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Prepared by the Legislative Council staff
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TITLE 3
Accountancy, Board of Public

AUGUST 1981

3-02-02-04. FEE FOR ANNUAL REGISTRATION AND LICENSURE. The annual registration fee for every person legally certified to practice as a certified public accountant and every person legally licensed to practice as a licensed public accountant within this state shall be thirty dollars. The fee for nonresidents shall be ~~fifteen~~ twenty dollars.

History: Amended effective August 1, 1981.

General Authority
NDCC 43-02.1-02(6)(d)

Law Implemented
NDCC 43-02.1-06

TITLE 7
Agriculture, Commissioner of

FEBURARY 1982

X 7-02-01-01. BEEKEEPER'S LICENSE. ~~Anyone--having--one--or--more colonies-of-bees-is-required-by--law--to--have--a--beekeeper's--license. Application--for--license--must--be--sent--to--the--state--department-of agriculture--by--May--first--or--within--twenty--days--thereafter.~~ No application for a beekeeper's license will be accepted by the commissioner of agriculture prior to February first of that licensing year.

History: Amended effective February 1, 1982.

General Authority
NDCC 28-32-02
4-12-03

Law Implemented
NDCC 4-12-03

X 7-02-01-04. LOCATION RIGHTS. Location rights shall be established through registration of locations with the department of agriculture pursuant to North Dakota Century Code sections 4-12-03 and 4-12-03.1 and pursuant to section 7-02-01-03, with the following restrictions:

1. ~~No--new--commercial--location--may--be--registered--or--established within-two--miles--{3-22-kilometers}--of--another--commercial location--which--was--previously--registered--by--another--beekeeper.~~ Any apiary location that has had the authorization revoked by the department of agriculture or relinquished by a beekeeper will be treated the same as a new apiary location for registration purposes.
2. ~~No--commercial--operator--may--register--or--establish--an--apiary site-of-any-size-within-two-miles--{3-22-kilometers}--of--another~~

previously---registered---apiary--site--belonging--to--another commercial-operator. Upon receipt of written notice from landowner/lessee of revocation of authorization for apiary location, the department of agriculture shall cancel the registration. If no new application for apiary location with authorization from landowner/lessee who canceled prior authorization, is received by the department of agriculture within one week, the beekeeper who had the previous registration shall have one week to apply for a new apiary location in this two-mile [3.22-kilometers] area. After this time, any beekeeper may apply for apiary locations in this two-mile [3.22-kilometers] area.

3. A--noncommercial-operator-may-register-one-site-upon-which-one to-twenty-four-hives-or-colonies-of-bees-may-be-kept,--thereby establishing--a--two-mile--{3:22-kilometer}-radius-territorial right-for-that-single-location-only---This--territorial--right will--prevent-any-commercial-location-from-being-registered-or established-within-the-two-mile-{3:22-kilometer}-radius. New commercial locations may be submitted for registration with the department of agriculture at any time. Applications with the earliest date received by the department of agriculture will have priority for the new locations.
4. All new commercial locations must be submitted on application for registration of apiary sites forms furnished by the commissioner of agriculture. Written landowner/lessee authorization for new commercial locations must be received by the commissioner prior to registration of the new commercial location.
5. A commercial operator shall not maintain noncommercial locations. Noncommercial beekeepers may register commercial locations providing they comply with the two-mile [3.22-kilometers] radius requirement.

The--basis--for--establishing-yard-priorities-as-to-yard-locations will--be--the--1967--and--subsequent--annual--yard--registrations. The department of agriculture will determine yard priorities on the basis of the last ten-year record of registration. Any conflict as to yard locations will be resolved by the department of agriculture.

History: Amended effective February 1, 1982.

General Authority
NDCC 28-32-02
4-12-08

Law Implemented
NDCC 4-12-03.1

λ 7-02-01-07. DISEASES. Permits to transport bees into North Dakota will not be issued to beekeepers who have a--record--of American

foulbrood;--or-high-incidence-of-European-foulbrood;--or-other-infectious diseases. If within-thirty-days--after--arrival--in--North--Dakota any colonies of bees are found to be infected with a contagious disease or pest, the yard will be placed under quarantine, and the owner will be requested required to do one of three two things:

1. Remove-the-diseased-bees-from-the-state-within-ten-days-
- 2- Destroy the-diseased-bees them by burning.
- 3- 2. Place--the--yards--under--quarantine--and--treatment Treat as specified by the state inspector of apiaries.

The choice of subsections-1;-2;-or-3 subsection 1 or 2 will remain with the state inspector of apiaries considering each individual case involved and its hazards to the beekeeping industry.

History: Amended effective February 1, 1982.

General Authority
NDCC 28-32-02
4-12-08

Law Implemented
NDCC 4-12-13

^x 7-06-01-01. DEFINITION--OF--ERADICATION WEED CONTROL OFFICER'S CERTIFICATION. Eradication-as-applied-to-weed-control-means-to--destroy a--plant--so--that--it--is--not--viable. A weed control officer shall be certified upon completion of certification in two categories under North Dakota Century Code chapter 4-35. The two categories are agricultural pest control and right of way. A temporary certification may be issued for a period of one year to a weed control officer.

History: Amended effective February 1, 1982.

General Authority
NDCC 28-32-02,
63-01.1-03

Law Implemented
NDCC 63-01.1-01
63-01.1-05.1

TITLE 10
Attorney General

AUGUST 1981

STAFF COMMENT: Article 10-04 is all new material but is not underscored to improve readability. The rules in article 10-04 were declared to be emergency rules by the attorney general so as to take effect prior to publication in the administrative code. The declaration was: Chapters 10-04-01 through 10-04-11 of Article 10-04 of the North Dakota Administrative Code, containing rules adopted by the Attorney General of the State of North Dakota, are hereby declared to be emergency rules effective July 1, 1981. It is the finding of the Attorney General that this effective date is necessary so as to prevent imminent peril to the public health, safety, or welfare. Specifically, the Attorney General finds that detailed rules are needed to be adopted on the date that North Dakota's Charitable Gambling Law takes effect (July 1, 1981) so as to protect and promote the public interest in charitable gambling and to prevent or detect unlawful gambling activity within this state.

ARTICLE 10-04

GAMES OF CHANCE

Chapter	
10-04-01	General Rules
10-04-02	Games of Chance Allowed
10-04-03	Eligible Organizations
10-04-04	Licensing Qualifications
10-04-05	Disposal of Net Proceeds
10-04-06	Conduct of Games of Chance
10-04-07	Accounting Rules
10-04-08	Gaming Tax and Tax Returns
10-04-09	Rules Governing Distributors and Manufacturers
10-04-10	[Reserved]
10-04-11	Transition Rules

CHAPTER 10-04-01
GENERAL RULES

Section	
10-04-01-01	Definitions
10-04-01-02	Inspection of Rules
10-04-01-03	Games of Chance Committee
10-04-01-04	Age Limitation
10-04-01-05	Equipment Acquisitions
10-04-01-06	Specific Location

10-04-01-01. DEFINITIONS.

1. "Equipment" means any device, apparatus, or implement usable in the conduct of games of chance, whether or not specifically designed for the purpose, but excluding tables and chairs normally used in the occupancy of a premise.
2. "Facility" is an entire enclosure which is occupied by one specific identifiable legal entity.
3. "Person" - refer to North Dakota Century Code section 1-01-28.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

10-04-01-02. INSPECTION OF RULES. Every eligible organization shall have a copy of the North Dakota Games of Chance Law and Rules readily available for inspection by any individual at each site authorized to conduct games of chance.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-03

10-04-01-03. GAMES OF CHANCE COMMITTEE.

1. Every eligible organization shall establish as an integral part of its organizational structure, a committee which shall

consist of no less than three individuals all of whom shall be bona fide members whose association with the organization is not for purposes of conducting or assisting in games of chance only.

2. The committee shall be the responsible governing board for all phases of gaming activity conducted by the eligible organization including its members, auxiliary components, employees, and agents. Gaming activity includes the use of the net proceeds.
3. The minutes of the organization shall annually reflect the name and address and title of each member of this committee.
4. Members of this committee may not conduct games of chance.
5. In order to preserve the integrity of the administration of the games of chance law, the attorney general may determine that the provisions of North Dakota Century Code section 53-06.1-16 are applicable to this committee or any member thereof.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

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

10-04-01-04. AGE LIMITATION. Individuals under the age of twenty-one may not conduct, assist, or play any games of chance being conducted within a facility which has a retail alcoholic beverage licensee therein.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

10-04-01-05. EQUIPMENT ACQUISITIONS.

1. Eligible organizations are prohibited from renting or lending gaming equipment to any person (person includes any entity - refer to North Dakota Century Code section 1-01-28).
2. Eligible organizations are prohibited from exchanging pull tabs, punchboards, sports pools, and twenty-one dealing boxes (shoes). All other gaming equipment may be exchanged. A

request for approval shall be made to the attorney general at least ten days prior to the exchange.

3. An eligible organization anticipating the printing, manufacture, or construction of any equipment for games of chance shall first notify the attorney general of its intention and shall have the finished product approved by the attorney general before being placed in service.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-14

10-04-01-06. SPECIFIC LOCATION. For the purpose of subdivision d of subsection 3 of North Dakota Century Code section 53-06.1-03 "specific location" does not include the site of a fair, carnival, exposition, or similar occasion.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

CHAPTER 10-04-02
GAMES OF CHANCE ALLOWED

Section	
10-04-02-01	Definitions
10-04-02-02	Only Those Games as Defined Allowed
10-40-02-03	Bingo
10-04-02-04	Raffles
10-04-02-05	Pull tabs and Punchboards
10-04-02-06	Sports pools
10-04-02-07	Twenty-one
10-04-02-08	Games to Display State Stamp

10-04-02-01. DEFINITIONS.

1. "Blackjack" - see "natural twenty-one".
2. "Deal":
 - a. In pull tabs means each separate serialized package of pull tabs purchased from a distributor.
 - b. In twenty-one means the distributing of the playing cards among the participants.
3. "Dealer" in twenty-one is the general term for the eligible organization's representative or employee that the payers bet against.
4. "Doubling-down" in twenty-one means the act of a player doubling the amount of the player's original wager on the player's first two cards. When the player doubles down the player can draw only one card.
5. "Flare" is the posted display which sets forth the rules of a particular game of pull tabs, punchboard, or sports pool and which is associated with a specific deal, punchboard, or sports pool board.
6. "Insurance bet" in twenty-one means a wager by a player that a dealer holds a natural twenty-one when he has an ace showing.
7. "Natural twenty-one" is the highest ranking hand consisting of an ace and a ten count card.

8. "Shoe" in twenty-one means a card-dealing box, capable of holding two hundred eight regular playing cards, which is constructed of a transparent material.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

10-04-02-02. ONLY THOSE GAMES AS DEFINED ALLOWED. Notwithstanding descriptions of various games of chance, only those defined in this article shall be permitted to be conducted by eligible organizations.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-07

10-04-02-03. BINGO. "Bingo" means that game of chance in which each participant receives one or more cards each of which is marked off into squares arranged in five vertical rows of five squares each and five horizontal rows of five squares each. Each square is designated by number, letter, or combination of numbers and letters, no two cards being identical. The players cover squares as the operator of such game announces the number, letter, or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically, from a receptacle in which have been placed objects bearing numbers, letters, or combinations of numbers and letters corresponding to the system used for designating the squares. The winner of each game is the player or players first properly covering a predetermined and announced pattern of squares on a card being used by the player or players. In the event that a sharing of the designated prize is required as a result of multiple winners on the last immediately called number, the following shall govern:

1. In the event that the designated prize consists of cash, the total amount of the prize shall be divided equally between or among the verified winners; provided, however, that the licensee shall have the option of rounding fractional dollars to the next higher dollar.
2. In the event that the designated prize consists of an item of tangible personal property, merchandise, or other things other than cash, the bingo licensee shall award, if the designated prize cannot be divided, substitute prizes to each verified

winner; provided, however, that the substitute prizes shall, insofar as possible, be of equal value to each other.

