century Code chapter 49-18.
2. "Lease" means a contract or arrangement in which the owner grants the use of a vehicle, with or without driver, for a specified period for use in the transportation of property or passenger, in exchange for compensation.
3. "Lessee" means in a lease, the party acquiring the use of a vehicle with or without driver, from another.
4. "Lessor" means in a lease, the party granting the use of a vehicle, with or without driver, to another.
5. "Owner" means a person:
 - a. To whom title to a vehicle has been issued;
 - b. Who, without title, has the right to exclusive use of a vehicle ~~for a period longer than thirty days~~; or
 - c. Who has lawful possession of a vehicle, registered and licensed in any state in the name of that person.

6. "Vehicle" means a self-propelled or motor-driven vehicle, operated by a common or contract motor carrier and used in the transportation of property or passengers for hire.

History: Effective September 1, 1981; amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-08, 49-18-19

69-03-06-01.1. General lease requirements. Unless otherwise provided by section 69-03-06-01.3 or 69-03-06-03, an authorized carrier may perform transportation with a vehicle it does not own only under the following conditions:

1. **Lease.** There ~~shall be~~ is a written lease granting the use of the vehicle and meeting the requirements ~~contained in~~ of section 69-03-06-01.2.
2. **Commission approval.** Three copies of the lease ~~must be~~ are filed with the commission. No lease will be valid unless ~~expressly~~ approved by the ~~motor carrier~~ transportation division of the ~~public service~~ commission.
3. **Insurance.** Every leased vehicle ~~subject to a lease~~ shall be is covered by insurance in amounts not less than those ~~prescribed set~~ in chapter 69-03-02, and evidence of which ~~must be~~ is filed with the commission.
4. **Identification.** During the period of the lease there ~~shall be~~ is displayed on both sides of each vehicle, identification signs showing the name, ~~or trade name,~~ of the motor carrier under whose authority the vehicle is being operated, and the carrier's address. The identification signs shall be ~~readably~~ legible, during daylight hours, from a distance of fifty feet [15.24 meters] while the vehicle is not in motion, and ~~such signs~~ maintained as to remain ~~so~~ legible.
5. **Operation records.** An authorized carrier leasing a vehicle ~~pursuant to~~ under this chapter shall be prepared at any time it seeks to change its rates and charges, to submit evidence of the cost of operating the vehicle while leased to the carrier over the most recent twelve-month period.

History: Effective September 1, 1981; amended effective July 1, 1983; October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-08, 49-18-19, 49-18-39.1

69-03-06-01.2. Written lease requirements. The written lease required under sections 69-03-06-01.1 and 69-03-06-01.3 ~~shall~~ must provide for the following:

1. **Parties.** The lease ~~shall~~ must be made between the authorized carrier and the owner of the vehicle. The lease ~~shall~~ must be signed by these parties or by their authorized representatives.
2. **Duration to be specific.** The lease ~~shall~~ must specify the time and date or the circumstances on which the lease begins and ends.
3. **Exclusive possession and responsibilities.** The lease ~~shall~~ must provide that the authorized carrier lessee shall have exclusive possession, control, and use of the vehicle for the duration of the lease. The lease ~~shall~~ must further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the vehicle for the duration of the lease.
4. **Compensation to be specific.** The amount to be paid by the authorized carrier for the vehicle and drivers' services ~~shall~~ must be ~~clearly~~ stated on the face of in the lease or in an addendum which is attached to the lease. The amount to be paid may be expressed as a percentage of gross revenue, a flat rate per mile {1.61 kilometers}, a variable rate depending on the direction traveled or the type of commodity transported, or by any other method of compensation mutually agreed upon by the parties to the lease. The compensation stated on the lease or in the attached addendum may apply to the vehicle and drivers' services either separately or as a combined amount.
5. **Items specific in lease.** The lease ~~shall~~ clearly must specify the responsibility of each party with respect to the cost of fuel, fuel taxes, empty mileage, permits of all types, detention and accessorial services, base plates and licenses, and any unused portions of such items.
6. **Lessee responsible.** The lessee, under the terms of the lease, must be responsible for all claims for damages ~~or otherwise~~ arising out of the use of the vehicle and for the lawful operation thereof.
7. **Insurance.** The lease ~~shall~~ must clearly specify the obligation of the authorized carrier to maintain insurance coverage for the protection of the public and shippers pursuant to chapter 69-03-02. The lease ~~shall~~ must further specify who is responsible for providing any other insurance coverage for the operation of the lease vehicle.

History: Effective September 1, 1981; amended effective July 1, 1983; October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-08, 49-18-19, 49-18-39.1

69-03-06-01.3. Short-term lease requirements. A carrier need not comply with the requirements of section 69-03-06-01.1 where transportation with a leased vehicle is performed pursuant to a lease of not more than thirty days' duration and where the following conditions are met:

1. **Lease.** There ~~shall~~ must be a written lease granting the use of the vehicle and meeting the requirements contained in section 69-03-06-01.2.
2. **Insurance.** Every vehicle subject to a lease ~~shall~~ must be covered by insurance in amounts not less than those prescribed in chapter 69-03-02.
3. **Identification.** During the period of the lease there ~~shall~~ must be displayed on both sides of each vehicle, identification signs showing the name, ~~or trade name,~~ of the motor carrier under whose authority the vehicle is being operated, and the carrier's address. The identification signs ~~shall~~ must be legible, during daylight hours, from a distance of fifty feet [15.24 meters] while the vehicle is not in motion, and such signs maintained as to remain legible.
4. **Identification permit.** The carrier shall complete and issue for the leased vehicle a temporary identification certificate secured from the commission which ~~shall~~ must be carried in the vehicle at all times while it is under lease. A copy of each temporary identification certificate ~~shall~~ must be returned to the commission within five days after issuance along with a signed copy of the written lease.

History: Effective July 1, 1983; amended effective September 1, 1985; October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-08, 49-18-09, 49-18-39.1, 49-18-41

69-03-06-03. Lease requirements - Exemptions. The provisions of this chapter ~~shall~~ do not apply to:

1. Equipment leased by an authorized carrier from an individual or corporation whose business is the leasing of equipment with or without drivers for compensation.
2. Equipment used in transportation performed ~~wholly~~ within a commercial zone in the state as determined by the commission.
3. Equipment leased for use in an emergency, with or without drivers, but only for the period of the emergency. A full description of the circumstances considered as meeting the definition of an emergency, the reason equipment was leased or rented not in accordance with this chapter, and a complete

description of the equipment and name or names of drivers must be filed with the commission.

4. Equipment used in transportation performed pursuant to any plan of operation specifically approved by the commission.

History: Amended effective September 1, 1981; October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-08, 49-18-19

69-03-11-01. Definitions. As used in this chapter, unless otherwise clearly apparent from the context:

1. ~~"Commission" means the public service commission of North Dakota.~~
2. "Motor carrier" means a motor carrier of passengers or property holding operating authority issued by the interstate commerce commission (ICC).
2. "Motor carrier domiciled in North Dakota" means any motor carrier whose principal place of business is located within the borders of North Dakota.
3. "Vehicle" means a self-propelled or motor driven vehicle operated by a motor carrier under authority issued by the interstate commerce commission.
4. "NARUC" means national association of regulatory utility commissioners.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19; 49 USC 302(b); 49 CFR 1023

69-03-11-02. Operations within borders of state. ~~Whenever this chapter refers to~~ In this chapter, operations "within the borders" of this state, ~~such operations shall be deemed to~~ include interstate operations to, from, within, or traversing the state of North Dakota.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19; 49 USC 302(b); 49 CFR 1023

69-03-11-03. When registration required. A motor carrier ~~shall~~ may not operate within the borders of North Dakota until ~~there shall~~ have been filed it registers its interstate commerce commission

authority with and approved by the commission an application for the registration of its authority issued by the interstate commerce commission and there shall have been a compliance and complies with all other requirements of this chapter. However, a motor carrier need only file that portion of its authority permitting operations within the borders of North Dakota, and a motor carrier shall need not be required to file an emergency or temporary authority having a duration of ninety consecutive days or less if such the carrier has done all of the following:

1. Registered its other authority and identified its vehicles under the provisions of this chapter.
2. Furnished the commission with a telegram or other written communication describing such the emergency or temporary operating authority and stating that operation thereunder shall be in full accord will comply with the requirements of this chapter.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19; 49 USC 302(b); 49 CFR 1023

69-03-11-04. Form and execution of application Registration of authority. The application for the registration of such A carrier's new or amended operating authority shall must be in the form registered as prescribed by the commission. The application shall be duly completed and executed by an official of the motor carrier. A carrier's initial filing must be accompanied by a fee of twenty-five dollars. Amendments must be accompanied by a fee of ten dollars.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19; 49 USC 302(b); 49 CFR 1023

69-03-11-05. Filing of application - Amended applications. The application for the registration of such operating authority shall be filed in duplicate with the commission. The original, to which the copy of the interstate commerce commission operating authority shall be attached, shall be retained by the commission. The other copy of the application or an acknowledgment shall be transmitted to the motor carrier when the application is approved by the commission. The application shall be accompanied by a fee of twenty-five dollars. An application involving an amendment or addition to the interstate commerce commission operating authority shall be accompanied by a fee of ten dollars. Repealed effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19
Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19,
49 USC 302(b), 49 CFR 1023

69-03-11-06. Prior registration. A motor carrier need not register under the provisions of this chapter any authority issued by the interstate commerce commission permitting operation within the borders of North Dakota, when the same which was properly registered with the commission at the time this chapter became effective.

History: Amended effective October 1, 1987.
General Authority: NDCC 49-18-08, 49-18-19
Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19; 49 USC 302(b);
49 CFR 1023

69-03-11-07. When designation required Local agents. A An interstate commerce commission motor carrier shall not engage in interstate or foreign commerce within the borders of this state unless and until there shall have been filed with and accepted by the commission a currently effective designation of must have a local agent for service of process. This agent's name and address must be filed with the commission.

History: Amended effective October 1, 1987.
General Authority: NDCC 49-18-08, 49-18-19
Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19; 49 USC 302(b);
49 CFR 1023

69-03-11-08. Filing of designation. The motor carrier shall file such designation of a local agent for service of process with the commission by showing the name and address of such agent on the uniform application for registration for interstate operating authority or by furnishing the commission with a true copy of the designation of such agent filed with the interstate commerce commission. Repealed effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19
Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19,
49 USC 302(b), 49 CFR 1023

69-03-11-09. Registration and identification.

1. On or before the thirty-first day of January of each calendar year, but not earlier than the preceding first day of November Annually, after October 1 and before February 1, motor carriers shall apply submit stamp applications to the commission for the

issuance of an requesting identification stamp or stamps for the registration and identification of the vehicle or vehicles which it intends they intend to operate within the borders of this state during the ensuing year. The motor carrier may apply for such number of stamps as is sufficient to cover its vehicles which it anticipates will be placed in operation or conducted during the period for which the stamps are effective. The motor carrier Motor carriers may thereafter file one or more supplemental applications for additional stamps if the need therefor arises or is anticipated. The application must be in a form prescribed by the commission and accompanied by the nonrefundable statutory fee.

2. If the commission determines that the motor carrier has complied with all applicable the provisions of this chapter, the commission shall issue to the motor carrier the number of identification stamps requested.
3. An identification stamp issued under the provisions of this chapter shall must be used for the purpose of registering and identifying a vehicle as being operated by a motor carrier under authority issued by the interstate commerce commission, and shall not be used for the purpose of distinguishing between the vehicles operated by the same motor carrier. A motor carrier receiving an identification stamp under the provisions of this chapter shall may not knowingly permit the use of same the stamp by any other person or organization.
- 4- On or before the thirty-first day of January in each calendar year, but not earlier than the preceding first day of November, such motor carrier shall apply to the national association of regulatory utility commissioners for the issuance of a sufficient supply of uniform identification cab cards for use in connection with the registration and identification of the vehicle or vehicles which it intends to operate within the borders of this state during the ensuing year.
- 5- The national association of regulatory utility commissioners shall issue to the motor carrier the number of cab cards requested. A motor carrier receiving a cab card under the provisions of this chapter shall not knowingly permit the use of same by any other person or organization. Prior to operating a vehicle within the borders of this state during the ensuing year, the motor carrier shall place one of such identification stamps on the back of a cab card in the square bearing the name of this state in such a manner that the same

cannot be removed without defacing it. The motor carrier shall thereupon duly complete and execute the form of certificate printed, on the front of the cab card so as to identify itself and such vehicle and shall enter the appropriate expiration date in the space provided below the certificate. The expiration date shall be within a period of fifteen months from the date cab card is executed and shall not be later in time than the expiration date of any identification stamp placed on the back thereof.

- 6- The registration and identification of a vehicle under the provisions of this chapter and the identification stamp evidencing same and the cab card prepared therefor shall become void on the first day of February in the succeeding calendar year, unless such registration is terminated prior thereto.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19, 49-18-41.1

Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19; 49 USC 302(b); 49 CFR 1023

69-03-11-09.1. Cab cards.

1. Annually, after October 1 and before February 1, motor carriers shall apply to the national association of regulatory utility commissioners (NARUC) for the issuance of cab cards for use in connection with the registration and identification of vehicles they intend to operate within this state during the ensuing year.
2. The cab card must be maintained in the cab of the vehicle for which issued whenever the vehicle is operated under the authority of the carrier identified in the cab card. The cab card may not be used for any vehicle except the vehicle for which it was originally issued. A motor carrier may not prepare two or more cab cards which are effective for the same vehicle at the same time.
3. A cab card must, upon demand, be presented by the driver to any authorized government personnel for inspection.
4. The national association of regulatory utility commissioners (NARUC) shall issue motor carriers the number of cab cards requested. Prior to operating a vehicle within the borders of this state during the ensuing year, the motor carrier shall place an identification on the back of each cab card in the square bearing the name of this state in such a manner that the stamp cannot be removed without defacing the cab card.

The motor carrier shall complete and execute the cab card. The expiration date must be within a period of fifteen months from the date the card is executed and may not be later in time than the expiration date of any identification stamp placed on the back thereof.

5. The registration and identification of a vehicle under this chapter shall expire on February first in the succeeding calendar year, unless the registration is terminated earlier.

History: Effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19, 49-18-41.1

Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19; 49 USC 302(b); 49 CFR 1023

69-03-11-10. Form and execution of application for identification stamps. The application for the issuance of such identification stamps shall be in the form prescribed by the commission. The application shall be completed and executed by an official of the motor carrier, and shall be accompanied by a nonrefundable fee of five dollars for the issuance of each such identification stamp. However, the fee for a motor carrier domiciled in North Dakota shall be a nonrefundable fee of two dollars. Repealed effective October 1, 1987.

History: Amended effective September 1, 1981.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19, 49 USC 302(b), 49 CFR 1023

69-03-11-11. Execution of application for cab card. The application for the issuance of cab cards shall be duly executed by an official of the motor carrier. Repealed effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19, 49 USC 302(b), 49 CFR 1023

69-03-11-12. Form of identification stamp. An identification stamp issued under the provisions of this chapter by the commission shall bear its name, the year for which it was issued and the geographical outline of the state of North Dakota. In addition, such stamp shall bear the expiration date of the "first day of February in the succeeding calendar year". The stamp shall be in the shape of a square and shall not exceed one inch {2.54 centimeters} in diameter. Repealed effective October 1, 1987.

General Authority: NDEC 49-18-08, 49-18-19
Law Implemented: NDEC 49-18-05, 49-18-08, 49-18-19,
49 USC 302(b), 49 CFR 1023

69-03-11-13. Form of cab card. The cab card shall be in the form prescribed by the commission, and shall bear the seal of the national association of regulatory utility commissioners. The cab card shall be printed on a rectangular card eleven inches {27.94 centimeters} in height and eight and one-half inches {21.59 centimeters} in width. Repealed effective October 1, 1987.

General Authority: NDEC 49-18-08, 49-18-19
Law Implemented: NDEC 49-18-05, 49-18-08, 49-18-19,
49 USC 302(b), 49 CFR 1023

69-03-11-14. Use of cab cards. The cab card shall be maintained in the cab of such vehicle for which prepared whenever the vehicle is operated under the authority of the carrier identified in the cab card. The cab card shall not be used for any vehicle except the vehicle for which it was originally prepared. A motor carrier shall not prepare two or more cab cards which are effective for the same vehicle at the same time. Repealed effective October 1, 1987.

General Authority: NDEC 49-18-08, 49-18-19
Law Implemented: NDEC 49-18-05, 49-18-08, 49-18-19,
49 USC 302(b), 49 CFR 1023

69-03-11-15. Inspection of cab card. A cab card shall, upon demand, be presented by the driver to any authorized government personnel for inspection. Repealed effective October 1, 1987.

General Authority: NDEC 49-18-08, 49-18-19
Law Implemented: NDEC 49-18-05, 49-18-08, 49-18-19,
49 USC 302(b), 49 CFR 1023

69-03-11-16. Destruction of cab cards - Transfer.

1. Each motor carrier shall destroy a cab card immediately upon its expiration, except as otherwise provided in the ~~proviso to~~ subsection 2.
2. A motor carrier permanently discontinuing the use of a vehicle, for which a cab card has been ~~prepared~~ issued, shall nullify the cab card at the time of ~~such~~ the discontinuance. However, if ~~such~~ the discontinuance results from destruction, loss, or transfer of ownership of a vehicle

owned by such carrier and such and the carrier provides acquires a newly acquired substitute vehicle in substitution therefor within thirty days of the date of such discontinuance, each identification stamp and number placed on the cab card prepared for such the discontinued vehicle, if such the card is still in the possession of the carrier, may be transferred to the substitute vehicle by compliance with the following procedure:

- a. The motor carrier shall ~~duly~~ complete and ~~execute~~ the form of certificate printed on the front of a new cab card, ~~so as~~ to identify itself and the substitute vehicle and shall enter the appropriate expiration date in the space provided ~~below such~~ on the certificate.
- b. The motor carrier shall indicate the date it terminated use of the discontinued vehicle by entering ~~same~~ it in the space provided for an early expiration date which appears below the certificate of the cab card prepared for the vehicle.
- c. The motor carrier shall affix the cab card prepared for the substitute vehicle to the front of the cab card prepared for the discontinued vehicle, by permanently attaching the upper left-hand corners of both cards together in such a manner as to permit inspection of the contents of both cards, and thereupon, each identification stamp or number appearing on the back of the card prepared for the discontinued vehicle shall be deemed to apply to the operation of the substitute vehicle.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19; 49 USC 302(b); 49 CFR 1023

69-03-11-17. Alteration of cab card - Replacement. Any erasure, improper alteration, or unauthorized use of a cab card shall render it void. If a cab card is lost, destroyed, ~~mutilated~~, or becomes illegible, a new cab card may be prepared and new identification stamps may be issued ~~therefor~~ upon application by the motor carrier and ~~upon~~ on payment of the same fee prescribed for the original issuance ~~thereof, if any.~~

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19; 49 USC 302(b); 49 CFR 1023

69-03-11-18. Interim operations. If the commission fails to act upon a filing made under this chapter within thirty days after receipt

of the filing, the motor carrier for whose benefit the filing was made may begin operation within ~~the borders of~~ this state in such the manner as would have been otherwise authorized if the filing has been acted upon favorably by the commission within the period of thirty days. The motor carrier may continue such the operations under the provisions of this section until such time as the commission acts upon the filing.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19; 49 USC 302(b); 49 CFR 1023

69-03-11-19. **Reproduction of form.** In order to achieve complete uniformity in the reproduction of the uniform identification cab card, the national association of regulatory utility commissioners ~~shall~~ (NARUC) may reproduce and supply an adequate quantity of such the form for use under the provisions of this chapter. No person or organization, other than the national association of regulatory utility commissioners ~~shall~~ (NARUC), may reproduce such the form for use under the provisions of this chapter, and any such form reproduced by such an authorized unauthenticated person or organization is **hereby declared to be void.**

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19; 49 USC 302(b); 49 CFR 1023

69-03-11-20. **Completion of forms.** A typewriter or indelible ink ~~shall~~ be used in entering information in the blank spaces appearing on forms prepared under the provisions of this chapter. Information entered on forms prepared under this chapter must legible.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19; 49 USC 302(b); 49 CFR 1023

69-03-14-01. **Substitute uses of motor vehicle.** Whenever any motor vehicle other than a bus is used to perform the functions normally performed by a bus, the regulations pertaining to buses and to the transportation of passengers shall apply to that motor vehicle and to its operation as though it were a bus, except with respect to vehicles operated by a motor carrier to transport its employees to and from their place of work in the regular course of the carrier's business. Likewise, whenever any motor vehicle of one type is used to perform the functions normally performed

by a motor vehicle of another type, the requirements of chapters 69-03-01 through 69-03-13 shall apply to that motor vehicle and to its operations in the same manner as though such motor vehicle were actually a motor vehicle of the other type. Repealed effective October 1, 1987.

History: Effective October 1, 1979.

General Authority: NDCC 49-18-46

Law Implemented: NDCC 49-18-46

69-04-01-01. Common motor carrier tariffs. Each common motor carrier of property or passengers must file a tariff setting forth its rates and rules for approval by the commission before commencing operations.

History: Amended effective September 1, 1985; October 1, 1987.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-08, 49-18-18

69-04-01-04. Collection of charges.

1. All tariff charges earned by a licensed carrier, in accordance with the schedules of rates applicable, must be paid and collected in legal tender upon delivery of freight unless appropriate credit arrangements are made in advance.
2. In no instance shall may credit be extended beyond a period of fifteen calendar days. When the freight bill covering a shipment is presented to the shipper on or before the date of delivery, the credit period shall run from the first twelve midnight following delivery of freight. When the freight bill is not presented to the shipper on or before the date of delivery, the credit period shall run from the first twelve midnight following the presentation of the freight bill.
3. Where a common carrier by motor vehicle has relinquished possession of freight and collected the amount of tariff charges represented in the freight bill presented by it as the total amount of such charges, and another freight bill for additional charges is thereafter presented to the shipper, the carrier may extend credit in the amount of such additional charges for a period of thirty calendar days, to be computed from the first twelve midnight following the presentation of the subsequently presented freight bill.
4. Freight bills for all transportation charges shall must be presented to the shippers within seven days from the first twelve midnight following delivery of freight.

5. Shippers may elect to have their freight bills presented by means of the United States mails and, when the mail service is so used, the mail. The postmarked time of mailing by the carrier shall be deemed to be the time of presentation of the bills. In case of dispute as to the time of mailing, the postmark shall be accepted as showing such time.
6. The Shipper mailing by the shipper of valid checks, drafts, or money orders, which are of satisfactory to the carrier, in payment of freight charges within the credit period allowed such shipper, may be deemed to be the collection of the tariff charges within the credit period for the purpose of this chapter. In case of dispute as to the time of mailing, the The postmark shall be accepted as showing such determine mailing time.

History: Amended effective July 1, 1983; October 1, 1987.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-08

69-04-01-05. Bill of lading required.

1. All licensed common or contract carriers transporting property for hire in vehicles over the highways of the state are required to use generally accepted bills of lading or shipping bills, a copy of any bill of lading, shipping bill, or receipt proposed to be used shall be approved by the commission before being placed in use.
2. All shipping bills, bills of lading and receipts are to be in triplicate, the original to be given to the shipper, the duplicate to be taken by the carrier and upon delivery of goods to be signed by the receiver of the goods and returned to the office of the carrier and filed as a part of its permanent records, and the triplicate to be signed by the carrier and delivered to the receiver of the goods.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-08, 49-18-19

69-04-01-06. Tariffs generally - Available to subscribers.

1. Tariffs or supplements filed with the commission shall must comply with all laws, rules, and orders applicable thereto, and any tariff or supplement or part thereof. Any filing not so complying in compliance shall be of no force and effect as of a date to be determined by the commission. Except as otherwise authorized in

subsection 2, one copy of each new tariff, supplement, and looseleaf page must be transmitted to each subscriber ~~thereto~~ by first-class mail (or other means requested in writing by the subscriber) not later than the time the official copies for official filing are transmitted to the commission.

2. If a new tariff, supplement, or looseleaf page is filed under an authority ~~from the commission~~ to publish and file ~~without~~ on less than statutory notice ~~or on notice of less than ten days~~, subsection 1 need not be complied with as to such publication if it cannot be ~~or compliance~~ would cause excessive delay, but one copy of such publication must be transmitted to each subscriber ~~thereto~~ by first-class mail (or other means requested in writing by the subscriber) within five calendar days, ~~starting with the calendar day following that on which the copies for official filing are transmitted to the commission.~~

~~Included in this exception are supplements issued for the purpose of announcing suspensions made by the commission, publications (published in the name of a carrier only) announcing adoptions, and publications reproducing service orders.~~

3. Expedited mailing service, ~~when transmitting one copy of each publication~~ must be provided to each subscriber requesting it. The cost of this service may be passed on to the subscriber.
4. Carriers and agents shall furnish without delay one copy of any of their tariff publications, effective or published but not yet effective, to any person upon reasonable request ~~therefor~~ at a reasonable charge not to exceed that assessed a subscriber.
5. As used in this section, "subscriber" means a party who ~~voluntarily or upon reasonable request is furnished at least one copy of requests to be placed on a mailing list to receive copies of a particular tariff and amendments thereto (including reissues thereof) by the publishing carrier or agent.~~ The term does not, however, pertain to requests for a copy ~~or copies~~ of a tariff without a request for future amendments thereto.

History: Amended effective July 1, 1983; September 1, 1985; October 1, 1987.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-08

69-04-01-07. Format. All tariffs and supplements ~~thereto~~ must be in book, pamphlet, or looseleaf form of size eight by eleven or eight

and one-half by eleven inches [20.32 by 27.94 or 21.59 by 27.94 centimeters]. They must be plainly ~~printed, mimeographed, planographed, stereotyped, or~~ reproduced by other similar durable process on paper of good quality. No alteration in writing or erasure ~~shall~~ may be made on any tariff or supplement ~~thereto~~. A margin of not less than one-half inch [12.7 millimeters] without any printing thereon must be allowed at the binding edge of each tariff and supplement.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-08

69-04-01-08. Filing of tariffs and petitions to suspend. All tariffs and supplements must be filed and posted at least thirty days prior to the effective date thereof, unless otherwise authorized by the commission. ~~Petitions to suspend tariffs or supplements shall be filed at least fifteen days before the same shall otherwise become effective.~~

History: Amended effective July 1, 1983; October 1, 1987.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-08

69-04-01-09. Transmittal. Issuing carriers Each issuing carrier or ~~their~~ its agent, as defined in section 69-04-01-22, shall transmit to the commission one copy of each tariff, supplement, or revised page. If verification of receipt ~~of the tariff~~ is desired, the carrier or agent must request verification in its transmittal letter and provide a self-addressed stamped envelope ~~for mailing the verification.~~

History: Amended effective September 1, 1985; October 1, 1987.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-08

69-04-01-13. General contents. All tariffs ~~shall~~ must also contain:

1. A brief description of the territories ~~in which~~ or points to ~~or between~~ which the tariff applies.
2. Date of issue ~~or~~ and date effective.
3. Name, title, and street address of officer or agent by whom the tariff is issued.
4. Explanation of all abbreviations, symbols, and reference marks used in the tariff.

