

NORTH DAKOTA ADMINISTRATIVE CODE

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(May 1 through August 1, 1980)

Prepared by the Legislative Council staff
for the
Administrative Rules Committee

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TITLE 13

Banking and Financial Institutions, Department of

13-02-01-06. TWENTY-SIX WEEK MONEY MARKET TIME DEPOSITS OF LESS THAN ONE HUNDRED THOUSAND DOLLARS. Except as provided in ~~section~~ sections 13-02-01-01, 13-02-01-02, and 13-02-01-04, state banking associations may pay interest on any nonnegotiable time deposits of ten thousand dollars or more, with a maturity of twenty-six weeks, at a rate not to exceed the rate established (auction average on a discount basis) for United States treasury bills with maturities of twenty-six weeks issued on or immediately prior to the date of deposit. Rounding such rate to the next higher rate is not permitted. A state bank may not compound interest during the term of this deposit. A state bank may offer this category of time deposit to all depositors. However, a state bank may pay interest on any nonnegotiable time deposits of ten thousand dollars or more with a maturity of twenty-six weeks which consists of funds deposited to the credit of, or in which the entire beneficial interest is held by:

1. The United States, any state of the United States, or any county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or political subdivision thereof; or
2. An individual pursuant to an Individual Retirement Account agreement or Keogh (H.R. 10) Plan established pursuant to 26 U.S.C. (I.R.C. 1954) sections 401, 408,

at a rate not to exceed the ceiling rate payable on the same category of deposits by any federally insured savings and loan association or mutual savings bank.

History: Amended effective July 1, 1979; amended effective January 1, 1980; amended effective May 1, 1980.

General Authority
NDCC 6-01-04

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

13-02-01-07. TIME DEPOSITS OF LESS THAN ONE HUNDRED THOUSAND DOLLARS WITH MATURITIES OF TWO AND ONE-HALF YEARS OR MORE. Except as provided in sections 13-02-01-01 ~~and~~, 13-02-01-02, 13-02-01-04, and 13-02-01-05, a state banking association may pay interest on any nonnegotiable time deposit with a maturity of two and one-half years or more that is issued on or after the first day of each month at a rate not to exceed the lower of three-quarters of one percent below the average two and one-half-year yield for United States treasury securities as determined and announced by the United States department of the treasury three business days prior to the first day of such month, or eleven and three-fourths percent. The average two and one-half-year yield will be rounded by the United

States department of the treasury to the nearest five basis points. A state bank may offer this category of time deposit to all depositors. However, a state bank may pay interest on any nonnegotiable time deposit with a maturity of two and one-half years or more which consists of funds deposited to the credit of, or in which the entire beneficial interest is held by:

1. The United States, any state of the United States, or any county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or political subdivision thereof; or
2. An individual pursuant to an Individual Retirement Account agreement or Keogh (H.R. 10) Plan established pursuant to 26 U.S.C. (I.R.C. 1954) sections 401, 408,

at a rate not to exceed the ceiling rate payable on the same category of deposits by any federally insured savings and loan association or mutual savings bank.

History: Effective July 1, 1979; amended effective January 1, 1980; amended effective May 1, 1980.

General Authority
NDCC 6-01-04

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

STAFF COMMENT:

Section 13-02-01-08 was declared an emergency rule and thus became effective on June 6, 1980. The State Banking Board filed this statement of necessity for an early effective date:

Congress was transferred the delegated authority to regulate interest rates on deposits from the various federal agencies which used to regulate these deposits to the Depository Institutions Deregulation Committee. When this committee acts, it affects all depository institutions regulated by any federal agency. This committee has just acted to adjust the interest rates on the money market certificates and small saver certificates offered by depository institutions. Consequently, credit unions and savings and loan associations within the State of North Dakota can offer the new rates without further action. Banks within the State of North Dakota can not offer the new rates until the State Banking Board acts to change Chapter 13-02-01, North Dakota Administrative Code. For this reason, the Banking Board authorized immediate proposal of such changes and held an emergency meeting to consider the proposals. The attached rule has been adopted by the State Banking Board today, pursuant to this procedure.

Based upon the foregoing, the State Banking Board finds that an effective date of June 6, 1980 is necessary because of imminent peril to the public health, safety and welfare.

13-02-01-08. INTEREST ADJUSTMENTS. The state banking board hereby adopts the interest rate adjustments concerning money market certificates and small saver certificates which were promulgated by the depository institutions deregulation committee effective June 2, 1980. The board adopts the adjustments in the form of the amendments to subsections (f) and (g) of section 217.7 of regulation Q of the federal reserve board, effective June 2, 1980. Any provision of North Dakota Administrative Code sections 13-02-01-06 and 13-02-01-07 in conflict with the provisions of federal reserve board regulation Q, section 217.7, subsections (f) and (g), as amended, shall be superseded by the provisions of regulation Q to the extent of the conflict, and all provisions of sections 13-02-01-06 and 13-02-01-07 not in conflict, shall remain effective.

History: Effective June 6, 1980.

General Authority
NDCC 6-01-04

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

13-03-03-02. APPLICABILITY. Section 13-03-03-01 shall not apply to a credit union's direct loans to members. A credit union's participation in a loan originating with another lender shall be considered an investment for purposes of this chapter.

History: Effective August 1, 1980.

General Authority
NDCC 6-01-04

Law Implemented
NDCC 6-06-06

TITLE 30

Game and Fish Department

30-05-03-01. BREWER LAKE. Boats powered by gas ~~or~~, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Brewer Lake (Erie Dam) in Cass County.

History: Amended effective August 1, 1980.

General Authority
NDCC 20.1-13-12

Law Implemented
NDCC 20.1-13-12

30-05-03-05. RUDOLPH LAKE. Boats powered by gas ~~or~~, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Rudolph Lake in Logan County.

History: Effective November 1, 1978; amended effective August 1, 1980.

General Authority
NDCC 20.1-13-12

Law Implemented
NDCC 20.1-13-12

30-05-03-06. WATERSHED DAM NO. 4. Boats powered by gas ~~or~~, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Watershed Dam No. 4 on the Forest River in Grand Forks County.

History: Effective November 1, 1978; amended effective August 1, 1980.

General Authority
NDCC 20.1-13-12

Law Implemented
NDCC 20.1-13-12

30-05-03-07. WATERSHED DAM NO. 9. Boats powered by gas or, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Watershed Dam No. 9 on the Turtle River in Grand Forks County.

History: Effective November 1, 1978; amended effective August 1, 1980.

General Authority
NDCC 20.1-13-12

Law Implemented
NDCC 20.1-13-12

30-05-03-08. CAMELS HUMP DAM. Boats and watercraft used on the waters of Camels Hump Dam in Golden Valley County may be propelled by paddles, oars, or sails only.

History: Effective August 1, 1980.

General Authority
NDCC 20.1-13-12

Law Implemented
NDCC 20.1-13-12

30-05-03-09. INDIAN CREEK DAM. Boats powered by motors of more than ten horsepower are prohibited on the waters of the Indian Creek Dam in Hettinger County.

History: Effective August 1, 1980.

General Authority
NDCC 20.1-13-12

Law Implemented
NDCC 20.1-13-12

30-05-03-10. LEIN DAM. Boats and watercraft used on the waters of the Lein Dam in Hettinger County may be propelled by paddles, oars, or sails only.

History: Effective August 1, 1980.

General Authority
NDCC 20.1-13-12

Law Implemented
NDCC 20.1-13-12

30-05-03-11. FISH CREEK DAM. Boats powered by gas, gasohol, diesel, or other internal combustion motors are prohibited on the waters of the Fish Creek Dam in Morton County.

History: Effective August 1, 1980.

General Authority
NDCC 20.1-13-12

Law Implemented
NDCC 20.1-13-12

30-05-03-12. GRAVEL LAKE. Boats powered by gas, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Gravel Lake in Rolette County.

History: Effective August 1, 1980.

General Authority
NDCC 20.1-13-12

Law Implemented
NDCC 20.1-13-12

30-05-03-13. HOOKER LAKE. Boats and watercraft used on the waters of Hooker Lake in Rolette County may be propelled by paddles, oars, or sails only.

History: Effective August 1, 1980.

General Authority
NDCC 20.1-13-12

Law Implemented
NDCC 20.1-13-12

30-05-03-14. ARRODA LAKES, EAST AND WEST. Boats and watercraft used on the waters of east and west Arroda Lakes in Oliver County may be propelled by paddles, oars, or sails only.

History: Effective August 1, 1980.

General Authority
NDCC 20.1-13-12

Law Implemented
NDCC 20.1-13-12

30-05-03-15. KOTA-RAY DAM. Boats powered by motors of more than ten horsepower are prohibited on the waters of Kota-Ray Dam in Williams County.

History: Effective August 1, 1980.

General Authority
NDCC 20.1-13-12

Law Implemented
NDCC 20.1-13-12

30-05-03-16. MCGREGOR DAM. Boats powered by motors of more than ten horsepower are prohibited on the waters of McGregor Dam in Williams County.

History: Effective August 1, 1980.

General Authority
NDCC 20.1-13-12

Law Implemented
NDCC 20.1-13-12

TITLE 43

Industrial Commission

~~43-02-01-11. CONFIDENTIAL-STATUS PUBLIC AVAILABILITY OF PERMIT APPLICATION INFORMATION. All information submitted to the state geologist in compliance with the statutes and this chapter shall be confidential and available only to the office of the state geologist. The period of confidentiality shall continue for a period of two years, beginning on the expiration date of the permit. One year extensions shall be granted if an application for extension is filed with the state geologist prior to the expiration date of the confidentiality period. In no event shall the total period of confidentiality exceed seven years.~~

1. Except as provided in subdivisions a, b, and c, all information submitted to the commission with a permit application for coal exploration shall be made available for public inspection and copying at the office of the state geologist.
 - a. The state geologist shall not make information submitted with a coal exploration permit application available for public inspection, if the person submitting it requests in writing, at the time of permit application submission, that it not be disclosed and the state geologist determines that the information is confidential. However, such information shall remain confidential only for the time period specified in North Dakota Century Code section 38-12.1-04.
 - b. The state geologist shall determine that permit application information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.
 - c. Information requested to be held as confidential under this subsection shall not be made publicly available until after proper notice and hearing before the commission.
2. Basic data collected during the course of the exploration and submitted to the state geologist shall be confidential and available only to the office of the state geologist. The period of confidentiality shall continue for a period of two years, beginning on the expiration date of the permit. One year extensions shall be granted if an application for extension is filed with the state geologist prior to the expiration date of the confidentiality period. In no event shall the total period of confidentiality exceed seven years.

3. The permit holder may waive the holder's right to confidentiality by providing written notice of the waiver to the state geologist.

History: Amended effective August 1, 1980.

General Authority
NDCC 38-12.1-04

Law Implemented
NDCC 38-12.1-04

43-02-01-18. PERMITS. A permit shall be required prior to commencement of operations for the exploration and evaluation of coal, ~~except in--those--instances where--the--statute--specifically--states--that--no--permit--shall--be--required;~~ as provided in subsection 2 of North Dakota Century Code section 38-12.1-05. A permit shall be granted for one year upon receipt of a permit application, on a form provided by the commission, and the furnishing of a bond, as set out in this chapter, and the payment of a fee of one hundred dollars per permit. A permit shall be valid for one permit area only, and only for those exploration operations which will remove less than two hundred fifty tons [226.80 metric tons] of coal from a permit area. The removal of more than two hundred fifty tons [226.80 metric tons] of coal from an area shall be considered a surface coal mining operation and shall be subject to the requirements of North Dakota Century Code chapter 38-14.1 and the regulations of the public service commission promulgated thereunder.

History: Amended effective August 1, 1980.

General Authority
NDCC 38-12.1-05

Law Implemented
NDCC 38-12.1-05

43-02-01-19. CONTENTS OF PERMIT APPLICATION. The permit application shall include:

1. The name, address, and telephone number of the person seeking to explore.
2. The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities.
3. A precise description of the exploration area.
4. A statement of the period of intended exploration.
5. A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities.
6. A statement by the permit applicant that the applicant will comply with all of the coal exploration performance standards of article 43-02 for

all coal exploration and reclamation which substantially disturbs the natural land surface.

7. Any other information required by the commission.

History: Effective August 1, 1980.

General Authority
NDCC 38-12.1-03,
38-12.1-05

Law Implemented
NDCC 38-12.1-05

43-02-01-20. PERFORMANCE STANDARDS FOR COAL EXPLORATION. The performance standards in this section are applicable to coal exploration which substantially disturbs land surface. Whether the land surface will be substantially disturbed shall be determined by the state geologist.

1. For purposes of this section, "substantially disturb" means, for purposes of coal exploration, to impact significantly upon land, air, or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of land.
2. Coal exploration activities which will substantially disturb land surface shall not be allowed to affect the following:
 - a. Habitats of unique value for fish, wildlife, and other related environmental values.
 - b. Threatened or endangered species of plants or animals listed by the Endangered Species Act of 1973, as amended [16 U.S.C. 1531 et seq.] and their critical habitats.
 - c. Species such as eagles, migrating birds or other animals protected by state or federal law, and their habitats.
 - d. Habitats of unusually high value for fish and wildlife, such as wetlands, riparian areas, cliffs, supporting raptors, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.
3. The person who conducts coal exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to the area and to provide supportive information for any permit application that person may submit as part of the permit application.
 - a. Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration. Travel shall be

confined to graded and surface roads during periods when excessive damage to vegetation or rutting of the land surface could result.