3. Notwithstanding the foregoing, a licensee may establish minimum prizes.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-07

10-04-02-04. RAFFLES. "Raffle" means a game of chance in which the prize or prizes, other than cash, are won by one or more of numerous persons buying chances. The winner is determined by drawing a number or numbers from a container holding numbers corresponding to all chances sold. The date of the drawing, the prize or prizes to be awarded, the name of the organization, the name of the licensing or authorizing authority, the license or authorizing resolution number, and the price of the chance shall be clearly printed on the raffle tickets which shall be numbered consecutively.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-07

10-04-02-05. PULL TABS AND PUNCHBOARDS.

1. A "pull tab" is a single-folded or banded ticket or is a card, the face of which is initially covered or otherwise hidden from view to conceal a number, symbol, or set of symbols, some of which numbers or symbols thereon, are winners. A player buys a "pull tab" from the eligible organization and opens it to determine if the "pull tab" is a winner. The player with a winning "pull tab" receives the prize stated on the flare from the eligible organization.
2. A "punchboard" means a board or device containing a number of holes or receptacles of uniform size in which are placed mechanically and at random serially numbered slips of paper or other substance which may be punched or drawn from said hole or receptacle. A player upon payment of a consideration, may punch or draw such numbered slips of paper or other substance from such holes or receptacles and obtain the prize stated on the flare if the number drawn corresponds to a winning number.

3. No deal of pull tabs, and no punchboard, shall be discarded once such deal or punchboard has been offered for sale unless all the highest denomination of winners have been sold.
4. Individual deals of pull tabs may be commingled in one receptacle subject to all of the following provisions:
 - a. The deals are identical as to a particular type of games of chance.
 - b. Each deal is identified by its own flare displaying the state identification stamp and manufacturer's serial number.
 - c. The flares applicable to each deal are identical as to:
 - (1) Price per ticket;
 - (2) Amount of prizes; and
 - (3) Denominations of prizes.
 - d. The receptacle displays the flares for all the deals inserted.
 - e. The commingled deals are placed into play and removed from play within one taxable quarter period and the reporting of the results of such games are made in the same quarter period tax returns.
 - f. All of the highest denominations of winning prizes for all deals commingled are awarded within the taxable quarter period.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-07

10-04-02-06. SPORTS POOLS.

1. "Sports pools" means a sheet of paper, cardboard, or similar material on which is printed a square. This is divided equally into one hundred squares consisting of ten rows of squares running both horizontally and vertically. Along the exterior line on the top of the master square, the numerical designations zero, one, two, three, four, five, six, seven, eight, and nine are randomly assigned to each of the vertical rows. The same procedure is applied to the left side of the master square for the horizontal rows.

Each of the horizontal and vertical numerical assigns are to be covered by a tape of such design so that once disturbed any other recovering shall be conspicuously noticeable.

The word "sports pool" is to be conspicuously headed at the top of the device. There shall also be placed conspicuously on the device a designation:

PRICE PER SQUARE \$ _____
AMOUNT OF PAYOFF \$ _____

Each of the contestants in the professional sporting event is designated along either the vertical or horizontal rows of numbers by the operator of the gaming device. All one hundred squares must be sold at a price not to exceed five dollars per square and such price is to be inserted in the appropriate space on the device prior to selling such squares. The purchaser of a square places the purchaser's name in that square. The winner of the pool is determined, at the conclusion of the sporting event, by removing the tapes covering the numbers assigned each row and determining the square at the juncture of the horizontal row and vertical row containing the numbers of the outcome of the sporting event in accordance with the rules posted by the operator of the gaming device.

2. The device so constructed shall be acquired only from licensed distributors.
3. The operator of the sports pool may determine the method of payout to the participants according to rules posted prior to the start of the sports event associated with the pool so long as the total payout does not exceed two-thirds of the gross proceeds of the pool. (For example, winners of a pool conducted for a particular football game may be determined at the end of each quarter of the game according to the score at that point. The payout each quarter need not be in direct proportion to the total two-thirds payout.)

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-07

10-04-02-07. TWENTY-ONE.

1. "Twenty-one" means a card game played by a maximum of seven players and one dealer. The object of the game is for a player to obtain a higher total card count than the dealer by reaching twenty-one or as close to twenty-one as possible

without exceeding that count. The cards have the following value:

- a. Aces count either one or eleven.
 - b. Kings, queens, and jacks each have a count of ten.
 - c. All other cards are counted at their face value.
2. The following rules, either complementing or in addition to those enumerated by law, shall be followed in the playing of twenty-one:

PLAYING SURFACE:

A layout or diagram which shall permanently and clearly display seven separate and distinct betting spaces and the complete statements:

BLACK JACK PAYS 3 TO 2
and
DEALER MUST STAND ON 17 AND MUST DRAW TO 16

NUMBER OF PLAYERS:

- a. The eligible organization will never surrender the deal or bank.
- b. One to seven active players, each of whom may bet on no more than two hands depending on the betting spaces available. No player may be a member of the dealer's immediate family.
- c. No outsiders may wager on a player's hand.
- d. No player may wager on another player's hand.

CARDS:

Four standard decks of fifty-two cards each (two red-backed decks and two blue-backed decks) shuffled together and used as one, a total of two hundred eight cards dealt as a single packet from a card-dealing box called a shoe.

SHUFFLE AND CUT:

The dealer shall shuffle all two hundred eight cards and any player may insert an indicator card to show where the cards are to be cut. The indicator will then go to the bottom of the deck. The dealer will then insert a second indicator approximately fifty cards or thereabouts from the bottom of the deck. He will then place all the cards in the shoe face down. At a minimum, when the indicator card inserted by the

dealer makes its appearance and enough cards have been dealt to complete the hand in progress, the deal ends - and the dealer must begin a new shuffle and again repeat the above-described procedure.

BETTING:

- a. The initial wager for each hand is made by placing chips in a betting space provided on the playing surface before the first card is dealt.
- b. Each separate wager shall not exceed two dollars in the form of chips. A wager is the amount bet per hand and is exclusive of splitting, doubling-down, and insuring. Therefore, each split, double-down, or insurance bet is a separate wager limited to a maximum of two dollars.

THE DEAL:

All cards must be dealt from a shoe. The dealer shall bury the first card dealt, that is, place it face down in a discard received pile without showing its face value. All cards used to make a hand are discarded in the same manner. The dealer deals one card face up to each player in order from the dealer's left with the dealer being dealt last, face down. The dealer then deals a second card face up to each player and himself in the same order. If the dealer's up card is an ace or a ten-count card, he then looks at his face down card to determine if he has a natural twenty-one. If it is not a natural twenty-one, each player, in order from left to right, can either stand or ask for one or more additional cards to be dealt face up.

THE PLAY:

- a. Splitting shall be permitted as follows:
 - (1) On any pair or any two ten-count value cards.
 - (2) Only one split may be made. The right-hand card in the split shall be played to completion before the adjacent split hand is dealt a second hand.
 - (3) The wager shall equal one's wager on one's own hand.
 - (4) Split aces draw only one card each.
 - (5) Two-card twenty-one on a split is not a natural twenty-one. Therefore, a wager is paid off at an equal amount and a twenty-one count tie is a standoff.

- b. Doubling-down shall be permitted on an eleven count only. A player may double-down after splitting.
- c. The eligible organization may determine whether or not to permit insurance betting. That determination must be posted. The player's wager shall be half the player's wager on the player's own hand. If the dealer holds a natural twenty-one, the player wins the insurance wager at the rate of two to one, otherwise the dealer wins the insurance wager.

WINNING:

- a. All ties are a standoff, that is, no payoff is made.
- b. If the dealer has a natural twenty-one, the dealer wins all bets, unless a player also has a natural twenty-one in which case a standoff exists between the dealer and that player's hand. All other players lose.
- c. If a player has a natural twenty-one, the player wins the player's hand and is paid off at a rate of three to two, unless a standoff exists with the dealer.
- d. If a player busts, that is, the player's count in course of being dealt cards exceeds a count of twenty-one, the player loses the player's bet and the cards are placed in the discard receiver.
- e. After all players have played their hands, the dealer turns up the dealer's down card and proceeds as follows:
 - (1) If the count is sixteen or under, the dealer must hit, or take one or more cards, until such time as the count exceeds sixteen.
 - (2) If the count exceeds sixteen but does not exceed twenty-one, the dealer must stay, that is, the dealer's hand has ended. If the dealer's hand contains an ace and a count of seventeen, eighteen, nineteen, or twenty can be obtained by including the ace as an eleven, the dealer shall value the dealer's hand as such and must then stay. Wagers are won or lost on an individual hand basis by comparing each separate hand with the dealer's hand. The dealer wins if the dealer's count exceeds that of the player's hand. If less, the player wins. Wagers are paid off at an equal amount. Ties are a standoff.
 - (3) If the dealer busts, the dealer pays off the remaining players at an amount equal to the wager.

POSTING:

The following rules must be posted in a clear, legible manner at each twenty-one table or in such a conspicuous location so that the player at a twenty-one table can readily read such rules.

HOUSE MUST

Use 4 decks of cards (208 cards)

Use last hand indicator

Deal from a shoe

PLAYER RULES

Two hands maximum

\$2.00 maximum wager

No side-bets

No credit

No payoff on tie counts

Splitting on all pairs and 10's

Doubling on 11

Insurance not permitted (Choose one
when posting)

-or-

Insurance permitted - pays 2 to 1

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-07

10-04-02-08. GAMES TO DISPLAY STATE STAMP. No deal of pull tabs, punchboards, or sports pool shall be displayed unless the flare shall have attached a North Dakota state gaming stamp which has been

previously affixed thereto by a licensed distributor of equipment for games of chance. See chapter 10-04-09.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

CHAPTER 10-04-03
ELIGIBLE ORGANIZATIONS

Section

10-04-03-01 [Reserved]
10-04-03-02 Purpose of Organization

10-04-03-01. [Reserved.]

10-04-03-02. PURPOSE OF ORGANIZATION. An organization shall be ineligible to conduct games of chance if the sole purpose of that organization is to conduct such games of chance, whether or not the organization is carrying out that purpose for one or more otherwise eligible organizations. Therefore, every organization desiring to conduct games of chance must manifest itself by veterans, charitable, educational, religious, fraternal, civic, service, or other public-spirited programs.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-02

CHAPTER 10-04-04
LICENSING QUALIFICATIONS

Section

10-04-04-01	[Reserved]
10-04-04-02	Licenses
10-04-04-03	Employee Information
10-04-04-04	Closely Connected Organizations Prohibited
10-04-04-05	Raffles - Bingo

10-04-04-01. [Reserved.]

10-04-04-02. LICENSES.

1. Every eligible organization must first receive an authorization for a gaming site or sites within a city from the city governing body or for a gaming site or sites within a county, exclusive of city limits, from the county governing body. The eligible organization must then apply to the attorney general for a separate class A or class B license for each city or county, or both, for which it holds an authorization for a gaming site or sites.
2. Every eligible organization must notify the city chief of police or county sheriff, as appropriate, of the intended site or sites at which games of chance are to be conducted and obtain the chief's or sheriff's acknowledgment that the chief or sheriff has been so informed. Every eligible organization must also consent in advance that local law enforcement officers or the attorney general and the attorney general's agents may, at any time games of chance are being conducted, enter upon the site to observe the playing of games of chance and to enforce the law for any unauthorized game or practice. The acknowledgment by the chief of police or sheriff and the consent by the eligible organization shall be completed on forms provided by the attorney general and returned to the attorney general's office.
3. All class A and class B applications are subject to the approval of the attorney general. At the discretion of the attorney general, temporary permits, revocable on demand, may be issued pending review or investigation, or both, of the application.
4. Class A and class B licenses shall be effective for a period of one year beginning July first and ending June thirtieth.

5. There shall be no proration of the fees set out in North Dakota Century Code section 53-06.1-03 for any organization commencing a game of chance after July first.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-03,
53-06.1-06

10-04-04-03. EMPLOYEE INFORMATION.

1. In order to ensure fair and honest games of chance and to preserve the integrity of the administration of the games of chance law, every class A and class B license holder shall complete and submit an employee information report to the attorney general within ten days after receipt of a class A or class B license.
2. The employee information report shall contain such necessary and reasonable information as the attorney general may require.
3. Additions or deletions, or both, to this report shall be furnished to the attorney general each quarter period.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

10-04-04-04. CLOSELY CONNECTED ORGANIZATIONS PROHIBITED.