History: Amended effective October 1, 1987.
General Authority: NDCC 49-18-08
Law Implemented: NDCC 49-18-08

69-04-01-14. Class tariffs. When a tariff names rates by classes, a classification of articles must be published in the tariff or in a separate tariff. When a classification is published in a separate tariff, reference to the classification tariff must be made ~~there~~ on the title page of the rate tariff as follows.

Governed, except as otherwise provided herein, by the
(here name) classification (showing issuing agent)
N-D-P-S-C. No- _____ supplements to or successive
issues thereof.

History: Amended effective October 1, 1987.
General Authority: NDCC 49-18-08
Law Implemented: NDCC 49-18-08

69-04-01-15. Table of rates. All transportation and accessorial rates must be explicitly stated in cents or in dollars and cents, per one hundred pounds {45.36 kilograms}, per mile {1.61 kilometers}, per ton of two thousand pounds {907.18 kilograms}, per ton of two thousand two hundred forty pounds {1,016.05 kilograms}, per truckload, of stated amount, or other some definable measure; except that loading, unloading, or accessorial services may be based on hourly rates and transportation rates may be based on a cubic footing {metering} basis where there are no adequate scales available at origin, destination, or en route (i.e. per pound, per gallon, per hour).

History: Amended effective October 1, 1987.
General Authority: NDCC 49-18-08
Law Implemented: NDCC 49-18-08

69-04-01-16. Notation of changes. All tariffs, supplements, and revised pages ~~shall~~ must indicate changes from preceding issues by use of the following commonly used symbols such as:

- (R) to denote reductions,
- (A) to denote increases,
- (C) to denote changes, the result of which is neither an increase nor a reduction.

The proper symbol must be shown directly in connection with each change.

History: Amended effective October 1, 1987.
General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-08

69-04-01-17. **Availability to public.** Each carrier must ~~keep and file~~ have copies of all applicable tariffs and schedules at each of its stations or offices ~~at which an exclusive agent is employed all of the tariffs or schedules applying from, or at, such station or office~~ and must also keep and file at its principal place of business all of its tariffs or schedules. All tariffs or schedules must be kept available for public inspection ~~or examination~~ at all reasonable hours. Carriers of passengers must also have placards on their buses showing ~~the~~ present and proposed fares, if any, and scheduled effective date thereof.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-08

69-04-01-21. **Short notice reference.** When permission has been granted to publish ~~tariffs~~ changes ~~in a tariff or tariffs~~ on less than thirty days' notice, the tariff or supplement containing such changes ~~shall~~ must contain a reference to the authority ~~of the commission pursuant to~~ under which such changes were published.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-08

69-04-01-22. **Publishing agent.** Whenever a carrier desires to give authority to an agent to publish and file all or part of the tariffs and supplements in which such carrier it participates, this may be accomplished by issuing the carrier must issue an appropriate power of attorney ~~in favor of such agent. The powers of attorney issued may limit the authority of the agent to publication of such rates, rules, or regulations as the carrier deems proper, or it may be unlimited in scope.~~

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-08

69-04-01-23. **Agent powers of attorney to be filed.** Copies of powers of attorney ~~issued by a carrier~~ must be filed with the commission and shall remain in effect until revoked, ~~by proper notice of revocation, a copy of which must also be filed with the commission and the commission notified, in writing.~~ Powers of attorney issued pursuant to this section ~~shall~~ must contain reference to the authority under which the issuing carrier operates.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-18-08
Law Implemented: NDCC 49-18-08

69-04-01-24. Assent and concurrence to other carrier's tariff. In instances where a carrier desires to assent to and concur in the publication and filing of a tariff by another carrier, the assent and concurrence should be reduced to writing and a copy of same furnished the commission. The assent or concurrence shall remain in full force and effect until the authority is revoked. A copy of the official notice of revocation must be filed with the commission. Repealed effective October 1, 1987.

General Authority: NDCC 49-18-08
Law Implemented: NDCC 49-18-08

69-04-01-25. C.O.D. remittances. Upon collection of a cash on delivery bill, the carrier collecting shall remit each cash on delivery collection payment directly to the consignor or other person designated by the consignor as payee, promptly and or its designee within ten days after delivery of the cash on delivery shipment to the consignee. Any carrier fee charged for remitting a cash on delivery collection to the consignor or other person designated by the consignor as payee shall designee must be published with in the tariff. If the cash on delivery shipment moved in interline service, the delivering carrier shall notify the originating carrier of the transmittal of the cash on delivery collection to the consignor or payee.

History: Amended effective October 1, 1987.
General Authority: NDCC 49-18-08
Law Implemented: NDCC 49-18-08

69-04-02-01. Applicability of chapter. This chapter governs the processing of claims for loss, damage, injury, or delay to property transported or accepted for transportation in intrastate commerce by each railroad, express company, motor carrier, water carrier, and freight forwarder (hereinafter called carrier), noncontract carrier subject to the public service commission of North Dakota jurisdiction.

History: Amended effective October 1, 1987.
General Authority: NDCC 49-02-04
Law Implemented: NDCC 49-02-04, 49-10.1-03, 49-18-08

69-04-02-02. Filing of claims.

1. Claims in writing required. A claim for loss or damage to baggage or for loss, damage, injury, or delay to

charge shall not be voluntarily paid by a carrier unless filed in writing, as provided in subsection 2. Loss and damage claims must be filed in writing with the receiving or delivering carrier, or carrier issuing the bill of lading, receipt, ticket, or baggage check, or carrier on whose line the alleged loss, damage, injury, or delay occurred. Claims must be filed within the specified applicable time limits applicable thereto and as otherwise may be required, specified by law, the terms of the bill of lading or other rule, contract of carriage, and all or applicable tariff provisions applicable thereto.

2. **Minimum filing requirements.** A communication in writing from a claimant, written claim must be filed with a proper carrier within nine months after delivery or, in the case of nondelivery, then within six months after a reasonable time for delivery has elapsed, and. The claim must (a) containing contain facts sufficient to identify the baggage or shipment (or shipments) of property involved, (b) asserting assert liability for alleged loss, damage, injury, or delay, and (c) making make claim for the payment of a specified or determinable amount of money, shall be considered as sufficient compliance with the provisions for filing claims embraced in the bill of lading or other contract of carriage.
3. **Documents not constituting claims.** Bad order reports, appraisal reports of damage, notations of shortage or damage, or both, on freight bills, delivery receipts, or other documents, or inspection reports issued by carriers or their inspection agencies, whether the extent of loss or damage is indicated in dollars and cents or otherwise, shall, standing alone, may not be considered by carriers as sufficient to comply with the minimum claim filing requirements specified in subsection 2. These items, however, may be used as supporting documents.
4. **Claims filed for uncertain amounts.** Whenever a claim is presented against a proper carrier for an uncertain amount, such as "one hundred dollars more or less", the carrier against whom such claim is filed shall determine the condition of the baggage or shipment involved at the time of delivery by it, if it was delivered, and shall ascertain as nearly as possible the extent, if any, of the loss or damage for which it may be responsible. It shall not, however, voluntarily pay a claim under such circumstances unless and until a formal claim in writing for a specified or determinable amount of money shall have been filed in accordance with the provisions of subsection 2.

5- Other claims. If investigation of a claim develops shows that one or more other carriers has been presented with a similar claim on the same shipment, the carrier investigating the claim carriers shall communicate with each other carrier and prior to any agreement entered into between or among them as to the proper disposition of such claim or lapping claims and shall require further substantiation, on the part of each claimant of the claimant's title to the property involved or the claimant's right with respect to the claim to determine each party's rights and obligations.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-02-04, 49-10.1-03, 49-18-08

69-04-02-03. Acknowledgment of claims.

1. Each carrier shall, upon receipt in writing of a proper claim in the manner and form described in this chapter, Carriers shall acknowledge the receipt of the claim claims in writing to the claimant within thirty days after the date of its receipt by the carrier unless the carrier shall have has already paid or declined the claim in writing within thirty days of the receipt thereof. The carrier shall indicate in its acknowledgment to the claimant what, if any, additional documentary evidence or other pertinent information may be required by it further to process the claim as its preliminary examination of the claim, as filed, may have revealed.
2. ~~The~~ When a claim is received, the carrier shall at the time each claim is received create a separate file and to maintain all related documents, assign thereto a successive the claim a file number, and note that number on all related documents filed in support of the claim and all records and correspondence with respect to the claim, including the written acknowledgment of receipt and, if in its possession, the shipping order and delivery receipt, if any, covering the shipment involved. At the time the claim is received the carrier shall cause the date of receipt to be recorded on the face of the claim document, and the. The date of receipt shall must also appear in the carrier's written acknowledgment of receipt to the claimant.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-02-04, 49-10.1-03, 49-18-08

69-04-02-04. Investigation of claims.

1. Prompt investigation required. Each claim filed against a carrier in the manner prescribed herein shall must be promptly and thoroughly investigated if investigation has not already been made prior to receipt of the claim.
2. Supporting documents. When a necessary part of an investigation, each Each claim shall must be supported by the original bill of lading, as evidence of the freight charges, if any, and either the original invoice, a photographic copy of the original invoice or an exact copy thereof, or an extract made therefrom certified by the claimant to be true and correct with respect to the property and value involved in the claim, or certification of prices or values, with trade or other discounts, allowance, or deductions of any nature whatsoever and the terms thereof, or depreciation reflected thereon. However, where the property involved in a claim has not been invoiced to the consignee shown on the bill of lading or where an invoice does not show price or value, or where the property involved has not been sold, or where the property has been transferred at bookkeeping values only, the carrier shall, before voluntarily paying a claim thereon, require the claimant to establish the destination value of the quantity shipped, transported, or involved and to certify the correctness thereof in writing or some other documentation of the cost or value of the lost or damaged freight.
3. Verification of loss. A prerequisite to the voluntary payment by a carrier of a claim for loss of an entire package or an entire shipment shall be the securing by it of a certified statement in writing from the consignee of the shipment involved that the property for which the claim is filed has not been received from any other source.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-02-04, 49-10.1-03, 49-18-08

69-04-02-05. Disposition of claims. Each carrier subject to the public service commission which receives a written claim for loss or damage to baggage or for loss, damage, injury, or delay to property transported shall pay, decline, or make a firm compromise settlement offer in writing to the claimant must be paid, declined, or otherwise settled within one hundred twenty days after receipt of the claim by the carrier. However, if the claim cannot be processed and disposed of within one hundred twenty days after

the receipt thereof, the carrier shall at that time and at the expiration of each succeeding sixty-day period while the claim remains pending advise the claimant in writing of the status of the claim and the reason for the delay in making final disposition thereof and it. The carrier shall retain a copy of such advice to the claimant in its claim file thereon.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-02-04, 49-10.1-03, 49-18-08

69-04-02-06. Processing of salvage.

1. Whenever ~~baggage or material, goods, or other~~ property transported by a carrier subject to this chapter is damaged or alleged to be damaged and is, as a consequence thereof, not delivered or is rejected or refused upon tender thereof to the owner, consignee, or person entitled to receive such property, the carrier, after giving due notice, whenever practicable to do so, to the owner and other parties that may have an interest therein, and unless advised to the contrary after giving such notice, shall undertake to sell or dispose of such property directly or by the employment of a competent salvage agent. The carrier shall only dispose of the property in a manner that will fairly and equally protect the best interest of all persons having an interest therein. The carrier shall make an itemized record sufficient to identify the property involved so as to be able to correlate it to the shipment or transportation involved, and claim, if any, filed thereon. The carrier also shall assign to each lot of such property a successive lot number and note that lot number on its record of shipment and claim, if any claim is filed thereon. Disposal records must be included in the claims file discussed in subsection 2 of section 69-01-02-03.
2. Whenever disposition of salvage ~~material or goods~~ shall be is made directly to an agent or employee of a carrier or through a salvage agent or company in which the carrier or one or more of its directors, officers, or managers has any interest financial or otherwise, that carrier's salvage records shall fully reflect the particulars of each such transaction ~~or and~~ relationship, ~~or both,~~ as the case may be.
3. Upon receipt of a claim on a shipment on which salvage has been processed in the manner prescribed in this section, the carrier shall record in its claim file thereon the lot number assigned, the amount of money recovered, if any, from the disposition of the property, and the date of

transmittal of the money to the person or persons lawfully entitled to receive the money.

History: Amended effective October 1, 1987.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-02-04, 49-10.1-03, 49-18-08

NOVEMBER 1987

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. Repealed effective November 1, 1987.

History: Amended effective June 17, 1984.
General Authority: NDEC 49-10-1-03
Law Implemented: NDEC 24-09-02

69-09-04-04. Abandonment of railroad facilities - Exemption. Railroad companies need not seek commission approval to remove facilities that have not been used to provide direct service to shippers in the past three years. Companies, however, shall notify the commission and persons leasing adjacent railroad property of proposed removals at least thirty days prior to the removal date.

History: Effective November 1, 1987.
General Authority: NDCC 49-10.1-03
Law Implemented: NDCC 49-10.1-03

69-09-04-05. Acquisition of right of way - Notice of intent. Persons intending to acquire operating railroad right of way under North Dakota Century Code section 49-09-10.2 shall notify the commission and provide it with the information specified by state law at least thirty days prior to the earlier of:

1. The proposed acquisition date; or

2. The filing of related notices with the interstate commerce commission.

History: Effective November 1, 1987.

General Authority: NDCC 49-09-11.7

Law Implemented: NDCC 49-09-10.2

TITLE 73
Securities Commissioner

AUGUST 1987

73-02-03-01. Limited offeree exemption.

1. **Application form.** Except as otherwise specifically provided, application for approval of the limited offeree exemption under subdivision a of subsection 9 of North Dakota Century Code section 10-04-06 shall be made on the form attached to this section, which is incorporated herein by reference.
2. **Supplemental filings.** In addition to the information specified in the application, the commissioner may require the filing of such supplemental schedules, projections, appraisals, opinions, documents, memoranda, briefs, or other matter as the commissioner deems convenient, appropriate, or necessary to determine whether the application should be approved.
3. **Filing fee.** Except as otherwise specifically provided, the application form shall be accompanied by a nonrefundable filing fee of ~~fifty~~ one hundred dollars.
4. **Term of effectiveness.** Unless earlier suspended or revoked or unless otherwise limited or restricted by the commissioner, approval under this section shall be effective for the period of twelve consecutive months beginning with the date of the letter by which approval is granted. A new application must be filed with and approved by the commissioner if offers or sales will extend beyond the twelve-month period.
5. **Conditions.** The commissioner may place such conditions, limitations, or restrictions on this exemption as the commissioner deems appropriate or necessary to carry out the purposes of the Securities Act of 1951.

6. **Reports.** Within thirty days after the end of any quarter of the issuer's fiscal year during which offers or sales of securities are effected in reliance upon this exemption, the offeror shall file a report of such offers or sales on a form prescribed by the commissioner.

7. **Waiver.**

- a. Except as otherwise provided under subdivisions c and d, if the number of offerees in connection with all offers of securities, whether of the same or of a different issue, in this state during a consecutive twelve-month period is three or fewer and if the conditions in paragraphs 1 and 2 of subdivision a of subsection 9 of North Dakota Century Code section 10-04-06 are met, the application, approval, filing fee, and reporting requirements prescribed under this section are waived.
- b. In addition to the waiver of the filing fee provided under subdivision a, the commissioner may also waive the filing fee in any other case where the commissioner determines that the time and effort involved in processing the application do not justify the imposition of the fee.
- c. The waiver provided under subdivision a shall not apply where any person involved in the offering, either directly or indirectly, as promoter, issuer, underwriter, broker-dealer, salesman, investment adviser, partner, officer, director, manager, controlling shareholder, or in any similar capacity or position:
 - (1) Has been suspended, expelled, fined, barred, censured, or otherwise disciplined by any securities, insurance, banking, real estate, or commodities agency, jurisdiction, or organization; or been refused membership therein or withdrawn an application for such membership; or been refused or denied a license or registration or had one suspended or revoked by any such agency, jurisdiction, or organization or by any other business or profession; or has knowledge of being the subject of any investigation or proceeding by any such agency, jurisdiction, or organization or by any other business or profession.
 - (2) Has been the subject of or has been associated in any capacity with another person against whom a temporary restraining order, temporary or permanent injunction, cease and desist order, or similar order has been issued either by a court or by an administrative agency.

- (3) Has been arrested for, complained against, informed against, or indicted for, convicted of, or pleaded nolo contendere to any felony or misdemeanor, except minor traffic offenses.
 - (4) Is now or has been a defendant or respondent in any litigation or proceeding alleging the violation of any securities, insurance, banking, real estate, or commodities law or regulation.
 - (5) Has been associated with any firm, corporation, or association which has failed in business, made a compromise with creditors, filed or been declared bankrupt under any bankruptcy acts, or for which a trustee has been appointed under the Securities Investor Protection Act of 1970 [Pub. L. 91-598; 84 Stat. 1636; 15 U.S.C. 78aaa et seq.], as amended, or which has been liquidated under any other circumstances.
 - (6) Has been suspended, expelled, fined, barred, censured, or otherwise disciplined by an employer in the securities, insurance, banking, real estate, or commodities industry; or in previous business connections or employment has been a subject of a major complaint or legal proceeding or has been discharged or requested to resign by an employer because of dishonest or unethical acts.
- d. If the security is issued by a corporation engaged in the business of farming or ranching which is organized under and operated in compliance with North Dakota Century Code chapter 10-06, the permissible number of offerees in this state during a consecutive twelve-month period shall not exceed fifteen, and the conditions in paragraphs 1, 2, and 3 of subdivision a of subsection 9 of North Dakota Century Code section 10-04-06 and the application, approval, filing fee, and reporting requirements prescribed under this section are waived.

History: Amended effective August 1, 1980; July 1, 1981; November 1, 1981; July 1, 1987; August 1, 1987.

General Authority: NDCC 10-04-06(9)

Law Implemented: NDCC 10-04-06(9)

TITLE 75
Department of Human Services

AUGUST 1987

AGENCY SYNOPSIS: The amendment would allow local fire safety standards, if complied with, to satisfy licensing requirements for residential facilities for developmentally disabled persons other than intermediate care facilities for the mentally retarded. If there are no local fire safety standards, the facilities would have to comply with those portions of the Life Safety Code normally applied to one-family and two-family dwellings.

75-04-01-23. Safety codes.

1. Applicant's ~~residential service facilities~~ intermediate care facilities for the mentally retarded shall meet the provisions of either the health care occupancies chapters or the residential board and care occupancies chapter of the Life Safety Code of the national fire protection association, 1985 edition, as determined by the department.
2. Applicant's residential service facilities which are not intermediate care facilities for the mentally retarded shall meet the applicable life safety standards established by the local governing municipality's ordinances. If the local governing municipality has no ordinances establishing life safety standards, such residential service facilities shall meet the one-family and two-family dwellings chapter of the Life Safety Code of the national fire protection association, 1985 edition, as determined by the department.
3. Upon written application, and good cause shown to the satisfaction of the department, the department may grant a variance from any specific requirement of the Life Safety Code, upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of the residents of the facility.

~~3-~~ 4. Applicant's facilities housing wheelchair bound or multiphysically handicapped shall conform to American National Standards Institute Standard No. A117.1 (1980).

~~4-~~ 5. Applicant's buildings used to provide day services shall conform to the chapters pertaining to new or existing educational occupancies of the Life Safety Code of the national fire protection association, 1985 edition.

History: Effective April 1, 1982; amended effective June 1, 1986; August 1, 1987.

General Authority: NDCC 25-15-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-15-08, 25-16-06

SEPTEMBER 1987

AGENCY SYNOPSIS: The North Dakota Department of Human Services has proposed to amend North Dakota Administrative Code Chapter 75-02-06. These proposed amendments affect the methodology by which rates for nursing facilities are set. The proposed amendments would, in all instances, be consistent with the limitations previously imposed by the Department pursuant to subsection 4 of North Dakota Administrative Code Section 75-02-06-16. Under the proposed rules, the information which the Department now requires for the establishment of the "limitations" would be the same information furnished by each facility as a cost report. All subsequent cost reports would be based upon the same fiscal period.

Numerous detailed changes have been proposed. The primary goal is to remove any requirements which will be of no effect because of the imposition of limitations. A section-by-section synopsis of the amendments follows:

75-02-06-01. Definitions: Adds five new definitions, deletes four definitions, and amends three definitions. The new definitions pertain to terms not previously used or defined in the chapter. The definitions removed refer to terms no longer used in the chapter. Two of the amended definitions are technical in nature, while the amendment to the definition of the Consumer Price Index is substantive. The substantive change to the definition of Consumer Price Index was intended to identify a projection, rather than a report, of historical changes.

75-02-06-02. Financial Reporting Requirement: This section was amended to require that facilities seeking the establishment of a rate report information necessary to permit that rate to be set under this chapter.

75-02-06-03. Depreciation: Provides for minor technical changes in depreciation techniques, and enlarges the dollar value of repair or maintenance costs which must be capitalized.

75-02-06-04. Interest Expense: Primarily technical changes to this section were made, with a goal of clarifying the proper treatment of interest expense and interest income involving the providers' investment of gifts or grants, and the treatment of interest charges to patients in certain circumstances.

75-02-06-05. Compensation: Provides for the establishment of a limit on allowable administrator compensation. Different limits must be applied depending upon the bed size. Also, items related to certain transportation expenses and certain deferred compensation and pension plans were removed from this section and placed in Section 75-02-06-12.

75-02-06-07. Related Organization: Removes the requirement that chain organizations demonstrate a cost savings to the Department in order to include each component of home office costs.

75-02-06-08. Rental Expense Paid to a Related Organization: Specifically describes the allowable costs of ownership to be included as a limit on the amount of rent which is allowable as a cost to a provider which leases a facility from a related organization.

75-02-06-12. Adjustment to Cost and Cost Limitation: This section describes, in detail, the relationship between certain specific items of cost and certain specific items of income, and requires certain costs to be offset against related income before those costs may be used to establish the rate. This section also identifies specific costs which may not be included in a calculation of costs used to establish the rate. This section received several technical amendments. In addition, provisions formerly a part of Sections 75-02-06-05, 75-02-06-13, and 75-02-06-16 were made a part of this section. The list of costs which may not be included in the costs used to establish the rate received an amendment and some additions. The existing limits on dues, contributions, and advertising were combined in one subparagraph and subjected to a specific dollar limit. Additional exclusions were specifically identified for five items of cost not related to patient care.

75-02-06-13. Cost Allocation and Classification: This section was amended to provide for the equalization of those costs which are nursing home costs on the Medicare report and the costs allocated on the Medicaid report, except for Medicaid adjustments not considered by Medicare. An additional subsection was added which requires that a facility receive approval for an allocation method for employee costs not directly allocated through a time study or some similar method.

75-02-06-14. Patient Census: This section was amended to remove some requirements concerning the detail of the patient census.

75-02-06-15. Nursing Care. A technical amendment removed a redundant phrase.

75-02-06-16. Reimbursement: This section was amended to incorporate the concept of a similar rate period and report period for all facilities, to reflect the removal of material which was reinserted in Section 75-02-06-12, to remove the requirement that rates be calculated on a minimum occupancy basis, to remove provisions inconsistent with the establishment of report periods and rate periods, to amend the partial year ratesetting provisions with respect to new facilities, and to remove the reference to appeals which was replaced by Section 75-02-06-17.

75-02-06-17. Appeals: Provides for an administrative appeal for providers dissatisfied by the rate established through this chapter.

75-02-06-18. Application: This section indicates that the provisions of this chapter will be applied in rate periods beginning on and after October 1, 1987.

75-02-06-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by medical assistance regulations.
3. "Bad debts" means those amounts considered to be uncollectible from accounts and notes receivable.
4. "Charity allowances" means the reductions in charges made by the provider of services because of patient indigence.
5. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of a facility are divided for purposes of cost assignment and allocations.
6. "Cost finding" means the process of analyzing the data derived from the accounts ordinarily kept by the provider to ascertain costs of the various types of services rendered; it is the determination of these costs by the allocation of direct costs and proration of indirect costs.
7. "Courtesy allowance" means a reduction in charges in the form of allowances to physicians, clergy, and others for services received from the provider.

8. "Consumer price index rate (CPI)" means the "all items" index for United States city average economic indicator selected by the North Dakota office of management and budget as the basis for forecasting changes in costs within the state of North Dakota.
9. "Daily room rate" means, when applied to the charge to private-pay patients, the rate which includes all items or services furnished as a part of the rate paid for medical assistance eligible patients, whether or not a particular item or service is regarded by a facility as special or ancillary.
10. "Department" means the department of human services.
11. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.
- ~~10-~~ 12. "Facility" means a skilled nursing or intermediate nursing care facility or a distinct part of a hospital providing skilled or intermediate nursing care or distinct parts of state institutions for the mentally retarded which are certified as intermediate care facilities for the mentally retarded. From and after July 1, 1987, or at such time as might be agreed by the director of institutions pursuant to section 75-04-05-24, it does not mean distinct parts of state institutions for the mentally retarded which are certified as intermediate care facilities for the mentally retarded. It does not otherwise mean an intermediate care facility for the mentally retarded.
- ~~11-~~ 13. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
- ~~12-~~ 14. "Fringe benefits" means all nonsalary employee benefits, including, but not limited to, self-employment (FICA) taxes, unemployment insurance, workmen's compensation, pensions, bonuses, health and life insurance premiums, and accrued compensation for absences.
- ~~13-~~ 15. "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
- ~~14-~~ 16. "Historical cost" means those costs reported on the cost statement which were incurred and recorded in the facility's accounting records.
15. "Intermediate care" means the level of care in which a licensed facility provides professional nursing services and personal care services to

individuals requiring these services at least eight hours per day, seven days per week.

- 16- 17. "Interest" means the cost incurred with the use of borrowed funds.
- 17- "Level of care" means the determination of the services required.
18. "Patient day" means, for cost determination purposes, all days ~~that~~ for which the facility has received payment. Hospital days, therapeutic days, and reserved bed days must be included. The day of admission will be counted, but not the day of discharge. The day of death shall be counted.
19. "Professional nursing service" means a service which must be furnished by or under the immediate personal supervision of licensed nursing personnel (registered nurse or licensed practical nurse) and under the general direction of the physician. "Rate period" means an annual period beginning after the end of a report period and continuing until a subsequent rate period is begun after a subsequent report period.
20. "Reasonable cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards. Reasonable cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost conscious buyer pays for a given item or services.
21. "Related organization" means an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or facility.
22. "Screening" means the method of patient review used by the department to determine the level of care required by individuals residing in a facility.
- 23- "Skilled nursing care" means a level of care in which a licensed facility provides professional nursing services and personal care services to individuals requiring these services on a twenty-four-hour daily basis, seven days per week. "Report period" means a period beginning on the first day of any month and ending on the last day of the twelfth subsequent month.