- b. Any new road in the exploration area shall comply with the provisions of chapter 69-05.2-24.
 - c. Existing roads may be used for exploration in accordance with the following:
 - (1) All applicable federal, state, and local requirements shall be met.
 - (2) If the road is significantly altered for exploration, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, then subsection 7 shall apply to all areas of the road which are altered or which result in such additional contributions.
 - (3) If the road is significantly altered for exploration activities and will remain as a permanent road after exploration activities are completed, the person conducting exploration shall ensure that the requirements of chapter 69-05.2-24, as appropriate, are met for the design, construction, alteration, and maintenance of the road.
 - d. Promptly after exploration activities are completed, existing roads used during exploration shall be reclaimed either:
 - (1) To a condition equal to or better than their preexploration condition; or
 - (2) To the condition required for permanent roads under chapter 69-05.2-24, as appropriate.
4. If excavations, artificial flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.
 5. Suitable plant growth material, as defined in subsection 31 of North Dakota Century Code section 38-14.1-02 shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the commission.
 6. Revegetation of areas disturbed by coal exploration shall be performed by the person who conducts the exploration or the person's agent. All revegetation shall be in compliance with the plan approved by the commission and carried out in a manner that encourages prompt vegetative cover and recovery of productivity levels compatible with approved postexploration land use and in accordance with the following:

- a. All disturbed lands shall be seeded or planted to the same seasonal variety native to the disturbed area or to some suitable, commercially available mixture approved by the state geologist. If both the preexploration and postexploration land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this section.
 - b. The vegetative cover shall be capable of stabilizing the soil surface in regards to erosion.
7. With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent or perennial stream shall be diverted during coal exploration activities. Overland flow of water shall be diverted in a manner that:
 - a. Prevents erosion.
 - b. To the extent possible using the best technology currently available, prevents additional contributions of suspended solids to streamflow or runoff outside the exploration area.
 - c. Complies with all other applicable state or federal requirements.
 8. Each exploration hole, borehole, well, or other exposed underground opening created during exploration must be cased or sealed to meet the requirements of chapter 69-05.2-14 and section 43-02-01-14.
 9. All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that the state geologist determines may remain to:
 - a. Provide additional environmental quality data.
 - b. Reduce or control the onsite or offsite effects of the exploration activities.
 - c. Facilitate future surface mining and reclamation operations by the person conducting the exploration, under an approved permit.
 10. Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include appropriate sediment control measures such as those specified in section 69-05.2-16-08. The commission may specify additional measures which shall be adopted by the person engaged in coal exploration.

11. Toxic-forming materials shall be handled and disposed of in accordance with sections 69-05.2-16-11 and 69-05.2-21-03. If specified by the commission, additional measures shall be adopted by the person engaged in coal exploration.

History: Effective August 1, 1980.

General Authority
NDCC 38-12.1-04

Law Implemented
NDCC 38-12.1-04

43-02-01-21. REMOVAL OF COAL. No coal shall be extracted for commercial sale during a coal exploration operation. No other coal shall be extracted except for cores and samples necessary for testing and analysis.

History: Effective August 1, 1980.

General Authority
NDCC 38-12.1-04

Law Implemented
NDCC 38-12.1-04

TITLE 54

Nursing, Board of

STAFF COMMENT: Chapter 54-05-01.1 is all new material and is therefore not underscored.

CHAPTER 54-05-01.1
STANDARDS OF PRACTICE FOR LICENSED PRACTICAL NURSES
PROVIDING SPECIALIZED NURSING CARE

Section	
54-05-01.1-01	Statement of Intent
54-05-01.1-02	Definition
54-05-01.1-03	Qualifications
54-05-01.1-04	Standards

54-05-01.1-01. STATEMENT OF INTENT. The practice of the licensed practical nurse providing specialized nursing care is based upon usual licensed practical nurse practice in that all care is to be performed under supervision (North Dakota Century Code section 43-12.1-02). Specialized nursing care provided by the licensed practical nurse is not commonly performed by a licensed practical nurse and requires knowledge and skills beyond the scope of a practical nursing program. The board of nursing recognizes that a terminal vocational program of approximately one year cannot provide for a comprehensive or transferable expanded role; it also recognizes that applicable learning may take place following a formal program of instruction.

Only that care in which the licensed practical nurse is competent may be delegated to the licensed practical nurse. This care is the responsibility of both the delegator and the licensed practical nurse and is consistent with chapter 54-05-01.

Performance of specialized nursing care is voluntary and may not be a condition of continued employment. The authorization to provide specialized nursing care is limited to specific practice within an identified institution. An institution employing a licensed practical nurse to carry out specialized nursing care shares in the responsibility to meet the standards of practice.

History: Effective May 1, 1980.

General Authority
NDCC 43-12.1-08

Law Implemented
NDCC 43-12.1-08(16)

54-05-01.1-02. DEFINITION. The licensed practical nurse providing specialized nursing care is a licensed practical nurse with additional preparation and experience who is qualified to assume greater responsibility in specialized care areas or in patient care management, or both, according to designated written policies of the employing institution.

History: Effective May 1, 1980.

General Authority
NDCC 43-12.1-08

Law Implemented
NDCC 43-12.1-08(16)

54-05-01.1-03. QUALIFICATIONS. The licensed practical nurse providing specialized nursing care shall:

1. Have completed an approved nursing program.
2. Possess a current North Dakota license to practice practical nursing.
3. Have at least one year's experience in nursing.
4. Have completed additional preparation, including theory, pertinent to the specialized nursing care.
5. Have completed planned, supervised onsite experience in the activities and decisionmaking inherent in the specialized nursing care.

History: Effective May 1, 1980.

General Authority
NDCC 43-12.1-08

Law Implemented
NDCC 43-12.1-08(16)

54-05-01.1-04. STANDARDS. The licensed practical nurse providing specialized nursing care shall:

1. Function within specific written institutional policies that identify the licensed practical nurse by name.
2. Function under the direct or indirect supervision of a licensed registered nurse, physician or dentist.

History: Effective May 1, 1980.

General Authority
NDCC 43-12.1-08

Law Implemented
NDCC 43-12.1-08(16)

TITLE 69

Public Service Commission

STAFF COMMENT: Due to the voluminous nature of the rules comprising NDAC Article 69-05.2, the rules are not contained in this handout. Article 69-05.2, relating to surface coal mining and reclamation operations, replaces Article 69-05.1 which was adopted effective July 1, 1979. Article 69-05.2 is effective August 1, 1980. The following material is the synopsis (of Article 69-05.2) submitted by the Public Service Commission.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-01 (General Provisions):

Chapter 69-05.2-01 establishes the applicability of the article; defines an extensive list of terms; provides for the notice and hearing requirements for the promulgation of regulations; sets forth the notice requirements for civil actions initiated by citizens; and provides for computation of time.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-02 (Restrictions on Financial Interests of Employees):

Chapter 69-05.2-02 provides for the filing by PSC employees of statements relative to their interests in coal mining operations. Employees of the commission must not have any direct or indirect financial interests in coal mining operations. The chapter lists the powers and duties of the PSC relative to restrictions on employee financial interests; provides for employee filing and reporting requirements; establishes a penalty for failure to file a statement; provides for the timing of the filings; contains prohibitions on employee soliciting or accepting gifts or gratuities from a coal company; provides for remedial action necessary to resolve any prohibited interests; and contains a procedure for an aggrieved employee to appeal a PSC order for remedial action to resolve the prohibited financial interests.

AGENCY SYNOPSIS of CHAPTER 69-05.2-03 (Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction):

Chapter 69-05.2-03 requires that persons who extract more than 250 tons of coal or who affect more than two acres incident to a government-financed highway or other construction project must have available for inspection on the site various documents relative to such construction. This construction is exempt from the surface coal mining and reclamation requirements.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-04 (Areas Unsuitable for Mining):

Chapter 69-05.2-04 provides the procedures and requirements for designating lands unsuitable for all or certain types of surface coal mining operations, or for having an existing designation terminated. A petition may be submitted by any person having an interest which is or may be adversely affected by the surface mining operation or by the designation of unsuitability. Within 10 months after the receipt of a complete petition, the PSC must, after proper notice, hold a public hearing in the locality of the area covered by the petition, unless all the petitioners and intervenors agree that the hearing need not be held prior to the PSC decision. The PSC must issue its final written decision within 60 days after the completion of the public hearing or within 12 months after the receipt of the completed petition if no public hearing is held. Designation of an area as unsuitable for surface coal mining does not prevent coal exploration operations in the area, however, exploration must not interfere with or affect any value for which the designation was made.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-05 (Permit Applications - General Requirements):

Chapter 69-05.2-05 contains provisions for the filing, by the operator or permittee, of a complete surface mining permit application. The format and contents of such permit application must be in a form prescribed by the PSC, verified under oath and accompanied by a nonrefundable filing fee of \$250. Upon receipt of a complete permit application, the PSC must approve or disapprove the application within 120 days. An approved permit must be issued for a fixed term not to exceed five years, unless it is demonstrated that a longer permit term is needed in order to obtain financing. This chapter also requires coordination with other state and federal agencies in order to avoid unnecessary duplication with other permit processes.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-06 (Permit Applications - Requirements for Legal, Financial, Compliance, and Related Information):

Chapter 69-05.2-06 provides that in addition to information required to be provided under NDCC section 38-14.1-14(1), each permit application must also include the following information: the names and addresses of record owners of all surface areas and coal subsurface rights contiguous to the permit area extending one quarter mile from the permit boundary; the name of the proposed mine and the mine safety and health administration identification number; a statement of all interests in lands held by the permit applicant extending one quarter mile from the permit boundary; the various names under which the permit applicant, partner or principal shareholder operated a surface coal mining operation in any state within the past five years; compliance information including any current or previous coal mining permits held in any state since 1970 and any suspension or revocation of a surface coal mining permit; a listing of any violation notices received by the permit applicant in any state within the past three years; copies of the documents upon which the permit applicant bases his legal right to enter and begin surface mining activities and whether that right is subject to pending litigation; a narrative and copies of documents which demonstrate that the requirements of the North Dakota Surface Owners Protection Act, NDCC chapter 38-18, has been complied with; a list of all other licenses and permits needed by the permit applicant to conduct the mining activities; and a statement whether the proposed permit area is within an area designated unsuitable for surface mining activities.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-07 (Permit Applications - Extended Mining Plan - Requirements for Information on Environmental Resources):

The permit application must also contain an extended mining plan identifying the land subject to surface coal mining operations over the estimated life of the mining operation. The extended mining plan must contain the following information: a topographic map; a description of water quality and quantity for all land within the area; for areas which may contain alluvial valley floors, an estimated timetable specifying when the permit applicant proposes to comply with the requirements governing mining of areas containing alluvial valley floors; soil survey information; and a description of the geology within the extended mining plan area.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-08 (Permit Applications - Permit Area - Requirements for Information on Environmental Resources):

Chapter 69-05.2-08 provides that each permit application must include the following information: a description of the premining environmental resources within and adjacent to the proposed permit area that may be affected or impacted by the proposed surface mining activities; a planimetric mine map and other separate detail maps; the description and identification of cultural and historic resources and known archaeological features within the area based on the results of an archaeological and historical survey; a detailed description of the geology, hydrology, and water quality and quantity for all land within the proposed permit area and in the adjacent and general areas; detailed premining vegetation and land use information; a preapplication investigation of the proposed permit area to determine whether land within the area may be prime farmland; a soil survey including a map and detailed report prepared by a professional soil classifier; and topographic maps to determine the natural premining contour of the land.

Prior to applying for a permit to conduct surface coal mining and reclamation operations within a valley holding a stream, the permit applicant must first make detailed investigations to determine whether the area is an alluvial valley floor. If land within the proposed permit area or adjacent area is identified as an alluvial valley floor, the permit applicant must submit a complete description of the alluvial valley floor resources and characteristics to the PSC.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-09 (Permit Applications - Permit Area - Requirements for Operation and Reclamation Plans):

Chapter 69-05.2-09 requires submission of the following information with each permit application: a detailed description of the mining operations proposed to be conducted within the proposed permit area; an appropriate combination of topographic and planimetric maps and plans of the permit and adjacent areas; a description of each existing structure within the proposed permit area or adjacent area; a blasting plan; an air pollution control plan; a detailed description of each road, conveyor, or rail system to be constructed, used or maintained in connection with the mining and reclamation operation; a description of the measures to be used to ensure protection of the public and landowner's interests; a description of the measures to be used to minimize impacts upon parks or historic places which may be adversely affected by the mining operations; a surface water management plan; a plan for reclamation of the affected lands showing how the permit applicant will comply with the applicable performance standards and achieve the proposed postmining land use; descriptions of the proposed spoil disposal sites and design of the spoil disposal area; plans for the reclamation of prime farmland within the proposed permit area; and operation and reclamation plans for the lands that have been identified as alluvial valley floors.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-10 (Permit Applications - Review, Public Participation, and Approval or Disapproval):

Chapter 69-05.2-10 specifies additional notice requirements for applicants filing a permit application with the PSC; requires that requests for an informal conference pursuant to NDCC section 38-14.1-18 must be in writing, must state the issues to be raised at the conference, and must state whether the requestor desires to have the conference conducted in the locality of the proposed mining operations; and states the criteria for permit approval, modification, or denial by the PSC. The PSC may not approve or disapprove a permit application prior to the expiration of the 30-day period for requesting an informal conference or for the filing of written comments or objections following the last public notice. If an informal conference has not been requested, the PSC must approve, require modification of, or deny the permit application within the review period specified in section 69-05.2-05-01.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-11 (Permit Reviews, Revisions and Renewals - Transfer, Sale, or Assignment of Rights Granted Under Permits):

The PSC must review each permit it has issued no less frequently than the permit midterm or every five years, whichever is more frequent. After the review, the PSC may by order require revision or modification of the permit provisions. Permits may be successively renewed for areas only within the boundaries of the approved permit and for any incidental boundary changes approved by the commission. The transfer, sale, or assignment of rights granted under a permit may be accomplished under procedures specified and upon approval by the PSC. Any successor in interest seeking to change the mining or reclamation operations, or any of the terms or conditions of the original permit, must make application for a new or revised permit within 30 days after the succession is approved by the PSC.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-12 (Performance Bonds - Liability Insurance):

In addition to the performance bond requirements of NDCC section 38-14.1-16, chapter 69-05.2-12 prescribes additional general requirements for performance bonds. The performance bond may be either a surety bond, a collateral bond, or a self-bond and is subject to the terms and conditions set forth in this chapter. The PSC may allow permittees to replace existing surety or collateral bonds with other surety, collateral or self-bonds, however, the existing performance bond may not be released until the permittee has submitted and the PSC has approved an acceptable replacement.