1. An otherwise eligible organization shall be determined to be connected to another eligible organization if any one or more of the following conditions are present:
 - a. Membership in one organization automatically qualifies an individual as a member of another organization.
 - b. Membership in one organization is dependent upon membership in another organization; including social memberships.
 - c. The existence of an organization is dependent upon the existence of another organization.

2. Any affiliation of two or more organizations, contractual or otherwise, the substance of which is the circumvention of North Dakota Century Code chapter 53-06.1, regarding the required use of net proceeds or payment of the tax, or both, is prohibited.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-03

10-04-04-05. RAFFLES - BINGO.

1. In order to protect and promote the public interest, licensure by a city or county governing body for the purpose of conducting raffles or bingo shall apply only when all of the following criteria are met:
 - a. The organization is an eligible organization.
 - b. The organization will conduct only raffles or bingo, or both, throughout the entire fiscal year beginning July first and ending June thirtieth.
 - c. The frequency of the occasions does not exceed once per week each for a raffle and a bingo occasion, unless the license is issued for a single specific occasion which does not last over two weeks.
 - d. The market value of a single prize for each game on each occasion does not exceed one thousand dollars and the total market value of the aggregate of the prizes for each game on each occasion does not exceed two thousand dollars. Raffles are restricted to noncash prizes.
 - e. The games are conducted within a facility which does not have a retail alcoholic beverage licensee therein.
2. An applicant failing to comply with any of the subdivisions b through e may not conduct raffles or bingo without first obtaining a class B license.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

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

CHAPTER 10-04-05
DISPOSAL OF NET PROCEEDS

Section	
10-04-05-01	"Devoted" Defined
10-04-05-02	Period Within Which Net Proceeds to be Disbursed - General Rule
10-40-05-03	Period Within Which Net Proceeds to be Disbursed - Special Rule
10-04-05-04	Licensed Organizations Not to Receive Funds From Donees
10-04-05-05	General Guidelines for Eligible Uses

10-04-05-01. "DEVOTED" DEFINED. "Devoted" means the unrestricted disbursement by check from the special gaming account provided in subsection 1 of North Dakota Century Code section 53-06.1-11.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

10-04-05-02. PERIOD WITHIN WHICH NET PROCEEDS TO BE DISBURSED -
GENERAL RULE.

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

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

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-06

10-04-05-03. PERIOD WITHIN WHICH NET PROCEEDS TO BE DISBURSED - SPECIAL RULE. Any class B licensed organization which has received a site authorization for a period of three calendar months or less shall devote the entire net proceeds earned during that period with thirty days from the date the site authorization expires.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

10-04-05-04. LICENSED ORGANIZATIONS NOT TO RECEIVE FUNDS FROM DONEES.

1. No eligible organization licensed by the attorney general shall accept any payment, gift, or other thing of material value from a recipient or potential recipient of net proceeds of its games of chance whether it be before or after such net proceeds are devoted.
2. Any eligible organization that devotes net proceeds and, within a period beginning one year before the disbursement and ending one year after the disbursement, sells or enters into an agreement to sell property, real or personal, to that same donee, then such contribution shall be deemed a contribution of property by the nonprofit donor organization and not a devoting of net proceeds.

3. Contributions of property encumbered by liens, chattels, mortgages, or any other forms of indebtedness shall be considered a sale of property for purposes of subsection 2.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

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

10-04-05-05. GENERAL GUIDELINES FOR ELIGIBLE USES. For the purpose of administering subsection 6 of North Dakota Century Code section 53-06.1-01, the following criteria shall be generally applied to each subdivision enumerated in that subsection:

1. The contribution must be a current irrevocable remittance not contingent upon future occurrences, and specific as to recipient and use.
2. The intended use must be broad in scope affecting an indefinite number of people. No direct benefit can enure to an individual except as permitted under subdivisions h and i.
3. Private athletic, social, hobby, trade, business, professional, or other similar clubs or associations generally are not eligible recipients, in and of themselves, unless the specific use of the intended contribution meets the criteria set forth in this section.
4. In applying subdivisions h and i, the events causing the eligible use must have occurred and the expense incurred must be uncompensated by insurance. Accumulations for future occurrences are not permitted.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

CHAPTER 10-04-06
CONDUCT OF GAMES OF CHANCE

Section	
10-04-06-01	[Reserved]
10-04-06-02	Person-In-Charge
10-04-06-03	Promotion of Games of Chance
10-04-06-04	Sale and Redemption of Chips
10-04-06-05	Rental Agreements

10-04-06-01. [Reserved.]

10-04-06-02. PERSON-IN-CHARGE. Every licensed organization shall designate an individual at each site location as the person-in-charge. The games of chance committee specified in section 10-04-01-03 shall be responsible for being aware of the conduct of the games at that site and the adherence to the law and regulations by the employees, lessor, members, and participants. Violation of the law and regulations shall be made known immediately by the person-in-charge to the attorney general or a local enforcement agency if circumstances dictate.

History: Effective July 1, 1981.

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

10-04-06-03. PROMOTION OF GAMES OF CHANCE. Free games, drinks, chips, or other inducements, directly or indirectly, to participate in games of chance are prohibited.

History: Effective July 1, 1981.

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

10-04-06-04. SALE AND REDEMPTION OF CHIPS. Chips must be sold by and redeemed only by the licensee and only for full value.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-07

Law Implemented
NDCC 53-06.1-17

10-04-06-05. RENTAL AGREEMENTS.

1. Every eligible organization conducting games of chance at a site that is not owned by that organization shall have in writing the conditions under which it is permitted the use and occupancy of that site. Such agreement shall be attested to by both the grantor and grantee.
2. At a minimum, every such agreement entered into pursuant to this section shall contain, by affirmative or negative statement, the following information:
 - a. Name of grantor or lessor, whichever is applicable, who must be the legal owner of the site. If the organization is to be a sublessee, then the lessee name must also be included.
 - b. Name of the eligible organization.
 - c. Term of the agreement.
 - d. Monetary consideration, if any.
 - e. Brief description of the general area being granted or leased within the facility.
 - f. Statement prohibiting advertising of the games of chance by the grantor.
 - g. The inclusion of the following statement for class B licensee applicants: "The (grantor/lessor) does hereby agree that (he/she), (his/her) spouse, and any employee or agent of the (grantor/lessor) shall not participate in the selling, distributing, conducting, assisting, or playing of games of chance at the site herein (granted/leased).
3. Payment of rent pursuant to the agreement must be for a flat dollar rate per month or other agreed upon duration.
 - a. Graduated rate arrangements are prohibited.

- b. Other remuneration, in lieu of money, is prohibited.
- c. Percentage rates are prohibited.
- 4. No game of chance shall be set up or otherwise operated in conjunction with the conduct of the grantor's business operations.
- 5. Renegotiated agreements shall be furnished to the attorney general prior to the effective date of the new agreement.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-03,
53-06.1-06

CHAPTER 10-04-07
ACCOUNTING RULES

Section	
10-04-07-01	Definitions
10-04-07-02	General Accounting Records
10-04-07-03	Specific Records
10-04-07-04	Internal Control
10-04-07-05	Method of Accounting
10-04-07-06	Games of Chance Bank Account
10-04-07-07	Expenses
10-04-07-08	Expense Limitation
10-04-07-09	Payment and Reconciliation of Expenses
10-04-07-10	Prizes
10-04-07-11	Charitable Gaming Trust Fund Account - Class B

10-04-07-01. DEFINITIONS.

1. "Capital cost" means a disbursement for personal property, the useful life of which is expected to extend beyond one year.
2. "Compensation" means wages, salaries, bonuses, and all other forms of remuneration for services rendered.
3. "Equipment for games of chance" means any device, apparatus, or implement usable in the conduct of games of chance, whether or not specifically designed for the purpose, but excluding tables and chairs normally used in the occupancy of a premise.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

10-04-07-02. GENERAL ACCOUNTING RECORDS. Every eligible organization and distributor shall maintain complete, accurate, and legible general accounting records with detailed, supporting, subsidiary

records sufficient to furnish information regarding all transactions pertaining to games of chance. Such records shall be retained for a period of three calendar years.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

10-04-07-03. SPECIFIC RECORDS. Every eligible organization shall maintain, at a minimum, the following specific records or information, or both, with regard to individual games for a period of one year:

BINGO: For each bingo occasion, the number in attendance; the total amount wagered; total prizes, cash and noncash, awarded; a copy of the schedule of games and their prizes.

RAFFLES: For each raffle, the number of tickets sold and a sample of the printed ticket.

PULL TABS AND PUNCHBOARDS: For each deal or punchboard, the flare, with the state gaming stamp affixed, associated with all opened winning tickets and all unopened and unsold tickets.

SPORTS POOLS: The completed, sold board indicating the winning squares.

TWENTY-ONE: Individual records to reflect daily win and loss results for each table.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

10-04-07-04. INTERNAL CONTROL. In order to adequately determine its liability for taxes under North Dakota Century Code section 53-06.1-12 and the proper determination of net proceeds to be devoted under subsection 7 of North Dakota Century Code section 53-06.1-06, the games of chance committee of every eligible organization shall establish and have available for review, a system of internal accounting and administrative controls relative to gaming operations.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

10-04-07-05. METHOD OF ACCOUNTING.

1. Every eligible organization shall determine its gross proceeds on the cash basis.
2. Every eligible organization shall determine its expenses on the cash basis, except:
 - a. Deals of pull tabs, punchboards, and sports pools shall be determined on the accrual basis. Every licensed organization shall furnish a listing of state gaming stamps removed from play or otherwise disposed of during the tax return reporting period to the attorney general.
 - b. The tax imposed by North Dakota Century Code section 53-06.1-12 shall be deducted on the accrual basis.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

10-04-07-06. GAMES OF CHANCE BANK ACCOUNT.

1. Every eligible organization shall maintain one checking account at a financial institution, located within the state for each license issued.
2. Every organization shall furnish an "Authorization to Inspect Bank Records" to the attorney general.
3. Interest shall be included in gross proceeds.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

10-04-07-07. EXPENSES.

1. For the purpose of administering subsection 4 of North Dakota Century Code section 53-06.1-11, the following terms found in that subsection shall have the following meaning:

- a. "The purchase of necessary goods, wares, and merchandise" means the reasonable cost of all equipment for games of chance, except capital costs, for the conduct of any game of chance permitted in accordance with chapter 10-04-02. Items of a minor nature such as pencils, crayons, tickets, envelopes, paper clips, and coupons necessary to conduct such games and all sales taxes paid herewith are included in this term.
- b. "The securing of services reasonably necessary for repair of equipment, and for operating or conducting games of chance" means:
 - (1) The reasonable compensation, employer paid benefits and payroll taxes paid for employees directly engaged in conducting or assisting in conducting games of chance. Where the employee performs other services unrelated to gaming activities, an allocation based on hours worked in each activity shall be made.
 - (2) The reasonable labor and material charges for the repair of equipment for games of chance.
- c. "The rent if the premises or equipment are rented, or for janitorial services if premises are not rented" means:
 - (1) The rent for a particular site location as shown in the rental agreement, except that rent paid by an organization determined to be closely connected in accordance with section 10-04-04-04.
 - (2) The reasonable rental fee for equipment other than equipment for games of chance but directly attributable to a specific game of chance on a specific occurrence. (For example, tables and chairs at a bingo event.)
- d. "For accountant's fees" means the reasonable accounting and bookkeeping fees, directly attributable to games of chance accounting and administrative functions, that are separately stated and invoiced by an independent person or firm.
- e. "For license fees" means the fees paid pursuant to North Dakota Century Code sections 53-06.1-03 and 53-06.1-05.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-11

10-04-07-08. EXPENSE LIMITATION.