History: Effective September 1, 1980; amended effective December 1, 1983; June 1, 1985; September 1, 1987.

General Authority: NDCC 50-24.1-04

Law Implemented: ~~42 USC 1396a(a)(32)~~
42 CFR Part 447

42 USC 1396a(a)(13);

75-02-06-02. Financial reporting requirements.

1. Records.

- a. The facility shall maintain on the premises the required census records and financial information which will be sufficient to provide for a proper audit or review. For any cost being claimed on the annual cost report, sufficient data must be available as of the audit date to fully support the report item. The accounting system must be double entry.
- b. Where several facilities are associated with a group and their accounting and reports are centrally prepared, added information must be submitted, for those items known to be lacking support at the reporting facility, with the annual cost report or must be provided to the local facility prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost. Home office cost reporting and cost allocation must be in conformance with ~~HIM-15~~ HCFA-15 paragraphs 2150 and 2153.
- c. Each provider shall maintain, for a period of not less than five years following the date of submission of the cost report form to the state agency, financial and statistical records of the period covered by such cost report which are accurate and in sufficient detail to substantiate the cost data reported. Each provider shall make such records available upon reasonable demand to representatives of the department or to the secretary of health and human services or representatives ~~thereof~~ of the secretary.

2. Accounting and reporting requirements.

- a. The accrual basis of accounting must be used for reporting purposes. A facility may maintain its accounting records on a cash basis during the year but adjustments must be made to reflect proper accrual accounting procedures at yearend and when subsequently reported in the annual cost statement. Generally accepted accounting principles will prevail unless alternative treatment is specified in this chapter.

- b. To properly facilitate auditing, the accounting system should be maintained in such a manner that cost accounts will be grouped by cost center and be readily traceable to the cost report.
- c. The ~~form~~ method for annual reporting of costs for reimbursement purposes shall be prescribed by the department. This A cost report satisfying all departmental reporting requirements must be filed with the management services division, provider audit unit, on or before the last day of the third month following the end of the ~~facility's normal accounting year~~ report period. The mailing of cost reports by registered mail, return receipt requested, will ensure documentation of the filing date. In the event a facility fails to file the required ~~financial and statistical~~ cost report on or before the due date, the medical services division shall, for the subsequent rate period, certify a rate using the following calculation:
- (1) After the last day of the fourth month following the ~~facility's accounting year~~, there will be a nonrefundable penalty of ten percent of any amount claimed for reimbursement to the department.
 - (2) The penalty is automatically applied each month past the deadline and continues through the month the report is received.
 - (3) The penalty may be waived by the executive director of medical services of the department upon a showing of good cause for a delay.
 - (4) Penalty appeals shall be available only through the procedures set forth in North Dakota Administrative Code chapter 75-01-03 equal to eighty percent of the rate established for services provided on the last day of the report period. Reinstatement of the rate shall occur upon the first of the month beginning after receipt of the required cost report, but is not retroactive.
- d. The facility shall make all adjustments, allocations, and projections necessary to ~~calculate, and shall calculate a daily rate consistent with these rules~~ arrive at allowable costs.
- e. Costs reported must include total costs and be adjusted to allowable costs. Adjustments required by the provider audit unit, to attain allowable cost, though not meeting the medicaid state agency or the state medicaid

investigative group criteria of fraud or abuse on their initial identification, could, if repeated on future cost filings, be considered as possible fraud or abuse. The provider audit unit will forward all such items identified to the appropriate medicaid investigative group.

f. Any facility required by medicare to submit a medicare cost report using the step-down method shall submit a copy of the medicare cost report with the annual cost report required by this section. If the medicare cost report covers a period other than the report period, the facility shall provide a statement of costs reported on a medicare cost report form prepared using costs for the report period.

g. The facility shall submit a copy of the facilities' financial statement together with supplemental information which reconciles costs on the financial statement with costs on the cost report.

3. **Auditing. For fiscal years beginning after September 30, 1983, each**

a. Each facility shall provide the department with a copy of its annual financial statements as audited by a certified public accountant, including the auditor's opinion, as part of its annual cost report. Compilation or other reports will not be acceptable. Each facility shall make all necessary adjustments, allocations, projections, and calculations necessary to determine a daily rate. The bases used to determine the daily rate must be reviewed by the certified public accountant to determine compliance with this chapter and consistency of cost finding processes.

a- In order to properly validate the accuracy and reasonableness of cost information reported by the facilities, the department will provide for necessary audits each year.

b. The department will perform audits an audit of each facility at least once every six years and retain all audit-related documents, including cost reports, working papers, and internal reports on rate calculations which are utilized and generated by audit staff in performance of audits and in establishing rates. Audits will meet generally accepted audit standards.

4. **Penalties for fraud and incorrect filings.** Any person who has committed a crime, including, but not limited to, fraud, making a false statement, or misrepresentation of a material

fact in an application for reimbursement, may, upon conviction, be fined or imprisoned in accordance with the provisions of 42 U.S.C. 1396h and North Dakota Century Code title 12.1.

History: Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987.

General Authority: NDCC 50-24.1-04

Law Implemented: ~~42 USC 1396a(a)(32)~~ 42 USC 1396a(a)(13);
42 USC 1396h; 42 CFR Part 447, Subpart C

75-02-06-03. Depreciation.

1. The principles of reimbursement for provider costs require that payment for services should include depreciation on all depreciable type assets that are used to provide necessary services to medical assistance recipients. This includes assets that may have been fully (or partially) depreciated on the books of the provider, but are in use at the time the provider enters the program. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity. Depreciation is recognized as an allocation of the cost of an asset over its estimated useful life. If any depreciated personal property asset is sold or disposed of for an amount in excess of different than its undepreciated value, the excess difference represents an overstatement an incorrect allocation of the cost of the asset to the facility and must be included as an adjustment in the cost report.
2. Depreciation methods.
 - a. The straight-line method of depreciation must be used. All accelerated methods of depreciation are unacceptable. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and detailed schedules of individual assets shall be maintained. If the books of account reflect depreciation different than that submitted on the cost report, a reconciliation must be prepared by the facility.
 - b. The depreciable life of an asset is its expected useful life to the provider, not necessarily the inherent useful or physical life. If a difference is considered, a salvage value should be established prior to the application of the depreciation rate. The useful life of a depreciable asset is determined in the light of the provider's experience and the general nature of the asset and other pertinent data. In projecting a useful life,

~~providers are to follow~~ Providers shall project a useful life at least as long as the useful life guidelines published by the American hospital association. A different longer useful life may be used, however, when. When the useful life selected differs significantly from that established by the guidelines, the deviation must be based on convincing reasons supported by adequate documentation, generally describing the realization of some unexpected event. The depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, may not be used for purposes of reimbursement. A composite useful life may be used for a class or group of assets.

3. Acquisitions.

- a. If a depreciable asset or special assessment has, at the time of its acquisition, an estimated useful life of at least two years and historical cost of at least ~~five~~ hundred one thousand dollars, its cost must be capitalized and depreciated over the estimated useful life of the asset. Cost during the construction of an asset, such as architectural, consulting and legal fees, interest, etc., should be capitalized as a part of the cost of the asset.
- ~~b-~~ **Depreciable assets acquired by donation may be depreciated provided the asset is valued at the fair market value and the basis for determining such value is reported and determined to be reasonable.**
- ~~e-~~ **b. Major** All repair costs or maintenance in excess of one five thousand dollars on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building repaired or maintained.

4. Proper records will provide accountability for the fixed assets and also provide adequate means by which depreciation can be computed and established as an allowable patient-related cost. Tagging of major equipment items is not mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.

5. Basis for depreciation.

- a. Depreciable costs may not exceed the lower of:
 - (1) Current reproduction costs less straight-line depreciation over the life of the asset to the time of purchase;

- (2) Fair market value at time of purchase;
 - (3) In the case of a trade-in, the sum of the book value of the trade-in plus the cash paid; or
 - (4) In the case of assets which have been previously owned by a hospital, or facility, and for which such hospital or facility has received payment, for services provided to recipients of benefits under title XVIII (Medicare) or XIX (Medicaid) of the Social Security Act, at a rate which reflects depreciation expense concerning those assets, the allowable acquisition cost of such assets to the first owner on or after July 18, 1984.
- b. For ~~depreciation~~ purposes of this chapter, donated assets may be recorded and depreciated based on their fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal must be made. The appraisal will be made by a recognized appraisal expert and will be accepted for depreciation ~~and return~~ on investment purposes. The facility may elect to forego depreciation on donated assets thereby negating the need for a fair market value determination.
- c. Purchase of a facility and its depreciable assets as an ongoing operation.
- (1) Determination of the cost basis of a facility and its depreciable assets of an ongoing operation depends on whether or not the transaction is a bona fide sale. Should the issue arise, the purchaser has the burden of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide. The cost basis of a facility and its depreciable assets acquired as an ongoing operation is limited to the lowest of the following:
 - (a) Current reproduction cost of the assets, depreciated on a straight-line basis over its useful life to the time of the sale;
 - (b) Price paid by the purchaser (actual cost);
 - (c) Fair market value of the facility or asset at the time of the sale;
 - (d) In a sale not bona fide, the seller's cost basis, less accumulated depreciation; or

- (e) With respect to sales made on or after July 18, 1984, the seller's cost basis less accumulated depreciation, plus recaptured depreciation.
- (2) The seller shall always use the sale price in computing the gain or loss on the disposition of assets.
- (3) Appraisal guidelines. To properly provide for costs or valuations of fixed assets, an appraisal will be required if the provider:
 - (a) Has no historical cost records or has incomplete records of depreciable fixed assets; or
 - (b) Prior to July 18, 1984, purchases a facility without designation of purchase price for the classification of assets acquired. Prior to having an appraisal made, the provider must inform the state that it intends to have the appraisal made. At this time the provider shall also set forth the reasons for the appraisal and will make available to the department the agreement between the provider and the appraiser. The appraisal agreement should contain the appraisal date, the estimated date of completion, the scope of the appraisal, and the statement that the appraisal will conform to the current medicare regulation on principles of reimbursement for provider cost.
 - (c) Limitation. With respect to purchases occurring before July 18, 1984, the department will recognize appraised value not to exceed cost basis for tax purposes. In all cases of major change, proper authority for expenditure shall be obtained.

6. Recapture of depreciation.

- a. At any time that the operators of a facility sell an asset, or otherwise remove that asset from service in or to the facility, any depreciation costs asserted after June 1, 1984, with respect to that asset, are subject to recapture to the extent that the sale or disposal price exceeds the undepreciated value. If the department determines that a sale or disposal was made to a related party, or if a facility terminates participation as a provider of services in the medicaid program, any depreciation costs asserted after June 1, 1984, with respect to that asset or facility, are subject to recapture to the extent that the fair market value of the asset or facility exceeds the depreciated value.

- b. The seller and the purchaser may, by agreement, determine which shall pay the recaptured depreciation. If the parties to the sale do not inform the department of their agreement, the department will offset the amount of depreciation to be recaptured against any amounts owed, or to be owed, by the department to the seller and buyer. The department will first exercise the offset against the seller, and shall only exercise the offset against the buyer to the extent that the seller has failed to repay the amount of the recaptured depreciation.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987.

General Authority: NDCC 50-24.1-04

Law Implemented: ~~42 USC 1396a(a)(32)~~ 42 USC 1396a(a)(13); 42 CFR Part 447, Subpart C

75-02-06-04. Interest expense.

1. General.

- a. To be allowable under the program, interest must be:
 - (1) Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are required;
 - (2) Identifiable in the provider's accounting records;
 - (3) Related to the reporting period in which the costs are incurred;
 - (4) Necessary and proper for the operation, maintenance, or acquisition of the provider's facilities as set forth in ~~HIM-15~~ HCFA-15 paragraphs 202.2 and 202.3;
 - (5) Unrelated to funds borrowed to purchase assets in excess of cost or fair market value; and
 - (6) When representative of borrowing for the purpose of making capital expenditures for assets that were owned by any other hospital or facility on or after July 18, 1984, limited to that amount of interest cost which such hospital or facility may have reported, for medicaid ratesetting purposes, had the asset undergone neither refinancing nor a change of ownership.
- b. In such cases where it was necessary to issue bonds for financing, any bond premium or discount shall be amortized over the life of the bond issue.

2. Interest paid by the provider to partners, stockholders, or related organizations of the provider is not allowable as a cost. Where the owner loans funds to a facility, the funds are considered capital, rather than borrowed funds.
3. Where the provider has invested funds from gifts or grants which are unrestricted as to use, and these funds are commingled with other funds so that identity is lost, the provider's allowable interest expense is reduced by the amount of investment income earned by the fund. Any investment income in excess of interest expense will not be used to offset other operating expenses. However, if the unrestricted gifts and grants are not commingled with other funds or identity is maintained as in a "pool", the investment income earned by the fund does not reduce allowable interest expense.
4. Restricted Interest on restricted gifts will be treated in a manner consistent with HIM-15 HCFA-15, Section 600.
5. 4. If a facility incurs interest expense because of late payments by patients and charges the patients a service charge or interest for late payments, such income must be offset against interest expense. If no interest expense is incurred by the facility because of late payments by patients, interest charges paid by the patients must be offset against administrative expense.
6. 5. Funded depreciation.
 - a. Funding of depreciation is the practice of setting aside cash or other liquid assets, in a fund separate from the general funds of the provider, to be used for replacement of the assets depreciated, or for other capital purposes. The deposits are, in effect, made from the cash generated by the noncash expense depreciation.
 - b. Deposits to the funded depreciation account are generally in an amount equal to the depreciation expense charged to costs each year. In order to qualify for all provisions of funded depreciation, the minimum deposits, exclusive of interest income to the account, must be fifty percent of the depreciation expensed that year. Deposits in excess of accumulated depreciation are allowable; however, the interest income generated by the "extra" deposits will be considered as a reduction of allowable interest expense. This provision is recommended as a means of conserving funds for the replacement of depreciable assets and purchase of capital assets. It is expected that the funds will be invested to earn revenues. The revenues generated by this investment will not be considered as a reduction of allowable interest expense, provided if the earned

interest or other income on the investment remains in the funded depreciation account.

- c. Monthly or annual deposits representing depreciation must be in the funded depreciation account for six months or more to be considered as valid funding transactions. Deposits of less than six months are not eligible for the benefits of a funded depreciation account. However, if deposits invested before the six-month period remain in the account after the six-month period, the investment income for the entire period will not reduce the allowable interest expensed in that period. Total funded depreciation in excess of accumulated depreciation on patient-related assets will be considered as ordinary investments and the income therefrom will be used to offset interest expense.
- d. Withdrawals for the acquisition of capital assets, the payment of mortgage principal on these assets and for other capital expenditures are on a first-in, first-out basis. Withdrawals for general operating purposes or for loans to the general fund are made on a last-in, first-out basis. Such loans must meet the "necessary and proper" requirements for need of the loan. Interest paid from the general fund to the funded depreciation account on the loan is an allowable cost, except as mentioned in subdivision c, where the deposit has not been in the fund for the six-month period, the interest paid on the loan is not an allowable cost. Loans made to the general fund may not be made for a period or term which is longer than three years. Documentation on prevailing interest rates at the time of the loan shall be maintained on file. The necessary and proper requirements set forth in HIM-15 HCFA-15 paragraphs 202.2 and 202.3 will apply to all loans made.
- e. The provider may use the funds in the funded depreciation account for purposes other than the improvement, replacement, or expansion of facilities or equipment related to patient care. However, allowable interest expenses for the period of withdrawal will be reduced to adjust for offsets not made in prior years for earnings applicable to such funds. For example, if the provider withdraws funds equal to two years' deposits, using the last-in, first-out method, any earnings applicable to these deposits during the two-year period are applied as a reduction of interest expense incurred during the period of withdrawal. When funded depreciation accounts are used for capital and noncapital purchases, the total interest income will be offset.

- f. When money is borrowed to fund depreciation, interest paid by the provider on the money borrowed for this purpose is not an allowable cost.
- g. Funded depreciation is to be used both for the replacement of existing assets and for expansion. These funds must be used for all capital outlays in excess of ~~five hundred~~ one thousand dollars except with regard to those assets purchased exclusively with donated funds, and cannot be restricted for a specific or future purpose. For example, restricting the account to funding depreciation for "building" would negate the intent of funding depreciation as defined by this section.
- h. When capital purchases are made with borrowed funds rather than funds from the funded depreciation account, the entire interest income for funded depreciation will be offset up to the entire interest expense.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987.

General Authority: NDCC 50-24.1-04

Law Implemented: ~~42 USC 1396a(a)(32)~~ 42 USC 1396a(a)(13);
42 CFR Part 447, Subpart C

75-02-06-05. Compensation.

- ~~1-~~ Compensation may be included in allowable provider costs only to the extent that it represents reasonable remuneration for managerial, administrative, professional, or other services related to the operation of the facility and rendered in connection with patient care. Services which are not related either to direct or indirect patient care are primarily accomplished for the purpose of managing or improving the owner's financial investment and are not allowable. Data necessary to establish the rendering of patient care must include the hours, types, and valuation basis of the work performed.
- ~~a-~~ 1. Reasonableness requires that the compensation allowance be such an amount as would ordinarily be paid for comparable services by comparable institutions depending upon the facts and circumstances of each case. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, an institution would have had to employ another person to perform them. The services must be pertinent to the operation and sound conduct of the institution. The facility shall demonstrate reasonableness of compensation. The department may use internal revenue service guidelines as the basis for determining reasonableness.

- b- 2. Items which are considered compensation and includable in the test for reasonable compensation received by any person identified in ~~subdivision e~~ subsection 3 include, but are not limited to, the following:
- (1) a. Salary amounts paid for managerial, administrative, professional, and other services.
 - (2) b. Amounts paid by the institution for the personal benefits of the person, e.g., housing allowance, flat-rate automobile allowance.
 - (3) c. The cost of assets and services which the person receives from the institution.
 - (4) d. Deferred compensation (pension and annuities).
 - (5) e. Supplies and services for the personal use of the person.
 - (6) f. The cost of a domestic or other employee who works in the home of the person.
 - (7) g. Life and health insurance premiums paid for the person.
- e- 3. Persons whose compensation will be tested under this subsection include, but are not limited to:
- (1) a. The provider's administrator.
 - (2) b. Any person who has an interest in the facility as a sole proprietor, partner, corporate stockholder, or organizer of a nonprofit corporation.
 - (3) c. Any person who occupies any position on the provider's governing board or group, however constituted.
 - (4) d. Any person who is a bondholder or creditor, or an officer in a corporate bondholder or creditor, to whom or which the provider is obligated to pay in excess of five thousand dollars.
 - (5) e. Any person who has an ownership interest in, or is an officer of, any related organization.
 - (6) f. Any person within the third degree of relationship to any person identified in paragraphs 1 through 5 subdivisions a through e.
- d- 4. The department will determine reasonable administrator compensation by survey of free standing facilities every two years. Survey data will be revised at least annually to reflect changes in the consumer price index establish a limit on allowable administrator

compensation. An administrator responsible for a facility of less than seventy-five bed capacity shall be subject to one limit. The department shall allow an additional amount for each additional bed in establishing limits for an administrator responsible for a facility of a bed capacity of seventy-five or larger. In establishing limits, the department shall consider the salaries paid to administrators of North Dakota facilities operated or managed by organizations which operate or manage at least twenty nursing facilities, wherever located. Any limits implemented in section 75-02-06-16 will also apply to compensation.

- 2- Travel costs for transportation of residents are allowable. The facility may include the amount authorized by North Dakota Century Code section 54-06-09 for mileage or may charge actual cost in accordance with internal revenue service guidelines for employee mileage with depreciation calculated on the straight-line basis. The facility shall support travel costs with sufficient documentation to establish the purpose of the travel and that it is patient related.
 - a- Travel costs will be allowed in order that staff may attend meetings which pertain to patient care. Allowable travel costs shall not exceed the maximum allowed pursuant to North Dakota Century Code sections 44-08-04 and 54-06-09.
 - b- The fees paid to members of a board of directors for meetings attended shall be allowed in an amount not to exceed the compensation paid, per day, to members of the legislative council, pursuant to North Dakota Century Code section 54-35-10, plus travel at a rate not to exceed the maximum allowed pursuant to North Dakota Century Code sections 44-08-04 and 54-06-09. Normally, no more than twelve meetings per fiscal year will be considered reasonable. No additional compensation will be allowed for service of employees on the board of directors.
- 3- All plans within the definition of deferred compensation and pension plans set forth in HIM-15 sections 2140-1 and 2142-1, respectively, shall be considered in the determination of allowable costs. No provisions of these plans may discriminate in favor of certain employees, such as employees who are officers, stockholders, supervisors, or highly paid personnel. In order to be considered an allowable cost, the payment reported must benefit

all eligible employees and be based on the same payment structure-

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; September 1, 1987.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32) 42 USC 1396a(a)(13); 42 CFR Part 447, Subpart C

75-02-06-06. Return on investment. For a No return on investment for proprietary homes, an allowance of eight and one-half percent of average net investment of fixed assets relating to patient care will be established. The "net investment of fixed assets relating to patient care" means the cost, less accumulated depreciation and the balance of notes and mortgages payable, pertaining to the fixed assets relating to patient care. The allowance for the return on an investment will be made on the cost report. The allowance may not exceed the amount allowable under section 1200 of HIM-15. The allowance must exclude that portion of the current owner's net investment in fixed assets in existence and purchased from any other hospital or facility, on or after July 18, 1984, which exceed the net investment (as adjusted for depreciation recapture, if any), in those assets, of the first owner on or after July 18, 1984 shall be allowed.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32) 42 USC 1396a(a)(13)

75-02-06-07. Related organization.

1. Costs applicable to services, facilities, and supplies furnished to a provider by a related organization may not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. Providers shall identify such related organizations and costs in the cost report. An appropriate statement of cost and allocations shall be submitted with the annual cost report. For cost reporting purposes, management fees will be considered as administrative costs.
2. A chain organization consists of a group of two or more health care facilities which are owned, leased, or through any other device controlled by one business entity. This includes not only proprietary chains but also chains operated by various religious and other charitable organizations.

3. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to their member facilities. Although the home office of a chain is normally not a provider in itself, it may furnish to the individual provider, central administration or other services such as centralized accounting, purchasing, personnel, or management services. Only the home office's actual cost of providing such services is includable in the provider's allowable costs under the program. Any services provided by the home office which are also included in cost reported costs as payments to an outside provider will be considered a duplication of costs and not be allowed. **The related organization shall clearly demonstrate a cost savings to the department in order to include each component of home office costs in the rate for individual facilities.**

History: Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32) 42 USC 1396a(a)(13);
42 CFR Part 447, Subpart C

75-02-06-08. Rental expense paid to a related organization.

1. A provider may lease a facility from a related organization within the meaning of the principles of reimbursement. In such case, the rent paid to the lessor by the provider is not allowable as cost unless the rent paid is less than allowable costs of ownership. The provider, however, ~~would~~ may include the cost allowable costs of ownership of the facility. ~~Generally, these would be~~ These costs such as are depreciation, interest on the mortgage, and real estate taxes, ~~and other expenses attributable to the leased facility.~~ The effect is to treat the facility as though it were owned by the provider. ~~Therefore, the owner's equity in the leased assets is includable in the equity capital of the proprietary provider.~~
2. In order to be considered an allowable cost, the home office cost must be directly related to those services performed for individual providers and relate to patient care. An appropriate share of indirect costs will also be considered. Documentation as to time or services provided must be available to substantiate cost.

History: Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32) 42 USC 1396a(a)(13);
42 CFR Part 447, Subpart C

75-02-06-09. Taxes.

1. General.

- a. Taxes assessed against the provider, in accordance with the levying enactments of the several states and lower levels of government and for which the provider is liable for payment, are allowable costs. Tax expense may not include fines, penalties, or those taxes listed in subsection 2.
- b. Whenever exemptions to taxes are legally available the provider is to take advantage of them. If the provider does not take advantage of available exemptions, the expense incurred for such taxes is not recognized as allowable costs under the program.

2. The following taxes, which are levied on providers, are not allowable as costs:

- a. Federal income and excess profit taxes, including any interest or penalties paid thereon.
- b. State or local income and excess profit taxes.
- c. Taxes in connection with financing, refinancing, or refunding operation, such as taxes in the issuance of bonds, property transfers, issuance or transfers of stocks, etc. Generally, these costs are either amortized over the life of the securities or depreciated over the life of the asset. They are not, however, recognized as tax expense.
- d. Taxes such as real estate and sales tax for which exemptions are available to the provider.
- e. Special assessments on land which represent capital improvements, such as sewers, water, and pavement, must be capitalized and may be depreciated over their useful life.
- f. Taxes on property which is not used in the provision of covered services.
- g. Taxes, such as sales taxes, levied against the patient and collected and remitted by the provider.
- h. Self-employment (FICA) taxes applicable to individual proprietors, partners, members of a joint venture, etc.

History: Effective September 1, 1980; amended effective December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32) 42 USC 1396a(a)(13);
42 CFR Part 447, Subpart C

75-02-06-10. Bad debts. Bad debts, charity, and courtesy allowances may not be included in allowable costs.

History: Effective September 1, 1980; amended effective December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32) 42 USC 1396a(a)(13);
42 CFR Part 447, Subpart C

75-02-06-11. Startup costs. In the first stages of operation, a new institution incurs certain costs in developing its ability to care for patients prior to admission of patients. Staff is obtained, organized, and other operating costs are incurred during this time of preparation which cannot be allocated to patient care during that period because there are no patients receiving services. Therefore, it is proper that such actual costs, commonly referred to as startup costs, be considered as deferred charges under the program and allocated over a number of periods which benefit from such costs. Where a provider has properly capitalized startup costs as a deferred charge, amortization of such costs will be recognized as allowable costs depreciated over sixty consecutive months starting with the month in which the first patient is admitted for treatment.

History: Effective September 1, 1980; amended effective December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32) 42 USC 1396a(a)(13);
42 CFR Part 447, Subpart C

75-02-06-12. Adjustment to cost and cost limitation. Reasonable patient-related costs will be determined in accordance with health care financing administration manual 15 (HCFA-15) and instructions issued by the department. Any conflict between the provision of HCFA-15 and instructions issued by the department will be controlled by the instructions issued by the department.