This chapter also provides criteria for determination of the amount of the performance bond and requires periodic reevaluation and, if necessary, adjustment of the amount of the bond. A permittee may also request a reduction of the amount of the performance bond. This chapter then provides criteria for the release or partial release of the performance bond. Any formal hearing on the release of a performance bond must be held in the city nearest the permit area or at the state capitol.

This chapter sets forth the criteria and procedures for forfeiture of a performance bond, contains a provision allowing revocation of the permit upon forfeiture and a provision concerning the minimum amounts of coverage for public liability insurance.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-13 (Performance Standards - General Requirements):

Chapter 69-05.2-13 sets forth general requirements for the following: submission of coal production reports to the PSC; submission of an annual map; signs and markers; use of the best technology currently available to minimize disturbances on lands where coal is not removed; employment of fugitive dust control measures to protect air quality; protection of fish, wildlife and related environmental values; reporting and necessary remedial measures to be taken if a slide occurs which may have a potential adverse effect on public property, health, safety, or the environment; and requirements upon cessation of operations or the temporary or permanent abandonment of surface mining activities.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-14 (Performance Standards - Casing and Sealing of Drilled Holes):

Chapter 69-05.2-14 sets forth general, temporary, and permanent performance standards for the casing and sealing of each drill hole, borehole, or well in order to prevent toxic drainage from entering ground and surface water and to ensure the safety of people, livestock, fish and wildlife in the area.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-15 (Performance Standards - Suitable Plant Growth Material):

Chapter 69-05.2-15 specifies the requirements for removal, handling, storage and protection, redistribution and stabilization of topsoil during the surface coal mining and reclamation operations.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-16 (Performance Standards - Hydrologic Balance - General Requirements):

Any runoff water or pit discharge water must meet the water quality requirements of the State Department of Health and any water impoundment, diversion, structure, or drainage ditch must be constructed in accordance with the requirements of the state engineer. The remaining provisions of this chapter specify comprehensive requirements necessary to ensure the quality and quantity of water in both the permit area and adjacent areas during surface mining and reclamation operations. These operations must be conducted to minimize and control pollution of surface water, ground water, streams, and impoundments.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-17 (Performance Standards - Use of Explosives):

Chapter 69-05.2-17 specifies the requirements concerning the use of explosives in surface mining operations. All blasting operations must be conducted by certified, experienced, trained, and competent persons. On request to the PSC by a resident or owner located near the permit area, the operator is required to conduct a preblasting survey. Each operator must publish a blasting schedule and conduct blasting operations according to required blasting procedures. Records of each blast must be retained at the minesite and be available for inspection.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-18 (Performance Standards - Disposal of Excess Spoil - Requirements):

In addition to the requirements of subsection 19 of section 38-14.1-24 of the NDCC, this chapter specifies requirements which must be met by the operator in disposing of excess spoil in order to provide for adequate drainage and for the stability of the disposal area.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-19 (Performance Standards - Waste Materials):

Chapter 69-05.2-19 specifies the requirements and procedures which must be complied with for the disposal of coal processing waste, ash, other waste materials and noncoal wastes. Permanent disposal is allowed only in mined-out pit areas.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-20 (Performance Standards - Dams and Embankments Constructed of or Impounding Coal Processing Waste):

Chapter 69-05.2-20 spells out the specifications, design, construction, and other requirements for the construction of dams and embankments made of coal waste materials. These requirements are necessary to ensure that the use or storage of waste material will not have a detrimental effect on the downstream water quality or the environment due to toxic seepage through the dam or embankment.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-21 (Performance Standards - Backfilling and Grading):

Chapter 69-05.2-21 establishes the time limitations and grading requirements for the backfilling and grading of surface mined areas, including special provisions for areas with thin overburden. Once the mined areas has been graded, the postmining topography must be approved by the PSC prior to the spreading of suitable plant growth materials. All exposed coal seams remaining after mining is completed, and all toxic or combustible materials, must be covered or treated to prevent water pollution and adverse effects on plants or land uses.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-22 (Performance Standards - Revegetation):

Under this chapter, the permittee is required to establish a diverse, effective and permanent vegetative cover which will support the approved postmining land use. This chapter contains provisions for: selecting the proper varieties and species of plants; seeding rates and practices necessary for establishment of vegetation; substitution of introduced species for native species; timing of the seeding and planting; use of mulch and other soil stabilizing practices; standards to measure the success of revegetation; grazing of revegetated rangeland or pastureland; and stocking of trees and shrubs on woodlands.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-23 (Performance Standards - Postmining Land Use):

Chapter 69-05.2-23 contains provisions for determining the premining use of mined land and establishes postmining land use categories. The land use categories are as follows:

1. Agricultural land;
2. Woodland;
3. Fish and wildlife habitat;
4. Developed water resources;
5. Recreation;
6. Residential; and
7. Industrial and commercial.

The chapter also sets forth the criteria for approving alternative postmining land uses.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-24 (Performance Standards - Roads - Other Transportation Facilities - Support Facilities):

Chapter 69-05.2-24 sets forth the standards and requirements for the design and construction, location, surfacing, maintenance, drainage, and removal of roads used in the surface mining operations. In addition, the chapter requires that other transportation facilities, support facilities and utility installations be constructed and maintained in a manner designed to prevent damage to the environment or to private or public property.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-25 (Performance Standards - Operations in Alluvial Valley Floors):

Chapter 69-05.2-25 sets forth the standards and requirements necessary in order for an operator to conduct surface coal mining and reclamation operations in or near alluvial valley floors. Such mining and reclamation operations must be closely monitored and must not interrupt, discontinue or preclude farming on the alluvial valley floor nor cause material damage to water that supplies the alluvial valley floor. The agricultural utility and the level of productivity of alluvial valley floors in the affected areas must be reestablished after mining.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-26 (Performance Standards - Prime Farmland):

Chapter 69-05.2-26 specifies the standards and requirements for soil removal, soil stockpiling, soil replacement, and revegetation for areas that contain prime farmlands.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-27 (Requirements for Research Plots and Permits for Experimental Surface Coal Mining and Reclamation Operations):

Chapter 69-05.2-27 contains the requirements for research plots used for experimental reclamation purposes. In addition, this chapter contains standards and procedures for variances from the environmental protection performance standards of NDCC section 38-14.1-24. Variances may be approved in individual cases for experimental purposes in order to encourage advances in surface mining and reclamation practices. An experimental practice must be approved jointly by the PSC and by the federal Office of Surface Mining. An experimental practice will not be approved unless it has been demonstrated that the practice will be at least as protective of the environment as are the performance standards. Special monitoring is required for all approved experimental practices.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-28 (Inspection and Enforcement):

Chapter 69-05.2-28 generally provides for the inspection of surface coal mining and reclamation operations and for the enforcement of the applicable laws and regulations governing such operations. This chapter contains provisions for the following: citizen requests for inspections; review of decisions not to inspect or to take enforcement action with respect to alleged violations; modification, termination, or vacation of cessation orders and notices of violation; requires an informal minesite hearing within 30 days of the issuance of a cessation order; allows the PSC to extend the period for correcting a violation up to 90 days; an operator or permittee's inability to comply is not grounds for vacation of a cessation order or notice of violation; establishment by the PSC of a pattern of violations; suspension of or revocation of a permit; requires minesite hearings on all requests for temporary relief; requires filing of reports, records and inspection materials with the county auditor; establishes factors to be considered in determining the amount of a civil penalty; allows a civil penalty to be assessed for each day the operator or permittee is in violation; contains escrow account procedures whereby the amount of the civil penalty is held in escrow pending a final decision on a violation; and prohibits the interference by the surface owner in approved reclamation operations.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-29 (Small Operator Assistance):

Chapter 69-05.2-29 sets forth the responsibilities and duties of the PSC relative to the small operator assistance program. The small operator assistance program provides funds for the collection and interpretation of hydrologic data and for test borings and core samples. This data is needed in order for a small operator to obtain a permit. This chapter contains provisions for the following: eligibility requirements for an applicant applying for assistance; filing requirements; procedures for approval or denial by the PSC of the application; data collection requirements; restrictions on the use of small operator assistance funds; and potential liability of the approved applicant.

AGENCY SYNOPSIS OF CHAPTER 69-05.2-30 (Off-Permit Use of Other Minerals):

Any operator or permittee proposing to remove and use any solid, noncoal natural resources outside the permit area must submit a plan to the PSC for approval. This chapter specifies the type of information which must be included with the plan.

TITLE 73

Securities Commissioner

AGENCY SYNOPSIS OF SUBSECTION 7 OF § 73-02-03-01:

At the present time, the waiver provided under subsection 7 of section 73-02-03-01 is available in connection with any offering, no matter how egregious the background of any person associated with that offering may be, as long as the number of offerees in this state during a consecutive twelve-month period is three or fewer.

The amendment will change this by limiting the availability of the waiver to offerings in which associated persons have not been involved in certain proscribed activities. In other words, only those offerings involving persons with "clean" records are eligible for the waiver.

Note that the amendment does not have the effect of removing the exemption entirely. All it does is require the written approval of this office for any offering in which associated persons have questionable backgrounds. In this way, the Commissioner can screen out on a case-by-case basis those offerings which are potentially inimical to the best interests of investors and of the public.

The amendment will also eliminate the exemption as a possible defense in any criminal or civil action based upon nonregistration counts.

73-02-03-01. LIMITED OFFEREE EXEMPTION.

1. Application form. Except as otherwise specifically provided, application for approval of the limited offeree exemption under 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 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. If Except as otherwise provided under subdivision c, if the number of offerees in this state during a consecutive twelve-month period is three or fewer and if the conditions in subdivisions a and b 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. Payment--of--the--filing-fee-may-be-waived-on-an-ad-hoc-basis-if-the commissioner--determines--that--the--time--and--effort--involved--in processing-the-application-do-not-justify-imposition-of-the-fee: 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.

History: Amended effective August 1, 1980.

General Authority
NDCC 10-04-06(9)

Law Implemented
NDCC 10-04-06(9)

TITLE 74

Seed Commission

STAFF COMMENT: Chapter 74-06-03 is all new material and is therefore not underscored.

CHAPTER 74-06-03

MUSTARD

Section

74-06-03-01	Class and Subclasses
74-06-03-02	Terminology and Definitions
74-06-03-03	Samples - Grading and Moisture
74-06-03-04	Moisture Determination
74-06-03-05	Dockage Determination
74-06-03-06	Numerical Grading Factors
74-06-03-07	Dockage Percentages
74-06-03-08	Grade Designation for North Dakota Mustard
74-06-03-09	Grading and Factor Analysis Fees

74-06-03-01. CLASS AND SUBCLASSES. The one class of mustard is the seed of yellow (*Brassica hirta*) or oriental or brown mustard (*Brassica juncea*) which, before the removal of dockage, contains at least fifty percent of these mustard seeds, and not more than ten percent of grains officially graded under the United States Grain Standards Act. The class is divided into four subclasses:

1. Yellow. Any variety of *Brassica hirta* but not in excess of five percent of brown or oriental mustard, singly or combined, after dockage removal.
2. Oriental. Any variety of *Brassica juncea* having yellowish seeds, but not in excess of five percent yellow or brown mustard seeds, singly or combined, after dockage removal. Oriental mustard may contain up to five percent seed having brown seedcoats due to staining or weathering.
3. Brown. Any variety of *Brassica juncea* having brown seeds, but not in excess of five percent yellow or oriental seeds, singly or combined, after dockage removal.

4. Mixed. Any mixture of mustard containing less than ninety-five percent yellow, oriental, or brown, and more than five percent of one subclass or combination of subclasses, after dockage has been removed.

History: Effective May 1, 1980.

General Authority
NDCC 4-09.1-02

Law Implemented
NDCC 4-09.1-02

74-06-03-02. TERMINOLOGY AND DEFINITIONS. Terminology used in the "Official United States Standards for Grain", FGIS, USDA, Stock No. 001-016-00104-7 is used as appropriate in these mustard standards to facilitate communication; and equipment used by FGIS is used as possible.