1. In order to administer subsection 3 of North Dakota Century Code section 53-06.1-11, the following term found in that subsection shall have the following meaning: "Each such occasion" is the period for which a tax return is required under section 10-04-08-02 or 10-04-08-03, whichever is applicable.
2. If the dollar amount of the percentage limitation for expenses is less than the actual expenses for each such occasion, the excess of the actual expenditures shall be required to be reimbursed to the gaming bank account by the general fund of the licensed eligible organization by the due date of the North Dakota gaming tax return.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

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

10-04-07-09. PAYMENT AND RECONCILIATION OF EXPENSES. Where allowable expenditures are not paid directly from the special gambling account, as in the case of the allocation of salary expenses, reimbursement to the disbursing fund from the gambling account shall be made by the due date of the North Dakota gaming tax return. Such reimbursement shall be supported by a detailed reconciliation of the difference.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

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

10-04-07-10. PRIZES. For purposes of computing adjusted gross proceeds, noncash prizes shall be valued at cost.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

10-04-07-11. CHARITABLE GAMING TRUST FUND ACCOUNT - CLASS B.

1. In order to ensure that the entire net proceeds are devoted to eligible uses, all class B licensees that file a tax return under the general rule at section 10-04-08-02 shall establish a charitable gaming trust fund account as a separate bank account. This account shall receive the transfers from the special gaming bank account established for each site (section 10-04-07-06). Such transfers shall constitute the devoting of net proceeds (section 10-04-05-02). From this account the disbursements for the actual eligible uses shall be made and in no instance may the balances of this account be used for any other purpose. These disbursements are not subject to any time limitations.

2. Every class B licensee subject to the accounting requirements of this section shall annually file a statement reflecting the activity of the charitable gaming trust fund account to the attorney general. The statement shall cover a calendar year and is due by January thirty-first of the following year. The first statement shall be due January 31, 1982.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

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

CHAPTER 10-04-08
GAMING TAX AND TAX RETURNS

Section	
10-04-08-01	[Reserved]
10-04-08-02	Due Date for Filing Tax Returns - General Rule
10-04-08-03	Due Date for Filing Tax Returns - Special Rule
10-04-08-04	Incomplete Tax Returns
10-04-08-05	Consolidated Returns
10-04-08-06	Extensions for Good Cause
10-04-08-07	Attorney General to Determine Accuracy of Return

10-04-08-01. [Reserved.]

10-04-08-02. DUE DATE FOR FILING TAX RETURNS - GENERAL RULE.

1. A North Dakota gaming tax return and payment of the tax due shall be made by the last day of the month following the end of a quarter year.
2. Quarters shall be identified and begin and end as follows:

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

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-12

10-04-08-03. DUE DATE FOR FILING TAX RETURNS - SPECIAL RULE. Any class B licensed organization which has received a site authorization for a period of three calendar months or less shall file a North Dakota

gaming tax return and make payment of the tax due for that period within thirty days from the date the site authorization expires.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

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

10-04-08-04. INCOMPLETE TAX RETURNS. An incomplete tax return will not be considered timely filed unless corrected and returned by the due date for filing. Delays in mailing shall be the responsibility of the eligible organization.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

10-04-08-05. CONSOLIDATED RETURN.

1. Only one return shall be filed for each eligible organization licensed by the attorney general.
2. Operations of an auxiliary, holding company, or other closely connected organization as defined in section 10-04-04-04 are subject to the supervision of the games of chance committee of the licensed organization and the reporting by that organization.
3. Class B licensees shall file an attachment to the tax return disclosing the operations at each site organization. The attachment shall use the format of the tax return.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-12

10-04-08-06. EXTENSIONS FOR GOOD CAUSE. Extensions for filing may be granted for good cause with the approval of the attorney general by filing a written request setting forth the reason for the request. If a request is denied, a return shall be due within fifteen days from

the date of the denial letter. Extensions to file do not extend the date for devoting the net proceeds.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

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

10-04-08-07. ATTORNEY GENERAL TO DETERMINE ACCURACY OF RETURN.
The attorney general shall have the authority to verify and determine the accuracy of any or all items reported on the return; to ascertain the propriety of any or all prizes, expenses deductions, and distributions of net proceeds; to determine the current tax liability; and to prepare delinquent returns.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

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

CHAPTER 10-04-09
RULES GOVERNING DISTRIBUTORS AND MANUFACTURERS

Section	
10-04-09-01	Definitions
10-04-09-02	Equipment For Games of Chance
10-04-09-03	Restrictions on Distributorship Interests
10-04-09-04	Changes in Ownership-Personnel
10-04-09-05	Marking and Identification of Equipment For Games of Chance
10-04-09-06	Books and Records to be Kept
10-04-09-07	Examination of Books and Records
10-04-09-08	Distributors to Sell Only to Licensed Organizations
10-04-09-09	Distributors Information Report
10-04-09-10	Rebate of Purchase Prices by Distributor
10-04-09-11	Domestic Manufacture

10-04-09-01. DEFINITIONS.

1. "Deal" in pull tabs means each separate serialized package of pull tabs purchased from a distributor.
2. "Flare" is a posted display which sets forth the rules of a particular game of pull tabs, punchboard, or sports pool and which is associated with a specific deal, punchboard, or sports pool board.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

10-04-09-02. EQUIPMENT FOR GAMES OF CHANCE. For purposes of administering North Dakota Century Code section 53-06.1-14, the term "equipment for games of chance" found in that section means any device,

apparatus, or implement usable in the conduct of games of chance, whether or not specifically designed for the purpose, but excluding tables and chairs normally used in the occupancy of a premise.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-14

10-04-09-03. RESTRICTIONS ON DISTRIBUTORSHIP INTERESTS.

1. No organization which is licensed or authorized to conduct games of chance shall be a distributor.
2. No person who is an officer, director, or manager of any licensed or authorized eligible organization shall be an officer, director, shareholder, (directly or indirectly) proprietor, or employee of a distributorship, nor shall such person have any financial interest whatsoever in such distributorship.
3. No person who is an officer, director, shareholder (directly or indirectly), partner, or proprietor of a wholesale alcoholic beverage business shall be an officer, director, shareholder, partner, proprietor, or employee of a distributorship, nor shall such person have any financial interest whatsoever in such distributorship.
4. No distributor shall be a lessor of premises, directly or indirectly, to a licensee.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

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

10-04-09-04. CHANGES IN OWNERSHIP-PERSONNEL. Additions or deletions of any employees, agents, or other personnel engaged in the business of the distributor or any change in the management,

directorship, or equity ownership of the distributorship shall be reported monthly to the attorney general on forms supplied by the attorney general.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

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

10-04-09-05. MARKING AND IDENTIFICATION OF EQUIPMENT FOR GAMES OF CHANCE.

1. The manufacturer's serial number shall appear on all gaming devices. The name of the club, club number, or other information may appear on such devices but only in addition to and not in replacement of, the manufacturer's serial number. Serial numbers may not be special ordered, but shall be as provided by the manufacturer in its ordinary course of business.
2. A distributor shall be responsible for placing a state identification stamp on each pull tab deal, punchboard, and sports pool board that is sold or otherwise disposed of. This rule shall not apply to sales by distributors to out-of-state customers for use out of state.
3. Consecutively numbered stamps will be furnished to each distributor by the attorney general. The distributor shall write the manufacturer's serial number in the space provided and affix the stamps to the front of the flare before making delivery to any licensed or authorized organization.
4. The flares will be furnished to the purchaser with each such deal.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

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

10-04-09-06. BOOKS AND RECORDS TO BE KEPT. Each distributor shall maintain records that contain the following information relative to the purchase and sale of gaming equipment and material.

1. Purchase invoices for all equipment for games of chance distributed to licensed or authorized organizations.
2. Sales invoices for all equipment for games of chance distributed to licensed or authorized organizations. The sales invoices shall be on a standard form prescribed by the attorney general, and shall have the following information as a minimum:
 - a. Date shipped.
 - b. Invoice number.
 - c. The name and address (city or town) of the licensed or authorized eligible organization.
 - d. License or permit number of the organization.
 - e. Quantity (by deals for pull tabs, by the number of boards for punchboards and sports pools).
 - f. Description of the equipment.
 - g. Gaming stamp numbers.
3. A gaming stamp log in which the gaming stamp numbers and the manufacturer's serial numbers are recorded shall be maintained.
4. The above records shall be kept for a period of three calendar years.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-14

10-04-09-07. EXAMINATION OF BOOKS AND RECORDS. The attorney general and the attorney general's agents shall have the power to examine or cause to be examined the books and records of any distributor to the extent that such books and records relate to any transaction connected to the sale of gaming equipment and materials in the state of North Dakota or to information that is required to be furnished to the attorney general under the statutes and regulations pertaining to games of chance, and no distributor shall prohibit, interfere with, or

otherwise impede such examination, but shall cooperate and assist with such examination, and provide such information as may be requested.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-14

10-04-09-08. DISTRIBUTORS TO SELL ONLY TO LICENSED ORGANIZATIONS. No distributor shall sell or otherwise dispose of equipment for games of chance to any organization which has not first been licensed by the attorney general or authorized by the local governing body to conduct raffles or bingo, or both, in accordance with section 10-04-04-05.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-14

10-04-09-09. DISTRIBUTORS INFORMATION REPORTS. Each distributor shall file a copy of each sales invoice, as described in subsection 2 of section 10-04-09-06 with the attorney general by the tenth day of the month following the month in which such invoice was prepared along with the gaming stamp log described in subsection 3 of section 10-04-09-06. A catalog of all equipment for games of chance offered to eligible organizations shall be furnished to the attorney general and shall be updated monthly as needed.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-14

10-04-09-10. REBATE OF PURCHASE PRICES BY DISTRIBUTOR. Rebates of purchase prices or discounts allowed by a distributor shall be separately stated on the original purchase invoice or separately invoiced on a credit advice referenced to the original sales invoice.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

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

10-04-09-11. DOMESTIC MANUFACTURE. Any person manufacturing equipment for games of chance within the state of North Dakota shall first register such manufacturing activity with the attorney general before selling, marketing, or otherwise distributing such equipment, in or out of state.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

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

CHAPTER 10-04-10

RESERVED

CHAPTER 10-04-11
TRANSITION RULES

Section	
10-04-11-01	"Transition" Defined
10-04-11-02	Specific Adaptations
10-04-11-03	Gaming Tax and Net Proceeds
10-04-11-04	Stamp Registration

10-04-11-01. "TRANSITION" DEFINED. "Transition" is that series of occurrences required to accomplish the continuity of the games of chance industry which is affected by the expiration of chapter 531 of the 1979 Session Laws and the inception of North Dakota Century Code chapter 53-06.1.

History: Effective July 1, 1981.

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

10-04-11-02. SPECIFIC ADAPTATIONS.

1. Organizations licensed by the attorney general under chapter 531 of the 1979 Session Laws on April 1, 1981, shall automatically receive a class A license for the year beginning July 1, 1981, and ending June 30, 1982.
2. All eligible organizations that had been previously permitted by the governing body of either a city or county to conduct games of chance (other than raffles or bingo) for a period of time running beyond June 30, 1981, must make a new application as provided by North Dakota Century Code chapter 53-06.1 and receive a license from the attorney general before conducting any games of chance.

History: Effective July 1, 1981.

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

10-04-11-03. GAMING TAX AND NET PROCEEDS. The provisions contained in chapter 531 of the 1979 Session Laws and the regulations thereunder for filing a North Dakota games of chance tax return and the devoting of net proceeds for the second quarter of 1981 ending June 30, 1981, shall be applicable commencing 12:01 a.m. July 1, 1981.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

10-04-11-04. STAMP REGISTRATION. Every eligible organization shall file a listing of all gaming stamp numbers affixed to games on hand or still in play as of June 30, 1981.

History: Effective July 1, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

NOVEMBER 1981

STAFF COMMENT: The changes to article 10-04 were declared to be an emergency nature by the attorney general and thus took effect September 21, 1981.

x 10-04-03-03. CIVIC AND SERVICE CLUBS.

1. An organization is a civic and service club only if its primary purpose is a civic and service purpose. A "civic and service purpose" is the promotion of the common good and social welfare of the community and public at large, i.e., affecting an indefinite number of people. Purposes which benefit only a portion of the community, which are limited to one or a few substantive activities, or which are otherwise narrow in scope are not civic or service purposes. Private athletic, social, hobby, trade, business, professional, or other similar clubs or associations are generally not civic and service clubs.
2. Before passing a resolution recognizing an organization as a civic and service club, a city or county governing body shall determine the primary purpose of the organization, the manner in which this purpose has been carried out in the past, and the intended uses of the net proceeds generated by the contemplated games of chance. The following items shall be examined by the governing body in order to make these determinations:
 - a. Statements of receipts and expenditures for at least the two previous years which specifically outline the projects and other activities to which all of the organization's funds have been devoted and which are attested to by the financial officer and the president or other similar officer of the organization.