1. Income to offset cost.

- a. Several items of income to the home will be considered as offsets against various costs as recorded in the books of the facility. Any income which is received by the home for reimbursements of cost, with the exception of the basic daily rate, income from payments made under the Job Training Partnership Act, and income from charges to private pay patients for care items which are included in the title XIX rate, will be offset against costs to the extent it does not exceed costs reported. Any

reimbursement not listed below, which may be classified as an offset, must be shown as such on the cost report and costs reduced accordingly. Items of income, whether in cash or in any other form, to offset cost include, but are not limited to, the following, and, in the event that income exceeds costs, must be offset to all costs on the basis of percentage of total remaining nonoffset costs:

- (1) "Activities income". Income from the activities department and the gift shop.
- (2) "Confections income". All income from the sale of pop, candy, or other items.
- (3) "Dietary income". Amounts received from or on behalf of employees, guests, or other nonpatients for lunches, meals, or snacks.
- (4) "Drugs or supplies income". Amounts received from employees, doctors, or others not admitted as patients.
- (5) "Insurance recoveries income". Any amount received from insurance for a loss incurred shall be offset against costs reported in the current year if the facility did not adjust the basis for depreciable assets.
- (6) "Interest or investment income". Interest received on investment except amounts allowable as funded depreciation or from earnings on noncommingled restricted gifts or donations.
- (7) "Laundry income". All amounts received for services rendered to or on behalf of employees, doctors, or others.
- ~~(8)~~ **"Maintenance of personnel". The cost of providing meals and lodging to nursing home personnel living on premises.**
- ~~(9)~~ **"Nonrelated depreciation expense". All depreciation expense for facility assets which is not related to patient care.**
- ~~(10)~~ (8) "Private duty nurse reimbursement". All reimbursement received for the providing of a private duty nurse.
- ~~(11)~~ (9) "Purchase discounts". All discounts received from vendors on purchases included in costs.

- ~~(12)~~ (10) "Rebates and refunds income". Amounts received on expense or cost items must be offset against the appropriate cost.
- ~~(13)~~ (11) "Rentals of nursing home space income". Any revenues received from outside sources for the use of nursing home space and equipment.
- ~~(14)~~ (12) "Telegraph and telephone income". All revenues received from patients, guests, or employees.
- ~~(15)~~ (13) All therapy and other professional services revenue unless services rendered to medical assistance program eligible patients and outpatients are identified and revenue from those services offset to the related cost.

- b. Payments to a provider by its vendor will be considered as discounts, refunds, or rebates in determining allowable costs under the program even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. However, such payments may represent a true donation or grant. Examples include, but are not limited to, when: (1) they are made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited; (2) they are in addition to discounts, refunds, or rebates, which have been customarily allowed under arrangements between the provider and the vendor; (3) the volume or value of purchases is so nominal that no relationship to the contribution can be inferred; (4) the contributor is not engaged in business with the provider or a facility related to the provider.
- c. Where an owner or other official of a provider directly receives from a vendor monetary payments or goods or services for the owner's or official's own personal use as a result of the provider's purchases from the vendor, the value of such payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's costs for goods or services purchased from the vendor.
- d. Where the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates must be credited to the costs of the provider in accordance with the instructions above. These should not be treated as income of the central purchasing function or used to reduce the administrative costs of that function. Such administrative costs are, however, properly allocable to the facilities serviced by the central purchasing function.

e. Amounts paid by a supplier for the use of space or equipment in a hospital or long-term care facility will ordinarily be found to constitute a form of discount, whether paid as a percentage of charges or as a flat amount per bed or per time period. Payments made by a supplier to a provider in recognition of the fact that the supplier is relieved of the need to collect individual bills from the patients of the provider, sometimes called "accounting fees" or "collection fees", are considered a form of discount, refund, or rebate and must be used to reduce the costs of the goods or services purchased from the supplier.

f. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased. They are not to be considered a form of income. They must be used to reduce the specific costs to which they apply. If possible, they should accrue to the period to which they apply. If not, they will reduce expenses in the period in which they are received. The reduction to expense for supplies or services must be used to reduce the total cost of the goods or services for all patients without regard to whether the goods or supplies are designated for all patients or a specific group, e.g., medicare or nonmedicare.

- (1) "Purchase discounts" include cash discounts, trade, and quantity discounts. "Cash discount" is for prepaying or paying within a certain time of receipt of invoice. "Trade discount" is a reduction of cost granted certain customers. "Quantity discounts" are reductions of price because of the size of the order.
- (2) Allowances are reductions granted or accepted by the creditor for damage, delay, shortage, imperfection, or other cause, excluding discounts and refunds.
- (3) Refunds are amounts paid back by the vendor generally in recognition of damaged shipments, overpayments, or returned purchases.
- (4) Rebates represent refunds of a part of the cost of goods or services.
- (5) "Other cost-related income" includes amounts generated through the sale of a previously expensed item, e.g., supplies or equipment.

2. Costs not related to patient care are costs which are not appropriate or necessary and proper in developing and maintaining the operation of patient care facilities and activities. Such costs are not allowable in computing reimbursable costs. They include, but are not limited to, the following:
- a. Costs which are unallowable when incurred by a facility are also unallowable for a home office and cannot be allocated to facilities in a chain organization.
 - b. Certain corporate costs, such as stockholder servicing costs, organization costs, or reorganization costs are not related to patient care and are not allowable.
 - c. Costs, in excess of forty-five dollars per bed per year, incurred in the form of dues or contributions paid to all charitable or civic organizations, in excess of one hundred fifty dollars per year will be allowed only upon a clear showing that they are patient related, and advertising exclusive of personnel procurement.
 - d. The full cost of items or services such as telephone, television, and radio which are located in patient accommodations and which are furnished solely for the personal comfort of the patients are not includable in allowable costs.
 - e. Fundraising costs, including salaries, advertising, promotional or publicity costs incurred for such a purpose are not includable in allowable costs.
 - f. Costs of advertising exclusive of personnel procurement and yellow page ads limited to the information furnished in the white page listing in the telephone directory.
 - ~~g.~~ The cost of any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates, to the satisfaction of the department, that any particular use of equipment was related to patient care.
 - ~~h.~~ g. Costs, including, by way of illustration and not by way of limitation, legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to any hospital or facility.

- ~~±~~ h. Costs which are incurred by the provider's subcontractors, or by the lessor of property which the provider leases, and which become an element in the subcontractor's or lessor's charge to the provider, if such costs would not have been allowable had they been incurred by a provider directly furnishing the subcontracted services, or owning the leased property, provided, however, that no facility shall have a particular item of cost disallowed under this subdivision if that cost arises out of a transaction which was completed before July 18, 1984.
- i. The cost of providing meals and lodging to nursing home personnel living on premises in excess of charges.
- j. Depreciation expense for facility assets which are not related to patient care.
- k. Expense or liabilities established through or under threat of litigation against the state of North Dakota or any of its agencies; provided that reasonable insurance expense shall not be limited by this subdivision.
- l. Non-long-term care operations and associated administrative costs.
- m. Medicare utilization review costs.
- 3. All costs for services reimbursed by the department directly to the provider, e.g., pharmacy and therapies, must be excluded from the rate calculation.
- 4. Travel costs involving the use of vehicles not exclusively used by the facility are allowable within the limits of this subsection.

 - a. Vehicle travel costs may not exceed the amount authorized by North Dakota Century Code section 54-06-09 for mileage.
 - b. The facility must support vehicle travel costs with sufficient documentation to establish that the purpose of the travel is related to patient care.
 - c. The facility must document any payment made to service or support the use of a vehicle not exclusively used by the facility.
- 5. Travel costs other than vehicle-related costs are allowable provided the items of cost do not exceed the maximum allowed pursuant to North Dakota Century Code section 44-08-04 and the facility supports the travel costs with sufficient documentation to establish that the purpose of the travel is related to patient care.

6. The fees paid to members of a board of directors for meetings attended shall be allowed in an amount not to exceed the compensation paid, per day, to members of the legislative council, pursuant to North Dakota Century Code section 54-35-10, plus travel at a rate not to exceed the maximum allowed pursuant to North Dakota Century Code sections 44-08-04 and 54-06-09. Normally, no more than twelve meetings per fiscal year will be considered reasonable. No additional compensation will be allowed for service of employees on the board of directors.
7. All plans within the definition of deferred compensation and pension plans set forth in HCFA-15 sections 2140.1 and 2142.1, respectively, shall be considered in the determination of allowable costs. No provisions of these plans may discriminate in favor of certain employees, such as employees who are officers, stockholders, supervisors, or highly paid personnel. In order to be considered an allowable cost, the payment reported must benefit all eligible employees and be based on the same payment structure. A plan approved by the United States department of labor as nondiscriminatory will be treated as acceptable under this subsection.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987.

General Authority: NDCC 50-24.1-04

Law Implemented: ~~42~~ ~~USE~~ ~~1396a(a)(32)~~ 42 USC 1396a(a)(13);
42 CFR Part 447, Subpart C

75-02-06-13. Cost allocation and classification.

1. Where services of the various cost centers are jointly used by any combination of facilities or in the event that services are provided which result in costs that are not includable in allowable costs, the following cost allocation methods must be used. In cases where more than one method of allocation is available within or among cost centers, the department shall have discretion to apply the method which, in its opinion, reflects the most reasonable cost based upon the data available at the time of audit.
 - a. Nursing salaries must be reported on actual costs. Other nursing service costs must be allocated on patient days.
 - b. Dietary costs must be allocated on the basis of meals served to patients.
 - c. Housekeeping costs must be allocated on the basis of patient days or on usable square footage.
 - d. Laundry and linen costs must be allocated on the basis of patient days or on pounds [kilograms] of laundry if

records are maintained to reflect a study which is performed at regular intervals on an ongoing basis.

- e. Plant operation costs must be allocated on the basis of available bed days, or on the basis of usable square footage of space.
 - f. Property costs must be allocated on the basis of available bed days, or on the basis of usable square footage of space.
 - g. Administration costs must be allocated on the basis of percentage of total cost, other than administration, in each facility. **Administrative cost must be limited to fifteen percent of total allowable nursing home costs exclusive of administrative costs.**
 - h. In facilities combining hospital and nursing home services, medical record costs must be allocated by number of admissions **and included as administrative costs.**
2. If certain costs within a particular cost center can be directly identified with the nursing home, then they are not subject to allocation procedures as previously outlined. The remaining costs within that cost center must be allocated according to cost allocation methods as described previously. **In no case shall** Except for medicaid adjustments not considered by medicare, the costs allocated by the methods **above exceed** provided by this section shall equal those costs which are nursing home costs on the medicare report. The medicaid rate may be subsequently adjusted to recognize adjustments by medicare.
 3. Allocation procedures for nursing homes combined with a hospital and facilities with dual licenses will be those set forth in this chapter.
 4. Except with respect to employee costs directly allocated through time studies or similar allocation methods, the proposed allocation of costs identified in this subsection must be approved by the department's medical services division prior to the submission of a budget or cost report used to establish a rate. An approved allocation method may be used by the facility obtaining approval in fiscal periods subsequent to the period with respect to which the approval was received unless the approval is withdrawn or the allocation method is altered in any material respect.
 - a. Employee costs related to employees who work in areas for which there is more than one cost center.

- b. Home office costs related to home office services allocated to a benefiting cost center other than administration.
- c. Costs allocated between patient-related costs and non-patient-related costs.
- d. Costs allocated between services provided at more than one level of care where the provider furnishes care at different levels under separate provider numbers.

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; September 1, 1987.

General Authority: NDCC 50-24.1-04

Law Implemented: ~~42 USC 1396a(a)(32)~~ 42 USC 1396a(a)(13); 42 CFR Part 447, Subpart C

75-02-06-14. Patient census.

1. A patient day is any day that the facility has received remuneration for the available bed. The amount of remuneration has no bearing on whether a day should be counted or not. Examples of days that must be included in census, providing they have been paid for, are hospital days and therapeutic leave days. ~~In the case where a private room has been made from a previously utilized double room and a rate has been charged that does not correspond to a normal private room rate, two patient days would be counted for this room.~~
2. A daily census record must be prepared and maintained by the facility to allow for proper audit of the census data.
3. ~~Census days will be segregated by the level of care provided. If the facility does not document the level of care provided, the rate charged to the resident may be used by the department to establish the level of care.~~

History: Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987.

General Authority: NDCC 50-24.1-04

Law Implemented: ~~42 USC 1396a(a)(32)~~ 42 USC 1396a(a)(13); 42 CFR Part 447, Subpart C

75-02-06-15. Nursing care. Routine nursing care services are those services included by the provider in a daily services charge usually referred to as the room and board charge. The following types of items and services in addition to room dietary and medical social services must be considered to be routine for purposes of medicaid cost reporting even though they may be considered ancillary by the facility:

1. All general nursing services including but not limited to administration of oxygen and related medication, hand feeding, incontinency care, tray service, enemas, etc.
2. Items which are furnished routinely and relatively uniformly to all patients, e.g., patients' gowns, water pitchers, basins, bedpans, etc.
3. Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, e.g., alcohol, applicators, cotton balls, bandaids, antacids, aspirins, (and other nonlegended drugs ordinarily kept on hand), suppositories, tongue depressors, paper tissues, deodorants, mouthwashes, kleenex, toothpaste, denture cleaner, etc.
4. Items which are utilized by individual patients which are reusable and expected to be available in the facility **providing a skilled or intermediate level of care**, e.g., ice bags, bedrails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.
5. Items which, while not listed above, came within the definitions set forth in the personal needs guidelines of the Guidelines for Routine Drugs, Supplies, and Equipment for Skilled Nursing and Intermediate Care Facilities as issued by the medical services division for any items which may not have been covered in the above but may come within the definitions set forth in the personal needs guidelines.
6. Special dietary supplements used for tube feeding or oral feeding such as elemental high nitrogen diet, even if written as a prescription item by a physician.
7. Laundry services considered necessary for the proper care and appearance of the patient.

History: Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987.

General Authority: NDCC 50-24.1-04

Law Implemented: ~~42 USC 1396a(a)(32)~~ 42 USC 1396a(a)(13);
42 CFR Part 447, Subpart C

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 rate period in which it will be effective with retroactive adjustment to the beginning of the ~~facility's fiscal year~~ rate period.

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 report period. Once the reasonable patient-related costs from the previous year report period are determined, adjustments and limitations 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 and limitations take into consideration the economic conditions and trends during the rate 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 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. b. 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 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~~ medicare rates for skilled nursing facilities, that ceiling shall also be considered the maximum for title XIX payment.

e- 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 routinely provided 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. Peer groupings, limitations, or adjustments which are based upon data received from or relating to more than one provider will be effective for a rate period. Any change in the data used to establish peer groupings, limitations, or adjustments will not be used to change such peer groupings, limitations, or adjustments during the rate period, except with respect to the specific facility or facilities to which the data change relates.

6. Partial year.

- a. For facilities changing ownership during the ~~fiscal~~ year rate period, the rate established for the previous owner will be retained.
- b. For existing 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~~ New facilities and beds added on the first day of the fiscal year, the facility will calculate, subject to submit, for departmental approval, an interim rate. The department may adjust this rate after the end of the fiscal year a proposed budget for operations for the period, at least three months but not more than fifteen months in duration, which ends on June thirtieth. The rate established based upon the approved budget shall be final and shall continue in effect until the beginning of the rate period next following after the end of the report period which coincides with the end of the budget period.

7. Adjustments and ~~appeal~~ reconsideration 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 rate period.
- b. An adjustment must be made for ~~those facilities a~~ facility which have has terminated participation in the program and have has disposed of its depreciable assets or which have has 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~~ must be filed with the medical services 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; September 1, 1987.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32); 42 USC 1396a(a)(13); 42 CFR Part 447, Subpart C

75-02-06-17. Appeals. A provider dissatisfied with the rate established under this chapter may appeal. An appeal may be perfected by mailing or delivering the information described in subsections 1 through 5 to the appeals referee supervisor, department of human services, state capitol, Bismarck, North Dakota, so that the mailed or delivered material arrives at the office of the appeals referee supervisor on or before five p.m. on the thirty-first day after the date of the determination of the medical services division made with respect to a request for reconsideration. An appeal under this section is perfected only if accompanied by written documents including all the following information:

1. A copy of the letter received from the medical services division advising of that division's decision on the request for reconsideration.
2. A statement of each disputed item and the reason or basis for the dispute.
3. A computation and the dollar amount which reflects the appealing party's claim as to the correct computation and dollar amount for each disputed item.
4. The authority in statute or rule upon which the appealing party relies for each disputed item.
5. The name, address, and telephone number of the person upon whom all notices will be served regarding the appeal.

History: Effective September 1, 1987.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(13); 42 CFR 447.253

75-02-06-18. Application. This chapter shall be applied, in rate periods beginning on and after October 1, 1987, in the establishment and determination of reimbursement rates for all nursing facilities

participating as providers of intermediate care or skilled nursing care through the medicaid program unless a different method or standard for establishing rates of reimbursement for different categories or classes of institutions is created by an express written statement of general policy by the department.

History: Effective September 1, 1987.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(13); 42 CFR 447, Subpart C

NOVEMBER 1987

AGENCY SYNOPSIS: Subdivision d of subsection 2 of section 75-02-02-08, amount, duration, and scope of medical assistance is amended to authorize the department to set limits on the number of eyeglass frames which may be provided to recipients, to set a limit on the price of those eyeglass frames, and to furnish information concerning the limits.

75-02-02-08. Amount, duration, and scope of medical assistance.

1. Within any limitations which may be established by rule, regulation, or statute and within the limits of legislative appropriations, eligible recipients may obtain the medical and remedial care and services which are described in the approved state plan for medical assistance in effect at the time the service is rendered and which may include:
 - a. Inpatient hospital services (other than services in an institution for mental diseases). "Inpatient hospital services" are those items and services ordinarily furnished by the hospital for the care and treatment of inpatients provided under the direction of a physician or dentist in an institution maintained primarily for treatment and care of patients with disorders other than tuberculosis or mental diseases and which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation; and which has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under title XIX of the Act.
 - b. Outpatient hospital services. "Outpatient hospital services" are those preventive, diagnostic, therapeutic,

rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to an outpatient by an institution which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.

- c. Other laboratory and x-ray services. "Other laboratory and x-ray services" means professional and technical laboratory and radiological services ordered by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, and provided to a patient by, or under the direction of, a physician or licensed practitioner, in an office or similar facility other than a hospital outpatient department or a clinic, and provided to a patient by a laboratory that is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
- d. Skilled nursing home services (other than services in an institution for mental diseases) for individuals twenty-one years of age or older. "Skilled nursing home services" means those items and services furnished by a licensed and otherwise eligible skilled nursing home or swing-bed hospital maintained primarily for the care and treatment of inpatients with disorders other than mental diseases which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law.
- e. Intermediate nursing care (other than services in an institution for mental diseases). "Intermediate nursing care" means those items and services furnished by a currently licensed intermediate care facility or swing-bed hospital maintained for the care and treatment of inpatients with disorders other than mental diseases which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law.
- f. Early and periodic screening and diagnosis of individuals under twenty-one years of age, and treatment of conditions found. Early and periodic screening and diagnosis of individuals under the age of twenty-one who are eligible under the plan to ascertain their physical or mental defects, and health care, treatment, and other measures to correct or ameliorate defects and chronic conditions

discovered thereby. Federal financial participation is available for any item of medical or remedial care and services included under this subsection for individuals under the age of twenty-one. Such care and services may be provided under the plan to individuals under the age of twenty-one, even if such care and services are not provided, or are provided in lesser amount, duration, or scope to individuals twenty-one years of age or older.

- g. Physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing home or elsewhere. "Physician's services" are those services provided, within the scope of practice of the physician's profession as defined by state law, by or under the personal supervision of an individual licensed under state law to practice medicine or osteopathy.
- h. Medical care and any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law. This term means any medical or remedial care or services other than physicians' services, provided within the scope of practice as defined by state law, by an individual licensed as a practitioner under state law.
- i. Home health care services. "Home health care services" in addition to the services of physicians, dentists, physical therapists, and other services and items available to patients in their homes and described elsewhere in these definitions, are any of the following items and services when they are provided on recommendation of a licensed physician to a patient in the patient's place of residence, but not including as a residence a hospital or a skilled nursing home:
 - (1) Intermittent or part-time nursing services furnished by a home health agency.
 - (2) Intermittent or part-time nursing services of a professional registered nurse or a licensed practical nurse when under the direction of the patient's physician, when no home health agency is available to provide nursing services.
 - (3) Medical supplies, equipment, and appliances recommended by the physician as required in the care of the patient and suitable for use in the home.
 - (4) Services of a home health aide who is an individual assigned to give personal care services to a patient in accordance with the plan of treatment outlined for the patient by the attending physician and the home

health agency which assigns a professional registered nurse to provide continuing supervision of the aide on the aide's assignment. "Home health agency" means a public or private agency or organization, or a subdivision of such an agency or organization, which is qualified to participate as a home health agency under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.

- j. Private duty nursing services. "Private duty nursing services" are nursing services provided by a professional registered nurse or a licensed practical nurse, under the general direction of the patient's physician, to a patient in the patient's own home or extended care facility when the patient requires individual and continuous care beyond that available from a visiting nurse or that routinely provided by the nursing staff of the hospital, nursing home, or extended care facility.
- k. Dental services. "Dental services" are any diagnostic, preventive, or corrective procedures administered by or under the supervision of a dentist in the practice of the dentist's profession and not excluded from coverage. Such services include treatment of the teeth and associated structures of the oral cavity, and of disease, injury, or impairment which may affect the oral or general health of the individual. "Dentist" means a person licensed to practice dentistry or dental surgery. Any procedure related to the preparation of "fixed bridgework" which involves the use of crowns and bridgework materials in concert with one another, but not including single crowns, is excluded from coverage unless a prior treatment authorization request, submitted by the attending dentist and approved by the department's dental consultant, describes a condition or combination of conditions which render the use of dentures impracticable or which may be more economically ameliorated by fixed bridgework than by dentures.
- l. Physical therapy and related services. "Physical therapy and related services" means physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders, and the use of such supplies and equipment as are necessary.
 - (1) "Physical therapy" means those services prescribed by a physician and provided to a patient by or under the supervision of a qualified physical therapist. A qualified physical therapist is a graduate of a program of physical therapy approved by the council on medical education of the American medical association in collaboration with the American

physical therapy association, or its equivalent, and where applicable, is licensed by the state.

(2) "Occupational therapy" means those services prescribed by a physician and provided to a patient and given by or under the supervision of a qualified occupational therapist. A qualified occupational therapist is registered by the American occupational therapy association or is a graduate of a program in occupational therapy approved by the council on medical education of the American medical association and is engaged in the required supplemental clinical experience prerequisite to registration by the American occupational therapy association.

(3) "Services for individuals with speech, hearing, and language disorders" are those diagnostic, screening, preventive or corrective services provided by or under the supervision of a speech pathologist or audiologist in the practice of the pathologist's or audiologist's profession for which a patient is referred by a physician. A speech pathologist or audiologist is one who has been granted the certificate of clinical competence in the American speech and hearing association, or who has completed the equivalent educational requirements and work experience necessary for such a certificate, or who has completed the academic program and is in the process of accumulating the necessary supervised work experience required to qualify for such a certificate.

m. Prescribed drugs, prosthetic devices, and dentures where a request is submitted by the attending dentist and granted prior approval by the department's dental consultant; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select.

(1) "Prescribed drugs" are any simple or compounded substance or mixture of substances prescribed as such or in other acceptable dosage forms for the cure, mitigation, or prevention of disease, or for health maintenance, by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's professional practice as defined and limited by federal and state law. With respect to "prescribed drugs" federal financial participation is available in expenditures for drugs dispensed by licensed pharmacists and licensed authorized practitioners in accordance with North Dakota Century Code chapter 43-17. When dispensing, the practitioner must do so on the

practitioner's written prescription and maintain records thereof.

- (2) "Dentures" means artificial structures prescribed by a dentist to replace a full or partial set of teeth and made by, or according to the directions of, a dentist. The term does not mean those artificial structures, commonly referred to as "fixed bridgework", which involve the use of crowns and bridgework materials in concert with one another.
- (3) "Prosthetic devices" means replacement, corrective, or supportive devices prescribed for a patient by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for the purpose of artificially replacing a missing portion of the body, or to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.
- (4) "Eyeglasses" are lenses, including frames when necessary, and other aids to vision prescribed by a physician skilled in diseases of the eye, or by an optometrist, whichever the patient may select, to aid or improve vision.

n. Other diagnostic, screening, preventive, and rehabilitative services.

- (1) "Diagnostic services" other than those for which provision is made elsewhere in these definitions, include any medical procedures or supplies recommended for a patient by the patient's physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, as necessary to enable the physician or practitioner to identify the existence, nature, or extent of illness, injury, or other health deviation in the patient.
- (2) "Screening services" consist of the use of standardized tests performed under medical direction in the mass examination of a designated population to detect the existence of one or more particular diseases or health deviations or to identify suspects for more definitive studies.
- (3) "Preventive services" are those provided by a physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, to prevent illness, disease, disability and other health

deviations or their progression, prolong life and promote physical and mental health and efficiency.

- (4) "Rehabilitative services" in addition to those for which provision is made elsewhere in these definitions, include any medical remedial items or services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.
- o. Care and services in a certified mental institution for individuals under twenty-one years of age or sixty-five years of age or over.
 - p. Any other medical care and any other type of remedial care recognized under state law, specified by the secretary. This term includes but is not limited to the following items:
 - (1) Transportation, including expenses for transportation and other related travel expenses, necessary to securing medical examinations or treatment when determined by the agency to be necessary in the individual case. "Travel expenses" are defined to include the cost of transportation for the individual by ambulance, taxicab, common carrier or other appropriate means; the cost of outside meals and lodging en route to, while receiving medical care, and returning from a medical resource; and the cost of an attendant may include transportation, meals, lodging, and salary of the attendant, except that no salary may be paid a member of the patient's family.
 - (2) Family planning services, including drugs, supplies, and devices, when such services are under the supervision of a physician. There will be freedom from coercion or pressure of mind and conscience and freedom of choice of method, so that individuals can choose in accordance with the dictates of their consciences.
 - (3) Whole blood, including items and services required in collection, storage, and administration, when it has been recommended by a physician and when it is not available to the patient from other sources.
 - (4) Skilled nursing home services, as defined in subdivision d, provided to patients under twenty-one years of age.