1. "Broken seeds" refers to broken, but sound, mustard seeds of any size (or with any portion of seedcoat removed) not removed in the proper determination of dockage.
2. "Damaged seeds" includes seeds, except heat damaged seeds, that are shrunken or shriveled as result of frost damage, discolored from excessive weathering that has penetrated the seedcoat, heavily blotched, distinctly green or heated as interpreted from the crushing test, or otherwise distinctly damaged.
3. "Distinctly green seeds" refers to seeds having a vivid green color throughout the embryo as observed and recorded after the crushing test.
4. "Dockage" refers to all matter removed from the sample using the required standard method of dockage determination. Dockage is reported in percent and added to and made a part of the grade designation after subclass.
5. "Foreign material other than dockage" is all material other than mustard seed of the four subclasses after the removal of dockage (includes weed seeds, other grains, earth pellets or stones, sclerotia, "trash", etc.). This total foreign material is composed of:
 - a. A combination of seeds of cockle (*Lychnis* spp.), wild mustard (*Brassica kaber*), and rapeseed (*Brassica campestris* and *B. napus*);
 - b. Other weed seeds than those in subdivision a; and
 - c. All matter other than mustard or weed seeds of subdivisions a and b.
6. "Heat damaged seeds" refers to whole or broken mustard seeds which are discolored light tan to charcoal black by excessive respiration or any other heating or drying process and have a distinct burnt odor after crushing.
7. "Moisture percentage" refers to moisture percentage of the seed sample prior to dockage removal.

8. "N.D." in the grade designation refers to North Dakota.
9. "Odor" of mustard seed of any of the four subclasses should be the natural odor associated with sound seed, and applied favorably to the numerical grades 1 to 4. Any lot of mustard seed having a musty, sour or otherwise objectionable odor will be graded North Dakota sample grade on account of "odor".
10. "Purity" refers to total percentage of the subclasses yellow, oriental, or brown, and to mixed mustard on basis of percentage of mustard seeds required to qualify for the mustard class.
11. "Sound seed" refers to whole or broken mustard seed not damaged by heat, sprout, frost, fungi, or otherwise damaged, or which do not appear distinctly green in the "crush" tests. The presence and percentage of distinctly green seeds and heat damaged seeds of mustard will be determined, by crushing with a roller, on a minimum of five strips of one hundred mustard seeds each. The determination will be made on clean seed after dockage removal.

History: Effective May 1, 1980.

General Authority
NDCC 4-09.1-02

Law Implemented
NDCC 4-09.1-02

74-06-03-03. SAMPLES - GRADING AND MOISTURE. The representative sample for grading North Dakota mustard will be taken with official probe as required by federal grain inspection service, e.g., ten probes per railcar, or by approved automatic samplers properly installed in grain elevators or terminals, or other approved methods. Grades applied to submitted samples will apply only to the sample submitted, and it will be the responsibility of the sampler to secure a representative sample. Samples for moisture determination will be stored and transported in plastic bags or other airtight containers until official moisture can be determined. Moisture percentages will be adjusted for temperature as specified by federal grain inspection service.

History: Effective May 1, 1980.

General Authority
NDCC 4-09.1-02

Law Implemented
NDCC 4-09.1-02

74-06-03-04. MOISTURE DETERMINATION. Percentage of moisture shall be determined on the mustard seed sample prior to removal of dockage by the air oven or equivalent instrument or equipment and recorded on the certificate.

History: Effective May 1, 1980.

General Authority
NDCC 4-09.1-02

Law Implemented
NDCC 4-09.1-02

74-06-03-05. DOCKAGE DETERMINATION. Dockage determination will be via Carter dockage tester. A minimum of one thousand grams will be used. The riddle and sieve arrangements will be: Feed on #3, for yellow and #2 feed for oriental and brown, air on #7, the 000 riddle, #10 sieve in top sieve carriage, and #11 sieve in middle.

All material, including mustard seeds and unthreshed pods, removed by air, and all material passing over the riddle and the #10 sieve are dockage. All material passing through the bottom #11 sieve will be reclaimed using a 6x21-inch wire sieve for brown and oriental mustard. Material remaining on top of the hand sieve will be placed back in the dockage-free mustard for grading. The fifty percent rule will apply to all material passing through the hand sieve, that is, if this material is fifty percent or more mustard it is returned to the mustard sample for grading, but if it is less than fifty percent mustard by weight it is placed in dockage and weighted and calculated with air and riddle dockage. (As the production environment or nature of mustard seed of any of the subclasses might change from year to year, the size of the reclaiming hand sieve may need to be changed. If a different sieve is used to reclaim that material passing through the bottom #11 sieve, the size and hole shape of the sieve used must be stated on the certificate.)

History: Effective May 1, 1980.

General Authority
NDCC 4-09.1-02

Law Implemented
NDCC 4-09.1-02

74-06-03-06. NUMERICAL GRADING FACTORS. All percentages are determined on weight basis except crushing tests to determine part of damage factor.

	GRADE				North Dakota Sample Grade
	North Dakota No. 1	North Dakota No. 2	North Dakota No. 3	North Dakota No. 4	
Minimum purity of subclass*	99.8 %	99.5 %	98.0 %	95.0 %	95.0 %
Heat damaged+	0.1 %	0.2 %	0.5 %	1.0 %	**
Damage distinctly green seeds+	1.5 %	1.5 %	3.5 %	3.5 %	**
Total damaged seeds+	1.5 %	3.0 %	5.0 %	10.0 %	**
Foreign material other than dockage - Yellow: Cockle, wild mustard and rapeseed, singly or combined+	0.1 %	0.2 %	0.3 %	0.7 %	**
Foreign material other than dockage - Brown or Oriental: Cockle, wild mustard and rapeseed, singly or combined+	0.1 %	0.2 %	0.7 %	1.0 %	**
Other weed seeds+	0.3 %	0.5 %	0.7 %	1.0 %	**
Other foreign material+	0.1 %	0.3 %	0.6 %	1.0 %	**

+All percentages are maximum tolerances.

*Not applicable to North Dakota mixed mustard.

**Sample grade shall be determined as that grade in which any one or more of the grading factors exceeds the maximum tolerances allowed for North Dakota No. 4, and samples having a musty, sour or objectionable odor.

Mustard containing two or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth or broken glass per one thousand grams cut from the sample as a whole shall be graded as North Dakota sample grade. Mustard containing two or more fertilizer pellets or two or more Sclerotinia Sclerotiorum bodies in the dockage free sample shall be graded North Dakota sample grade.

History: Effective May 1, 1980.

General Authority
NDCC 4-09.1-02

Law Implemented
NDCC 4-09.1-02

74-06-03-07. DOCKAGE PERCENTAGES. The percentage of dockage when equal to one-half percent or more shall be stated in terms of half percent, whole percent, or whole and half percent, as the case may be, with other fractions disregarded; that is, all fractions of five-tenths percent are dropped, so five-tenths to nine-tenths percent is reported as five-tenths percent, one percent to one and four-tenths percent is reported as one percent, one and five-tenths percent to one and nine-tenths percent is reported as one and five-tenths percent, etc. All other percentages will be recorded and reported to nearest one-tenth percent.

History: Effective May 1, 1980.

General Authority
NDCC 4-09.1-02

Law Implemented
NDCC 4-09.1-02

74-06-03-08. GRADE DESIGNATION FOR NORTH DAKOTA MUSTARD. The grade designation for mustard shall include in the following order:

1. The letters "N.D."
2. The number of the grade or "sample grade", the latter considered a numerical grade below No. 4.
3. The subclass of yellow, oriental, brown or mixed.
4. Dockage percentage if any applicable.

Information determining numerical grade and subclass will be stated on the certificate.

History: Effective May 1, 1980.

General Authority
NDCC 4-09.1-02

Law Implemented
NDCC 4-09.1-02

74-06-03-09. GRADING AND FACTOR ANALYSIS FEES.

1. Grade determination for official samples.

(Form CI-1) samples taken by North Dakota state seed department authorized inspectors.

Grading not including sampling - \$10.00

2. Grade determination for submitted samples.

(Form CI-2) samples not officially taken under North Dakota state seed department supervision.

Grading - \$10.00

3. Factor analysis.

Per factor - \$ 2.00

Dockage
Distinctly green seed
Moisture

Heat damaged seed
Total damaged seed
Foreign material

History: Effective May 1, 1980.

General Authority
NDCC 4-09.1-03

Law Implemented
NDCC 4-09.1-03

TITLE 75
SOCIAL SERVICE BOARD

AGENCY SYNOPSIS OF § 75-02-01-06:

Amends the section by adding two new subsections which set forth the manner in which the reasonable value of physical and custodial care support which has been furnished to the child or children of a legally responsible relative by the AFDC Program is determined or is to be determined.

75-02-01-06. RESPONSIBLE RELATIVES.

1. The legally responsible relatives of a dependent child under the aid to families with dependent children program are the child's natural or adoptive parents.
2. The reasonable value of the physical and custodial care or support which has been furnished to the child or children of a legally responsible relative (obligor) by the aid to families with dependent children program is, for each month such child or children are eligible, the amount of the aid to families with dependent children grant receive multiplied by the number of children of the obligor receiving benefits and divided by the total number of children in the household receiving benefits.
3. Stepparents cannot be legally required to support their stepchildren but when they are able and willing to do so should be encouraged to support to the extent of their ability.
4. In cases where a stepparent is eligible to receive aid to families with dependent children benefits, the reasonable value of the physical and custodial care or support which has been furnished to the child or children of a legally responsible relative (obligor) by the aid to families with dependent children program is, for each month such child or children are eligible, the amount of the aid to families with dependent children grant received multiplied by the number of children of the obligor receiving benefits and divided by one plus the total number of children in the household receiving benefits.

History: Amended effective June 1, 1980.

General Authority
NDCC 50-09-02

Law Implemented
NDCC 50-09-02,
50-09-10,
45 CFR 233.90

AGENCY SYNOPSIS OF § 75-02-03-09:

Amends subsection 2, establishes two new subsections numbered 3 and 4, and renumbers the former section 3, all to more fully delineate the ratesetting process for homes for the aged and infirm, to establish a new time frame for the ratesetting, and to raise the profit margin for proprietary homes from five percent to eight and one-half percent. Also included is a method by which a maximum payable rate is established, and a requirement that county social service boards pay the rate established by the Social Service Board unless it exceeds the maximum payable rate.

75-02-03-09. RATESETTING.

1. The social service board shall establish reasonable rates for licensed homes for the aged and infirm for the care and maintenance of individuals dependent in whole or in part upon state or county supplementation of supplemental security income benefits.
2. The rates--are--determined social service board shall annually, by an audit conducted by the social service board and are based on, determine the operational allowable costs in the case of nonprofit homes for the aged and infirm and operational allowable costs plus--a--five--percent profit, including eight and one-half percent of an amount arrived at by subtracting mortgages and loans from net fixed assets, in the case of proprietary homes for the aged and infirm. The allowable costs thereby established in the most recent audit shall, no later than May first of each year, be adjusted to reflect changes projected in operational and labor costs for the year beginning on the July first immediately following and ending on June thirtieth of the following year. The rate thereby established shall be called the audit rate, shall be published on May first of each year, and shall be effective from July first of the year of publication through June thirtieth of the following year.
3. No later than May first of each year the social service board shall publish a reasonable rate for licensed homes for the aged and infirm. The reasonable rate shall be effective from July first of the year of publication through June thirtieth of the following year. The reasonable rate shall be established by ranking all licensed homes for the aged and infirm by their respective audit rates and determining the position in the ranking below which lie seventy percent of the ranked homes. The reasonable rate shall be the audit rate which has been established for the home in the position thus determined.
4. A county social service board shall determine the payable rate for any resident whose care is, in whole or in part, paid for by that county social service board. The payable rate shall be the lesser of the reasonable rate and the audit rate. Reimbursement pursuant to North Dakota Century Code section 50-01-09.2 will not be made for expenses

incurred by counties which establish a payable rate less than that required by this subsection.

5. ~~The payable rate established by the social service board~~ shall include a twenty-five dollar per month clothing and personal needs allowance which must be reserved for each individual. Homes for the aged and infirm shall ensure that this monthly clothing and personal needs allowance is reserved for its intended purpose.

History: Amended effective June 1, 1980.

General Authority
NDCC 50-18-02,
50-18-06

Law Implemented
NDCC 50-18-06.1

AGENCY SYNOPSIS OF § 75-01-03-05:

Amend subsection 1 so as to permit oral requests for fair hearing.

75-01-03-05. CLAIMANT RESPONSIBILITY.

1. The claimant ~~must~~ may request a fair hearing in writing or orally. Oral requests must be clear expressions, made by the claimant or the claimant's authorized representative to an employee of a county agency or the state agency to the effect that the claimant wishes to appeal a decision. The employee hearing such a request shall promptly reduce the request to writing and file it as provided by this section. The request may be filed on the back of a form 599 which gave notice of the proposed action which the claimant disputes; however, the request need not be in any particular form. The county agency shall assist the claimant in filing the claimant's request for a fair hearing. A printed form provided by the board for such request may be given the claimant by the county agency upon the claimant's request for such action.
2. For the purpose of prompt action, the claimant shall be informed by the county agency that the claimant's request for a fair hearing should identify the aid program involved as well as the reason for the claimant's dissatisfaction with the particular action involved in the case.

History: Effective September 1, 1979; amended effective July 1, 1980.

General Authority
NDCC 28-32-02,
50-06-05.1

Law Implemented
NDCC 28-32-05

AGENCY SYNOPSIS OF § 75-02-01-05:

Amends subdivision f of subsection 8 so as to permit county social service boards greater flexibility in meeting AFDC child care costs, to permit the Board to establish child care maximum rates without going through the regulation amendment process, and to delete a never-used provision of the regulations.

75-02-01-05. NEED.