- b. A copy of the organization's charter, constitution, bylaws, articles of incorporation, or similar documents which help to establish its primary purpose and its date of origin.
 - c. A copy of the minutes of the organization's meetings which includes a resolution which specifically states the intended uses of funds generated by games of chance and which is attested to by the secretary or other similar officer of the organization.
 - d. Any other relevant materials submitted by the organization or by any other party.
3. The resolution passed by the city or county governing body recognizing an organization as a civic and service club shall include the following findings of the governing body:
- a. A statement of the primary purpose of the organization and the specific items relied upon in concluding that the purpose is a "civic and service purpose" as defined by subsection 1 of section 10-04-03-03.
 - b. A statement which specifically outlines the manner in which this primary purpose has been achieved in the past and how the purpose will be achieved by the granting of the games of chance license.
 - c. A statement which specifically outlines the intended uses of the net proceeds generated by the contemplated games of chance and the conclusion that all of these uses are eligible uses under North Dakota Century Code chapter 53-06.1, and the rules issued thereunder.
 - d. A statement of the organization's date of origin and the conclusion that the organization has existed for at least two years.
 - e. A statement that the governing body has examined all of the materials which are required to be examined.
 - f. A clause recognizing the organization as a civic and service club.
4. Organizations recognized by resolution as "civic and service clubs" shall devote the net proceeds of games of chance only to those eligible uses specifically outlined in the resolution.

History: Effective September 21, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-01

X10-04-03-04. OTHER PUBLIC-SPIRITED ORGANIZATIONS.

1. For the purpose of administering subsection 17 of North Dakota Century Code section 53-06.1-01, the term "other public-spirited organization" does not include veterans, charitable, educational, religious, fraternal organizations, or civic and service clubs. Therefore, "other public-spirited organization" does not include an organization which would satisfy any of the definitions of these terms in North Dakota Century Code section 53-06.1-01, except for its failure to meet a requirement of two years of existence or functioning or its failure to obtain the resolution required under subsection 4 of North Dakota Century Code section 53-06.1-01.
2. For the purpose of administering subsection 17 of North Dakota Century Code section 53-06.1-01, the term "other public-spirited organization" means an organization whose primary purpose is consistent with subdivision c, e, f, g, h, or i of subsection 6 of North Dakota Century Code section 53-06.1-01.
3. An organization whose primary purpose is consistent with subdivision h or i of subsection 6 of North Dakota Century Code section 53-06.1-01 must have one or more individuals affected by a specific event which has transpired as of the time of the application for a license.
4. In order to allow a city or county to protect and promote the public interest, an organization, except one whose primary purpose is consistent with subdivision h or i of subsection 6 of North Dakota Century Code section 53-06.1-01, must have been in existence and maintained its same qualifying primary purpose for a period of time before it can be licensed as an other public-spirited organization. A period of two years shall be sufficient for this purpose.
5. Before passing a resolution recognizing an organization as a public-spirited organization which is eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1, a city or county governing body shall determine the primary purpose of the organization, the manner in which its purpose has been carried out, and the intended uses of the net proceeds generated by games of chance. The following items shall be examined by the governing body in order to make these determinations:
 - a. Statements of receipts and expenditures for at least the two previous years, except for organizations whose primary purpose is consistent with subdivision h or i of

subsection 6 of North Dakota Century Code section 53-06.1-01, which specifically outline the projects and other activities to which all of the organization's funds have been devoted and which are attested to by the financial officer and president or other similar officer of the organization.

- b. A copy of the organization's charter, constitution, bylaws, articles of incorporation, or similar documents which help to establish its primary purpose and its date of origin.
 - c. A copy of the minutes of the organization's meetings which includes a resolution which specifically states the intended uses of funds generated by games of chance and which is attested to by the secretary or other similar officer of the organization.
 - d. Any other relevant materials submitted by the organization or by any other party.
6. The resolution passed by the city or county governing body recognizing an organization as a public-spirited organization which is eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1 shall include the following findings of the governing body:
- a. A statement that the organization is not a veterans, charitable, educational, religious, or fraternal organization, or a civic and service club.
 - b. A statement of the primary purpose of the organization.
 - c. A statement specifying the specific provision of subdivision c, e, f, g, h, or i of subsection 6 of North Dakota Century Code section 53-06.1-01 with which the primary purpose of the organization is consistent.
 - d. A statement which specifically outlines the manner in which this primary purpose has been achieved and how the purpose will be achieved by the granting of the games of chance license.
 - e. A statement which specifically outlines the intended uses of the net proceeds generated by the contemplated games of chance and the conclusion that all of these uses are eligible uses under subdivision c, e, f, g, h, or i of subsection 6 of North Dakota Century Code section 53-06.1-01 and the rules issued hereunder.
 - f. A statement that the governing body has examined all of the materials which are required to be examined.

g. A clause recognizing the organization as public-spirited and eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1.

7. If the resolution states that the primary purpose of the organization is within subdivision g of subsection 6 of North Dakota Century Code section 53-06.1-01 (lessening the burden of government), it must also state either that the city or county (as applicable) operated and funded the project the organization intends to benefit or that it is a project the city or county wants to undertake but that it cannot do so without receiving financial help from the organization. Copies of city or county records sufficient to establish either of these statements will be sent to the attorney general by the city or county governing body.
8. Organizations recognized by resolution as public-spirited organizations eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1 shall devote the net proceeds of games of chance only to those eligible uses specifically outlined in the resolution.

History: Effective September 21, 1981.

General Authority
NDCC 53-06.1-17

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

10-04-03-05. PROCESSING OF CITY AND COUNTY RESOLUTIONS.

1. A copy of the civic and service club or other public-spirited organization resolution passed by the city or county governing body, along with copies of all the materials which must be examined by the governing body under section 10-04-03-03 or 10-04-03-04, will be sent directly to the attorney general by the governing body.
2. As the final licensing authority, the attorney general shall review the resolution, the materials submitted with it, the license application, and any other evidence concerning the organization. The attorney general may also examine any other materials concerning an organization which the attorney general determines are necessary in order to process the application. If the attorney general determines that the findings made by the governing body are not supported by the available facts, that the resolution does not meet the requirements of the law or is incorrect or internally inconsistent, that the governing body has failed to undertake a sufficient examination of the organization or has acted in

an arbitrary or capricious fashion, or that any other requirement of the law has not been complied with, the attorney general shall return the resolution to the city or county governing body.

3. If, after the organization has received a license to conduct games of chance, the attorney general determines at any time that the organization's primary purpose is not equivalent to the statement of its primary purpose contained in the resolution or that a use of the net proceeds generated by games of chance is outside the uses outlined in the resolution, the attorney general shall revoke that organization's license.

History: Effective September 21, 1981.

General Authority
NDCC 53-06.1-17

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

χ 10-04-04-06. SITE APPROVALS. Site authorizations are issued at the discretion of the city or county governing body. An applicant has no absolute right to receive a site approval from the governing body. The governing body, therefore, may reject applications for a site approval or restrict a site approval in order to limit the amount of gaming activity within its jurisdiction.

History: Effective September 21, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-03

χ 10-04-05-05. GENERAL GUIDELINES FOR ELIGIBLE USES. For the purpose of administering subsection 6 of North Dakota Century Code section 53-06.1-01, the following criteria shall be generally applied to each subdivision enumerated in that subsection:

1. The contribution must be a current irrevocable remittance not contingent upon future occurrences, and specific as to recipient and use.
2. The intended use must be broad in scope affecting an indefinite number of people. No direct benefit can enure to an individual except as permitted under subdivisions h and i.

3. Private athletic, social, hobby, trade, business, professional, or other similar clubs or associations generally are not eligible recipients, in and of themselves, unless the specific use of the intended contribution meets the criteria set forth in this section.
4. In applying subdivisions h and i, the events causing the eligible use must have occurred and the expense incurred must be uncompensated by insurance. Accumulations for future occurrences are not permitted.
5. A use of funds for the erection, acquisition, improvement, maintenance, or repair of real, personal, or mixed property owned by an eligible organization is an eligible use only if the eligible organization agrees that, upon abandoning the exclusive use of the property which is stated in subsection 6 of North Dakota Century Code section 53-06.1-01, it will grant its interest in the property to a governmental unit or to an organization which will use it exclusively for the purposes stated in subsection 6 of North Dakota Century Code section 53-06.1-01.

History: Effective July 1, 1981; amended effective September 21, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
 NDCC 53-06.1-17

x 10-04-10-02. INELIGIBLE USE OF NET PROCEEDS BY DONEE.

1. In order to ensure that the entire net proceeds of games of chance are devoted to eligible uses, the attorney general shall have the power to cause a donee individual or organization to produce records sufficient to determine the actual use of the net proceeds received.
2. Any person or organization receiving gaming proceeds from an eligible organization for a permissible use, and subsequently using such proceeds for a nonpermissible use, shall reimburse the donor organization for all funds which the attorney general determines is a nonpermissible use under subsection 6 of North Dakota Century Code section 53-06.1-01.

History: Effective September 21, 1981.

General Authority
NDCC 53-06.1-17

Law Implemented
NDCC 53-06.1-17

STAFF COMMENT: Article 10-05 contains all new material, but is not underscored in order to improve readability.

ARTICLE 10-05

JAILS

Chapter	
10-05-01	Required Facilities
10-05-02	Detention of Juveniles and Juvenile Detention Centers
10-05-03	Jail Classification, Construction and Renovation
10-05-04	Admissions Procedures
10-05-05	Supervision and Security
10-05-06	Inmate Health Care
10-05-07	Safety, Sanitation, and Hygiene
10-05-08	Food Service
10-05-09	Telephone Calls and Visitation
10-05-10	Mail
10-05-11	Reading and Legal Materials
10-05-12	Prisoner Exercise and Recreation
10-05-13	Exercise of Religious Practices
10-05-14	Grievance Procedure
10-05-15	Cell Care - Jail Property - Prisoner Responsibility
10-05-16	Prohibited Acts and Disciplinary Procedure
10-05-17	Correctional Officer Training
10-05-18	Inspections
10-05-19	Application Procedure for Jail Classification and Inmate Categories

CHAPTER 10-05-01 REQUIRED FACILITIES

Section	
10-05-01-01	Cell Size
10-05-01-02	Dayroom
10-05-01-03	Exercise Room
10-05-01-04	Outdoor Recreation Area
10-05-01-05	Educational and Counseling Program Space
10-05-01-06	Visitation Area
10-05-01-07	Intake/Booking Area
10-05-01-08	Food Preparation Space
10-05-01-09	Heating and Ventilation Systems
10-05-01-10	Sanitary Facilities
10-05-01-11	Firefighting and Fire Detection Equipment
10-05-01-12	Recognized Standards

10-05-01-01. CELL SIZE. Every effort shall be made to house each inmate in a single cell. Each inmate shall be provided an adequate amount of cell space. Minimum cell size for shared cells in existing jails shall, at a minimum, meet the requirements as set out in Campbell v. Cauthron, 623 F.2d 503, 507-8 (8th Cir. 1980).