- (5) Emergency hospital services which are necessary to prevent the death or serious impairment of the health of the individual and which, because of the threat to the life or health of the individual, necessitate the use of the most accessible hospital available which is equipped to furnish such services, even though the hospital does not currently meet the conditions for participation under title XVIII of the Social Security Act, or definitions of inpatient or outpatient hospital services set forth in subdivisions a and b.
2. The following limitations exist with respect to medical and remedial care and services covered or provided under the medical assistance program.
 - a. Coverage will not be extended and payment will not be made for diet remedies prescribed for eligible recipients.
 - b. Coverage will not be extended and payment will not be made for alcoholic beverages prescribed for eligible recipients.
 - c. Coverage will not be extended and payment will not be made for orthodontia prescribed for eligible recipients, except for orthodontia necessary to correct serious functional problems.
 - d. Coverage and payment for eye examinations and eyeglasses for eligible recipients shall be limited to examinations and eyeglass replacements necessitated because of visual impairment. Coverage and payment for eyeglass frames ~~shall not exceed forty-four dollars per pair~~ is available for a reasonable number of frames, and in a reasonable amount, not to exceed limits set by the department. The department shall make available to all practitioners dispensing eyeglass frames, and to anyone else who may make inquiry, information concerning established limits. No coverage exists, and no payment will be made, for eyeglass frames which exceed the limits. A recipient is responsible for copayment of three dollars for the replacement of eyeglasses when the replacement is occasioned by loss or breakage.
3. Remedial services provided by residential facilities such as licensed homes for the aged and infirm, licensed foster care homes or facilities, and specialized facilities are not covered services but expenses incurred in securing such services must be deducted from countable income in determining financial eligibility. For the purposes of this chapter, "remedial services" means those services, provided in the above-identified facilities, which produce the maximum

reduction of physical or mental disability and restoration of a recipient to the recipient's best possible functional level.

4. The department may refuse payment for any covered service or procedure for which a prior treatment authorization request is required but not secured, but shall consider making payment if the vendor demonstrates that the failure to secure the required prior treatment authorization request was the result of oversight and the vendor has not failed to secure a required prior treatment authorization request within the twelve months prior to the month in which the services or procedures were furnished.
5. A vendor of medical services which provides a covered service but fails to receive payment due to the operation of subsection 4, and which attempts to collect from the eligible recipient or the eligible recipient's responsible relatives any amounts which would have been paid by the department but for the operation of subsection 4, has by so doing breached the agreement referred to in subsection 4 of section 75-02-02-10.

History: Amended effective September 1, 1978; September 2, 1980; February 1, 1981; November 1, 1983; May 1, 1986; November 1, 1986; November 1, 1987.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04; 42 CFR 431.53, 42 CFR 431.110, 42 CFR 435.1009, 42 CFR Part 440, 42 CFR Part 441, subparts A, B, & D, 45 CFR 435.732

STAFF COMMENT: Article 75-05 contains all new material but is not underscored so as to improve readability.

ARTICLE 75-05

HUMAN SERVICE CENTER LICENSURE STANDARDS

Chapter	
75-05-01	Administration and Center Management
75-05-02	Physical Plant Management
75-05-03	Clinical Services
75-05-04	Client Management
75-05-05	Specialized Services

**CHAPTER 75-05-01
ADMINISTRATION AND CENTER MANAGEMENT**

Section	
75-05-01-01	Definitions
75-05-01-02	Administration
75-05-01-03	Human Service Council
75-05-01-04	Fiscal Management
75-05-01-05	Personnel Policies and Procedures
75-05-01-06	Staff Growth and Development
75-05-01-07	Quality Assurance
75-05-01-08	Data Collection
75-05-01-09	Disaster Plan
75-05-01-10	Clients' Rights

75-05-01-01. Definitions. As used in this article:

1. "Acute treatment and care" means the process of providing treatment services to clients on a regularly scheduled basis with arrangements made for nonscheduled visits during times of increased stress or crisis.
2. "Addiction evaluation" means an assessment by an addiction counselor to determine the nature or extent of possible alcohol abuse, drug abuse, or addictive illness.
3. "Aftercare services" means activities provided to persons which assist them in gaining access to needed social, psychiatric, psychological, medical, vocational, housing, and other services in the community.
4. "Case closure summary" means a document prepared by the client's case manager and filed in the client's record which contains a summary of the intake data, course of treatment or training, final diagnosis, and recommendations for care and treatment outside the human service center.
5. "Client" means a person who receives services from the human service center and for whom an individualized service record is maintained.
6. "Clinical services" means a variety of services, including acute treatment and care, emergency, psychosocial rehabilitation, and medication review to meet the care and treatment needs of clients.
7. "Community correction aftercare program" means supervision and treatment services provided to appropriately referred unruly and delinquent youth committed to the legal custody of the superintendent of the North Dakota state industrial school by

the juvenile courts through a contractual agreement between the director of institutions and the department.

8. "Community correction prevention program" means supervision, prevention, and treatment services provided to youth having, or potentially having, conflicts with the law and families experiencing parent-child conflict but who have not been adjudicated unruly or delinquent by the juvenile court.
9. "Community correction program" means a program which consists of four major components: state youth authority, aftercare, prevention, and interstate compact on juveniles. This program provides rehabilitative services to predelinquent, delinquent, and unruly youth.
10. "Community home counselor" means a person who provides care, supervision, and training for chronically mentally ill clients in a community residential care facility, assists residents in reorientation to the community, and is responsible for the upkeep and maintenance of the facility.
11. "Community living supervisor" means a professional who is responsible for the planning and implementation of training and treatment in a community residential care facility for chronically mentally ill clients.
12. "Community residential service" means a service for the chronically mentally ill that provides twenty-four-hour supervision, seven days a week, in transitional living and long-term care facilities which provide room, board, and training in daily living skills. This service also includes supportive living, which provides human service center staff to be available twenty-four hours in supportive care. On an individual basis, the supportive living program can provide room, board, and training in daily living skills.
13. "Community supportive care service" means a volunteer program to assist the chronically mentally ill person to remain in the community.
14. "DSM III" means the third edition of the diagnostic and statistical manual of mental disorders of the American psychiatric association.
15. "Department" means the department of human services.
16. "Developmental disabilities case management" means activities provided to persons with developmental disabilities which will assist them in gaining access to needed social, medical, educational, vocational, residential, and other services in the community.

17. "Developmental disabilities case manager" means a professional in the field of developmental disabilities who provides professional case coordination aimed at accessing the necessary community and institutional services for developmentally disabled individuals, which includes the coordination of vocational, psychological, and medical assessments to plan for individual needs, the establishment of individual service plans, placement of individuals with appropriate service providers, and monitoring and reviewing services provided.
18. "Diagnosis" means the process of identifying specific mental or physical disorders based on DSM III (Axes I, II, III, IV, V) and ICD-9CM.
19. "Educational programs" means planned, time-limited educational programs such as child management or parenting courses.
20. "Emergency services" means a service that is available at all times to handle crisis situations.
21. "Group counseling" or "group therapy" means a form of treatment in which a group of clients, with similar problems, meet with a counselor or therapist to discuss difficulties, provide support for each other, gain insight into problems, and develop better methods of meeting their problems.
22. "Human service center" means a facility which was established in accordance with the provisions of North Dakota Century Code section 50-06-05.3.
23. "Human service council" means a group appointed in accordance with the provisions of North Dakota Century Code section 50-06-05.3.
24. "ICD-9CM" means the international classification of diseases (9th revision) clinical modification.
25. "Individual counseling" or "individual therapy" means a form of treatment in which a counselor or therapist works with a client on a one-to-one basis.
26. "Individual service plan (ISP)" means a document which describes service needs of the developmentally disabled person and the scope of services to be provided. The individual service plan, in conjunction with an individual program plan (IPP) prepared by each provider, provides a comprehensive plan of care. This comprehensive plan of care identifies the services to be provided, the persons who will provide services, the time period of service provision, and the frequency of the service.

27. "Individual treatment plan (ITP)" means a document which describes an individual plan of treatment or service for each client, including a description of the client's problems, goals, and objectives for treatment and of individuals responsible for developing and implementing the plan. The individual program plan of a developmentally disabled person constitutes that person's individual treatment plan. The youth service plan of a person committed to the state youth authority constitutes that person's individual treatment plan.
28. "Individualized written rehabilitation program (IWRP)" means a statement of the client's rehabilitation goal and a detailed outline of the program to be followed in achieving the goal. The individualized written rehabilitation program is not a contract, but is rather a tool in the rehabilitation process used for information, planning, and assessment purposes. It requires participatory planning by the counselor and the client to establish communication and a mutual understanding of the goals and the objectives.
29. "Intake" means an initial contact with the client intended to define and evaluate the presenting problem and make disposition for appropriate services.
30. "Interstate compact on juveniles" means an administrative responsibility established pursuant to North Dakota Century Code chapter 27-22 and the statutes of other states, to provide procedures for protection of juveniles who are on probation, parole, or runaway status and are in need of placement, supervision, and return-home services.
31. "Medication review" means prescription monitoring and consultation to a client regarding the client's use of medication performed by a psychiatrist or medical doctor, or by a registered nurse or a licensed practical nurse under the direction and supervision of a psychiatrist or medical doctor.
32. "Multidisciplinary team" means at least two clinical members representing different professions, disciplines, or services.
33. "Outreach" means the process of reaching into a community systematically for the purposes of identifying persons in need of services, alerting and referring persons and their families to the availability of services, locating needed services, and enabling persons to enter and accept the service delivery system.
34. "Partial care" means services, provided in or based at a human service center, to individuals to maintain and promote social, emotional, and physical well-being through opportunities for socialization, therapy, work participation, education, and other self-enhancement activities.

35. "Program" means an organized written system of services designed to meet the service needs of clients.
36. "Progress notes" means the documentation in the client's record which describes the client's progress or lack of progress in treatment.
37. "Psychiatric evaluation" means the assessment evaluation of a client by a psychiatrist.
38. "Psychiatrist" means a physician, with three years of approved residency training in psychiatry, who is licensed to practice medicine in the state of North Dakota.
39. "Psychological evaluation" means the assessment or evaluation of a client by or under the supervision of a licensed psychologist.
40. "Psychologist" means a professional who holds a doctor's degree in psychology and who is licensed by the state of North Dakota.
41. "Psychosocial rehabilitation services" means services provided to individuals to maintain or promote social, emotional, and physical well-being through opportunities for socialization, work participation, education, and other self-enhancement activities. Psychosocial rehabilitation services include partial care, community residential services, employment services, community supportive care program, and aftercare program.
42. "Quality assurance" means a facility-wide ongoing objective and systematic series of activities which monitor and evaluate the quality and appropriateness of client care, provide a method for problem identification, provide corrective action if needed, and monitor outcomes.
43. "Regional aging services coordinator" means a person assigned responsibility to plan, develop, implement, and assess programs under the Older Americans Act.
44. "Regional developmental disabilities program administrator" means a professional in the field of developmental disabilities who is responsible for the development, monitoring, and coordination of services to developmentally disabled individuals of all ages. Specifically, this position is responsible to manage and supervise the case management system, authorize payments for service programs, provide technical assistance and consultation to service providers, assist in the development of new provider facilities and services, coordinate the regional deinstitutionalization plan, and monitor the effectiveness of services.

45. "Regional director" means the human service professional who is appointed by the executive director of the department to be responsible for the overall management and administration of the human service center.
46. "Regional ombudsman" means a person assigned the responsibility to plan, develop, and maintain the North Dakota long-term care ombudsman program.
47. "Regional representative of social services programs" means a person, designated by the regional director of the human service center, to whom is delegated the responsibility for supervising and assisting with county social service board programs as assigned.
48. "Residential care" means services provided on a twenty-four-hour per day basis, including room and board, to unwed pregnant women who are unable to remain in their own homes and who are in need of instruction and counseling to cope with the problems associated with unwed pregnancy.
49. "Residential treatment team" means multidisciplinary staff who make decisions regarding admissions, treatment, training, and disposition of clients in the community residential service.
50. "Service record" means a compilation of those events and processes that describe and document the evaluation, care, treatment, and service of the client.
51. "Staff growth and development" means professional growth activities provided or approved by the department, and approved professional growth activities of individual staff persons seeking to advance their own career goals and professional expertise.
52. "Staff privileges" means approval by the quality assurance committee to render client care and treatment services within well-defined limits, based on the individual's professional qualifications, experiences, competence, ability, and judgment.
53. "State youth authority" means an administrative function of the department authorized by North Dakota Century Code chapter 27-21 to provide treatment and rehabilitation services to delinquent and unruly youth and their families when the youth are committed to it by juvenile courts of North Dakota.
54. "Supervision of county social services" means the activities of supervision, consultation, evaluation, licensure, certification of various county social service programs, program planning, implementation, monitoring, receiving and reviewing reports, generation of statistical reports, staff

development, and in-service training of county social service board staff and board members.

55. "Transitional living" means the provision of meals and lodging-related services to an individual in a twenty-four-hour per day community-based living environment established for individuals who do not need the protection offered in an institutional setting, but are not yet ready for independent living.
56. "Utilization review" means a program designed to ensure optimal allocation of financial and clinical resources to determine if generally accepted guidelines for service utilization and duration are being practiced.
57. "Vocational adjustment counseling" means assisting the individual and family to understand and accept any physical or mental limitations placed on activities because of a disability. This includes working with the client, teacher, trainer, and employer to help the client learn adaptive behavior or techniques to attain the vocational objective and function appropriately in the family and community.
58. "Vocational assessment (diagnosis and evaluation)" means acquisition and analysis of medical, psychological, vocational, educational, and social information to determine the effect of a handicapping condition on preparing for or obtaining employment. This also includes the medical and psychological consultations, as well as consultations with social workers, teachers, and employers, on behalf of a specific client.
59. "Vocational rehabilitation administrator" means the professional responsible for the overall management and implementation of all vocational rehabilitation services within a region.
60. "Vocational rehabilitation counselor" means the professional who provides vocational counseling and guidance, placement services, and assists physically and mentally handicapped persons to become vocationally competent.
61. "Work activity" means therapeutic training in community survival and prevocational skills, but does not mean "developmental work activity" as that term is defined in section 75-04-01-01.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-01-02. Administration.

1. The regional director shall have direct responsibility for the overall management and implementation of services and programs of the human service center and must be a full-time employee.
2. The regional director shall employ personnel who shall meet federal and state laws, applicable rules, and applicable court orders. The employed personnel shall meet the criteria for employment as set forth by state merit system standards and the central personnel division. All human service center employees are department employees.
3. The regional director shall develop an organizational chart which reflects the line of authority of staff.
4. The regional director shall develop and implement a written plan for the essential services the center provides, the goals and objectives of the services, staff positions designated to provide the services, authority and responsibility of positions, and coordination of the services with other services of the center.
5. Where necessary, the regional director may contract for services with nonemployees with the permission of the executive director of the department.
6. The regional director shall employ or contract with a psychiatrist to be the medical director in accordance with the policies of the department. The medical director shall provide consultation, treatment, and psychiatric evaluations for clients at the human service center and shall provide input in program planning and development of services.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-01-03. Human service council.

1. The human service center shall have a human service council appointed in accordance with North Dakota Century Code section 50-06-05.3.
2. The regional director shall maintain an accurate list of all human service council members, together with their addresses and telephone numbers.
3. The human service council shall meet at least quarterly.
4. The human service council shall develop bylaws to govern its activities.

5. The human service council shall keep minutes of all meetings and, when the minutes have been approved, a copy must be sent to the executive director of the department.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-01-04. Fiscal management.

1. The regional director shall designate a business manager who shall oversee the financial management of the center. The business office shall abide by the policies and procedures of the department and by state and federal laws, rules, and regulations.
2. The center shall have a formal system of internal control in the handling of the center's fiscal affairs.
3. The center shall follow manuals or have guidelines for the following:
 - a. Budget preparation and development, which is the result of a team effort, which includes active participation of professional staff.
 - b. Fee for services schedule, including rates and charges, which is available to any person upon request.
 - c. Authorizations and approvals for purchasing supplies, services, and equipment, and an equipment inventory control program.
 - d. Fiscal reports which are prepared as needed or requested.
 - e. Accounts receivable policies, procedures, and reports.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-01-05. Personnel policies and procedures. All personnel employed at the human service center shall abide by the personnel policies and procedures established by the department and the central personnel division.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-01-06. Staff growth and development.

1. There must be a written plan for the orientation and on-the-job training of all new employees.
 - a. The orientation program must be initiated upon employment and completed within thirty working days.
 - b. The orientation program must include policies and procedures of the department and operations of the human service center, and any other information deemed necessary by the regional director and the supervisor of the person being employed.
2. Employees of the human service center shall attend inservice training programs at the human service center as it pertains to their program and clients.
3. All on-the-job training and inservice training must be documented.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-01-07. Quality assurance.

1. The regional director shall appoint a committee or an individual who is responsible for the quality assurance program at the human service center.
2. The committee's or individual's functions shall be to develop a written quality assurance plan which must include, as a minimum, the following components:
 - a. Client and staff safety and protection (risk management).
 - b. Specifications for the appropriate methods for the performance evaluation and utilization of personnel.
 - c. A system for credentialing and granting or withholding staff privileges.
 - d. A utilization review program to ensure quality client care, which reviews appropriateness of admissions, services provided, duration of service, and underutilization and overutilization of personnel and financial resources.
 - e. A plan for the review of individual treatment and service plans.

History: Effective November 1, 1987.
General Authority: NDCC 50-06-05.2
Law Implemented: NDCC 50-06-05.2

75-05-01-08. Data collection. There must be a data collection system which provides statistics to comply with the policies of the department and state and federal laws, rules, and regulations which must show, at a minimum, the number of clients served, type of services, and reasons for termination of services.

History: Effective November 1, 1987.
General Authority: NDCC 50-06-05.2
Law Implemented: NDCC 50-06-05.2

75-05-01-09. Disaster plan.

1. The regional director shall adopt and maintain a written disaster plan which must provide for disaster emergencies in the counties and coordination with the North Dakota division of emergency management.
2. The regional director shall adopt and maintain a written disaster plan which must provide for disaster emergencies within the human service center and other facilities which are operated by the center.
3. The plan must be available on the premises and clients must be instructed in its implementation when appropriate. Evacuation drills at the human service center and other facilities which are operated by the center must be conducted at least every six months.

History: Effective November 1, 1987.
General Authority: NDCC 50-06-05.2
Law Implemented: NDCC 50-06-05.2

75-05-01-10. Clients' rights.

1. The persons responsible for intake shall provide all human service center clients, and families or guardians, as appropriate, with a written statement regarding the exercise and protection of the clients' civil rights. This statement must include the assurance of civil rights for all clients of the human service center regardless of the clients' race, color, religion, national origin, sex, age, political beliefs, or handicap in accordance with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act, and the North Dakota Human Rights Act (North Dakota Century Code chapter 14-02.4).

2. The clients, and families or guardians, as appropriate, must receive written information concerning their rights under each program within the human service center from which the client is receiving services.
3. Each client, and family or guardian, as appropriate, will receive written information describing:
 - a. The conditions under which a decision, action, or inaction may be appealed;
 - b. The method of filing the appeal;
 - c. The various steps in the appeal; and
 - d. The assistance which can be furnished in the preparation and submission of the appeal.
4. The human service center shall provide assistance in obtaining protective or advocacy services, if needed and appropriate.
5. Clients' rights will not be limited unless the limitation is essential to protect the clients' safety, the safety of others, or is determined to be of therapeutic value. The restriction will be implemented and documented according to the policies of the department.
6. This article may not be construed as creating, for the benefit of a client, or a client's family or guardian, any civil right or other right.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

CHAPTER 75-05-02 PHYSICAL PLANT MANAGEMENT

Section	
75-05-02-01	Building and Grounds
75-05-02-02	Therapeutic Environment
75-05-02-03	Janitorial Services

75-05-02-01. Building and grounds. The center shall have available documentation that facilities occupied by the center meet local fire and safety regulations.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-02-02. Therapeutic environment. The human service center shall establish an environment that enhances the positive self-image of clients and preserves their human dignity.

1. There must be outside parking which must be well marked with lighting for safety.
2. The human service center shall meet the minimum requirements of North Dakota Century Code section 48-02-19 and shall provide accessibility to services in accordance with the accessibility requirements of section 504 of the Rehabilitation Act of 1973, as amended.
3. Waiting room and reception areas must be comfortable in their design, location, and furnishings, and must accommodate the client's needs.
 - a. Restrooms which are handicapped accessible must be available for clients, visitors, and staff.
 - b. A telephone for local calls must be available for client use.
 - c. Drinking units must be accessible either by the physical location or by the availability of drinking cups.
4. Direct outside air ventilation must be provided to all rooms by forced ventilation, air-conditioning, or operable windows.
5. All furnishings must be clean, in good repair, and appropriate to the age and handicap of clients or visitors.
6. Offices and group therapy or counseling rooms must be appropriately decorated, and furniture and equipment must be in good usable repair and must meet the needs of the clients. The offices and group therapy or counseling rooms must have ample room and furniture to accommodate the client, family members, and guardian.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-02-03. Janitorial services.

1. Furnishings must be kept clean.
2. Floors and walls must be kept clean and free of foul odors.
3. Bathrooms and lavatory facilities must be kept clean at all times.

4. Sidewalks and the parking lot must be cleared of snow, ice, and debris.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

CHAPTER 75-05-03 CLINICAL SERVICES

Section

75-05-03-01	Acute Treatment and Care
75-05-03-02	Emergency Services
75-05-03-03	Psychosocial Rehabilitation Services - Extended Care
75-05-03-04	Medication Review
75-05-03-05	Outreach
75-05-03-06	Consultation
75-05-03-07	Community Education

75-05-03-01. Acute treatment and care.

1. There must be an acute treatment and care service in the human service center.
2. Treatment modalities that must be offered to clients include, but are limited to, the following: individual counseling and psychotherapy; group counseling and psychotherapy; family therapy; marital therapy; and chemotherapy.
3. All treatment provided must be documented in the client's record.
4. The regional director shall employ clinical staff to provide the acute treatment and care service.
5. Acute treatment and care services must be available to clients during the day and on designated evenings.
6. When appropriate, access to acute treatment and care services must be made available to clients in settings outside the human service center, such as the client's home and outreach offices.
7. When appropriate, services provided by the acute treatment and care service must be coordinated with other private and public agencies.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-03-02. Emergency services.

1. The human service center shall maintain or contract for a twenty-four-hour emergency service. As a minimum, telephone or face-to-face contact must be part of this service. All contacts must be documented.
2. Emergency service personnel must be trained to handle crisis situations. Training must include, but not be limited to: suicide intervention; violent behavior of clients; and crisis telephone calls. This training must be documented.
3. In situations where face-to-face crisis counseling is provided, it must be in an environment which is conducive to treatment and control of the client in case of suicide or violent behavior.
4. When appropriate, emergency services personnel shall be responsible for notifying the client's family of the emergency and of the arrangements made for delivery of the service.
5. Emergency service personnel must be fully informed and aware of all agencies and organizations which provide services and emergency service to people, including hospitals, clergy, inpatient programs, law enforcement personnel, and ambulance.
6. If additional services are needed after emergency services have been delivered, the human service center shall make available any treatment which is needed by the client and which the center normally provides.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-03-03. Psychosocial rehabilitation services - Extended care.

1. **Partial care.**
 - a. The regional director shall designate a person who shall coordinate, administer, and supervise the partial care service.
 - b. The partial care service must be a full-time program with a minimum of thirty programmed hours per week offered during the day and designated evening hours.
 - c. Treatment and training modalities offered to clients must include, but are not limited to: individual counseling and psychotherapy; group counseling and psychotherapy; daily living skills training; prevocational skills training; work activity; vocational counseling;

occupational therapy; and training in the appropriate use of leisure time.

- d. An evaluation of the client's progress in partial care must be documented in the client's record on at least a monthly basis or when a significant life event occurs.
- e. The center shall employ staff to carry out the functions of a partial care program.

2. Community residential services.

- a. The regional director shall designate a community living supervisor.
- b. When ordered by the client's physician, special diets must be made available to all clients of the community residential service.
- c. The community residential service facility must:
 - (1) Be physically integrated into the community with interior and exterior features that are comparable and compatible to other residences in the nearby neighborhood;
 - (2) Be readily accessible to an outdoor recreational area;
 - (3) Have bedrooms which are outside rooms and must accommodate one or two clients. Each client must be provided with a bed appropriate for his size and weight, a clean, comfortable mattress, bedding appropriate for weather and climate, and furniture; and
 - (4) Have an area where the client can go for quiet or private times.
- d. The transitional living environment must:
 - (1) Not house more than eight clients;
 - (2) Have the ability to house both male and female clients, while being maintained to accommodate privacy for individuals;
 - (3) Have bedrooms on or above grade level with a minimum of eighty square feet [7.43 square meters] per client for multiple sleeping rooms and at least one hundred square feet [9.29 square meters] in single bedrooms unless a variance has been granted by the department; and

- (4) Provide at least one full bathroom for every four clients.
- e. The staff of the community residential service shall have the following duties and responsibilities:
 - (1) The client's individual treatment plan shall include input from the community home counselors as well as the residential treatment team.
 - (2) An activity schedule for each client must be available to the community home counselors and must be implemented daily and posted when appropriate.
 - (3) The community home counselor is responsible for maintaining an inventory of the client's personal effects.
 - (4) The community living supervisor shall appoint a community home counselor who is responsible for food purchasing, food storage, and sanitary conditions for food preparation.
 - (5) Make arrangements so that the privacy and individual rights of the clients are not infringed upon by other clients.
 - f. The transitional living facility shall comply with the most recent provisions of chapter 20 "Lodging Rooming Houses" of the life safety code.
 - g. Clients in the community residential service must be allowed home visits when appropriate and as documented in the client's individual treatment plan.
 - h. The client's family may visit the community residential facility during visiting hours except as contraindicated by the individual treatment plan.
- 3. Work evaluation, job training, and placement.**
- a. Work evaluation, job training, and placement must be provided to or arranged for clients determined to be ready for and in need of such services.
 - b. Services offered to clients must include, but are not limited to: assessment of clients' strengths and weaknesses as related to employment; vocational counseling; prevocational training; job development; job placement; and followup.
 - c. All clients who have been placed on a job must be provided followup services.

4. Aftercare services.

- a. The regional director shall designate an aftercare coordinator.
- b. The aftercare coordinator shall maintain close contact with the North Dakota state hospital in whatever fashion is appropriate to serve the clients as part of the continuum of care of clients.

5. Community supportive care services.

- a. The regional director shall designate a community supportive care supervisor.
- b. The community supportive care supervisor is responsible for the recruitment and training of all community supportive caregivers.
- c. Community supportive caregivers shall meet monthly with a designated clinical staff person for case consultation and related matters.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-03-04. Medication review.

1. The human service center shall have written policies and procedures designed to ensure that all medications are administered safely and properly.
2. Medication orders must be written only by physicians who are in direct care and treatment of clients.
3. Administration of medications must be in accordance with state laws.
4. There must be maintained a record in the client's record of medication administered and prescriptions written.
5. There must be a system of checking to detect unhealthy side effects or toxic reactions.
6. Medication storage areas must be well lighted, safely secured, and maintained in accordance with the security requirements of federal, state, and local laws.
7. Each client who receives medication must be informed of benefits, risks, side effects, and potential effects if medications are not accepted. At a minimum, this informed

consent must be in a progress note written by the prescribing physician. A signed informed consent statement by the client is acceptable in addition to the progress note, but not in lieu of the progress note. The progress note must include:

- a. A statement that a discussion regarding medications prescribed was given.
 - b. A statement that a specific discussion of tardive dyskinesia was had, if the medication is an antipsychotic.
 - c. A statement that the person appears to be not competent to understand the discussion regarding medications if that is the case. If the client, in the opinion of the physician, is not competent to understand the discussion and gives consent, the note must document discussions with guardian, family, or other responsible individuals.
8. When clients of community residential services are not capable of the competent self-administration of medication, a self-administration program will be designed. When a client has received training in self-medication, this will be documented in the client's clinical record.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-03-05. Outreach.