1. Budget. A person's need is determined by a budget. Available net income and resources are collated with basic maintenance requirements. If net income and resources exceed maintenance requirements, no need or eligibility exists. If income is insufficient, the resulting budgetary deficiency is the amount of the assistance grant.
2. Definition of need.
 - a. Form 286 is entitled "Standard Requirements and Budget Plan - AFDC".
 - b. The combined requirements as shown on the basic requirements table represent the minimum amounts of income necessary to maintain a standard of living compatible with decency and health by size of assistance units. They represent one hundred percent need for an aid to families with dependent children assistance grant.
 - c. The social service board of North Dakota may curtail the payment of benefits by a system of ratable reductions whereby all recipients within one or more of the categorical assistance programs will receive a fixed percentage of the standard of need. The system of ratable reductions shall be implemented by the social service board of North Dakota to accommodate budgetary realities and to equitably apportion those funds allocated by the legislative assembly for the public assistance program.
 - d. The social service board may, within funding limitations, make a seasonable adjustment in basic need standards of up to ten percent for a maximum of six months during any calendar year.
3. Initial grant. The county social service board may not include need which is for a period prior to the month for which the first payment is authorized. An exception to this policy can be made when payments for preceding months must be made to correct previous administrative action such as for example to carry out the decision of a fair hearing.
4. Recipients living outside of state. Assistance recipients residing temporarily outside of North Dakota are to be budgeted in accordance with the same standards as are applicable for recipients in comparable living arrangements within the state.
5. Security assistance in whole dollars. Assistance payments are to be made in the amount of the nearest whole dollar. In establishing the

grant, needs and incomes will be computed in their exact amounts with the rounding off process to be done at the end.

6. Overpayments. Recovery of an overpayment of assistance resulting from agency error is prohibited unless the recipient has the income and resources, exclusive of the current assistance payment, to offset the impact of the recoupment. If the overpayment was caused by the recipient's willful withholding or misrepresenting of the facts, or by a willful failure by the recipient to report receipt of an excess payment which should have been known, every reasonable effort should be made to recover the amount of overpayment without regard to the availability of income and resources. Recovery of overpayments, where permitted, may be made from the cash reserve, exempt earned income, or future assistance payments. When recovered from future payments, the county social service board, as a safeguard against undue hardship, may not reduce a month's grant by more than ten percent of the basic requirement unless a court orders reduction of larger amounts. Likewise, a reduction shall not be made in more than six aid to families with dependent children grants, unless ordered by a court for a longer duration.
7. Standard requirements of budget.
 - a. Form 286 entitled "Standard Requirements and Budget Plan - AFDC" serves as the basis for budgeting need and is to be used in determining initial and continuing budgeting need for aid to families with dependent children.
 - b. Schedule 1 or 2 are to be used to budget the two major types of living arrangements. The eligibility worker must select the appropriate living arrangement and budget accordingly.
 - c. Stepchildren: aid to families with dependent children eligibility exists in the amount of unmet need if stepchildren do not receive sufficient financial support from their natural parent or parents, social security, or other sources specifically earmarked for them or the stepfather's income and resources are either inadequate or the stepfather refuses to commit them to the stepchildren. If the natural parent in the family has income, this is considered available to meet the needs of the stepchildren to the extent that the spouse and natural children in the family are not deprived of basic necessities. If the stepparent is willing to assume full responsibility for the stepchildren's unmet need, eligibility does not exist.
8. Special items of need. In Form 286 in Schedules 1 and 2, line C, are provisions for special needs. These items are as follows:
 - a. Essential services. The cost of services which are essential to the well-being of the recipient shall be provided for in his grant as needed. These must be specific services which the individual or family, because of age, infirmity, or temporary illness, cannot perform.

- b. Work/training expenses. Costs reasonably attributed to holding a job or participating in an educational training program must be considered. An eligible caretaker shall receive a standard work/training allowance of thirty dollars per month if employed or in training at least halftime (eighty-five hours or more per month) and fifteen dollars if less than halftime. Additional funds may be authorized if the recipient can show that the expenses actually incurred exceed the standard.
- c. Catastrophic events. In the event of a disaster involving an aid to families with dependent children recipient, the county social service board, after exploring the availability of property insurance and community resources, shall authorize the replacement of food, clothing, furniture, household equipment, and other needed supplies at a level comparable to that maintained by the recipient at the time of the fire, flood, tornado, or other natural disaster.
- d. Establishment of guardianship. The cost of establishing a legal guardianship for a recipient including the expense of original appointment and an annual report to the court if requested by the county judge may be incorporated in the recipient's grant as a special allowance. The inclusion of funds with which to compensate the guardian for managing the recipient's financial affairs is allowable up to five percent of the recipient's total monthly requirements if necessary to obtain guardianship services.
- e. Medical insurance premiums. The county social service board may authorize the cost of premiums for private medical and hospital insurance if at least one of the following conditions is met:
 - (1) The individual or family already carries private insurance and the individual or members of the individual's family have a chronic, preexisting condition which would make it difficult or impossible to reacquire coverage if the policy were to be dropped, particularly if eligibility for public assistance is expected to be of short duration.
 - (2) The individual or family already carries private insurance and the past and anticipated future utilization of medical benefits is such that continued coverage appears warranted.
- f. The cost of child care, if associated with the work incentive program must, may be paid through either the vendor method and--need not;--therefore;--appear--in--the--budget--plan as a service cost or identified as a special item and paid through the aid to families with dependent children grant. Job-related child care expense for other than the-federal federally mandated work incentive program participation shall-be-identified-as-a-special-need-and-paid-through the-aid-to-families-with-dependent-children-grant must be discharged through the grant as a special item of need. Any child care arrangement which is to be paid for through the vendor payment method must be in a facility which is licensed or registered. Licensure or registration is not required when payment of child care costs is made through the grant as an aid to families with dependent

children recipient is entitled to an unrestricted money payment. Reimbursement of child care costs shall be in accordance with rules established by the social service board which permit counties to set their own payment standards up to a maximum of seventy cents per hour-per-child rate established by the board. ~~They~~ The counties also have the option of adding twenty percent to the hourly rate for a child who is under four years of age or who is physically or mentally handicapped. Child care providers in a given county need not be paid at the same rate. Likewise, families with more than one child receiving services need not be reimbursed at the same hourly rate for each child. ~~Because of the minimum wage requirement, in-home child care will be reimbursed up to the amount that would be paid for out-of-home care unless (1) the only alternative to in-home care is foster care, or (2) out-of-home care is deemed "unsuitable" because the parent's employment takes the child from the child's home during normal nighttime sleeping hours or because the child's illness or handicap makes it imperative that the child be cared for in the child's own home.~~

9. Income and resources.

- a. All income and resources of an individual applying for or receiving assistance must be taken into consideration except as is required by law to be disregarded. Only income and resources which are actually available to the individual or family may be taken into consideration in determining the amount of the grant.
- b. Budgets for the first one or two months of eligibility shall be computed prospectively, i.e., the amount of assistance for a payment month shall be computed based upon the agency's best estimate of income and circumstances which will exist in that month. The amount of each subsequent month's payment shall be computed retrospectively. Earned income from self-employment shall be ascertained on the basis of prediction predicated on self-employment earnings during prior periods of similar employment.
- c. The county social service board must reinvestigate eligibility as promptly as possible but not exceeding thirty days after receiving information about changes in need, income, or resources.
- d. All income earned by an eligible aid to families with dependent children caretaker and by a child sixteen to eighteen years of age who is a nonstudent and living in the home must be accounted for in the assistance plan, subject to the earned income exemption.

10. Conservation of children's earnings for future identifiable need.

- a. If a child's earned income accumulates in an amount exceeding one thousand dollars of cash reserve, the child's family becomes ineligible for aid to families with dependent children unless the funds are set aside for an approved future identifiable need. The funds so set aside should be set aside in a joint account with the county social service board for a future need without jeopardizing the child's family's eligibility for assistance.

- b. Savings so set aside in such joint account may be released to the child from the joint account for any of the following reasons:
 - (1) Payment of expenses for the child's training or education beyond high school.
 - (2) For payment of appropriate activities and items such as summer camps, debate, band, athletics, class rings, graduation pictures, etc.
 - (3) Upon the child's attaining the age of twenty-one.
 - (4) When the family is no longer certified for public assistance or it is the consensus of the county social service board and the family that the joint account no longer represents good social planning.
 - (5) For any of a variety of other purposes acceptable to the county social service board.
- 11. Other income to be considered in determination of aid to families with dependent children need and explored by the county social service board.
 - a. Income from workmen's compensation, unemployment compensation, and veteran's benefits.
 - b. Contributions of cash from relatives.
 - c. Court-ordered support payments.
 - d. All other income not exempted by law.
- 12. Loans. Loans made to applicants or recipients are not to be regarded as income when the nature of the loan is such that the principal is not available for current maintenance. When the loan constitutes a debt and the property purchased with the proceeds cannot be converted for current living needs, it does not represent a resource to be considered in determining property reserves.

History: Amended effective December 1, 1979; amended effective July 1, 1980.

General Authority
NDCC 50-09-02

Law Implemented
NDCC 50-09-02,
45 CFR 224.30,
45 CFR 233.20,
45 CFR 233.90

STAFF COMMENT:

Chapter 75-02-05 is all new material and is therefore not underscored.

CHAPTER 75-02-05
PROVIDER INTEGRITY

Section	
75-02-05-01	Purpose
75-02-05-02	Authority and Objective
75-02-05-03	Definitions
75-02-05-04	Provider Responsibility
75-02-05-05	Grounds for Sanctioning Providers
75-02-05-06	Reporting of Violations and Investigation
75-02-05-07	Resolution Prior to Sanction
75-02-05-08	Imposition and Extent of Sanction
75-02-05-09	Appeal and Reconsideration
75-02-05-10	Provider Information Sessions

AGENCY SYNOPSIS OF § 75-02-05-01:

Purpose: States the purpose of permitting efforts which will assure "the proper and efficient utilization of Medicaid funds . . ."

75-02-05-01. PURPOSE. The purpose underlying administrative remedies and sanctions in the medical assistance (medicaid) program is to assure the proper and efficient utilization of medicaid funds by those individuals providing medical, dental, and other health services and goods to recipients of public assistance and medically indigent persons.

History: Effective July 1, 1980.

General Authority
NDCC 50-24.1-04

Law Implemented
NDCC 50-24.1-01

AGENCY SYNOPSIS OF § 75-02-05-02:

Authority and Objective: Sets forth the statutory authority for the promulgation for these regulations.

75-02-05-02. AUTHORITY AND OBJECTIVE. Under authority of North Dakota Century Code chapter 50-24.1, the social service board of North Dakota is empowered to promulgate such rules and regulations as are necessary to qualify for federal funds under section 1901 specifically, and title XIX generally of the Social Security Act. These regulations are subject to the medical assistance state plan and to applicable federal law and regulation.

History: Effective July 1, 1980.

General Authority
NDCC 50-06-05.1,
50-24.1-04

Law Implemented
NDCC 50-24.1-04

AGENCY SYNOPSIS OF § 75-02-05-03:

Definitions: Sets forth, in 11 subsections, certain terms which are pertinent to the chapter.

75-02-05-03. DEFINITIONS.

1. "Administrative or fiscal agent" means an organization which processes and pays provider claims on behalf of the division of medical services.
2. "Affiliates" means persons having an overt or covert relationship each with the other such that any one of them directly or indirectly controls or has the power to control another.
3. "Closed-end medicaid provider agreement" means an agreement that is for a specified period of time not to exceed twelve months.
4. "Exclusion from participation" means permanent removal from provider participation in the North Dakota medical assistance program.
5. "Medicaid" means "medical assistance" and is a term precisely equivalent thereto.
6. "Offsetting of payments" means a reduction or other adjustment of the amounts paid to a provider on pending and future bills for purposes of offsetting overpayments previously made to the provider.
7. "Open-end medicaid provider agreement" means an agreement that has no specific termination date and continues in force as long as it is agreeable to both parties.

8. "Person" means any natural person, company, firm, association, corporation, or other legal entity.
9. "Provider" means any individual or entity furnishing medicaid services under a provider agreement with the division of medical services.
10. "Suspension from participation" means temporary suspension of provider participation in the North Dakota medical assistance program for a specified period of time.
11. "Suspension of payments" means the withholding of payments due a provider until the resolution of the matter in dispute between the provider and the division of medical services.

History: Effective July 1, 1980.

General Authority
NDCC 50-24.1-04

Law Implemented
42 CFR 431.1,
42 CFR 431.107

AGENCY SYNOPSIS OF § 75-02-05-04:

Provider Responsibility: Sets forth, in nine subsections, certain requirements with which providers must comply if they are to receive prompt payment for medical assistance services rendered.

75-02-05-04. PROVIDER RESPONSIBILITY. In order to assure the highest quality medical care and services, medicaid payments shall be made only to providers meeting established standards. Providers who are certified for participation in medicare shall be automatically approved for participation, providing no sanction has been imposed as provided for in section 75-02-05-08. Comparable standards for providers who do not participate in medicare are established by state law and appropriate licensing and standard-setting authorities in the health and mental health fields.

1. Payment for covered services under medicaid is limited to those services certified as medically necessary in the judgment of a qualified physician or other practitioner, for the proper management, control, or treatment of an individual's medical problem and provided under the physician's or practitioner's direction and supervision.
2. Providers agree to keep and, upon request, to make available to the division of medical services and the department of health and human services, such records as they may, from time to time, deem necessary and proper.
3. A provider must accept, as payment in full, the amounts paid in accordance with the payment structure established for medicaid. A provider performing a procedure or service may not request or receive any payment, in addition to such established amounts, from the

recipient, or anyone acting on the recipient's behalf, for the same procedure or service. In cases where a recipient liability has been properly determined by a county social service board, the provider may hold the recipient responsible for a portion of the allowable fee.