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

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

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

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

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-01-04. OUTDOOR RECREATION AREA. Grade one jails shall have an adequate sized secure outdoor recreation area equally available to all classifications of inmates.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-01-05. EDUCATIONAL AND COUNSELING PROGRAM SPACE. Grade one and grade two jails shall provide adequate and secure space for conducting educational and counseling programs for inmates which shall be equally available to all classifications of inmates.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-17

10-05-01-06. VISITATION AREA. Each jail shall have an adequate sized secure visitation room. Grade one jails shall also have a separate adequate sized secure contact visitation area.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-01-07. INTAKE/BOOKING AREA. Each jail shall have a separate and secure intake/booking area.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-01-08. FOOD PREPARATION SPACE. When food is prepared in the jail, adequate space for food preparation shall be provided.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-01-09. HEATING AND VENTILATION SYSTEMS. Each jail shall have heating and ventilation systems sufficient to maintain humane comfort.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-01-10. SANITARY FACILITIES. Toilets, showers, washbasins, and hot and cold running water shall be accessible to all inmates.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-01-11. FIREFIGHTING AND FIRE DETECTION EQUIPMENT. Commercial type firefighting and fire detection equipment, approved by the state fire marshal shall be provided in accessible locations within the jail and shall be regularly tested to assure operational condition.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-03

10-05-01-12. RECOGNIZED STANDARDS. The governing bodies of existing jails are encouraged to make every effort to meet recognized

standards for jails such as those published by the United States department of justice and the American correctional association.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

CHAPTER 10-05-02
DETENTION OF JUVENILES AND JUVENILE DETENTION CENTERS

Section	
10-05-02-01	Juvenile Detention Centers
10-05-02-02	Liberal Construction
10-05-02-03	Security Versus Jail Appearance
10-05-02-04	Coeducational Programs
10-05-02-05	School Study Assistance

10-05-02-01. JUVENILE DETENTION CENTERS. Juvenile detention centers shall meet, at a minimum, the regulations contained herein. For purposes of these regulations, juvenile detention centers are considered grade one jails.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-24	NDCC 12-44.1-24

10-05-02-02. LIBERAL CONSTRUCTION. The rules contained in this article shall be construed liberally when applied to juveniles.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-24	NDCC 12-44.1-24

10-05-02-03. SECURITY VERSUS JAIL APPEARANCE. Juvenile detention centers shall be secure but every effort shall be made to minimize the appearance of a jail.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-24	NDCC 12-44.1-17

10-05-02-04. COEDUCATIONAL PROGRAMS. Coeducational programs and activities may be utilized in juvenile detention centers if adequate supervision may be maintained.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-17

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

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-17

CHAPTER 10-05-03
JAIL CLASSIFICATION, CONSTRUCTION, AND RENOVATION

Section	
10-05-03-01	Construction or Renovation Plan Approval
10-05-03-02	Plan Conformance to Federal Standards
10-05-03-03	Grade Classification

10-05-03-01. CONSTRUCTION OR RENOVATION PLAN APPROVAL. Plans for the construction of a new jail or plans for the major renovation (estimated expenditure of more than ten thousand dollars) of an existing jail must be approved by the attorney general prior to commencement of the project.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-24	NDCC 12-44.1-24

10-05-03-02. PLAN CONFORMANCE TO FEDERAL STANDARDS. Plans for the construction or major renovation of jails shall be substantially in accordance with the federal jail standards and other equivalent model standards such as those published by the United States department of justice and the American correctional association.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-24	NDCC 12-44.1-24

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

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-24	NDCC 12-44.1-24

CHAPTER 10-05-04
ADMISSIONS PROCEDURES

Section

10-05-04-01	Health Screening Data
10-05-04-02	Health Examination and Treatment
10-05-04-03	Communicable Disease Treatment
10-05-04-04	Mental Illness - Supervision
10-05-04-05	Individual File
10-05-04-06	Clothing
10-05-04-07	Communications Allowed
10-05-04-08	Inmate Instructions

10-05-04-01. HEALTH SCREENING DATA. Prior to admission or as soon thereafter as is reasonably possible, a correctional officer who is trained in American red cross basic first aid shall obtain receiving health screening data as required by the health care administrator.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-04-02. HEALTH EXAMINATION AND TREATMENT. Prior to admission the inmate shall be examined by a correctional officer for body vermin, cuts, bruises, other injuries, infectious diseases, and other visible health problems. These findings shall be recorded and any health problems shall be appropriately treated.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-04-03. COMMUNICABLE DISEASE TREATMENT. Inmates known to have or suspected of having hepatitis, venereal disease, or other communicable diseases shall be isolated from the remainder of the inmate

population and suitable treatment shall be obtained as soon as reasonably possible.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-04-04. MENTAL ILLNESS - SUPERVISION. Inmates known to be mentally ill or persons who are held under the emergency provisions of the commitment law shall be placed under close supervision.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-09,
12-44.1-13

10-05-04-05. INDIVIDUAL FILE. An individual file on each inmate should be established at intake. The following minimum identification data and information should be recorded for each person detained in the facility:

1. Name (and aliases if any).
2. Address.
3. Date of birth.
4. Sex.
5. Name, address, and phone number of person to be contacted in the event of emergency (parent or guardian if juvenile).
6. Time and date of admission to jail.
7. Authority for admission.
8. Offense.
9. Name of delivering officer and arresting officer.
10. Apparent physical and emotional condition.
11. Space for remarks.
12. Date of release or transfer.

13. Name of person recording the data.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-04,
12-44.1-24

Law Implemented
NDCC 12-44.1-22

10-05-04-06. CLOTHING. Jail clothing shall be issued immediately upon admission, unless the correctional officer, in the officer's discretion, determines that the inmate shall be permitted to wear the inmate's own clothing. Possession of shoelaces, belts, scarves, ties, hard shoes or boots, keys, heavy chains, and large rings shall be restricted where they could be a security problem or used to inflict bodily harm. Personal property taken from the inmate shall be listed on a personal receipt form made out in the name of the inmate.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-12,
12-44.1-14

10-05-04-07. COMMUNICATIONS ALLOWED. Inmates shall be allowed to contact an attorney, a family member, friend, next of kin, or bondsman upon completion of the admissions process. A sufficient number of attempts should be allowed to assure completion of a telephone call. Juvenile inmates shall be allowed to complete at least two telephone calls.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-04-08. INMATE INSTRUCTIONS. Upon admission, an inmate shall be informed of visitation hours, mail procedures, what constitutes

contraband, prohibited acts, disciplinary procedures, grievance procedures, health care procedures, and inmate cell care responsibility.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

CHAPTER 10-05-05
SUPERVISION AND SECURITY

Section

10-05-05-01	Supervision by Correctional Officer
10-05-05-02	Inmate's Right to Privacy
10-05-05-03	Personal Observation of Inmates
10-05-05-04	Written Jail Policy

10-05-05-01. SUPERVISION BY CORRECTIONAL OFFICER. No person shall be detained without a correctional officer on duty capable of responding to the reasonable needs of the inmate. No inmate shall be placed in a supervisory capacity over other inmates.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-13

10-05-05-02. INMATE'S RIGHT TO PRIVACY. Correctional officers shall not be placed in positions of responsibility for the supervision of inmates of the opposite sex in circumstances that can be described as an invasion of privacy.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-05-03. PERSONAL OBSERVATION OF INMATES. Each inmate must be personally observed by a correctional officer at least every sixty minutes on an irregular basis. Inmates who exhibit suicidal tendencies, who manifest emotional distress, or who have specialized medical problems such as severe intoxication shall be personally observed by a correctional officer at more frequent intervals as their condition

requires. Juvenile inmates shall be observed by a correctional officer every thirty minutes on an irregular basis.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-13

10-05-05-04. WRITTEN JAIL POLICY. Written jail policy shall cover, at a minimum, the following areas:

1. Control and recovery of contraband.
2. Visitor and visitation control.
3. Delivery of goods and supplies.
4. Equipment maintenance.
5. Prohibition of firearms in security perimeter.
6. Search procedures.
7. Escort of prisoners outside security areas.
8. Escape prevention and action plans.
9. Tool, medication, key, and weapon control procedures.
10. Prisoner count procedure.
11. Classification of prisoners.
12. Lockup and disciplinary procedures.
13. Riot prevention and control procedures.
14. Fire evacuation procedures.

15. Inmate's daily schedule which shall include mealtimes, exercise, recreation, showers, visitation, telephone calls, sick call, and lights out.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-04,
12-44.1-24

Law Implemented
NDCC 12-44.1-09,
12-44.1-14,
12-44.1-15,
12-44.1-19,
12-44.1-20,
12-44.1-21

CHAPTER 10-05-06
INMATE HEALTH CARE

Section	
10-05-06-01	Health Care Administration
10-05-06-02	Medical Care Access
10-05-06-03	Medical Staff Availability
10-05-06-04	Medical Emergency Provision
10-05-06-05	Special Medical Care
10-05-06-06	First-Aid Kits
10-05-06-07	Medical Records - Access
10-05-06-08	Inactive Medical Records - Retention
10-05-06-09	Health Appraisal Access
10-05-06-10	Administration of Medical Treatment
10-05-06-11	Notification of Illness or Death
10-05-06-12	Detoxification Procedures
10-05-06-13	Sick Call Procedures
10-05-06-14	Medication
10-05-06-15	Law Governing Practice of Medicine and Nursing
10-05-06-16	Inmate Health Complaints
10-05-06-17	Qualified Officer to be on Duty

10-05-06-01. HEALTH CARE ADMINISTRATION. The jail administrator shall designate a licensed physician or registered nurse or county or state health authority which shall be responsible for health care administration and development of policies or procedures.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-06-02. MEDICAL CARE ACCESS. Inmates shall have access to necessary emergency medical care, including but not limited to physical, psychiatric, and dental care. The cost of such medical care shall be paid subject to reimbursement from the inmate. Adequate staff, space, equipment, supplies, and materials shall be provided if health care is delivered in the jail. Nonemergency physical, psychiatric, and dental

care shall be provided to an inmate as directed by the health care administrator.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-06-03. MEDICAL STAFF AVAILABILITY. A licensed physician or registered nurse shall be available on call on a twenty-four-hour basis. Provisions made to notify a licensed physician or registered nurse on duty at a hospital may be sufficient. Jails in communities without a licensed physician or nurse shall have arrangements made to provide health care to an inmate on the same basis as any resident of the community. That is, the inmate must be transported to an appropriate health care facility or a licensed physician or nurse must be brought to the jail.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-06-04. MEDICAL EMERGENCY PROVISION. The jail administrator shall adopt a written plan which provides for transportation to a medical facility in the event of a medical emergency. Emergency telephone numbers shall be readily available to correctional officers.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-06-05. SPECIAL MEDICAL CARE. Inmates with acute psychiatric or other illnesses who require necessary health care beyond the resources available in the jail shall be transferred or committed to a facility where the necessary health care is available. The jail administrator shall ensure that security will be maintained.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-06-06. FIRST-AID KITS. First-aid kits shall be available in the jail. The health care administrator shall approve the contents, locations, and procedure for the inspection of the kits.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-06-07. MEDICAL RECORDS - ACCESS. Access to medical records shall be controlled by the health care administrator. The medical records file shall be separate from the jail confinement records. Requests by the inmate, the inmate's personal representative, or lawyer for medical attention and the disposition of such requests shall be in writing and copies placed in the inmate's personal medical file. Other licensed physicians or registered nurses may be provided access to the information contained in the inmate's confinement record or personal medical file when written authorization by the inmate is obtained. When an inmate is transferred to another jail, summaries or copies of the inmate's health records shall be sent to the health care administrator of that jail.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-06-08. INACTIVE MEDICAL RECORDS - RETENTION. Inactive personal medical records shall be retained as permanent records for a period of ten years unless otherwise provided by law.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-06-09. HEALTH APPRAISAL ACCESS. An inmate detained in a grade one or grade two jail shall be given a health appraisal by a licensed physician or registered nurse within fourteen days of admission, the nature and extent of which shall be determined by the health care administrator. The health care administrator may require a health appraisal at an earlier date if the health care administrator, in

the administrator's discretion, determines that it is necessary. The health appraisal shall include, at a minimum:

1. Review of health screening.
2. Collection of additional data to complete the medical, dental, psychiatric, and immunization histories.
3. Laboratory or diagnostic, or both, test results to detect communicable diseases, including venereal diseases and tuberculosis.
4. Recording of height, weight, pulse, blood pressure, and temperature.
5. Other tests and examinations as deemed appropriate by the health care administrator.
6. Review of medical examination results.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-06-10. ADMINISTRATION OF MEDICAL TREATMENT. The jail administrator shall be responsible for identifying the mechanism necessary to carry out the specific orders of the health care administrator relating to the inmate's medical care. All treatment administered by correctional officers pursuant to specific orders shall be documented.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-06-11. NOTIFICATION OF ILLNESS OR DEATH. The jail administrator shall make a good faith attempt to notify the next of kin or legal guardian of an inmate in case of serious illness, injury, or death. The county coroner shall be notified in the event of an inmate's death.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-06-12. DETOXIFICATION PROCEDURES. The health care administrator shall establish the procedures for detoxification when performed in the jail. When detoxification is not performed in the jail, it is to be conducted in a hospital or community detoxication center.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