1. The outreach service shall assist the people who have problems or handicaps in obtaining those services by making referrals to local providers or by developing programs to meet those needs.
2. If services are developed in the outreach program, the services shall meet the standards of chapters 75-05-03 and 75-05-04.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-03-06. Consultation.

1. The human service center shall maintain a consultation service.

2. A list of qualified staff who can provide consultation to the various community groups or agencies must be maintained.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-03-07. Community education

1. The human service center shall maintain a community education service.
2. The general public must be informed of the services of the human service center.
3. The human service center shall document the number, type, and time spent on community educational services.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

CHAPTER 75-05-04 CLIENT MANAGEMENT

Section

75-05-04-01	Intake
75-05-04-02	Admission
75-05-04-03	Treatment and Service Plans
75-05-04-04	Progress Notes
75-05-04-05	Treatment and Service Plan Review
75-05-04-06	Case Closure
75-05-04-07	Client Referrals
75-05-04-08	Records Maintenance

75-05-04-01. Intake.

1. The regional director shall designate intake personnel who are responsible for the initial contact with the client to define and evaluate the presenting problems and make disposition for appropriate services.
2. If, in the judgment of the intake personnel, the contact which has been made is of an emergency nature, the intake personnel shall comply with emergency service procedures.
3. If, in the judgment of the intake personnel, the contact which has been made is not of an emergency nature, the intake personnel shall determine if the treatment or services required by the client can be appropriately provided by the

center. Upon such determination, the intake personnel shall assure an appointment is scheduled with an appropriate staff member.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-04-02. Admission.

1. The initial admission process shall involve a face-to-face interview with the client. The admission process must include the following:
 - a. Social history to include, when appropriate, presenting problems, family background, developmental history, educational history, and employment.
 - b. Medical history to include any relevant findings of previous physical or psychiatric evaluations, a list of the client's current medications and allergies, and additional evaluations as deemed necessary. If the client is being considered for community residential services, a physical examination must have been completed within the last three months.
 - c. A psychological evaluation, if appropriate.
 - d. An addiction evaluation, if appropriate.
 - e. A vocational assessment, if the client has been employed, and if appropriate.
 - f. Signed release of information form from the client and client's parent or guardian when deemed necessary.
2. Upon completion of the admission process, a diagnosis must be made and a treatment or service plan developed.
3. A case staffing must be held with a multidisciplinary team to confirm or revise the diagnosis and the treatment or service plan or reassign the client to an appropriate member of the professional staff based on the client's needs.
4. If the client is being referred for community residential services, the client shall, if possible, visit the residential facility. If arrangements can be made, an overnight stay must be considered.
5. If the human service center cannot provide appropriate services, the professional staff person shall document, in writing, in the client's admission file, the reasons why the

client is not eligible. The professional staff person will contact the client within seventy-two hours and assist the client in referral to appropriate services.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-04-03. Treatment and service plans.

1. Each client who has been admitted for service to the human service center shall have an individualized treatment or service plan that is based on the admission data and needs of the client.
2. Overall development and implementation of the treatment or service plan are the responsibility of the professional staff assigned the client.
3. The treatment or service plan must be developed in accordance with the following time lines:
 - a. Clients whose preliminary diagnosis indicates a mental disorder (based on DSM III or ICD-9CM classification) or alcohol and drug abuse or individual and family dysfunction shall have an individualized treatment plan (ITP) developed within twenty working days from the day of case assignment.
 - b. Clients who are eligible for vocational rehabilitation services shall have an individualized written rehabilitation program (IWRP).
 - c. Clients who are admitted for state youth authority services shall have a youth service plan (YSP) developed within sixty working days of admission.
 - d. Clients who are admitted for developmental disabilities services shall have an individual service plan (ISP) within thirty calendar days of admission. If additional developmental disability services are provided by the center, an individual program plan (IPP) must be developed within thirty calendar days.
4. The treatment or service plan shall contain the name of the client, goals and planned outcomes, service strategies, expected achievement dates of goals and outcomes, staff responsible for service, and signature of the case manager. In the case of clients who are eligible for medical assistance benefits, and receiving clinic service, there must be documentation of physician approval.

5. The professional staff member assigned the client shall review the treatment or service plan with the client and shall document such review in the client's record.
6. The treatment or service plan shall include, if appropriate, involving the family and significant others in the treatment or service of the client.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-04-04. Progress notes. Progress notes must be entered into the client's service record and must include, after each visit, the client's progress towards meeting the goals of the treatment or service plan. Partial care activities must be documented in the individual

client's service record at least monthly. The date, signature, and title of the staff member making an entry must be included with each entry.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-04-05. Treatment and service plan review. Individual treatment plans and youth service plans must be reviewed and evaluated by the professional staff member assigned the client and that staff member's supervisor at least every six months after the development of the individual treatment plan and youth service plan. If it is determined that a client will receive long-term services, the individual treatment plan must be reviewed and evaluated at least every twelve months by the case manager and the case manager's supervisor. The individual written rehabilitation program must be reviewed and evaluated at least every twelve months by the vocational rehabilitation counselor and the counselor's supervisor. The individual program plan must be reviewed and evaluated at least every twelve months by the case manager and the case manager's supervisor.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-04-06. Case closure. A case closure summary must be entered in the client's record within fifteen working days following the client's completion of treatment or training as outlined in the client's record. The summary must include a brief statement of the presenting problems, a summary of the course of treatment or training, diagnosis or clinical impressions at time of closure, reason for closure, and an

aftercare or followup plan or referral, if appropriate. Case closure of vocational rehabilitation records shall be subject to federal law.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-04-07. Client referrals.

1. When a client needs treatment or service which the human service center does not provide, staff shall assist the client in obtaining the services, if available.
2. The staff shall provide pertinent information to the referral agency. Before any referral is made, a release of information must be signed by the client or a determination must be made that the signed release of information form is not necessary for the referral.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-04-08. Records maintenance.

1. The regional director shall designate a staff person who is responsible for the safekeeping of each client's record.
2. All data and information in the client's record is confidential.
 - a. Records must be maintained in accordance with federal and state confidentiality requirements.
 - b. Upon written request, the client's record is available to the client for review unless a legally sufficient basis for denying the client access to the record has been established. The center shall establish policies which encourage clients to seek professional assistance while undertaking a review of records, and which prevent the alteration of any record during a review.
3. The human service center shall comply with department policies and procedures concerning records management.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

**CHAPTER 75-05-05
SPECIALIZED SERVICES**

Section	
75-05-05-01	Developmental Disabilities Program
75-05-05-02	Vocational Rehabilitation
75-05-05-03	Supervision and Direction of County Social Services
75-05-05-04	Community Correction Program
75-05-05-05	Aging Services
75-05-05-06	Long-Term Care Ombudsman Program

75-05-05-01. Developmental disabilities program.

1. If the human service center operates developmental disability programs subject to licensure under chapter 75-04-01, the center must be accredited by the accreditation council for developmentally disabled persons using the most recent standards applicable at the time of survey by the council.
2. The regional director shall designate a regional developmental disabilities program administrator.
3. The human service center shall provide case management services to eligible developmentally disabled persons.
 - a. There must be written procedures to provide for opportunities for the individual or the individual's family to request a change of the person responsible for coordinating the individual's service plan.
 - b. The average caseload of the developmental disabilities case management unit must be no greater than sixty clients per case manager.
 - c. The developmental disabilities case manager assigned to an individual will be responsible for coordinating the individual's overall individual service plan. The developmental disabilities case manager:
 - (1) Attends to the total spectrum of the individual's needs including, but not limited to, housing, family relationships, social activities, education, finance, employment, health (including special health needs), recreation, mobility, protective services, and records;
 - (2) Locates, obtains, and coordinates services as needed by the individual;

- (3) Secures relevant data from other agencies providing services, to maintain a current individual service plan;
- (4) Provides documentation concerning coordination of the individual service plan;
- (5) Visits each of the persons on the case manager's caseload at their residences and day programs as required by department policies and procedures;
- (6) Reviews the individual program plan prepared by each provider to assure that the resulting comprehensive plan of care identifies services to be provided, the service provider, the time of service provision, and the frequency of the service;
- (7) Intervenes, when necessary, to assure implementation of the individual service plan;
- (8) Requests, when necessary, review of the individual service plan by the individual's interagency team;
- (9) Requests, when necessary, review of the individual program plan by the individual's interdisciplinary team; and
- (10) Initiates the transfer of the individual to another service or agency, when such transfer is appropriate to meet the individual's needs.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-05-02. Vocational rehabilitation.

1. The regional director shall designate a full-time vocational rehabilitation administrator.
2. The vocational rehabilitation administrator shall establish annual goals and objectives identifying, as a minimum, the following:
 - a. Number of clients to be served and rehabilitated;
 - b. Major regional initiatives in service delivery; and
 - c. Job placement activities.
3. The vocational rehabilitation administrator shall follow the appeals procedures outlined in chapter 75-01-03 and shall

inform all clients or potential clients of the client assistance program.

4. Client files must be monitored to assure appropriateness of services using the status life guidelines.
 - a. At least ten percent of the client files will be reviewed annually using the case review schedule. A report of the results and recommendations of the review will be submitted to the regional director, if requested.
 - b. There must be a recorded contact with or on behalf of the client within the past ninety days unless the previous recording explains why a contact is not necessary.
5. The vocational rehabilitation administrator monitors the encumbrance and bills paid to ensure that obligations of available funds are appropriately expended or canceled.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-05-03. Supervision and direction of county social services.

1. The regional director shall designate a regional representative of social service programs.
2. With respect to child protective services, the regional representative shall:
 - a. Review all reports of suspected child abuse and neglect in the region and determine if they are investigated in accordance with North Dakota Century Code chapter 50-25.1 and department policy;
 - b. Determine if the investigative completion time frames and appropriate child protective services are provided;
 - c. Provide technical assistance in child abuse and neglect services;
 - d. Provide final determinations of probable cause or no probable cause for all child abuse and neglect cases in the region;
 - e. Refer all child abuse and neglect cases where there is a probable cause determination to the appropriate juvenile court;
 - f. Provide investigative services for reports of institutional child abuse or neglect in the region;

- g. Establish and chair all county or multicounty child protection teams in the region and assure that they meet at least monthly;
 - h. Maintain a regional log concerning all child abuse and neglect reports and the disposition of those reports; and
 - i. Provide or arrange for an orientation in children's services for counties for appropriate county social service board staff.
3. With respect to foster care services, the regional representative shall:
- a. Monitor all placements and review all court orders for compliance with the provisions of Public Law 96-272.
 - b. Review all foster care grievances in the region to determine if they are carried out in compliance with state law and policy;
 - c. Maintain a regional log of all children in foster care;
 - d. Approve and arrange for specialized foster care service payments program for all appropriate cases in the region;
 - e. Conduct an annual licensing study of each group home or residential child care facility in the region and forward the study and recommendation to the department;
 - f. Review each family foster care licensing study conducted in the region and approve, and issue license, or deny license and provide appropriate notice to applicant. Where appropriate, revoke foster care licenses and provide notice to the licensee;
 - g. Chair each county or multicounty permanency planning committee in the region and assure they meet in conformance with section 75-03-14-06;
 - h. Approve all referrals for group or residential foster care placements for the region and review with the permanency planning committee; and
 - i. Provide technical assistance and interpretation of policies, procedures, rules, and laws related to foster care services.
4. With respect to homemaker-home health aid services, the regional representative shall:
- a. Conduct an annual audit on the certification of each county homemaker-home health aid service and send such

report to the department no later than December thirty-first of the year previous to the effective date of the license;

- b. Provide technical assistance to counties regarding aspects of the homemaker-home health aid services;
 - c. Provide or arrange for training to new homemaker supervisors in the region; and
 - d. Serve on the county interviewing panel for the selection of all new homemaker and home-health aides in the region.
5. With respect to early childhood services (day care services), the regional representative shall:
- a. Approve, deny, or revoke all early childhood home, group, and center license applications, as well as license applications for preschool educational facilities, and provide formal notification to all applicants;
 - b. Provide technical assistance regarding policies, procedures, rules, and laws for early childhood services in the region; and
 - c. Provide or arrange for inservice training for early childhood licensing staff regionwide.
6. With respect to unmarried minor parent services, the regional representative shall provide technical assistance for services to unmarried minor parents.
7. With respect to work incentive program (WIN) services, the regional representative shall provide technical assistance for the work incentive program.
8. With respect to home and community-based services (HCBS) for aged and disabled, the regional representative shall:
- a. Arrange for or conduct training related to home and community-based services;
 - b. Provide technical assistance and interpretation of policies, procedures, rules, and laws related to home and community-based services;
 - c. Monitor services provided and reimbursements claimed under the home and community-based services program;
 - d. Resolve compliance discrepancies for services and reimbursements under the home and community-based services program; and

- e. Act on individual care plans submitted for services to be provided under the medicaid waiver program for aged and disabled.
9. With respect to crippled children's services, the regional representative shall:
- a. Provide technical assistance to county social service staff in the administration of crippled children's services; and
 - b. Provide regional supervision of all crippled children field clinics.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-05-04. Community correction program. The regional director shall designate a person who is responsible for the community correction program, which must include the following four major components:

1. State youth authority (SYA).
 - a. All youth committed to state youth authority shall have a valid court order from the originating juvenile court of jurisdiction.
 - b. All client management services shall include the following:
 - (1) The admission process must involve a face-to-face interview with the youth and the youth's family when possible.
 - (2) The admission process must include obtaining an appropriate release of information form from the parents, guardian, or legal custodian.
 - (3) There must be a diagnostic testing and evaluation process for all youth committed to state youth authority by professional staff within sixty days of referral as may be necessary.
 - (4) The diagnostic testing and evaluation process must include a report which must be sent to the committing juvenile court within ten days after the completion of the evaluation.

- (5) There must be a written youth service plan based on the diagnostic testing and evaluation process and completed within sixty working days of admission.
 - (6) The youth service plan must include a placement choice which is in the least restrictive environment appropriate for treatment or rehabilitation, the name of the youth, case status, legal status, presenting problems, treatment plan goals and objectives, treatment program progress during past quarter to include action or steps taken, state youth authority worker's recommendations, and appropriate signatures to include supervisor.
 - (7) The youth service plan must be reviewed at least every three months; however, this plan may be reviewed and revised to reflect the ongoing treatment and rehabilitation needs of the youth.
 - (8) A written quarterly report must be sent to the committing court on the current status and progress of each youth committed to state youth authority.
 - (9) A written community placement agreement must be completed and revised as necessary for all youth committed to state youth authority.
 - (10) A signed release of information form from the parents, guardian, or legal custodian shall be included in the referral process for all youth committed to state youth authority who need treatment or therapy which the human service center does not provide.
- c. The human service center shall provide case management and treatment or rehabilitation services to all youth committed to state youth authority.
 - d. State youth authority staff shall make at least one face-to-face and one additional contact every month for each youth and family residing within the regional service area and one contact each month for each youth and family residing outside the regional service area.
 - e. A state youth authority staff person shall serve on the permanency planning committee for all youth committed to state youth authority and to be placed in foster care.
 - f. There must be documentation that all youth have been informed of their civil rights and provided an explanation as to why out-of-home placement is in the youth's best interest.

- g. Documentation in the youth's case file must include correspondence to youth, parents, court of jurisdiction, and other coordinating agencies as appropriate.
2. Upon receipt of a request from the state industrial school, which is in compliance with the current interagency contract, community correction program staff will provide aftercare services to all youth who are committed directly to the state industrial school by the court.
3. Upon referral of all youth who have, or who are likely to have, conflicts with the law, community correction program staff shall provide or arrange for the provision of supervision, counseling, and treatment.
4. Community correction program staff shall complete a placement and investigation report, and shall provide case management or supervision, counseling, and treatment services for any youth who is referred through an interstate compact from another state.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-05-05. Aging services. The regional director shall designate a regional aging services coordinator. The regional aging service coordinator, or a designee, shall:

1. Develop a plan of advocacy for services to older persons in the region.
2. Conduct public hearings:
 - a. Concerning the state plan on aging; and
 - b. Concerning the state funding plan for title III of the Older Americans Act.
3. Publish and distribute information to older persons.
4. Provide and document technical assistance to service providers on:
 - a. Senior organizations' development and operation;
 - b. Program and service development and implementation;
 - c. Resource development;
 - d. Funding requests under title III of the Older Americans Act;

- e. Title III audit resolution; and
 - f. Senior center acquisition, renovation, and construction.
5. Review and evaluate title III funding requests and grant or contract revisions for fiscal and programmatic accuracy and compliance with grant application and contracting requirements.
 6. Conduct and document formal onsite fiscal and programmatic assessments of all title III funded service providers.
 7. Monitor the service and fiscal performance data of each title III funded service provider.
 8. Provide financial and program training for title III funded service providers as appropriate.
 9. Promote community education and training in areas of gerontology.
 10. Implement and evaluate outcomes of selected federal and state aging program initiatives included in the state plan on aging.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-05-06. Long-term care ombudsman program. The regional director of the human service center shall employ a regional ombudsman for long-term care facilities designated by the executive director of the department and maintain a staff who shall:

1. Carry out the responsibilities assigned by the state long-term care ombudsman in accordance with North Dakota Century Code chapter 50-10.1.
2. Visit each long-term care facility in the region.
3. In the investigation and resolution of complaints made by or on behalf of long-term care facility residents:
 - a. Follow departmental procedures established for the statewide uniform reporting system.
 - b. File a copy of the final case closure report with the statewide uniform reporting system.
 - c. Maintain a filing system for the purpose of documenting pertinent information concerning the case.

4. Identify and document issues affecting long-term care residents, and where within the authority of the regional ombudsman, act on those issues.
5. Provide to the public, information and education on long-term care issues.
6. Recruit, select, train, and certify community volunteer ombudsmen, and provide technical assistance and supervision to them.

History: Effective November 1, 1987.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

TITLE 81
Tax Commissioner

OCTOBER 1987

81-09-02-03. {Reserved} Procedure for refund of overpayments, duplicate payments, and erroneous payments of tax.

1. For purposes of this section, "taxpayer" means the party who has actually remitted an overpayment, duplicate payment, or erroneous payment of tax.
2. A claim for credit or refund must be made by filing with the tax commissioner an amended return, or other report as prescribed by the tax commissioner, accompanied by a statement outlining the specific grounds upon which the claim for credit or refund is based.
3. The tax commissioner shall notify the taxpayer of the commissioner's decision to either grant or deny the taxpayer's claim for credit or refund within a reasonable period of time. If the tax commissioner decides to deny the taxpayer's claim for credit or refund, in part or in full, this decision becomes final and irrevocable thirty days after the date the notice of denial is mailed to the taxpayer unless, within this thirty-day period, the taxpayer files a written protest with the tax commissioner. Upon written request of the taxpayer, the tax commissioner may grant a reasonable extension of time for the filing of a protest.
4. The protest must state the grounds upon which the protest is based along with any additional information required by the tax commissioner. Upon written request of the taxpayer, the tax commissioner may grant the taxpayer, or the taxpayer's authorized representative, an informal conference.
5. The tax commissioner shall reconsider the denial of the claim for credit or refund after the taxpayer has filed a written protest. This reconsideration may include further examination

by the tax commissioner or the tax commissioner's representative of the taxpayer's books, papers, records, or memoranda, including, but not limited to, corporate minutes and committee notes.

6. The tax commissioner shall notify the taxpayer of the reconsideration of the taxpayer's claim for credit or refund within a reasonable period of time after a protest is filed. If the decision of the tax commissioner is to deny the claim for credit or refund, in part or in full, the decision becomes final and irrevocable thirty days after the date the notice of denial is mailed to the taxpayer unless, within this thirty-day period, the taxpayer seeks formal administrative review of the tax commissioner's reconsideration of claim for credit or refund by filing a complaint and requesting an administrative hearing. The provisions of North Dakota Century Code chapter 28-32 apply to and govern the administrative hearing procedure, including appeals from any decision rendered by the tax commissioner. Upon written request of the taxpayer, the tax commissioner may grant a reasonable extension of time for the filing of a complaint.

History: Effective October 1, 1987.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-51-19

81-09-03-02. Definition Definitions. Unless As used in these sections and for the administration of North Dakota Century Code chapter 57-51.1, unless the context requires otherwise, the following definition applies definitions apply:

1. "Completion" means an oil well shall be considered completed when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run.
2. "Drilled" means the following:
 - a. The point at which the drill bit of the rig used to complete the well bore began boring; or
 - b. The point at which the drill bit was used to deepen an existing well bore to a separate reservoir.
3. "Lease tanks" means tanks used to store oil.
4. "New well" means a well drilled and completed after April 27, 1987, to a separate and distinct reservoir as recognized by the industrial commission. A multiple completion well, which produces oil from separate reservoirs, may be considered a new well as to the portion of the well bore drilled to and completed in the new reservoir after April 27, 1987.

5. "Reservoir" means a common source of supply as defined by the industrial commission.
6. "Test oil" means oil recovered during and after drilling but before normal completion of a well.
7. "Ultimate producing interval" means an interval within a reservoir or pool as defined by the industrial commission.
8. "Unit" means the total area of land that results from the combining of interests in all or parts of two or more leases or fee interests in order to operate the reservoir as a single production unit subject to a single operating interest. A unit may be formed by an agreement between the mineral interest owners (voluntary unitization) or by order of an agency of the state or federal government (compulsory unitization). A unit does not include "poolings" resulting from the enforcement of spacing requirements. This definition is only effective for periods prior to April 27, 1987.

History: Effective August 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51.1-01(3)(4)(5)(8), 57-51.1-03(2)(3)

81-09-03-03. Determination of a property - Operator's election to designate individual wells as separate properties. A property, for purposes of exemption of stripper well property from the oil extraction tax, is governed by the following:

1. A unit, whether created before, on, or after January 1, 1972, constitutes a separate property.
2. A lease or fee interest subdivision created before January 1, 1972, constitutes a separate property if production of oil occurred in commercial quantities before January 1, 1972.
3. A lease or fee interest subdivision created after December 31, 1971, does not constitute a separate property if production of oil occurred in commercial quantities before January 1, 1972.

To receive a determination from the tax commissioner that the property an operator desires to have classified as a stripper well property constitutes a property as specified in ~~subdivision 3~~ subsection 4 of North Dakota Century Code section 57-51.1-01, the operator must file, on forms prescribed by the tax commissioner, an application for property determination. Upon receipt of the completed application form, the tax commissioner will determine whether the unit, lease, or fee interest subdivision constitutes a property within the meaning of ~~subdivision 3~~ subsection 4 of North Dakota Century Code section 57-51.1-01. The tax commissioner will notify the operator of the tax commissioner's determination within thirty days of receipt of a completed application form. If the operator objects to the tax

commissioner's determination, the operator may apply for a redetermination. The application for a redetermination must state the reasons for the objection. Within fifteen days of the receipt of the objection, the tax commissioner shall notify the operator of any change in the property determination.

An operator may elect at any time to treat each and every well located on the property determined above as a separate property for stripper well purposes. An operator's election to designate individual wells as separate properties is effective upon proper notification to the tax commissioner pursuant to section 81-09-03-04. The election, once exercised, is irrevocable.

This rule is only effective for periods prior to April 27, 1987.

History: Effective August 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51.1-01(3)(4)(5)(8), 57-51.1-03(2)

81-09-03-04. Designation of a property on an individual well basis - Notification by operator. An operator who elects to designate as a separate property each and every well located on a property determined in section 81-09-03-03 shall notify the tax commissioner. The notice must be submitted upon forms prescribed by the tax commissioner. The tax commissioner will review the notice to guarantee that the election is not in conflict with previous actions concerning that property. Provided the election is consistent with previous actions, within thirty days of receiving the notice, the tax commissioner shall provide the operator with a statement of separate property designation.

The origination date for a well receiving a separate property designation is the first day of the month following notification to the tax commissioner by the operator. Any consecutive twelve-month period after December 31, 1972, must be considered in determining whether a designated separate property qualifies for certification as a stripper well property. The exemption from the oil extraction tax for a designated separate property which is certified as a stripper well property is effective as of the origination date.

This rule is only effective for periods prior to April 27, 1987.

History: Effective August 1, 1986; amended effective October 1, 1987.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51.1-01(~~3~~)(~~5~~)(4)(8), 57-51.1-03(2)

81-09-03-05. Certification of a qualifying secondary and tertiary recovery project well. To be eligible for the four percent tax rate, a producer of a well located on a secondary or tertiary recovery project must have the project certified as qualifying by the industrial commission and must submit a copy of the certification received from the industrial commission to the tax commissioner.

History: Effective October 1, 1987.
General Authority: NDCC 57-51-21, 57-51.1-05
Law Implemented: NDCC 57-51.1-01(5)(6)

81-09-03-06. New well exemption. Oil produced from a new well during the first fifteen months from the date of well completion is exempt from the oil extraction tax. Test oil is also exempt from the oil extraction tax.

To be eligible for this exemption, a producer must submit a new well qualification letter signed by a representative of the industrial commission. This qualification letter must state the date the well was spudded or deepened, the date the well was completed, and the total volume of test oil recovered prior to completion. The tax commissioner will accept the information provided in the qualification letter subject to confirmation upon audit.

If the average price of a barrel of crude oil, as defined in subsection 2 of North Dakota Century Code section 57-51.1-01, between June first and October thirty-first of any year is thirty-three dollars or more, the exemption is eliminated for any well as of November first of that year. The exemption cannot be reinstated except by legislative action. However, oil produced from a new well after the exemption is eliminated is eligible for a reduction in the oil extraction tax rate. This reduction, from six and one-half percent of gross value to four percent of gross value, is effective for only the months of November and December of the year in question. Beginning January first of the year following the year in question and continuing through December thirty-first of that year, the oil extraction tax rate applicable to new wells is six and one-half percent of gross value.

History: Effective October 1, 1987.
General Authority: NDCC 57-51-21, 57-51.1-05
Law Implemented: NDCC 57-51.1-03(3)

81-09-03-07. Stripper well exemption. Oil produced from a stripper well property is exempt from the oil extraction tax.

To be eligible for the stripper well exemption, a producer must have its property certified as a stripper well property by the industrial commission and must submit a copy of the certification received from the industrial commission to the tax commissioner.

For a property which has more than ten barrels of average daily production, which qualifies as a stripper well property under chapter 724 of the 1987 Session Laws, and which uses as its qualifying period any twelve-month period prior to April 1, 1987, a well operator must file an application with the industrial commission by December 31, 1987, to receive an exemption from April 27, 1987, the effective date of chapter 724 of the 1987 Session Laws. If an application is filed with the industrial commission after December 31, 1987, the date the operator

actually filed the application will be treated as the date the exemption becomes effective.