4. No medicaid payment will be made for claims received by the division of medical services later than twelve months following the date the service was provided except that any periods of time exceeding thirty days, from the time a provider requests an authorization to the time the authorization is sent to the provider, shall be added to the twelve months.
5. In all joint medicare/medicaid cases, a provider of service must accept assignment of medicare payment in order to receive payment from medicaid for amounts not covered by medicare.
6. When the recipient has other medical insurance, all benefits available due to such insurance must be applied prior to the acceptance of payment by medicaid.
7. Providers may not offer or accept a fee, portion of a fee, charge, rebate, or kickback for a medicaid patient referral.
8. Claims for payment and documentation as required must be submitted on forms prescribed by the division of medical services or its designee.
9. A provider must comply with all accepted standards of professional conduct and practice in dealing with recipients and the division of medical services.

History: Effective July 1, 1980.

General Authority
NDCC 50-24.1-04

Law Implemented
42 CFR 431.107

AGENCY SYNOPSIS OF § 75-02-05-05:

Grounds for Sanctioning Providers: Sets forth, in 19 subsections, specific kinds of behaviors, actions, and events which may result in the imposition of a sanction against the provider.

75-02-05-05. GROUNDS FOR SANCTIONING PROVIDERS. Sanctions may be imposed by the division of medical services against a provider who:

1. Presents or causes to be presented for payment any false or fraudulent claim for care or services.
2. Submits or causes to be submitted false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled.

3. Submits or causes to be submitted false information for the purpose of meeting prior authorization requirements.
4. Submits a false or fraudulent application to obtain provider status.
5. Fails to disclose or make available to the division of medical services or its authorized agent records of services provided to medicaid recipients and records of payments received for those services.
6. Fails to provide and maintain services to medicaid recipients within accepted medical community standards as adjudged by a body of peers.
7. Fails to comply with the terms of the provider certification agreement which is printed on the medicaid claim form.
8. Overutilizes the medicaid program by inducing, furnishing, or otherwise causing a recipient to receive care and services not required by the recipient.
9. Rebates or accepts a fee or portion of a fee or charge for a medicaid patient referral.
10. Is convicted of a criminal offense arising out of the practice of medicine in a manner which resulted in death or injury to a patient.
11. Fails to comply and to maintain compliance with all regulations and statutes, both state and federal, which are applicable to the applicant's/licensee's profession, business, or enterprise.
12. Is suspended or involuntarily terminated from participation in medicare.
13. Is suspended or involuntarily terminated from participation in any governmentally sponsored medical program such as workmen's compensation, crippled children's services, rehabilitation services, and medicare.
14. Bills or collects from the recipient any amount in violation of section 75-02-05-04.
15. Fails to correct deficient provider operations within a reasonable time, not to exceed thirty days, after receiving written notice of these deficiencies from the division of medical services, other responsible state agencies, or their designees.
16. Is formally reprimanded or censured by an association of the provider's peers for unethical practices.
17. Fails to change or modify delivery patterns and services within a reasonable period after receipt of a request so to do by a peer review committee whose jurisdiction includes the provider.
18. Is convicted of a criminal offense arising out of the making of false or fraudulent statements or omission of fact for the purpose of securing any governmental benefit to which the provider is not entitled, or out of conspiring, soliciting, or attempting such an action.

19. Refuses to repay or make arrangements for the repayment of identified overpayments or otherwise erroneous payments. A refusal of repayment exists if no repayment or arrangement for repayment is made within thirty days of the date written notice of discrepancy was sent.

History: Effective July 1, 1980.

General Authority
NDCC 50-24.1-04

Law Implemented
NDCC 12.1-11-02,
42 CFR 455.11,
42 CFR 455.13

AGENCY SYNOPSIS OF § 75-02-05-06:

Reporting of Violations and Investigation: Requires the Division of Medical Assistance of the Social Service Board to investigate reports of provider violations.

75-02-05-06. REPORTING OF VIOLATIONS AND INVESTIGATION. Information from any source indicating that a provider has failed or is failing to fulfill the provider's responsibilities, as set forth in section 75-02-05-04; or that a provider has acted or omitted to act in a manner which forms a ground for sanction as set forth in section 75-02-05-05 shall be transmitted to the division of medical services. The division shall forthwith investigate the matter and, should the report be substantiated, take whatever action or impose whatever sanction is deemed most appropriate. The taking of any action or the imposition of any sanction shall not preclude subsequent or simultaneous civil or criminal court action.

History: Effective July 1, 1980.

General Authority
NDCC 50-24.1-04

Law Implemented
42 CFR 455.14,
42 CFR 455.15,
42 CFR 455.16

AGENCY SYNOPSIS OF § 75-02-05-07:

Resolution Prior to Sanction: Permits the Division of Medical Services to notify a provider that the provider's manner of operation in some way violates regulations and further permits the Division of Medical Services and the provider to resolve the matter without imposition of sanction.

75-02-05-07. RESOLUTION PRIOR TO SANCTION.

1. When the staff of the division of medical services determines that a provider has been rendering care or services in a form or manner inconsistent with program regulations, or has received payment for which the provider may not be properly entitled, the division of medical services may notify the provider in writing of the discrepancy noted. The notice to the provider will set forth:
 - a. The nature of the discrepancy or inconsistency.
 - b. The dollar value, if any, of such discrepancy or inconsistency.
 - c. The method of computing such dollar values.
 - d. Further actions which the division may take.
 - e. Any action which may be required of the provider.
2. When the division of medical services has notified the provider in writing of a discrepancy or inconsistency, it may withhold payments on pending and future claims in an amount reasonably calculated to approximate the amounts in question pending a response from the provider. If the division of medical services and the provider are able to satisfactorily resolve the matter, sanctions shall not be imposed.

History: Effective July 1, 1980.

General Authority
NDCC 50-24.1-04

Law Implemented
42 CFR 455.16

AGENCY SYNOPSIS OF § 75-02-05-08:

Imposition and Extent of Sanction: Sets forth certain factors to be considered by the Division of Medical Services in determining what sort of sanction should be imposed, sets forth the types of sanctions which can be imposed, prohibits suspended or terminated providers from submitting claims for Title XIX services, provides that the Division of Medical Services must notify the provider in writing of the sanction, and provides for notice of certain other agencies and organizations who have a need to know information concerning sanctions.

75-02-05-08. IMPOSITION AND EXTENT OF SANCTION.

1. Imposition of sanction.

- a. The determination of appropriate sanction shall be at the discretion of the director of the division of medical services or the director's designee.
- b. The following factors shall be considered in determining the sanction to be imposed:
 - (1) Seriousness of the offense.
 - (2) Extent of the violations.
 - (3) History of prior violations.
 - (4) Prior imposition of sanctions.
 - (5) Prior provision of provider information and training.
 - (6) Provider willingness to adhere to program rules.
 - (7) Agreement to make restitution.
 - (8) Actions taken or recommended by peer groups or licensing boards.
- c. When a provider has been suspended or involuntarily terminated from the medicare program, the director of the division of medical services or the director's designee shall impose the same sanction as that imposed by medicare.
- d. A provider convicted of a violation of North Dakota Century Code section 12.1-24-03 shall be suspended from further participation in the medicaid program for a period of at least thirty days, or shall be terminated from participation in the medicaid program.

2. Scope of sanction.

- a. One or more of the following sanctions may be imposed on providers who become subject to sanction:

- (1) Termination from participation in the medicaid program.
 - (2) Suspension from participation in the medicaid program.
 - (3) Suspension or withholding of payments to a provider.
 - (4) Transfer to a closed-end provider agreement not to exceed twelve months.
 - (5) Mandatory attendance at provider information sessions.
 - (6) Prior authorization of services.
 - (7) One hundred percent review of the provider's claims prior to payment.
 - (8) Referral to the state licensing board or other appropriate body for investigation.
 - (9) Referral to peer review.
- b. A sanction may be applied to all known affiliates of a provider, provided that each affiliate so sanctioned knew or should have known, had the affiliate properly carried out the affiliate's official duties, of the violation, failure or inadequacy of performance for which the sanction is imposed.
- c. No provider who is subject to suspension or termination from participation shall submit claims for payment, either personally or through claim submitted by any clinic, group, corporation, or other association to the division of medical services or its fiscal agent for any services or supplies provided under the medicaid program except for any services or supplies provided prior to the effective date of the suspension or termination.
- d. No clinic, group, corporation, or other organization which is a provider of services shall submit claims for payment to the division of medical services or its fiscal agent for any services or supplies provided by a person within such organization who has been suspended or terminated from participation in the medicaid program except for those services and supplies provided prior to the effective date of the suspension or termination.
- e. Claims submitted in violation of subdivisions c and d will be returned without processing. The submission of such claims may subject the person or organization submitting to sanction.
3. Notice of sanction.
- a. When a provider has been sanctioned, the director of the division of medical services or the director's designee shall notify the provider in writing of the sanction imposed. Such notice will also advise the provider of the right of appeal.

- b. When a provider has been sanctioned, the director of the division of medical services may notify, as appropriate, the applicable professional society, board of registration or licensure, and federal, state, or county agencies of the findings made and the sanctions imposed.
- c. When a provider's participation in the medicaid program has been suspended or terminated, the director of the division of medical services or the director's designee will notify the counties from whom the provider has requested claims for services, that such provider has been suspended or terminated. Each county agency so notified shall post, in a prominent place within its office, the name and location of the suspended or terminated provider. The posting shall remain in place for the entire period of a suspension, and for the first ninety days of a termination.

History: Effective July 1, 1980.

General Authority
NDCC 50-24.1-04

Law Implemented
42 CFR 455.16(c)

AGENCY SYNOPSIS OF § 75-02-05-09:

Appeal and Reconsideration: Permits the sanctioned provider an administrative appeal to be governed by NDAC Chapter 75-01-03.

75-02-05-09. APPEAL AND RECONSIDERATION.

1. Within thirty days after notice of sanction, the provider may appeal the decision to impose sanctions to the social service board of North Dakota unless the sanction imposed is termination or suspension and the notice states that the basis for such sanction is:
 - a. The provider's failure to meet standards of licensure, certification, or registration where those standards are imposed by state or federal law as a condition to participation in the medicaid program.
 - b. Because the provider has been similarly sanctioned by the medicare program.
2. Appeals taken shall be governed by chapter 75-01-03, and providers shall be treated as claimants thereunder.

3. Without prejudice to any right of appeal, the provider, upon receipt of notice of sanction, may in writing, request reconsideration. Such request for reconsideration must include a statement refuting the stated basis for the imposition of the sanction. The division of medical services shall, within ten days after receipt of a request for reconsideration, make written response to the request, stating that imposition of the sanction has been affirmed or reversed.

History: Effective July 1, 1980.

General Authority
NDCC 50-24.1-04

Law Implemented
NDCC 23-01-03,
23-16-01,
23-17.1-01,
23-20.1-04,
23-27-01,
25-16-02,
26-38-02,
43-05-09,
43-06-08,
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43-33-02,
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50-11.1-03,
50-11.1-05,
NDAC 75-01-03,
42 USC 1396a(a)(39),
42 CFR 431.151

AGENCY SYNOPSIS OF § 75-02-05-10:

Provider Information Sessions: Establishes a requirement that sanctioned providers, except those providers who have been terminated from the program, shall participate in a provider education program if the Division of Medical Services directs.

75-02-05-10. PROVIDER INFORMATION SESSIONS.

1. Except where termination has been imposed, each provider who has been sanctioned shall participate in a provider education program as a condition of continued participation, if the division of medical services in its direction so directs.

2. Provider education programs may include any of the following topics, or may include other topics that are deemed by the division of medical services to be reasonable and necessary:
 - a. Instruction in claim form completion.
 - b. Instruction on the use and format of provider manuals.
 - c. Instruction on the use of procedure codes.
 - d. Instruction on statutes, rules, and regulations governing the North Dakota medicaid program.
 - e. Instruction on reimbursement rates.
 - f. Instructions on how to inquire about coding or billing problems.
 - g. Any other matter as determined by the division of medical services.

History: Effective July 1, 1980.

General Authority
NDCC 50-24.1-04

Law Implemented
42 CFR 455.16(c)

AGENCY SYNOPSIS OF § 75-02-01-02:

Definitions: Adds a definition of the term "emancipated minor" and makes technical changes to another definition.

75-02-01-02. DEFINITIONS ~~---DEPENDENT--CHILD-----DEPRIVATION--OF-PARENTAL SUPPORT.~~

1. ~~The--term--"deprived~~ "Deprived of parental support or care" encompasses means the situation of any child who is in need and otherwise eligible for aid to families with dependent children and whose parent has died, has a physical or mental incapacity, or who, because of continued absence, does not provide maintenance, physical care, or guidance for the parent's children. The parent may be either the father or the mother. Since the term specifies parental support of or care, it the definition is equally applicable whether the parent was the chief breadwinner or was devoted oneself primarily to the care of the child.
2. "Emancipated minor" means a person:
 - a. Who has entered into a valid marriage, provided that the marriage has not been annulled; or
 - b. Who willingly lives separate and apart from any caretaker relative or legal guardian, other than on a temporary basis, with the consent or acquiescence of one's parents or guardian, and who is managing

one's own financial affairs, regardless of the source of one's income so long as it is not derived from any activity declared to be a crime by the laws of the state of North Dakota, or declared to be a crime by laws of the United States. Emancipation, once gained pursuant to this subpart, is a permanent status.

3. "Unmarried mother" means a woman who was not married at the birth of her child nor during the ten months preceding that date.

History: Amended effective August 1, 1980.

General Authority
NDCC 50-09-02

Law Implemented
NDCC 50-09-01,
45 CFR 233.90

AGENCY SYNOPSIS OF § 75-02-01-20:

Unmarried Minor Parents - Unborn Children - Eligibility Considerations: Amends original section and adds three new subsections to delineate eligibility considerations concerning unmarried parents before and after their children are born.