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

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-06-14. MEDICATION. No person other than a licensed physician shall prescribe medication. A licensed physician shall be responsible for matters of medical judgment.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-06-15. LAW GOVERNING PRACTICE OF MEDICINE AND NURSING. The practice of medicine and nursing shall be governed by North Dakota law and the accepted practice of the medical and nursing community.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-06-16. INMATE HEALTH COMPLAINTS. Inmate health complaints shall be received and documented daily and the health care administrator shall be notified of the complaints. An inmate with a health complaint shall be placed on the next sick call list.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-06-17. QUALIFIED OFFICER TO BE ON DUTY. At least one correctional officer shall be on duty at all times who has received American red cross basic first aid training and basic cardiopulmonary resuscitation training.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

CHAPTER 10-05-07
SAFETY, SANITATION, AND HYGIENE

Section	
10-05-07-01	Bedding and Clothing
10-05-07-02	Bedding Required
10-05-07-03	Mattress Requirement
10-05-07-04	Personal Hygiene Availability
10-05-07-05	Hair Length
10-05-07-06	Safety Code Compliance
10-05-07-07	Evacuation and Emergency Service Plans

10-05-07-01. BEDDING AND CLOTHING. Bedding and inmate clothing shall be kept clean and laundered at least weekly. Pillows, blankets, and mattresses shall be sanitized as often as jail usage and the promotion of inmate health require. Delousing materials and procedures shall be approved by the health care administrator.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-24	NDCC 12-44.1-24

10-05-07-02. BEDDING REQUIRED. Inmates shall be provided with a bed, mattress, pillow, and clean sheets, blanket, and pillowcase. Special circumstances may require inmate clothing or bedding be removed from an inmate's cell. Such action shall be documented.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-24	NDCC 12-44.1-14

10-05-07-03. MATTRESS REQUIREMENT. All mattresses shall be of a nontoxic fire retardant material approved by the state fire marshal.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-24	NDCC 12-44.1-03

10-05-07-04. PERSONAL HYGIENE AVAILABILITY. Inmates detained for more than twenty-four hours shall be provided personal hygiene items such as soap, towels, toothbrush and toothpaste and access to a shower at designated intervals to be determined by the jail administrator.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-07-05. HAIR LENGTH. The jail administrator may restrict an inmate's hair length when necessary for identification, health, or safety purposes. However, an inmate's hair length may not be restricted if it would violate a religious practice.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-07-06. SAFETY CODE COMPLIANCE. The jail administrator shall ensure compliance with the most current edition of the Life Safety Code of the national fire protection association and the Portable Fire Extinguishers Code of the national fire protection association, incorporated.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-03

10-05-07-07. EVACUATION AND EMERGENCY SERVICE PLANS. The jail administrator shall provide written procedure specifying an entire evacuation plan in case of fire or other emergency which shall include an accounting system to enable officers to readily determine the number

of people inside the jail, the method for prompt evacuation of all inmates, and a plan for mass emergency medical services.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-04,
12-44.1-24

Law Implemented
NDCC 12-44.1-03

CHAPTER 10-05-08
FOOD SERVICE

Section

10-05-08-01	Dietary Allowance Requirement
10-05-08-02	Special Diet Requirements
10-05-08-03	Mealtimes
10-05-08-04	Food Service Facilities
10-05-08-05	Food Service Area Inspection
10-05-08-06	Meal Service

10-05-08-01. DIETARY ALLOWANCE REQUIREMENT. All meals shall meet or exceed the dietary allowance as stated in the recommended dietary allowances, national academy of sciences. The jail administrator shall document what was served at each meal.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-08-02. SPECIAL DIET REQUIREMENTS. The jail administrator shall provide for, at a minimum:

1. Special diets as approved by the health care administrator.
2. Prohibitions of the use of food as a reward or disciplinary measure.
3. Special diets as required for adherence to religious beliefs.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-08-03. MEALTIMES. Three meals, at least one of which shall be a hot meal in grade one and grade two jails, shall be provided

at regular mealtimes during each twenty-four-hour period with no more than fourteen hours between the evening meal and breakfast.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-08-04. FOOD SERVICE FACILITIES. Food service facilities, equipment, and employees shall meet all applicable health, safety, and sanitation laws and regulations. The jail administrator shall make a written request to the agency that inspects local restaurants to inspect the jail food service every three months. This inspection report shall be on file in the jail administrator's office.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-03

10-05-08-05. FOOD SERVICE AREA INSPECTION. The jail administrator or the health care administrator shall make a daily inspection of all food service areas to ensure sanitary conditions.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-08-06. MEAL SERVICE. Inmates in a grade one facility shall be served their meals in a dayroom or a dining hall. An inmate may be required to have his meals served in his cell area if the jail administrator has reasonable grounds to believe that the inmate presents a threat to jail security, order, or rehabilitation. Inmates in a grade two or grade three jail may have their meals served in their cells.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

CHAPTER 10-05-09
TELEPHONE CALLS AND VISITATION

Section	
10-05-09-01	Telephone Calls - Lawyer, Doctor, or Clergyman
10-05-09-02	Telephone Calls - Friends or Relatives
10-05-09-03	Visitation Privileges
10-05-09-04	Restrictions on Visitation Privileges
10-05-09-05	Visiting Hours
10-05-09-06	Visitors Subject to Search
10-05-09-07	Contact Visitation

10-05-09-01. TELEPHONE CALLS - LAWYER, DOCTOR, OR CLERGYMAN. An inmate shall be allowed to make telephone calls to his lawyer, doctor, or clergyman at reasonable times. These calls may not be monitored. The telephone number of a lawyer, doctor, or clergyman who has called an inmate shall be obtained and the inmate shall be permitted to return the call at a reasonable time.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-09-02. TELEPHONE CALLS - FRIENDS OR RELATIVES. An inmate shall be allowed to send or receive telephone calls from persons other than the inmate's lawyer, doctor, or clergyman within limitations set by the jail administrator. Long distance calls shall be made collect. These calls may be monitored if the jail administrator has reasonable grounds to believe that the conversation will result in a threat to jail security, order, or rehabilitation. These reasonable grounds shall be documented.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-09-03. VISITATION PRIVILEGES. Each inmate shall be allowed visits from clergy, legal counsel, probation officers, legal custodian,

inmate's immediate family, and those individuals approved by the jail administrator. Juveniles who are not members of the inmate's immediate family may be prohibited from visiting inmates. Upon an inmate's request, legal counsel shall be permitted to visit an inmate after admission as soon as reasonably possible. All subsequent visits by legal counsel may be restricted to reasonable hours.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-09-04. RESTRICTIONS ON VISITATION PRIVILEGES. Restrictions may be placed on who may visit an inmate whenever the jail administrator has reasonable grounds to believe the visitor presents a threat to jail security, order, or rehabilitation and those reasonable grounds are documented. Individuals who have previously been detained in the jail may be prohibited from visiting inmates who were detained with them.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-09-05. VISITING HOURS. Visiting hours shall be reasonably convenient but within such limitations as established by the jail administrator. Visiting hours shall be posted in a conspicuous place. Clergy, legal counsel, and probation officers shall be allowed to visit with an inmate in private at reasonable times other than regular visiting hours.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-09-06. VISITORS SUBJECT TO SEARCH. Visitors entering the jail may be required to submit to a search of their person and belongings before entering the visitation area if the jail administrator

so directs. Anything brought in by visitors for inmates may be inspected for contraband.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14,
12-44.1-15

10-05-09-07. CONTACT VISITATION. Contact visitation between an inmate and clergy, legal counsel, and probation officers is mandatory. Contact visitation between an inmate in a grade one jail and family members is encouraged. If contact visitation with family members is provided, then all inmates must be treated equally and have the same opportunity to have contact visitation unless reasonable grounds exist to deny contact visitation and such reasonable grounds are documented.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

CHAPTER 10-05-10
MAIL

Section	
10-05-10-01	Mail as Privileged Correspondence
10-05-10-02	Mail as General Correspondence

10-05-10-01. MAIL AS PRIVILEGED CORRESPONDENCE. Privileged correspondence is mail between an inmate and any one of the following: attorneys; judges and clerks of federal, state, and local courts; president, vice president and attorney general of the United States; any member of the Congress of the United States; the governor, lieutenant governor, and attorney general of any state; any member of the state legislative assembly; and any parole board member.

1. Outgoing mail. Outgoing privileged correspondence shall not be opened, inspected, or censored. Outgoing privileged correspondence initiated by an indigent inmate and which contains legal documents shall be mailed without charge to the inmate. This shall extend only to first-class postage for legal mail and shall not include registered, certified, or insured mail. Indigent inmates shall also be provided free envelopes and writing materials for the mailing and drafting of legal documents. Indigent inmates shall be provided a reasonable amount of stamps, envelopes, and writing materials for other privileged correspondence.
2. Incoming mail. Incoming privileged correspondence shall be treated as privileged only if the name and official status of the sender appears on the envelope. All incoming privileged correspondence may be opened and examined for cash, checks, money orders, or contraband, but only in the presence of the inmate to whom the communication is addressed. In cases where cash, checks, or money orders are found, they shall be removed and credited to the inmate's account. Where contraband is found, it shall be removed and returned to the sender or retained with the inmate's personal property. The jail administrator of each jail shall determine what constitutes contraband. In no case shall the privileged correspondence be read or censored.

3. Packages. Incoming packages from privileged correspondents shall be inspected for contraband in the same manner as any other item of privileged correspondence.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

10-05-10-02. MAIL AS GENERAL CORRESPONDENCE. General correspondence is mail between an inmate and a nonprivileged correspondent.

1. Outgoing mail. Outgoing general correspondence shall be permitted; however, correspondence with inmates in other institutions may be restricted. Outgoing general correspondence may be read, censored, or rejected and returned to the inmate. A written and signed notice stating the reason the correspondence was censored or rejected and the appeal procedure shall be given to the inmate. Within a reasonable time, the inmate may appeal this decision to the jail administrator or the administrator's designated representative. The reviewing authority on appeal shall not be the same person who originally censored or rejected the correspondence. The reviewing authority shall document the findings and the disposition of the item. This documentation shall be retained by the jail administrator and a copy shall be given to the inmate.
2. Incoming mail. Incoming general correspondence may be opened and examined for cash, checks, money orders, or contraband. In cases where cash, checks, or money orders are found, they shall be removed and credited to the inmate's account. Where contraband is found, it shall also be removed. Incoming general correspondence may be read, censored, or rejected and returned to the sender or retained with the inmate's personal belongings. A written and signed notice stating the reason the correspondence was censored or rejected and the appeal procedure shall be given to the sender and the inmate to whom it was addressed. Within a reasonable time, the sender may appeal this decision to the jail administrator or the administrator's designated representative. The reviewing authority on appeal shall not be the same person who originally censored or rejected the correspondence. The reviewing authority shall document the findings and the disposition of the item. This documentation shall be retained by the jail administrator and a copy shall be given to the sender.

3. Packages. Each jail administrator shall provide inmates with a list of items which may be received in packages. All incoming packages shall be inspected for contraband. Any item which is not on the approved list shall be returned to the sender or placed with the inmate's personal property.
4. Publications. Inmates shall be allowed to receive books, magazines, newspapers, and other printed materials that have been sent directly from the publisher. Items not sent directly from the publisher shall be allowed in the discretion of the jailer. Sexually explicit publications may be prohibited.
5. Censorship or rejection of an inmate's general correspondence must meet the following requirements: (a) the correctional officer must show that the censorship or rejection furthers security, order, or rehabilitation; and (b) the censorship or rejection of general correspondence must be no greater than is necessary or essential to security, order, or rehabilitation. These findings shall be documented.
6. In each case where it is necessary to remove any item from incoming mail, or censor or reject general correspondence, a written record shall be made of such action. Such record shall include:
 - a. The inmate's name and number.
 - b. A description of the mail in question.
 - c. A description of the action taken and the reason for such action.
 - d. The disposition of the item involved.
 - e. The signature of the acting officer.