History: Effective October 1, 1987.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51.1-03(2), 57-51-19

NOVEMBER 1987

81-02.1-01-01. Requirements for application Definitions.
As used in these sections and for the administration of North Dakota Century Code chapter 57-55, unless the context otherwise requires:

1. The term "owner" "Owner" means the person holding legal title to the mobile home for the purpose of determining who must apply for a mobile home tax permit 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.
2. "Mobile home structure" means a structure as defined in North Dakota Century Code section 57-55-01 and includes a recreational vehicle if it is not permanently attached to the land and is used as living quarters or as a place of business.
3. "Length" means the longest exterior dimension of the area used as a residence or place of business, excluding the hitch, if any.

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987.

General Authority: NDCC 57-55-09

Law Implemented: NDCC 57-55-01, 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 permit 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 permit. If the owner's exempt status is established, the county treasurer will issue a special tax-exempt permit.

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987.

General Authority: NDCC 57-55-09

Law Implemented: NDCC 57-55-01, 57-55-01.1, 57-55-02, 57-55-10

81-02.1-01-03. Form and contents of application. The application for a tax permit must be made on forms approved by the tax commissioner and 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; amended effective July 1, 1985; November 1, 1987.

General Authority: NDCC 57-55-09

Law Implemented: NDCC 57-55-02

81-02.1-01-04. Computation of taxable value tax. The taxable value of a county director of tax equalization shall calculate the mobile home is determined as follows tax in the following manner:

1. The replacement cost new is determined by multiplying the total square feet of the mobile home is multiplied by the average cost per square foot, for the appropriate quality and size as shown in the tax department's guidelines for the appropriate quality and width, to determine the true and full value. To adjust for depreciation, replacement cost new is multiplied by a percentage good factor 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 fifty percent 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, the assessed value is multiplied by nine percent to determine the taxable value. 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 ten percent.

4. The taxes due on the mobile home are then tax due is determined by applying multiplying the taxable value of the mobile home to by 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; amended effective November 1, 1987.

General Authority: NDCC 57-55-09

Law Implemented: NDCC 57-02-01, 57-02-27, 57-55-04

81-02.1-01-05. Filing procedures for the counties - Payment of tax. When the computation of the mobile home tax ~~permit section of the application~~ is complete, the county director of tax equalization ~~must retain one copy and shall deliver the original and one copy information~~ to the county treasurer.

~~If the taxes are~~ When the tax is paid in full, the treasurer ~~must shall~~ issue a ~~prenumbered permit receipt~~ showing the amount of payment and the type of tax ~~and the tax permit information must be recorded on the back of the receipt. The receipt and permit 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 shall~~ 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 permit must be issued upon payment of the final installment. The county treasurer ~~must shall~~ inform the county director of tax equalization if an installment becomes delinquent, and the director ~~must shall~~ give the owner notice of the delinquency as provided in North Dakota Century Code section 57-55-11.

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987.

General Authority: NDCC 57-55-09

Law Implemented: NDCC 57-55-03, 57-55-04, 57-55-06

81-02.1-01-05.1. Form of tax permit. The tax permit that is recorded on back of the receipt issued for payment in full must contain the following information:

1. Name of county that issues the permit.
2. A statement that the receipt for payment in full constitutes a mobile home tax permit for the mobile home described in this document.

3. Date of expiration of the permit.

The tax permit does not need to be displayed on the mobile home.

History: Effective November 1, 1987.

General Authority: NDCC 57-55-09

Law Implemented: NDCC 57-55-06

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 tenth day thereafter.

The due date must be distinguished from the delinquency date, which is the date penalties fixed by law attach to unpaid taxes.

If a mobile home is acquired, or moved into the state, after January tenth, the entire tax is due within ten days of acquisition or movement into the state. The tax may not be paid in installments and becomes delinquent after the fortieth day.

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987.

General Authority: NDCC 57-55-09

Law Implemented: NDCC 57-55-01.1, 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 house trailer 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.

If a delinquent mobile home owner has real estate in the county, the county commissioners shall extend the delinquent mobile home tax as a lien against the owner's real estate in that county.

History: Effective June 1, 1984; amended effective November 1, 1987.

General Authority: NDCC 57-55-09

Law Implemented: NDCC ~~57-55-02~~, 28-22-02, 57-22-21, 57-55-03, 57-55-11

81-02.1-01-15. Liability for taxes upon sale of mobile home. When a mobile home upon which the yearly permit 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 any agreement made between the buyer and seller will not prevent the collection of the unpaid tax from being collected as follows:

1. The county director of tax equalization will collect the entire tax due levied from the seller prorated for the period of ownership during the year, including any delinquent tax from prior years.
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; amended effective July 1, 1985; November 1, 1987.

General Authority: NDCC 57-55-09

Law Implemented: NDCC 57-55-01.1, 57-55-04, 57-55-05

~~81-02.1-01-17. Tax Moving permit 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 permit or a tax release statement moving permit.~~

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987.

General Authority: NDCC 57-55-09

Law Implemented: NDCC 57-55-10, 57-55-11

81-03-01.1-04. Computation of interest on refunds.

1. For any return having a due date before July 1, 1987:
 - a. Interest on a refund must be computed at nine percent per annum for the entire accrual period, and does not start accruing until sixty days after the due date of the return, the date the return is filed, or the date the tax is fully paid, whichever date is later.
 - b. If a refund is due to a carryback of a net operating loss or net capital loss, interest at the rate of nine percent per annum must be computed on the refund if the due date of the return for that carryback year was before July 1, 1987, and does not start accruing until the first day of the taxable year following the taxable year in which the net operating loss or net capital loss was incurred.
2. For any return having a due date after June 30, 1987:
 - a. The rate of interest used in computing interest on a refund must be equal to the rate established under section 6621(a)(2) of the Internal Revenue Code. The rate of

interest used in computing interest on a refund is the federal rate assigned to the calendar quarter wherein the interest began to accrue, and interest starts to accrue sixty days after the due date of the return, the date the return is filed, or the date the tax is fully paid, whichever date is later.

- b. If a refund is due to a carryback of a net operating loss or net capital loss, the rate established under section 6621(a)(2) of the Internal Revenue Code must be used to compute interest on the refund if the due date of the return filed for that carryback year is after June 30, 1987, and does not start to accrue until sixty days after the date the amended return claiming the refund is filed.
- c. The applicable federal rate is applied on a per annum basis over the entire accrual period.
3. As used in this section, the due date of a return is the date prescribed by law for filing that return, excluding extensions, and refers only to the original return for any tax year.
4. The federal rate established under section 6621(a)(2) of the Internal Revenue Code for each calendar quarter must be monitored by the tax commissioner. A schedule must be prepared and maintained listing the established federal rates, the calendar quarters to which they apply, and references to the final authority announcing the rates publicly.

History: Effective November 1, 1987.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-35.2

81-03-01.1-05. Computation of interest on an extension, a late payment, underpayment, and additional tax found due through audit or mathematical verification.

1. For any return having a due date before July 1, 1987, interest must be charged at the rate of twelve percent per annum in the case of an extension, and the rate of one percent per month or fraction thereof in the case of a late payment, underpayment, and additional tax found due through audit or mathematical verification.
2. For any return having a due date after June 30, 1987, the rate of interest applicable to an extension, late payment, underpayment, and additional tax found due through audit or mathematical verification is equal to the rate established under section 6621(a)(2) of the Internal Revenue Code.

- a. The rate of interest charged is the federal rate assigned to the calendar quarter that includes the due date of the return.
 - b. For an extension, the appropriate federal rate is applied on a per annum basis over the entire extension period.
 - c. For a late payment, underpayment, and additional tax found due through audit or mathematical verification, the appropriate federal rate is divided by twelve to determine the interest rate to be charged per month or fraction thereof.
 - d. The applicable federal rate determined for a return is used in all instances where interest is computed on tax due under the return.
3. As used in this section, the due date of a return is the date prescribed by law for filing that return, excluding extensions, and refers only to the original return for any tax year.
 4. The federal rate established under section 6621(a)(2) of the Internal Revenue Code for each calendar quarter must be monitored by the tax commissioner. A schedule must be prepared and maintained listing the established federal rates, the calendar quarters to which they apply, and references to the federal authority announcing the rates publicly.

History: Effective November 1, 1987.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-45

81-03-03.1-01. Certificate of residence - Penalty. Repealed as a result of S.L. 1987, ch. 695, §§ 3, 4, 5, 6, 8, and 9.

81-03-03.1-02. Employer's application for identification number registration. Employers An employer who employ one or more nonresident employees as defined for North Dakota income tax withholding purposes is required to withhold state income tax must apply for an employer's identification number register with the office of tax commissioner within seven days of hiring a nonresident an employee. The application must be made to the tax commissiener on forms a form prescribed by the tax commissioner.

History: Effective July 1, 1985; amended November 1, 1987.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-58, 57-38-59, 57-38-60

81-03-03.1-03. Exemptions - Federal or state withholding certificate. Repealed as a result of S.L. 1987, ch. 695, §§ 3, 4, 5, 6, 8, and 9.

81-03-03.1-04. Amount of wages payable before withholding applies. Repealed as a result of S.L. 1987, ch. 695, §§ 3, 4, 5, 6, 8, and 9.

81-03-04-01. Corporation required to report and pay estimated tax, penalty, and interest - Refund of overpayment.

1. Any corporation may elect to file a declaration of estimated income tax with the tax commissioner.
2. ~~Any corporation that reasonably expects its current state income tax liability to be in excess of five thousand dollars must file a declaration of estimated tax with the tax commissioner.~~ A corporation shall file a declaration of estimated tax with the tax commissioner if:
 - a. The corporation's previous year's state income tax liability exceeded five thousand dollars; and
 - b. The corporation reasonably expects the current state income tax liability to be in excess of five thousand dollars.
3. For the purpose of this section, tax liability is defined as the amount of North Dakota tax due computed after the application of allowable credits and before the application of estimated payments.
4. When making the declaration, a corporation has the option of basing ~~its~~ the estimation on the tax liability for the previous year or on an estimate of ~~its~~ the liability for the current tax year.
- 3- 5. The declaration of estimated tax must be filed on or before the fifteenth day of the fourth month of the current corporate tax year. The original declaration may be amended by filing an amended declaration any time before the fifteenth day of the first month of the tax year following the current tax year.
- 4- 6. A corporation ~~must~~ shall pay ~~its~~ the estimated tax liability in four equal installments payable on the fifteenth day of the fourth, sixth, and ninth month of the current tax year and the fifteenth day of the first month of the following tax year. As an alternative to paying in quarterly installments, a corporation may pay the entire estimated amount on the fifteenth day of the fourth month of the current tax year.

7. For taxable years beginning after December 31, 1986, the provisions for recurring seasonal income as provided in section 6655(e) of the Internal Revenue Code is recognized for state income tax purposes.

~~5-~~ 8. Penalty and interest apply in the following conditions:

- a. A corporation did not timely file a declaration of estimated tax.
- b. A corporation did not pay the estimated tax on or before the quarterly due date.
- c. The quarterly estimated payments were underpaid by more than ten percent of the actual tax liability for the current tax year divided by four. However, no penalty or interest will apply if the quarterly estimated payments equaled the previous year's total tax divided by four.

~~6-~~ A corporation having a total state income tax liability of less than five thousand dollars in the previous tax year and more than five thousand dollars in the current tax year, will be subject to penalty and interest if the conditions of subsection 5 apply.

~~7-~~ 9. Interest is computed from the due date of the quarterly installment to the date of actual payment. Estimated tax payments, received as a result of an amended declaration of estimated tax, will have interest computed from the date paid to the date due in the related quarters.

~~8-~~ 10. If the total amount of estimated tax payments exceed the total amount of tax required to be paid for the current tax year, the overpayment will be refunded. Interest will be paid on any overpayment of tax if the overpayment is not refunded within sixty days after the due date of the income tax return or within sixty days after the date the income tax return was filed, whichever comes later.

11. a. If the total amount of estimated tax payments exceeds the anticipated tax liability for the tax year by more than five hundred dollars, a quick refund may be requested. The request for refund must be filed on forms provided by the tax commissioner. In addition, the request must be filed after the close of the tax year and before the original due date of the tax return. No interest will be paid on a quick refund.

b. If a quick refund of estimated income tax results in a corporation's failure to meet the requirements of North Dakota Century Code section 57-38-62, penalty and interest provisions will apply.

History: Effective July 1, 1985; amended effective November 1, 1987.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-62

81-03-04-02. Individual, estate, and trust required to file a declaration and make payment of estimated income tax, penalty, and interest.

1. Except as otherwise provided, an individual, estate, or trust shall file a declaration and make payment of estimated state income tax if all three of the following conditions exist:
 - a. There is a requirement to make payment of estimated federal income tax.
 - b. The estimated state income tax for the current year exceeds two hundred dollars.
 - c. The state income tax liability for the previous year exceeded two hundred dollars.
2. A resident individual, estate, or trust that was not required to file a return for the previous year, and therefore had no state income tax liability for the previous year, does not have to file a declaration and make payment of estimated state income tax.
3. A nonresident individual, estate, or trust that was not required to file a return for the previous year, and therefore had no state income tax liability for the previous year, shall file a declaration and make payment of state income tax if there is a requirement to make payment of estimated federal income tax and the estimated state income tax for the current year exceeds two hundred dollars.
4. If an individual derives over two-thirds of gross income from farming, files a federal income tax return by March first of the following tax year, and pays the federal tax in full by that same date, the individual does not have to file a declaration and make payment of estimated state income tax. The individual does not have to file a state income tax return or pay any state income tax due on or before March first of the following tax year to qualify for this exception.
5. If an individual derives over two-thirds of gross income from farming, makes the one required estimated federal tax installment on January fifteenth of the following tax year, and files a federal income tax return after March first of the following tax year, the individual is required to file the declaration and pay the estimated state income tax due on January fifteenth of the following tax year. The first three declarations and payments due on April fifteenth, June

fifteenth, and September fifteenth of the current tax year are not required.

6. Any individual, estate, or trust that is not required to file a declaration and make payment of estimated state income tax may elect to do so.
7. An individual shall use form 400-ES to file a declaration and make payment of estimated state income tax.
8. An estate and trust shall use form 401-ES to file a declaration and make payment of estimated state income tax.
9. An individual, estate, or trust required to file a declaration and make payment of estimated state income tax shall pay the estimated tax in four equal installments due on the fifteenth day of the fourth, sixth, and ninth months of the current tax year and the fifteenth day of the first month of the following tax year. As an alternative, the entire estimated state income tax may be paid on the fifteenth day of the fourth month of the current tax year.
10. Penalty and interest must be computed and added in the following situations:
 - a. An individual, estate, or trust did not timely file a declaration on or before the quarterly due date.
 - b. An individual, estate, or trust did not pay the required estimate on or before the quarterly due date.
11. Penalty and interest will not be applied in the following situations:
 - a. An individual, estate, or trust utilizes the annualized income installment method as provided in section 6654 of the Internal Revenue Code, and makes the required estimated state income tax payment based thereon.
 - b. The quarterly payment of state income tax, including state withholding, equals or exceeds the previous year's total state income tax liability divided by four. The previous year's total state income tax liability means the amount of North Dakota income tax computed after any allowable credits, but before income tax withheld and estimated payments, are subtracted.
 - c. The quarterly payment of state income tax, including state withholding, equals ninety percent of the total state income tax liability for the current year divided by four. The total state income tax liability for the current year means the actual net state tax liability computed after

any allowable credits, but before state income tax withheld and estimated state income tax, are subtracted.

History: Effective November 1, 1987.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-62, 57-38-63, 57-38-64

81-03-09-37. Special rules - Trucking companies.

The following special rules are established with respect to trucking companies:

1. In general. As used in this section, the term "trucking company" means a motor common carrier, a motor contract carrier, or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation. Where a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this section. In such cases, the first step is to determine what portion of the trucking company's income constitutes business income and what portion constitutes nonbusiness under North Dakota Century Code sections 57-38.1-01 and 57-59-01, article IV(1), and section 81-03-09-03. Nonbusiness income is directly allocable to specific states pursuant to the provisions of North Dakota Century Code sections 57-38.1-05 through 57-38.1-08, and section 57-59-01, article IV(5) through (8). Business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this section. The sum of the items of nonbusiness income directly allocated to this state plus the amount of business income attributable to the state constitutes the amount of the taxpayer's entire net income which is subject to taxing in this state.
2. Business and nonbusiness income. For definitions, rules, and examples for determining business and nonbusiness income, see sections 81-03-09-03 through 81-03-09-06.
3. Apportionment of business income.
 - a. In general. The property factor must be determined in accordance with sections 81-03-09-15 through 81-03-09-21, the payroll factor in accordance with sections 81-03-09-22 through 81-03-09-25, and the sales factor in accordance with sections 81-03-09-26 through 81-03-09-31, except as modified by this section.
 - (1) Property valuation. Owned property must be valued at its original cost and property rented from others, including purchased transportation, must be valued at

eight times the net annual rental rate in accordance with North Dakota Century Code sections 57-38.1-11 and 57-59-01, article IV(11), and sections 81-03-09-19 and 81-03-09-20. To the extent that the taxpayer's records reflect a separate charge incurred for the use of purchased transportation attributable to the property so used, such separate charge must be used in calculating the value of rented property. If such a charge is not separated from that attributable to the compensation paid for the operator of the purchased transportation, the total combined charge must be reduced by twenty percent to determine that portion of the charge attributable solely to the value of the rented property. Mobile property, other than purchased transportation, which is owned by other trucking companies and temporarily used by the taxpayer in its business and for which a per diem or mileage charge is made may not be included in the property factor as rented property. Mobile property which is owned by the taxpayer and temporarily used by other trucking companies in their business and for which a per diem or mileage charge is made by the taxpayer must be included in the property factor of the taxpayer.

- (2) General definitions. The following definitions are applicable to the numerator and denominator of the property factor, as well as other apportionment factor descriptions:
- (a) "Average value" of property means the amount determined by averaging the values at the beginning and end of the income tax year, but the tax commissioner may require the averaging of monthly values during the income year or such averaging as is necessary to reflect properly the average value of the trucking company's property, in accordance with North Dakota Century Code sections 57-38.1-12 and 57-59-01, article IV(12), and section 81-03-09-21.
 - (b) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property, other than support vehicles used predominantly in a local capacity. Mobile property includes purchased transportation.
 - (c) "Mobile property mile" is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.

- (d) "Original cost" is deemed to be the basis of the property for federal income tax purposes prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions, or, if the property has no such basis, the valuation of such property for interstate commerce commission purposes. If the original cost of property is ascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer. In accordance with section 81-03-09-19.
- (e) "Property used during the course of the income year" includes property which is available for use in the taxpayer's trade or business during the income year.
- (f) "Purchased transportation" means the taxpayer's use of a motor vehicle owned and operated by another for the purpose of transporting tangible personal property for which a charge, whether based upon a per diem, mileage, or other basis is incurred.
- (g) "Temporarily used" means the use of any mobile property owned by another for a period not to exceed a total of thirty days during any income year.
- (h) The "value" of owned real and tangible personal property means its original cost, in accordance with North Dakota Century Code sections 57-38.1-11 and 57-59-01, article IV(11), and section 81-03-09-19.
- (i) The "value" or rented real and tangible personal property means the product of eight times the net annual rental rate, in accordance with North Dakota Century Code sections 57-38.1-11 and 57-59-01, article IV(11), and section 81-03-09-20.
- (3) The denominator and numerator of the property factor. The denominator of the property factor must be the average value of all the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor must be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year. In the determination of the numerator of the property

factor, all property, except mobile property as defined in this section, must be included in the numerator of the property factor in accordance with North Dakota Century Code sections 57-38.1-10 through 57-38.1-12 and 57-59-01, article IV(10)(11)(12), and sections 81-03-09-15 through 81-03-09-21.

Mobile property as defined in this section, which is located within and without this state during the income year must be included in the numerator of the property factor in the ratio which mobile property miles in the state bear to the total mobile property miles.

- b. The payroll factor. The denominator of the payroll factor is the compensation paid everywhere by the taxpayer during the income year for the production of business income, in accordance with North Dakota Century Code sections 57-38.1-13, 57-38.1-14, and 57-59-01, article IV(13)(14), and sections 81-03-09-22 through 81-03-09-25.

With respect to personnel performing services within and without this state, compensation paid to such employees must be included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere based on mobile property miles.

- c. The sales factor.

- (1) In general. All revenue derived from transactions and activities in the regular course of the taxpayer's trade or business which produce business income must be included in the denominator of the revenue factor, in accordance with North Dakota Century Code sections 57-38.1-01 and 57-59-01, article IV(1), and sections 81-03-09-03 through 81-03-09-06.

The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with North Dakota Century Code sections 57-38.1-15 through 57-38.1-17, 57-59-01, article IV(15)(16)(17), and sections 81-03-09-26 through 81-03-09-31.

- (2) The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:

- (a) Intrastate. All receipts from any shipment which both originates and terminates within this state.
- (b) Interstate. That portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio which the mobile property miles traveled by such movements or shipments in this state bear to the total mobile property miles traveled by movements or shipments from points of origin to destination.
- d. Records. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by such mobile property as those terms are used in this section. Such records are subject to review by the tax department or its agents.
- e. De minimus nexus standard. Notwithstanding any provision contained herein, this section does not apply to require the apportionment of income to this state if the trucking company during the course of the income tax year neither:
- (1) Owns nor rents any real or personal property in this state, except mobile property.
 - (2) Makes any pickups or deliveries within this state.
 - (3) Travels more than twenty-five thousand mobile property miles within this state provided that the total mobile property miles traveled within this state during the income tax year does not exceed three percent of the total mobile property miles traveled in all states by the trucking company during that period.
 - (4) Makes more than twelve trips into this state.

History: Effective November 1, 1987.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38, 57-38.1, 57-59

81-04.1-01-03. Taxable sales - Engaging in business. Repealed effective November 1, 1987.

81-04.1-01-03.1. Definitions. Any person having nexus in North Dakota and making taxable sales in or making taxable sales having a destination in North Dakota must obtain a North Dakota sales and use tax permit from the tax commissioner and collect and remit tax on these sales.

For purposes of implementing chapters 704 and 715 of 1987 Session Laws, unless the context otherwise requires:

1. "Advertisement" means any message by which a retailer solicits retail sales of tangible personal property. It includes but is not limited to:
 - a. Each transmittance, by United States mail, common carrier or otherwise, of a printed sales solicitation message in the form of a bulk mailing or bulk delivery, a sales catalog, brochure, advertising flier, billing or package insert or similar publication of device.
 - b. Each transmittance of a sales solicitation message by space advertising in a newspaper, magazine or other publication, which is local, regional, or national in nature.
 - c. Each transmittance of a sales solicitation message by radio, television, telephone, telegraph, computer data base, or by cable, optic, microwave or other electronic means, or by any other communications means.
2. "Destination" means the location to which the delivery of tangible personal property is made by a retailer or the retailer's agent.
3. "Regular or systematic solicitation" means three or more separate transmittances of any advertisement or advertisements during a testing period.
4. "Separate transmittance" means any transmittance of an advertisement during any twenty-four-hour period.
5. "Solicitation" means:
 - a. Offering, by advertisement, to make a taxable sale with a destination in North Dakota.
 - b. Inviting offers to purchase tangible personal property for delivery in North Dakota.
6. "Taxable sale" means a sale made by a retailer or a retailer maintaining a place of business in this state to purchasers for final use or consumption and not for resale or processing.
7. "Testing period", with respect to the determination of whether a person is required to obtain a permit and collect use tax as a retailer for tax periods commencing on or after the effective date of this section, means the twelve month period ending on September thirtieth of the preceding calendar year.

History: Effective November 1, 1987.

General Authority: NDCC 57-39.2-19, 57-40.2-13
Law Implemented: NDCC 57-39.2-19, 57-40.2-01

81-04.1-01-08. Monthly sales tax returns. 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 the tax due for the month, forfeit the one and one-half percent compensation for expenses.

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 returns and to determine if sales or use tax permitholders who have filed monthly returns must revert to quarterly filing status.

~~Sales or use tax permitholders who qualify to file monthly sales or use tax returns may deduct one and one-half percent from the tax due as compensation for expenses. Such compensation is limited to a maximum of eighty-three dollars and thirty-three cents per month.~~

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987.