75-02-01-20. ~~UNMARRIED--MOTHER--DEFINED UNMARRIED MINOR PARENTS - UNBORN CHILDREN - ELIGIBILITY CONSIDERATIONS. An-unmarried-mother-within-the-meaning-of the-aid-to-families-with-dependent-children-program-is-a-woman-who-was-not-married at-the-time-of-the-birth-of-her-child-nor-during-the--ten--months--preceding--that date---Technical~~

1. Emancipated minor parent's eligibility for the aid to families of dependent children program will be determined without reference to the income and resources of their parents unless an actual contribution is documented.
2. Unemancipated minor parents are eligible for the aid to families with dependent children program only if they are receiving program benefits as a child member of an eligible family. The child or children of an ineligible unemancipated minor may be eligible for program benefits.
3. Any unmarried person under the age of eighteen years is presumed to be unemancipated. This presumption may be rebutted by substantial evidence of emancipation. For the purposes of the aid to families of dependent children program, emancipation of a minor takes place on the first day of the first full month following the rebuttal of the presumption.

4. ~~When financial eligibility exists and technical eligibility exists for an unborn child when the fact of~~ has been determined including medical verification of the unwed mother's pregnancy has--been-verified-by medical-diagnosis, the needs of the mother may be met. ~~However;--only the--needs--of--the--caretaker--mother-are-considered-until-the-child-is born-~~ The child's needs cannot be included until the month of birth.

History: Amended effective August 1, 1980.

General Authority
NDCC 50-09-02

Law Implemented
NDCC 50-09-02,
45 CFR 233.90

AGENCY SYNOPSIS OF § 75-03-01-05:

Family Day Care Home Supplemental Parental Child Care: Amends subdivision a of subsection 2 so as to revise the number of children a day care home is permitted to provide care to.

75-03-01-05. FAMILY DAY CARE HOME SUPPLEMENTAL PARENTAL CHILD CARE.

1. Application for registration certificate and issuance by the social service board.
 - a. Any person, corporation, partnership, or voluntary association desiring to provide supplemental parental child care to no more than twelve children from more than one family in a family day care home or desiring to receive public funds in consideration for providing supplemental parental child care shall apply for a registration certificate, therein certifying compliance with the applicable provisions of North Dakota Century Code chapter 50-11.1 and the standards for such care established by the social service board of North Dakota and shall secure a registration certificate from the board.
 - b. Application for registration certificates shall be made in a manner prescribed and on forms provided by the social service board for such purposes.
 - c. Application shall be made to the county social service board office in the county wherein the applicant purposes to provide family day care home services.
 - d. Upon acceptance by the social service board of North Dakota of the applicant's affidavit of standard compliance, the applicant shall, subject to the provisions of section 75-03-01-08, be entitled to a registration certificate issued by the social service board of North Dakota.

- e. Any registration certificate issued by the social service board of North Dakota shall serve as public documentation that the provider of the family day care home has in writing certified to the board compliance with the provisions of North Dakota Century Code chapter 50-11.1 and the requirements contained in subsection 2.
2. Affidavit of standard compliance - standards for provision of supplemental parental child care in family day care home.
 - a. Staffing.
 - (1) Family day care homes ~~providing care for one to six children shall comply with the following~~ staffed by one caregiver may:
 - (a) ~~In the event care is extended to children under the age of six years, there shall be no more than two children under the age of two, and no more than a total of five children under care, including the attendant's own children under the age of twelve, who are physically in the home at the time such care is provided.~~ Provide care to no more than two children under the age of two years and no more than a total of five children;
 - (b) ~~In the event care is extended to children three to eight years of age, there shall be no more than a total of six children under care, including the attendant's own children under the age of twelve who are physically in the home at the time such care is provided.~~ Provide care to no more than three children under age two but to no other children except the caregiver's own child over the age of six years; or
 - (c) ~~Notwithstanding the provisions of subparagraphs a and b, care may be extended to one to six children, regardless of age, in a home in which there is a reliable assistant fourteen years of age or older.~~ Provide care to six children, all of whom are age two or older and may additionally provide care for two children of school age before and after school.
 - (d) Where one or more children is retarded, emotionally disturbed, or handicapped, and requires more than usual care, the ratio of adult to child shall not exceed one to three.
 - (2) Family day care homes ~~providing care for seven to twelve children shall comply with the following~~ staffed by two or more caregivers may:
 - (a) ~~Care shall be provided to no more than twelve children, including attendant's own children under the age of twelve years physically in the home at the time care is provided. The ratio of adult to child shall be one to four for children under three years of age and one to six for~~

children-over-three-years-of-age- Provide care to no more than two children under the age of two years and a total of no more than ten children.

(b) Provide care to twelve children, all of whom are age two or older, and may additionally provide care for two children of school age before and after school; or

(c) Where one or more children are retarded, emotionally disturbed, or handicapped, and require more than usual care, the ratio of adult to child shall not exceed one to three for-children-over-three-years-of-age.

~~(e) --Where--there--is--a--combination--of--ages--within--a--group--the number--of--required--staff--shall--be--determined--on--the--basis of--the--age--of--the--youngest--child--~~

(3) The child of any caregiver present in the home, under age six and not in school shall be counted among the children for whom care is provided.

- b. Family day care attendant qualifications. Family day care attendants shall be mature, responsible adults having adequate physical and emotional health to undertake the care of the children enrolled and shall be able to contribute to each child's physical, intellectual, personal, and social development.
- c. Health factors.
- (1) Family day care home attendants shall have a medical examination annually, such examination establishing that the attendant is physically able to care for children and free of any communicable disease.
 - (2) The social service board of North Dakota, upon indication of a health problem in the home, may require other family members to submit to a medical examination, with the results of such examination provided to the board.
- d. Location of family day care home.
- (1) The home shall be located in an area which offers no physical or moral hazards to the health, safety, or welfare of the children.
 - (2) The home shall meet the requirements of applicable local and state laws and ordinances for sanitation, zoning, health, fire, building construction, safety, and all other applicable state laws and local ordinances.
- e. Physical facilities.
- (1) The family day care home shall provide adequate space, indoors and out, for the daily activities of the children. This shall

include a minimum of thirty-five square feet [3.25 square meters] of play space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors.

- (2) The home shall be clean, reasonably neat, and free from accumulation of dirt, rubbish, or other health hazards.
- (3) The home shall have adequate heating, ventilation, and lighting facilities for the comfort and protection of the health of children. A temperature of not less than sixty-eight degrees Fahrenheit [20 degrees Celsius] shall be maintained in all rooms occupied by children.
- (4) The home shall have a water supply from an approved municipal system. If water is from another source, a sample shall be tested and approved by the department of health.
- (5) Satisfactory arrangements for daytime rest periods for preschool children shall be made. A separate crib, sleeping mat, cot, or bed of adequate size shall be provided for each child requiring rest.
- (6) The home shall have sufficient play materials and equipment for indoor and outdoor activity to stimulate activity and imaginative play.
- (7) The home shall be free from an accumulation of rubbish near places of extreme heat.

f. Admission procedures.

- (1) Arrangements shall be made for a preadmission visit by the child and the child's parents to acquaint the child with the surroundings, the group, and the attendant who will be caring for the child.
- (2) The day care attendant and parents shall exchange information concerning the child so that the child's needs can be identified and accommodated.
- (3) There shall be a written understanding with the parents concerning the hours the child is to be in care, amount of fees, and time of payment.
- (4) Each child in care shall have had a physical examination no more than twelve months prior to admission to the family day care home.

g. Program.

- (1) There shall be a program of daily activities appropriate to the ages and needs of the child in the family day care home. The

program shall include activities which foster sound social, intellectual, emotional, and physical growth.

- (2) The program shall be designed with intervals of stimulation and relaxation, and a balance between periods of active play and quiet play or rest.
- (3) The program shall offer outdoor play each day, except when precluded by severity of weather.
- (4) The program shall provide children in the family day care home with opportunities for individual and small group activities.
- (5) The program shall provide creative experiences through art, music, books, stories, and dramatic play with sufficient time, materials, equipment, and opportunities for these activities.
- (6) The program shall provide a morning quiet interval just prior to lunch. All preschool children shall be required to rest after the midday meal.

h. Nutrition.

- (1) The family day care home shall provide adequate and nutritious meals, prepared in a safe, sanitary manner.
- (2) If a child's period of care covers two normal meal hours, the day care home shall provide two full meals.
- (3) All milk served in the family day care home shall be pasteurized or obtained from a dairy approved by the department of health.

i. Health protection.

- (1) All children shall be immunized against diphtheria, pertussis, tetanus, measles (rubeola), rubella, mumps, and polio prior to entering the day care home, with a record of these immunizations kept on file at the family day care home.
- (2) Family day care attendants shall be familiar with emergency first aid techniques. A copy of any statements signed by the parent authorizing emergency medical care for the child shall be in the possession of the attendant.
- (3) A daily inspection of each child for signs of illness shall be made on arrival at the home. If a child is sick, the child shall be isolated from the other children in a quiet area. The parents or other individuals designated by the parents shall be notified immediately of the child's illness.
- (4) No child shall be readmitted following an absence until the reason for the absence is known and there is assurance that the

child's return will not harm the child or other children in care.

- (5) If play area is near a dangerous area, it shall be enclosed by a fence or some other natural or artificial barrier to protect the children.
- (6) When the child's parents are unwilling or unable to provide needed medical care, the family day care attendant shall notify the county social service board.
- (7) If day care is purchased by the county, the child shall have medical and dental examinations before enrolling in the home and annually thereafter unless more frequent examinations are indicated.
- (8) If the family day care facility or its owner or operator provides transportation to or from the home, the child's parents shall be informed in writing as to the extent and coverage of liability insurance, if any, that is carried for the vehicle and driver.
- (9) The family day care attendant shall release a child only to the child's parent, guardian, person in loco parentis, or person authorized in writing by such person to receive the children.

j. Records.

- (1) The registration certificate for the family day care home shall be posted in a conspicuous place in the premises to which it applies.
- (2) A copy of the current standards for family day care homes shall be kept in the premises.
- (3) The following records shall be kept and maintained:
 - (a) Name of the child, home address, names of parents and business addresses and telephone numbers where parents can be reached.
 - (b) A "preadmission health evaluation" completed annually.
 - (c) Any written statement from the parents authorizing emergency medical care.
 - (d) Statement of the parents' payment plan.
 - (e) Record of daily attendance.
- (4) All records which are maintained with respect to children receiving family day care home services shall be deemed confidential and shall not be disclosed except:

- (a) In a judicial proceeding.
 - (b) To officers of the law or legally constituted agencies.
 - (c) In medical emergencies, to persons with a definite interest in the child's well-being.
- k. Special provisions for family day care services provided in mobile homes. In addition to compliance with the above prescribed standards, any person desiring to provide family day care home services in a mobile home shall:
- (1) Have a qualified person inspect the furnace within a period of one month prior to application for a registration certificate and thereafter on an annual basis.
 - (2) Provide a minimum of two doors at opposite ends of the home which are functional for ingress and egress purposes.
 - (3) Provide that rooms in which the children will be placed have adequate ventilation, lighting, and heat and at least one window in such rooms suitable for fire escape.
 - (4) Have an electrician inspect the home within one month prior to the application for a registration certificate.
 - (5) Provide that the mobile home meets the standards established for mobile homes as prescribed in the rules and regulations of the American national standards institute (ANSI A119.1 1969) as adopted by North Dakota.

History: Amended effective August 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-05,
50-11.1-07,
45 CFR 228.13,
45 CFR 228.42

AGENCY SYNOPSIS OF § 75-03-02-17:

Day Care Center Minimum State Staffing Requirements: Amends subsection 2 so as to revise the permitted ratio of day care center staff to children in care.

75-03-02-17. DAY CARE CENTER MINIMUM STATE STAFFING REQUIREMENTS.

- 1. The number of staff and their utilization shall reflect program requirements, individual differences in the needs of the children enrolled, and shall permit flexible groupings where necessary.

2. The minimum ratio of personal care or program staff to children shall be:
- a. Children less than ~~three~~ two years of age, one staff per ~~four~~ three children ~~or-partial-group-thereof~~.
 - b. Children ~~three~~ two years of age, one staff per ~~six~~ four children ~~or partial-group-thereof~~.
 - c. Children ~~four~~ three years of age ~~to six years of age~~, one staff per ~~seven~~ eight children ~~or-partial-group-thereof~~.
 - ~~d. Children five years of age, one staff per ten children or partial group thereof.~~
 - e. d. Children six to ten years of age, one staff per ~~fifteen~~ fourteen children or partial group thereof.
 - f. e. Children ten to fourteen years of age, one staff per ~~twenty~~ eighteen children or partial group thereof.

History: Amended effective August 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-08,
45 CFR 228.13,
45 CFR 228.42

TITLE 89

Water Conservation Commission

STAFF COMMENT: Article 89-05 is all new material and is therefore not underscored.

AGENCY SYNOPSIS OF ARTICLE 89-05: Summary of rules and regulations governing the construction of dikes within the flood plains of the Red River of the North and the Bois de Sioux Rivers.

This summarizes the Rules and Regulations of the State Engineer governing the Construction of Dikes within the Flood Plains of the Red River of the North and the Bois de Sioux Rivers (Article 89-05), which are promulgated pursuant to North Dakota Century Code § 61-16-15. The rules and regulations are the result of extensive meetings and negotiations with local and state officials in North Dakota and Minnesota, to provide uniform rules and criteria for dike construction. Preliminary copies of the rules and regulations were submitted to all the water management districts in the Red River watershed prior to a public hearing held on August 6, 1979, in Grand Forks. Submission of these rules and regulations has been withheld, pending the approval of the Joint Cooperative Agreement between the states of Minnesota and North Dakota. This agreement was reached in February 1980.