General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-12

81-04.1-01-29. Bracket system. The following brackets must be used by all North Dakota retailers to calculate applicable North Dakota sales and use tax:

3 1/2 %

<u>Amount of Sale</u>	<u>Tax</u>
0.01 - 0.15	No tax
0.16 - 0.29	1¢
0.30 - 0.58	2¢
0.59 - 0.86	3¢
0.87 - 1.15	4¢
1.16 - 1.43	5¢
1.44 - 1.72	6¢
1.73 - 2.00	7¢
2.01 - 2.29	8¢
2.30 - 2.58	9¢

Repeat established brackets

4 1/2 %

<u>Amount of Sale</u>	<u>Tax</u>
0.01 - 0.15	No tax
0.16 - 0.23	1¢
0.24 - 0.45	2¢
0.46 - 0.67	3¢
0.68 - 0.89	4¢
0.90 - 1.12	5¢

1.13 - 1.34	6¢
1.35 - 1.56	7¢
1.57 - 1.78	8¢
1.79 - 2.00	9¢
2.01 - 2.23	10¢
2.24 - 2.45	11¢
2.46 - 2.67	12¢
Repeat established brackets	

5 1/2 %

<u>Amount of Sale</u>	<u>Tax</u>
0.01 - 0.15	No tax
0.16 - 0.19	1¢
0.20 - 0.37	2¢
0.38 - 0.55	3¢
0.56 - 0.73	4¢
0.74 - 0.91	5¢
0.92 - 1.10	6¢
1.11 - 1.28	7¢
1.29 - 1.46	8¢
1.47 - 1.64	9¢
1.65 - 1.82	10¢
1.83 - 2.00	11¢
2.01 - 2.19	12¢
2.20 - 2.37	13¢
2.38 - 2.55	14¢
Repeat established brackets	

6 1/2 %

<u>Amount of Sale</u>	<u>Tax</u>
0.01 - 0.15	No tax
0.16 - 0.31	2¢
0.32 - 0.47	3¢
0.48 - 0.62	4¢
0.63 - 0.77	5¢
0.78 - 0.93	6¢
0.94 - 1.08	7¢
1.09 - 1.24	8¢
1.25 - 1.39	9¢
1.40 - 1.54	10¢
1.55 - 1.70	11¢
1.71 - 1.85	12¢
1.86 - 2.00	13¢
2.01 - 2.16	14¢
2.17 - 2.31	15¢
2.32 - 2.47	16¢
2.48 - 2.62	17¢
Repeat established brackets	

7 1/2 %

<u>Amount of Sale</u>	<u>Tax</u>
0.01 - 0.15	No tax
0.16 - 0.27	2¢

0.28 - 0.40	3¢
0.41 - 0.54	4¢
0.55 - 0.67	5¢
0.68 - 0.80	6¢
0.81 - 0.94	7¢
0.95 - 1.07	8¢
1.08 - 1.20	9¢
1.21 - 1.34	10¢
1.35 - 1.47	11¢
1.48 - 1.60	12¢
1.61 - 1.74	13¢
1.75 - 1.87	14¢
1.88 - 2.00	15¢
2.01 - 2.14	16¢
2.15 - 2.27	17¢
2.28 - 2.40	18¢
2.41 - 2.54	19¢
Repeat established brackets	

8 1/2 %

<u>Amount of Sale</u>	<u>Tax</u>
0.01 - 0.15	No tax
0.16 - 0.24	2¢
0.25 - 0.36	3¢
0.37 - 0.48	4¢
0.49 - 0.59	5¢
0.60 - 0.71	6¢
0.72 - 0.83	7¢
0.84 - 0.95	8¢
0.96 - 1.06	9¢
1.07 - 1.18	10¢
1.19 - 1.30	11¢
1.31 - 1.42	12¢
1.43 - 1.53	13¢
1.54 - 1.65	14¢
1.66 - 1.77	15¢
1.78 - 1.89	16¢
1.90 - 2.00	17¢
2.01 - 2.12	18¢
2.13 - 2.24	19¢
2.25 - 2.36	20¢
2.37 - 2.48	21¢
Repeat established brackets	

9 1/2 %

<u>Amount of Sale</u>	<u>Tax</u>
0.01 - 0.15	No tax
0.16 - 0.22	2¢
0.23 - 0.32	3¢
0.33 - 0.43	4¢
0.44 - 0.53	5¢
0.54 - 0.64	6¢
0.65 - 0.74	7¢

0.75 - 0.85	8¢
0.86 - 0.95	9¢
0.96 - 1.06	10¢
1.07 - 1.16	11¢
1.17 - 1.27	12¢
1.28 - 1.37	13¢
1.38 - 1.48	14¢
1.49 - 1.58	15¢
1.59 - 1.69	16¢
1.70 - 1.79	17¢
1.80 - 1.90	18¢
1.91 - 2.00	19¢
2.01 - 2.11	20¢
2.12 - 2.22	21¢
2.23 - 2.32	22¢
2.33 - 2.43	23¢
Repeat established brackets	

History: Effective November 1, 1987.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-08.2

81-04.1-03-03. Food and food products for human consumption. Candy, soft drinks, breath mints, and chewing gum are not exempt from sales tax when purchased in North Dakota.

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 exceed fifty percent of the total selling price, the entire sale is subject to the tax.

Effective October 1, 1987, all food or food products, including otherwise taxable soft drinks and candy, purchased for human consumption with food stamps issued by the United States department of agriculture are exempt from tax.

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04.1

81-04.1-04-01. Agriculture - Commercial ~~fertilizers~~ chemicals and seeds for planting. Sales of ~~commercial fertilizers~~, agricultural chemicals, including adjuvants, 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 "adjuvant" includes surfactants, phytobland oils, stickers, spreaders, spreader-stickers, thickening agents, and anti-foam agents.

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; amended effective November 1, 1987.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-07.1. Educational, religious, or charitable sales activities. Gross receipts from educational, religious, or charitable activities are subject to tax when these activities include regular retail sales made in direct competition with other retailers.

"Regular retail sales" include all recurring, regularly scheduled, or ongoing retail sales made in the ordinary course of business other than those made on an isolated or occasional basis.

"Direct competition" means activity wholly or substantially similar to existing sales, taxable goods, or services competing for the same customer market.

History: Effective November 1, 1987.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-09.1. [Reserved]

81-04.1-04-10. Amusement - Vending machines and coin-operated amusement devices. Gross receipts derived from ~~all~~ coin-operated vending 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 vending machine owner and the location ~~owner~~ operator, the vending machine owner is responsible for sales tax on ~~all of the~~ gross receipts derived from ~~a the~~ vending machine or amusement device.

Sales tax is included in the gross receipts from coin-operated vending machines and must be deducted to arrive at gross receipts subject to sales tax (taxable sales). Taxable sales are calculated as follows: taxable sales = gross receipts divided by 105.5% (1.055).

The ~~owner~~ purchaser of a vending machine ~~or amusement device~~ is liable for sales tax on ~~machines~~ a vending machine purchased in this state or for use tax on ~~machines~~ a vending machine purchased outside of this state regardless of whether ~~or not~~ a license fee is paid to any governmental authority for operating the vending machine.

History: Effective June 1, 1984; amended effective November 1, 1987.

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

81-04.1-04-10.1. Amusement - Coin-operated amusement devices. Sales tax is due on eighty percent of the gross receipts collected from coin-operated amusement devices. Sales tax is included in the gross receipts from coin-operated amusement devices and must be deducted before calculating gross receipts subject to sales tax (taxable sales).

Taxable sales are calculated as follows: taxable sales = gross receipts divided by 105.5% (1.055) multiplied by 80% (.80). Taxable sales may also be calculated in a single step as follows: taxable sales = gross receipts multiplied by 75.83% (.7583).

In the absence of a written agreement stipulating division of gross receipts between the coin-operated amusement device owner and the location operator, the coin-operated amusement device owner is responsible for sales tax on eighty percent of the gross receipts.

The purchaser of a coin-operated amusement device is liable for sales tax on a coin-operated amusement device purchased in this state or for use tax on a coin-operated amusement device purchased outside of this state regardless of whether a license fee is paid to any governmental authority for operating the coin-operated amusement device.

History: Effective November 1, 1987.

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.

Sales of goods not taxable as a casual sale are taxable if made through consignment auctions or multiparty auctions unless the principals and their specific consigned property are disclosed on all promotional material. Casual sales of consigned goods not part of any promotional material are exempt from tax if a verbal disclosure of the owner is made at the time of the sale, and if the auction is not promoted as a consignment sale.

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; amended effective November 1, 1987.

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~~

81-06.1-01-01. 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 chapters 57-43.1 and 57-43.2, and, in addition:

1. "Anhydrous alcohol" means qualifying alcohol whose purity is at least ninety-nine percent.
2. "Industrial purposes" includes a manufacturing, warehouse and loading dock operation, construction, sand and gravel processing, and well drilling, testing, and servicing. Fuel used for industrial purposes includes fuel used in an unlicensed off-road vehicle, engine or machine, movable or immovable, which is operated in whole or in part by internal combustion and fuel used to operate a refrigeration unit on a transport. It does not include heating fuel.
- ~~2-~~ 3. "Motor fuel" means all motor vehicle fuels and aviation fuels.
- ~~3-~~ 4. "Public funds" means payment by the United States, state, county, city, township, park district, or other political subdivision.
- ~~4-~~ 5. "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 solvent, gasoline, heavyweight distillates sometimes referred to as number 5 or 6 fuel, or antifreeze.

- 5- 6. "Wet alcohol" means qualifying alcohol whose purity is less than ninety-nine percent.

History: Effective June 1, 1984; amended effective December 3, 1985; November 1, 1987.

General Authority: NDCC 57-43.1-30, 57-43.2-22, 57-43.3-05

Law Implemented: NDCC 57-43.1-01, 57-43.1-03, 57-43.2-01, 57-43.2-02, 57-43.3-01

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~~ seventeen cents per gallon [3.79 liters].

1. Qualifying alcohol-blended motor vehicle fuels are taxed as follows:
 - a. From July 1, 1985, through June 30, 1987, eight cents per gallon [3.79 liters] less than the above-stated tax.
 - b. From July 1, 1987, through December 31, 1992, four cents per gallon [3.79 liters] less than the above-stated tax.
 - c. After December 31, 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 drilling, testing and servicing equipment is subject to motor vehicle fuel tax. ~~However, the~~ The tax may be refunded in accordance with the provisions in pursuant to section 81-06.1-03-01.
4. The licensed motor vehicle fuel dealer is responsible for ~~collecting and remitting~~ the tax imposed. Monthly A monthly returns dealer's report are is required and the tax must be remitted upon filing ~~of the returns report.~~
5. Motor vehicle fuel used for an industrial purpose is subject to the motor vehicle fuel tax. The motor vehicle fuel user may be eligible for a refund pursuant to section 81-06.1-03-01.

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987.

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. The formula used to compute the average miles per gallon [kilometers per liter] of fuel used in interstate fleet operations is total miles [kilometers] traveled in all states and Canadian provinces, divided by total gallons [liters] of fuel used in all states and Canadian provinces. Liters and kilometers must be converted to gallons and miles for purposes of the formula. The average miles per gallon [kilometers per liter] determined by this formula must be used to determine total gallons [liters] of fuel used in North Dakota.
2. The user is to receive may request a refund or a credit for North Dakota fuel tax paid on such fuel when more fuel is purchased in North Dakota than necessary to cover miles traveled in this state.
- 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; amended effective November 1, 1987.

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~~ 57-43.1-42, ~~57-43.2-12~~ 57-43.2-02, 57-43.2-26,
57-43.2-27, ~~57-43.2-28~~ 57-43.2-35

81-06.1-02-03. Special fuels tax imposed - Exemptions. Special fuels sold, used, or delivered in this state are taxed at the rate of ~~thirteen~~ seventeen cents per gallon [3.79 liters].

1. This tax does not apply to special Special fuels used for heating, agricultural, industrial other than as set out in subsection 2, or railroad purposes are subject to an excise tax of two percent in lieu of seventeen cents per gallon. If the sale price is discounted by the special fuels dealer, the tax applies on the discounted price. The sale price on which the tax is computed must include freight or related charges if those charges are paid by the purchaser.
 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-
- Special fuels sold to construction contractors and subcontractors, including sand and gravel processors, and to well drilling, testing, and servicing companies for use in auxiliary equipment, is taxed at seventeen cents per gallon. A qualifying user may request a refund of the tax pursuant to section 81-06.1-03-03.
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. Banks, trust companies, building and loan associations, credit unions, and public and private educational facilities are subject to the special fuels tax. A federal credit union organized under the Federal Credit Union Act is exempt.
 4. The licensed special fuels dealer is responsible for collecting and remitting the tax imposed. A monthly dealer's report is required and the tax must be remitted upon filing the report.
 5. The state of North Dakota and all political subdivisions are subject to the special fuels tax but may obtain a full refund when the fuel is used for construction, reconstruction, or

maintenance of public highways pursuant to section 81-06.1-03-03.

History: Effective June 1, 1984; amended effective November 1, 1987.

General Authority: NDCC 57-43.2-22

Law Implemented: NDCC 57-43.2-02, 57-43.2-03, 57-43.2-04

81-06.1-03-01. 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~~ issued for:

1. Tax paid by any person on motor vehicle fuel used for agricultural or privately funded industrial purposes, except ~~that~~ fuel used in motor vehicles operated or intended to be operated on public highways ~~of~~ in 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~~ its 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 well ~~(drilling)~~ drilling, testing, and servicing equipment and which fuel is exempt from the tax provided:
 - a. The ~~well driller~~ user 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~~ user ~~has~~ obtains certified figures from the manufacturer of the ~~drilling~~ equipment as to standard fuel consumption.
 - d. The ~~well driller~~ ~~(drilling operator)~~ user 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.

5- No refund claim for less than five dollars will be allowed.

One-half cent per gallon [3.79 liters] for deposit in the agriculturally derived fuel tax fund and one cent per gallon [3.79 liters] for deposit in the township highway aid fund is deducted from refunds issued under subsections 1, 3, and 4. No refund claim for less than five dollars is allowed.

History: Effective June 1, 1984; amended effective November 1, 1987.

General Authority: NDCC 57-43.1-30

Law Implemented: NDCC 54-27-19.1, 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. This includes fuel used by construction contractors, subcontractors, and sand and gravel processors paid directly or indirectly with public funds.

History: Effective June 1, 1984; amended effective November 1, 1987.

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.

Special fuels tax refunds may be obtained upon application to and approval by the tax commissioner. Refunds may be issued for:

1. Tax paid by any person on special fuels used for heating, agricultural, privately funded industrial, and railroad purposes, except fuel used in motor vehicles operated or intended to be operated on public highways in this state.
2. Special fuels tax paid by the state of North Dakota or any of its political subdivisions on fuel used in publicly owned vehicles for construction, reconstruction, or maintenance of any public road, highway, street, or airport.

3. Special fuels tax paid on fuel used in the operation of auxiliary well drilling, testing and servicing equipment provided:

- a. The user keeps complete and accurate daily records of the time during which the equipment is operated.
- b. The records reflect miles [kilometers] traveled in each individual unit.
- c. The user obtains certified figures from the manufacturer of the equipment as to standard fuel consumption.
- d. The user complies with all provisions of North Dakota Century Code chapter 57-43.1 in applying for the refund.

One cent per gallon [3.79 liters] for deposit in the township highway aid fund and an excise tax of two percent of the purchase price of the fuel is deducted from all refunds issued under subsections 1, 2, and 3. No refund claim for less than five dollars is allowed.

History: Effective June 1, 1984; amended effective November 1, 1987.

General Authority: NDCC 57-43.2-22

Law Implemented: NDCC 57-43.2-02, 57-43.2-03

81-06.1-03-03.1. Special fuels tax not refundable.

1. The special fuels tax imposed upon a person, firm, or private corporation pursuant to North Dakota Century Code section 57-43.2-02 is not refundable if the work performed is paid for with public funds. This includes fuel used by a construction contractor, subcontractor, and sand and gravel processor paid directly or indirectly with public funds.
2. The two percent special fuels excise tax imposed on fuels otherwise exempt from the special fuels tax is not refundable.

History: Effective November 1, 1987.

General Authority: NDCC 57-43.2-22

Law Implemented: NDCC 57-43.2-02, 57-43.2-03

81-08-02-01. Definitions. As used in these sections and for the administration of North Dakota Century Code chapter 57-61, unless the context otherwise requires:

1. "Coal mine owner or operator" does not include any individual who mines coal from the individual's own land solely for use for heating the individual's own home.
2. "Cogeneration facility" means a facility which produces electrical energy and any other form of useful energy, such as

steam or heat, which is used for industrial, commercial, heating, or cooling purposes.

3. "Industrial purposes" as applied to coal that has been severed includes the use of such coal for making products from it or for the consumption of such coal to produce power or heat, except that it does not include coal mined by an individual from the individual's own land for use for heating the individual's own home.
4. "Producer" means the coal mine owner, or the operator of the coal mine if different from the owner.
5. "Renewable resources" means biomass, waste, wind, solar, geothermal, or any combination of those resources.
6. "Sale" as applied to coal that has been severed means any transfer of title, conditional or otherwise, to such coal for a consideration regardless of where such transfer of title occurs.
7. "Tax commissioner" means the tax commissioner of the state of North Dakota.
8. "Wholesale price index" means the index of producer prices (formerly the index of wholesale prices) for all commodities that is prepared by the bureau of labor statistics in the United States department of labor.

History: Amended effective September 1, 1979; July 1, 1985; November 1, 1987.

General Authority: NDCC 57-61-08

Law Implemented: NDCC 57-61

81-08-02-02. Nature of coal severance tax. As provided in North Dakota Century Code section 57-61-01 the coal severance tax is a tax "imposed upon all coal severed for sale or for industrial purposes by coal mines within the state" of North Dakota. The tax is imposed at a rate of ~~not less than eighty-five~~ seventy-five cents per ton of two thousand pounds [907.18 kilograms] on coal severed in this state beginning July 1, ~~1979~~ 1987. ~~The method for determining any increase in the coal severance tax rate over the minimum rate of eighty-five cents per ton {907.18 kilograms} is set out in section 81-08-02-04 must be the same for all coal severed except as otherwise provided.~~ An additional tax at a rate of two cents per ton of two thousand pounds [907.18 kilograms] is imposed beginning July 1, 1987, effective through June 30, 1989.

History: Amended effective September 1, 1979; November 1, 1987.

General Authority: NDCC 57-61-08

Law Implemented: NDCC 57-61-01

STAFF COMMENT: Chapter 81-08-03 contains all new material but is not underscored so as to improve readability.

**CHAPTER 81-08-03
COAL CONVERSION FACILITIES PRIVILEGE TAX**

Section	
81-08-03-01	Definitions
81-08-03-02	Taxable Electrical Production
81-08-03-03	Installed Capacity
81-08-03-04	Calculation of Reduced Tax Rate
81-08-03-05	Maximum Benefit Under Reduced Tax Rate
81-08-03-06	Taxable Synthetic Natural Gas
81-08-03-07	Byproducts Exempt From Taxation

81-08-03-01. Definitions. As used in these sections and for the administration of North Dakota Century Code chapter 57-60, unless the context requires otherwise:

1. "Cost to repair" means the cost to return a disabled unit to generating capability, including costs from the date on which the unit became incapable of generating electricity to the date the unit again becomes capable of generating electricity.
2. "Eighteen consecutive months" means the eighteen-month period commencing immediately following the last month during which a unit was capable of generating electricity.
3. "Estimated cost to repair" means an estimate of the total cost to return the unit to generating capability, made at the end of the first eighteen consecutive months that a unit is incapable of generating electricity. The estimate includes costs from the date the unit became incapable of generating electricity through projected completion of repair.
4. "First taxable production" means the first production which occurs after April 20, 1987, and which is subject to the coal conversion facilities privilege tax.
5. "Original cost" means the total undepreciated cost of construction of and additions to the unit, less retirements, as recorded on the books of the operator, on the date the unit became incapable of generating electricity.

History: Effective November 1, 1987.

General Authority: NDCC 57-60-12

Law Implemented: NDCC 57-60-01, 57-60-02, 57-60-03

81-08-03-02. Taxable electrical production. "Electricity produced for the purpose of sale" includes electricity supplied to a

coal mine serving the coal conversion facility. It does not include electricity used within the plant or used within free-standing structures located at the plant site which constitute an integral part of the plant, for example, an AC/DC terminal.

History: Effective November 1, 1987.

General Authority: NDCC 57-60-12

Law Implemented: NDCC 57-60-01, 57-60-02, 57-60-03

81-08-03-03. Installed capacity. The operator of each electrical generating plant shall certify to the tax commissioner the installed capacity of the power unit as defined in North Dakota Century Code section 57-60-01, shown in kilowatts on the nameplate assigned to the turbine of the power unit, the manufacturer of the power unit, and the serial number of the power unit.

History: Effective November 1, 1987.

General Authority: NDCC 57-60-12

Law Implemented: NDCC 57-60-01, 57-60-02, 57-60-03

81-08-03-04. Calculation of reduced tax rate. If a unit has been incapable of generating electricity for eighteen consecutive months, the tax on that unit for taxable periods beginning after the eighteenth month must be reduced by the ratio that the estimated cost to repair bears to the original cost of the unit. When the unit is again capable of generating electricity, the reduced tax rate must be recalculated, using the ratio that the cost to repair bears to the original cost of the unit. Taxes for all taxing periods during which the reduced rate was in effect must be recalculated, and adjustments for underpayments or overpayments made. The full tax rate will be in effect for the month in which the unit is again capable of generating electricity.

History: Effective November 1, 1987.

General Authority: NDCC 57-60-12

Law Implemented: NDCC 57-60-01, 57-60-02, 57-60-03

81-08-03-05. Maximum benefit under reduced tax rate. The rate reduction calculated for a unit that has been incapable of generating electricity for eighteen consecutive months may not exceed one hundred percent of the tax.

History: Effective November 1, 1987.

General Authority: NDCC 57-60-12

Law Implemented: NDCC 57-60-01, 57-60-02, 57-60-03

81-08-03-06. Taxable synthetic natural gas. "Taxable synthetic natural gas" does not include synthetic natural gas used within the plant and does not include any amount of synthetic natural gas in excess of one hundred ten million cubic feet per day, over and above that used

within the plant. Calculation of any amount of synthetic natural gas in excess of one hundred ten million cubic feet per day must be accomplished by multiplying one hundred ten million cubic feet by the number of days in the month for which the report is filed, and subtracting the result from the total number of cubic feet of synthetic natural gas produced, less that used within the plant, during the month for which the report is made.

History: Effective November 1, 1987.

General Authority: NDCC 57-60-12

Law Implemented: NDCC 57-60-01, 57-60-02, 57-60-03

81-08-03-07. Byproducts exempt from taxation. Calculation of the sale of byproducts exempt from taxation must be accomplished by multiplying total gross receipts from the sale of synthetic natural gas plus the sale of byproducts during the month for which the report is made by twenty percent, and subtracting the result from gross receipts from the sale of byproducts for that month.

History: Effective November 1, 1987.

General Authority: NDCC 57-60-12

Law Implemented: NDCC 57-60-01, 57-60-02, 57-60-03

TITLE 92
Workers Compensation Bureau

NOVEMBER 1987

92-02-01-03. General rules.

1. No person, firm, or corporation shall use, permit, or require to be used within North Dakota, any machine, tool, or other device which does not comply with the safety requirements of the North Dakota industrial safety code. In the absence of any specific requirement in this article, the generally accepted standards for such machine, device, or tool shall be applied.

- 2- No unfired pressure vessel shall be installed or used in North Dakota unless such vessel has been inspected, stamped, or otherwise certified by an inspector duly authorized by the American society of mechanical engineers or the national board of pressure vessel inspectors. Maximum working pressure is to be clearly marked on the vessel.

2. a. Construction and installation standards - Exceptions.
Unfired pressure vessels may not be installed in North Dakota unless such vessels have been constructed in accordance with the American society of mechanical engineers boiler and pressure vessel code, section VIII, division 1 or 2, and bear the "U" stamp as proof of such construction.

Manufacturers shall register unfired pressure vessels with the national board of boiler and pressure vessel inspectors. Unfired pressure vessels must bear the required stamping of the national board.

The requirements of this section apply to all pressure vessels within the scope of the American society of

mechanical engineers code, section VIII, division 1 and 2, 1986 edition with these exceptions:

- (1) Pressure vessels under federal control.
- (2) Pressure vessels that do not exceed four cubic feet [30 United States gallons] in volume and two hundred fifty pounds per square inch gage (psig) in pressure.
- (3) Pressure vessels that do not exceed one and one-half cubic feet [11.22 United States gallons] in volume and six hundred pounds per square inch gage in pressure.
- (4) Unfired pressure vessels installed or ordered prior to the effective date of this rule are exempt. However, such exempt pressure vessels must conform to the North Dakota industrial safety code requirements.

Unfired pressure vessels referenced by this section must be protected with the American society of mechanical engineers (ASME) stamped pressure relief devices as defined in section VIII of the American society of mechanical engineers code.

Existing pressure relief devices installed on unfired pressure vessels referenced by this section will be considered acceptable if the pressure relief device is set for the correct pressure, if the usage is correct, and if the device is in a satisfactory operating condition.

b. Application of standards - Repairs.

- (1) These rules apply only to new construction, except as noted below:
 - (a) Reinstalled pressure vessels must meet the rules for new construction. Exception: National board registration is required only for those vessels ordered and constructed after November 1, 1987.
 - (b) Other inservice safety rules and regulations of the bureau's safety department apply to existing pressure vessels.
 - (c) Repairs to unfired pressure vessels and to safety and safety relief valves for those vessels:
 - [1] Repairs to safety valves and safety relief valves must be such that valve function is not impaired and the repaired valve will

perform to the standards for which it was originally constructed. It is recommended that these repairs be made by a firm in possession of a valid "VR" certificate of authorization from the national board of boiler and pressure vessel inspectors.

[2] Repairs to unfired pressure vessels must be such that vessels repaired will be returned to a safe and satisfactory operating condition, provided there is no deviation from the original design. It is recommended that these repairs be made by a firm in possession of a valid "R" certificate of authorization from the national board of boiler and pressure vessel inspectors.

[3] The national board inspection code (ANSI/NB-23, 1985 ed.) and the American petroleum institution inspection code (ANSI/API-510, 1985 ed.) shall cover repair and alteration procedures. ANSI/API-510 may be used to cover the maintenance inspection, repair, alteration, and rerating procedure for pressure vessels used by the petroleum and chemical process industries. It is intended that ANSI/NB-23 cover installations other than those covered by ANSI/API-510.

c. Allowance for state specials. If, due to valid impediment to compliance with the American society of mechanical engineers code in its entirety, an unfired pressure vessel cannot bear the American society of mechanical engineers and national board stamping, details in the English language, and specifications and calculations, approved by a registered professional engineer experienced in pressure vessel design, must be submitted to the chief inspector by the owner or user. Approval as "State Special" must be obtained from the bureau before construction is started.

3. All new buildings of more than two stories in height shall have window cleaning anchors installed unless provision is made for changing or cleaning windows from the inside.
4. Two separate means of exit shall be provided from the work floor, as remote from each other as practicable.
5. Employers responsibility.
 - a. The employer shall furnish and maintain a place of employment which shall be safe for the employees and shall

furnish and use safety devices and safeguards, and shall adopt and use methods and processes adequate to render such places of employment reasonably safe, and shall do every other thing necessary to protect the life and safety of the employees.

- b. Superintendents, foremen, and key persons shall be carefully chosen and qualified by experience to supervise the safe performance of the activities under their direction, and shall share responsibility for the safety of employees under their jurisdiction.

Superintendents, foremen, and key persons shall insist on employees observing and abiding by every rule, regulation, and order as is necessary to the safe conduct of the work, and shall resort to disciplinary measures if necessary to compel observance.

The use of intoxicating liquors or any other such stimulant which may impair abilities and alertness on the job is strictly prohibited. Anyone under the influence of liquor or any other such stimulant shall not be allowed on the job while in that condition.

- c. The employer shall make every effort to see that each person has been trained to safely perform the duties to which the person is assigned and has been thoroughly instructed in the person's duties and responsibilities under this article.

6. Employees responsibility.

- a. Every employee must carry out assigned duties in a safe and proper manner and take any other measures reasonably necessary to protect the life and safety of all employees.
- b. The employee shall make every effort to keep self and coworkers, and all machines or equipment free from accidents to the best of the employee's ability.
- c. Every employee shall abide by the safety rules as prescribed by the workers compensation bureau or its authorized representatives.
- d. Every employee shall comply with this article. Whenever a doubt exists as to the meaning, the employee shall obtain a clear understanding before starting the work.
- e. Employees shall wear clothing which is appropriate to the duties performed and conditions encountered.
- f. Employees shall wear, use, and properly care for personal protective safety equipment.

- g. Every employee must maintain proper physical condition to safely perform the assigned work.
- h. Employees shall not report to the job while under the influence of intoxicating liquors or any other such stimulant which may impair abilities and alertness on the job and shall not use intoxicating liquors or any other such stimulant while on the job.

History: Amended effective August 1, 1987; November 1, 1987.

General Authority: NDCC 65-03-01

Law Implemented: NDCC 65-03-01