The intent of these rules and regulations is to provide for an orderly and consistent review of permit applications to construct, relocate, rebuild, or alter agricultural dikes located within the flood plains of the Red River of the North and the Bois de Sioux Rivers. The design criteria as set forth in the rules and regulations allows for a maximum increase in the elevation of flood waters of the 100 year frequency flood at one-half foot, based on the construction of dikes on both sides of the River. The design criteria also sets a top width at a minimum of six feet with side slopes not steeper than 3:1. The dikes will also be provided with a protective cover of grass or riprap and provisions shall be made for interior drainage.

The rules and regulations also provide for the construction of dikes across natural waterways and legal drains only after proper authorization has been secured from the appropriate agencies.

Applications to construct dikes covered by these rules and regulations must be approved by both the local water management district and the State Engineer, pursuant to North Dakota Century Code § 61-16-15. A copy of each application to construct a dike shall also be forwarded by the State Engineer to the Department of Natural Resources of the State of Minnesota for comment and recommendation before final approval can be granted. If comments are not received within 30

days, the State Engineer shall then process the permit without comments. All the provisions set forth in these rules and regulations shall also apply to all unauthorized dikes constructed in the past.

Exceptions to the criteria set forth in these rules and regulations may be authorized on an individual basis, but must have the concurrent approval of the North Dakota State Engineer, local water management board in North Dakota, Minnesota Department of Natural Resources, and watershed district in Minnesota. Construction of farmstead dikes or ring dikes around individual farmsteads shall not require a permit, provided that they do not include tiebacks to existing roadways or dikes. However, this waiver of a permit for ring dikes from the State Engineer does not relieve the necessity of appropriate authorization from the local water management district in accordance with the North Dakota Century Code.

ARTICLE 89-05

CONSTRUCTION OF DIKES

Chapter

89-05-01 Construction of Dikes Within the Flood Plains of the
Red River of the North and the Bois de Sioux Rivers

CHAPTER 89-05-01

CONSTRUCTION OF DIKES WITHIN THE FLOOD PLAINS OF THE RED RIVER OF THE NORTH AND THE BOIS DE SIOUX RIVERS

Section

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89-05-01-05	Design Criteria
89-05-01-06	Dike Design Data
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89-05-01-10	Joint Permit Applications
89-05-01-11	Referral to Water Management District
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89-05-01-14	Permit Revocation
89-05-01-15	Dike Reconstruction or Rebuilding
89-05-01-16	Exception to the Criteria

89-05-01-17 Application to Existing Dikes

89-05-01-01. INTENT. The purpose of this chapter is to provide for the orderly and consistent review of permit applications to construct, relocate, rebuild, or alter agricultural dikes located within the flood plains of the Red River of the North and Bois de Sioux Rivers. The authority to establish this chapter is granted to the North Dakota state engineer by North Dakota Century Code section 61-16-15. Similar rules will be in effect in the state of Minnesota. The two states recognize that establishment of these rules governing the issuance, review, and denial of permits to construct, relocate, rebuild, or alter agricultural dikes along the Red and Bois de Sioux Rivers is but the first step in the exercise of joint control over those activities which could contribute to an increased flood potential of these rivers. The two states further recognize the need to exercise this joint control in a cooperative and coordinated manner because water management decisions which appear logical in a local or statewide context may have negative interstate and international impacts. These rules will also provide a basis for the review of existing unauthorized agricultural dikes along the Red River and Bois de Sioux River.

History: Effective August 1, 1980.

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

Law Implemented
NDCC 61-16-15,
61-02-24

89-05-01-02. APPLICATION OF CHAPTER. This chapter governs the review, issuance, and denial of permits to construct, relocate, rebuild, or alter agricultural dikes located within the flood plains of the Red River of the North and the Bois de Sioux River. Flood plain areas of the Red River of the North are defined in Appendix O, Volume 8 of the Souris-Red-Rainy Basins Comprehensive Study of "Red River of the North Main Stem Regional Floodplain Area" and the flood plain of the Bois de Sioux River is defined by the United States geological survey one percent change of recurrence area flood quadrangles. These criteria apply to dikes constructed on tributaries within the flood plains of the Red River or the Bois de Sioux River.

History: Effective August 1, 1980.

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

Law Implemented
NDCC 61-16-15

89-05-01-03. DEFINITIONS. Unless the context otherwise requires, the following definitions apply:

1. "Board of commissioners" means the board of commissioners of a water management district.
2. "Boundary rivers" means the Red River of the North and the Bois de Sioux River as they form a natural boundary between the states of Minnesota and North Dakota.
3. "Dike" means an embankment constructed of earth or other suitable materials to protect agricultural lands from floods which result from overflow of watercourses or from diffused surface waters.
4. "District" means water management district.
5. "Farmstead" means a farm dwelling or associated farm buildings.
6. "Flood frequency" means the average frequency, statistically determined, for which it is expected that a specific flood stage or discharge may be equaled or exceeded. This frequency is usually expressed as having a probability of occurring, on the average, once within a specified number of years.
7. "Flood waters" means those waters which temporarily inundate normally dry areas adjoining a watercourse. This inundation results from an overflow of the watercourse caused by excessive amounts of rainfall or snowmelt which exceed its capacity.
8. "Person" means a human being, firm, partnership, association, corporation, or any other type of private legal relationship, and any governmental organization, which includes, but is not limited to, any agency of the United States, a state agency, and any political subdivision of the state.
9. "Ring dike" means an embankment constructed of earth or other suitable materials for the purpose of enclosing a farmstead.
10. "State engineer" means the state engineer, appointed pursuant to North Dakota Century Code section 61-03-01, or the state engineer's designee.
11. "Watershed" means the area draining into, or contributing water to, the Red River of the North or the Bois de Sioux River.
12. "Waterway" means a channel in which a flow of water occurs either continuously or intermittently in a definite direction. The term applies to either natural or artificially constructed channels.

History: Effective August 1, 1980.

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

Law Implemented
NDCC 61-16-15

89-05-01-04. SEVERABILITY. The provisions of this chapter shall be severable, and the invalidity of any section or subsection shall not make void any other section or subsection, or any other part.

History: Effective August 1, 1980.

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

Law Implemented
NDCC 61-16-15

89-05-01-05. DESIGN CRITERIA.

1. Dikes shall be constructed so as not to cause an increase in the elevation of flood waters which will result in an unreasonable increase in flood damages due to the displacement of flood waters. However, in no event shall dikes, based on total encroachment, increase the elevation of flood water of the one hundred year frequency flood of more than one-half foot [15.24 centimeters].
2. Calculation of the effects of proposed dikes shall be based on the dikes being located on both sides of the Red and Bois de Sioux Rivers so as not to cause more than one-half of the maximum allowable stage increase. If mutual agreement has been reached between persons on both sides of the river, dikes on one side of the river may utilize the entire increase in flood stage elevation allowable.
3. Dike dimensions. Dike top widths shall not be less than six feet [1.83 meters]. Side slopes shall not be steeper than 3:1, except whose slope stability analysis and slope erosion control can justify steeper slopes. No organic soil or material shall be allowed in the foundation of the fill of dikes.
4. Vegetative cover and riprap. A protective cover of grasses shall be established on all exposed surfaces of the dike. Riprap shall be used where required for control of erosion.
5. Interior drainage. Dikes shall have provisions for interior drainage. The design shall include plans to handle the discharge from the drainage area based on drainage design requirements for the local area.

History: Effective August 1, 1980.

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

Law Implemented
NDCC 61-16-15

89-05-01-06. DIKE DESIGN DATA. The North Dakota state water conservation commission shall provide the discharges and corresponding elevations of various frequency floods (and other available flood data), in relation to known historic floods, for use in dike design.

History: Effective August 1, 1980.

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

Law Implemented
NDCC 61-16-15

89-05-01-07. DIKES ACROSS NATURAL WATERWAYS AND LEGAL DRAINS. Dikes shall not be constructed across tributaries to the Red River and the Bois de Sioux River without proper authorization from the appropriate agency. Dike setbacks along tributary waterways to the Red River and the Bois de Sioux River, within the area defined in section 89-05-01-02, shall meet the criteria as stated in section 89-05-01-04. Dikes constructed across special assessment drains or public ditch systems constructed pursuant to North Dakota Century Code title 61 shall require the approval of the appropriate drain board, water management district, or other local authority.

History: Effective August 1, 1980.

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

Law Implemented
NDCC 61-16-15

89-05-01-08. FARMSTEAD DIKING. Within an existing dike system, ring dikes around individual farmsteads shall not require permits if they do not include tiebacks to existing roadways or dikes. Ring dikes with tiebacks shall be considered part of the overall dike system and will be required to secure diking permits. This waiver of a permit requirement for ring dikes from the state engineer does not relieve the necessity of appropriate authorization for ring dikes from the local water management district in accordance with the North Dakota Century Code.

History: Effective August 1, 1980.

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

Law Implemented
NDCC 61-16-15

89-05-01-09. APPLICATION FOR PERMIT. All applications submitted by the owner to construct, to relocate, rebuild, or alter dikes shall be made on forms provided by the North Dakota state engineer and shall be accompanied by two

complete sets of plans or specifications. Such plans and specifications shall include the following:

1. A general location map with a minimum scale of one inch to eight hundred feet [2.54 centimeters to 243.84 meters] showing the following:
 - a. Location of the dike with respect to the watercourse.
 - b. Location of field inlets to provide for internal drainage.
 - c. Location of legal drains and natural channels tributary to the main river channel.
2. Detailed cross sections of the dike showing elevations, in relation to mean sea level, and side slopes.
3. The state engineer may require any other additional information that the state engineer deems necessary.

After review of the information required above and other available data, the state engineer shall determine the location and number of required cross sections of the river channel and overland areas. These locations shall be provided to the applicant who shall then provide the required cross-section data. The applicant shall undertake and agree to pay the expenses incurred in securing these cross sections.

History: Effective August 1, 1980.

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

Law Implemented
NDCC 61-16-15

89-05-01-10. JOINT PERMIT APPLICATIONS. Joint permit applications involving two or more landowners or a permit application on behalf of two or more landowners will be accepted by the state engineer. These permit applications, taken together, must meet the requirements of this chapter.

History: Effective August 1, 1980.

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

Law Implemented
NDCC 61-16-15

89-05-01-11. REFERRAL TO WATER MANAGEMENT DISTRICT. Within forty-five days after the receipt of a permit application, the state engineer shall make recommendations and suggestions concerning the propriety and efficiency of the proposal to the water management district within which the contemplated project is located. The water management district shall, in accordance with this chapter,

review the application and impose any conditions for the orderly management of water resources it deems necessary. The permit application shall then be returned to the state engineer for final approval. Unless an exception is granted pursuant to section 89-05-01-15, the state engineer and the water management district shall not allow the construction of a dike not in conformance with this chapter nor which is unsafe, improper, or dangerous, and may order such changes as necessary for safety or the protection of property.

History: Effective August 1, 1980.

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

Law Implemented
NDCC 61-16-15

89-05-01-12. ISSUANCE OF PERMITS. Dike permits will be issued only upon concurrent approval of the state engineer and the appropriate water management district. Approval of the permit will in no way relieve the owner from damages which may be caused or created by construction of the dikes.

History: Effective August 1, 1980.

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

Law Implemented
NDCC 61-16-15

89-05-01-13. JOINT ADMINISTRATION. A copy of each application and accompanying information for a permit shall be forwarded by the state engineer to the department of natural resources of Minnesota for comment and recommendation before final approval is granted. If comments are not received within thirty days, the state engineer shall process the permit without such comments.

History: Effective August 1, 1980.

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

Law Implemented
NDCC 61-16-15,
61-02-24

89-05-01-14. PERMIT REVOCATION. The applicant shall provide certification by a registered land surveyor, engineer, or other qualified person or agency that the finished dike elevations are not higher than those approved by the state engineer. The permit will be revoked for failure to provide this certification. The permit may be revoked for failure to construct the dike in accordance with the plans and specifications submitted. Structural alteration of the dike without permission of the state engineer and the appropriate water management district will also result in revocation of the permit.

History: Effective August 1, 1980.

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

Law Implemented
NDCC 61-16-15

89-05-01-15. DIKE RECONSTRUCTION OR REBUILDING. Reconstruction or rebuilding of any authorized dikes shall require notification of the state engineer and recertification upon completion in accordance with section 89-05-01-14.

History: Effective August 1, 1980.

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

Law Implemented
NDCC 61-16-15

89-05-01-16. EXCEPTION TO THE CRITERIA. Under special circumstances, exceptions to the dike criteria may be authorized on an individual basis but they must have the concurrent approval of the North Dakota state engineer, local water management board in North Dakota, Minnesota department of natural resources, and local watershed district in Minnesota. Factors that will be considered, among other things, shall be increase in flood stage, increase of stage at existing city dikes, increase in stream velocity, and environmental effects. In addition, the state engineer will authorize the utilization of farmsteads, property lines, and existing roads for dike construction, consistent with this chapter.

History: Effective August 1, 1980.

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

Law Implemented
NDCC 61-16-15

89-05-01-17. APPLICATION TO EXISTING DIKES. This chapter applies to all unauthorized dikes constructed in the past for the protection of those agricultural lands located within the flood plains of the Red River of the North and the Bois de Sioux, as defined in section 89-05-01-02. Exceptions are farmstead dikes which meet the provisions of section 89-05-01-08.

History: Effective August 1, 1980.

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

Law Implemented
NDCC 61-16-15