A copy of the record shall be given to the inmate and to the sender.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-04,
12-44.1-14

Law Implemented
NDCC 12-44.1-14

CHAPTER 10-05-11
READING AND LEGAL MATERIALS

Section	
10-05-11-01	Reading Materials
10-05-11-02	Legal Materials Access
10-05-11-03	Legal Materials - Private Access
10-05-11-04	Reading Materials and Legal Materials - Public Libraries or Donations
10-05-11-05	Use of Law Library and Legal Materials
10-05-11-06	Legal Materials Access - Restriction

10-05-11-01. READING MATERIALS. The jail administrator shall provide reading materials to inmates. Reading materials may include the following:

1. Recent newspapers.
2. Magazines.
3. Books.

Reading materials shall not be limited to religious materials.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-11-02. LEGAL MATERIALS ACCESS. The jail administrator of grade one and grade two jails shall allow inmates without legal counsel either research assistance from a paralegal or law student intern or reasonable access to the following legal materials:

1. A leading law dictionary.
2. A basic book on criminal procedure.
3. A basic book on legal research techniques.
4. A basic treatise on criminal law.

5. Rules of the United States district court, and local district courts which have jurisdiction over the prisoners in the jail facility.
6. Those chapters of the North Dakota Century Code which deal with criminal law and procedures.
7. Photocopies of requested cases from the Northwest 2nd Reporter.
8. A list of all legal representatives within the county.

These legal materials may be provided from the legal library of the state's attorney or county judge. The library of the state's attorney or the county judge shall be at least equivalent to any separate library provided to the inmates.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-11-03. LEGAL MATERIALS - PRIVATE ACCESS. Inmates shall be permitted to purchase or receive legal materials from sources approved by the jail administrator.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-11-04. READING MATERIALS AND LEGAL MATERIALS - PUBLIC LIBRARIES OR DONATIONS. Reading materials and additional legal materials not listed in section 10-05-11-02 may be obtained by loan from public libraries or donations from the general public.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-11-05. USE OF LAW LIBRARY AND LEGAL MATERIALS. An inmate shall be allowed to use the law library or bring legal materials to the inmate's cell for a reasonable period of time unless the jail

administrator has reasonable grounds to believe that access to the law library or legal materials will present a threat to jail security, order, or rehabilitation. These reasonable grounds shall be documented.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-11-06. LEGAL MATERIALS ACCESS - RESTRICTION. Inmate requests for legal materials shall be made on a form which clearly states the responsibility of the inmate for the legal materials and the liability for the damage or destruction of the legal materials. An inmate who damages any legal materials shall lose his privilege to obtain further legal materials for a period of time designated by the jail administrator.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

CHAPTER 10-05-12
PRISONER EXERCISE AND RECREATION

Section	
10-05-12-01	Indoor Exercise - Ninety-Hour Detention
10-05-12-02	Outdoor Exercise - Thirty Days' Detention
10-05-12-03	Daily Recreation

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

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

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

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-12-03. DAILY RECREATION. Inmates shall be allowed daily recreation. Jail administrators in grade one and grade two jails shall provide for recreation in a dayroom.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

CHAPTER 10-05-13
EXERCISE OF RELIGIOUS PRACTICES

Section
10-05-13-01 Freedom of Religion

10-05-13-01. FREEDOM OF RELIGION. Inmates shall have the right to practice their religion within limitations necessary to maintain jail security and order.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-14

CHAPTER 10-05-14
GRIEVANCE PROCEDURE

Section	
10-05-14-01	Grievance Reporting Forms
10-05-14-02	Grievance Filing Protected
10-05-14-03	Grievance Investigation and Report
10-05-14-04	Appeal

10-05-14-01. GRIEVANCE REPORTING FORMS. The jail administrator shall provide forms on which an inmate may report a grievance.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-24	NDCC 12-44.1-24

10-05-14-02. GRIEVANCE FILING PROTECTED. An inmate reporting a grievance shall not be subject to disciplinary action for filing a grievance.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-24	NDCC 12-44.1-24

10-05-14-03. GRIEVANCE INVESTIGATION AND REPORT. A grievance which is determined not to be obviously trivial or frivolous by the correctional officer charged with the authority to receive and investigate grievances shall be promptly investigated and the inmate shall be allowed to orally present the grievance to the correctional officer. A written report, setting forth the results of the investigation and any recommendation for the disposition of the grievance, shall be given to the inmate filing the grievance and shall be filed in the jail records.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-24	NDCC 12-44.1-24

10-05-14-04. APPEAL. An inmate has the right to appeal the decision of the correctional officer within twenty-four hours of that decision to the jail administrator. If the jail administrator has been involved at a lower level of the grievance procedure, then the jail administrator shall designate the reviewing authority on appeal. The reviewing authority on appeal shall not be the same individual who initially reviewed the grievance as provided in section 10-05-14-03. The reviewing authority shall document the findings and the disposition of the grievance and such documentation shall be retained by the jail administrator. A copy shall be given to the inmate.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

CHAPTER 10-05-15
CELL CARE - JAIL PROPERTY - PRISONER RESPONSIBILITY

Section	
10-05-15-01	Cell Maintenance
10-05-15-02	Property Destruction
10-05-15-03	Work Requirements
10-05-15-04	Work Requirements - Juvenile

10-05-15-01. CELL MAINTENANCE. An inmate shall keep one's cell clean and orderly. An inmate may be required to clean up any mess for which the inmate is responsible.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-24	NDCC 12-44.1-24

10-05-15-02. PROPERTY DESTRUCTION. Destruction of or damage to jail property or legal materials by an inmate may result in disciplinary action and referral to the state's attorney for possible criminal prosecution.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-24	NDCC 12-44.1-24

10-05-15-03. WORK REQUIREMENTS. Convicted inmates may be required to perform work as directed by the jail administrator.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-24	NDCC 12-44.1-24

10-05-15-04. WORK REQUIREMENTS - JUVENILE. An adjudicated or convicted juvenile inmate may be required to perform work provided:

1. The work assignment does not conflict with educational programs; and
2. The work is not prohibited by state and federal statutes and regulations pertaining to child labor.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

CHAPTER 10-05-16
PROHIBITED ACTS AND DISCIPLINARY PROCEDURE

Section	
10-05-16-01	Rules of Conduct
10-05-16-02	Disciplinary Action Procedures
10-05-16-03	Jail Rules Violation - Report
10-05-16-04	Investigation
10-05-16-05	Disciplinary Hearing - Notice
10-05-16-06	Disciplinary Action Prior to Hearing
10-05-16-07	Hearings Officer
10-05-16-08	Conduct of Hearing
10-05-16-09	Report of Hearing
10-05-16-10	Appeal by Inmate
10-05-16-11	Segregation of Inmates

10-05-16-01. RULES OF CONDUCT. The jail administrator shall establish written rules of inmate conduct specifying acts prohibited and the range of penalties that may be imposed. All disciplinary action of any kind shall be documented and shall be reviewed by the jail administrator.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-16-02. DISCIPLINARY ACTION PROCEDURES. The jail administrator shall develop written procedures for disciplinary action implementing the rules of this chapter. Sections 10-05-16-04, 10-05-16-05, 10-05-16-06, 10-05-16-07, 10-05-16-08, and 10-05-16-09 do not apply to grade three jails. Jail administrators in grade three jails shall review all disciplinary action.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-04,
12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-16-03. JAIL RULES VIOLATION - REPORT. A correctional officer who observes or has knowledge of a violation of the jail rules shall submit a written report of the incident to the jail administrator which shall include the name of the inmate, the offense charged, a brief description of the circumstances surrounding the incident, the names of the complainants and any witnesses, the name of the correctional officer making the report and any immediate disciplinary action taken. The reporting officer shall not be utilized in any investigatory or reviewing capacity. The responsibility of the reporting officer shall cease when the report is submitted unless the officer is required to clarify or supplement the report. The reporting officer may not be the hearings officer or member of the disciplinary hearings board as provided in section 10-05-16-07 or the reviewing officer on appeal as provided in section 10-05-16-10.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-16-04. INVESTIGATION. The jail administrator shall designate a correctional officer who shall review the disciplinary report, investigate the circumstances, and either dismiss the complaint against the inmate or proceed with further disciplinary action or disciplinary proceedings. The correctional officer shall submit a written report of the findings and actions to the jail administrator. The correctional officer may not be the hearings officer or member of the disciplinary hearings board as provided in section 10-05-16-07 or the reviewing officer on appeal as provided in section 10-05-16-10.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-16-05. DISCIPLINARY HEARING - NOTICE. An inmate violating a jail rule which could result in disciplinary action involving disciplinary segregation shall receive a disciplinary hearing and at least a twenty-four-hour notice of the charges prior to the disciplinary hearing.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-16-06. DISCIPLINARY ACTION PRIOR TO HEARING. Emergency circumstances may require that an inmate be placed in disciplinary segregation for a violation of the jail rules prior to a disciplinary hearing. Such emergency and disciplinary action shall be documented. A disciplinary hearing shall follow such disciplinary action as soon as possible.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-16-07. HEARINGS OFFICER. The jail administrator shall appoint a correctional officer who shall be responsible for conducting hearings involving jail rule violations or the jail administrator may appoint correctional officers to a disciplinary hearings board. The jail administrator may be the hearings officer or a member of the disciplinary hearings board if the administrator is not the reviewing officer on appeal as provided in section 10-05-16-10. The hearings officer or disciplinary hearings board shall receive copies of the reports required in sections 10-05-16-03 and 10-05-16-04.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-16-08. CONDUCT OF HEARING. An inmate has the right to appear at the inmate's disciplinary hearing and testify on the inmate's own behalf. The inmate shall be allowed to call material witnesses and present documentary evidence in the inmate's defense if permitting the inmate to do so will not jeopardize security, order, or rehabilitation. The hearings officer or the disciplinary hearings board may, in its sound discretion, allow the inmate to cross-examine witnesses.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-16-09. REPORT OF HEARING. The hearings officer or the disciplinary hearings board shall make a written report including the findings and disposition to the jail administrator and the reviewing

officer on appeal as provided in section 10-05-16-10. A copy of this report shall be retained by the jail administrator.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-16-10. APPEAL BY INMATE. An inmate has the right to make a written appeal of the decision of the hearings officer or disciplinary hearings board within twenty-four hours of that decision to the jail administrator. If the jail administrator has been involved at a lower level of the disciplinary procedure, then the jail administrator shall designate an individual who has not been involved at a lower level of the disciplinary procedure as the reviewing authority on appeal. The reviewing authority shall make a determination, in writing, based on the written findings at the disciplinary hearing. Any disciplinary action recommended by the hearings officer or disciplinary hearings board may be reduced on appeal but not increased.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-16-11. SEGREGATION OF INMATES. Inmates may be segregated from the remainder of the jail population without a disciplinary hearing if the segregation cell has the same accommodations as those provided to other inmates and the inmate is not deprived of privileges that are available to other inmates.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

CHAPTER 10-05-17
CORRECTIONAL OFFICER TRAINING

Section

10-05-17-01 Orientation Training Program
10-05-17-02 Correctional Officer Training Program

10-05-17-01. ORIENTATION TRAINING PROGRAM. An orientation training program for correctional officers shall provide for orientation training within ninety days of initial employment and annual inservice training. The orientation training program shall be developed by the jail administrator to meet the particular needs of the jail.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-04, 12-44.1-24	NDCC 12-44.1-04

10-05-17-02. CORRECTIONAL OFFICER TRAINING PROGRAM. All full-time and part-time correctional officers and jail administrators shall satisfactorily complete a training program in accordance with North Dakota Century Code chapter 12-62 and the regulations promulgated by the criminal justice training and statistics division.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-04, 12-44.1-24	NDCC 12-44.1-04

CHAPTER 10-05-18
INSPECTIONS

Section	
10-05-18-01	Inspections
10-05-18-02	Access for Inspection

10-05-18-01. INSPECTIONS. Inspections of jails shall be made pursuant to North Dakota Century Code chapter 12-44.1 and the rules set forth herein.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-24	NDCC 12-44.1-24

10-05-18-02. ACCESS FOR INSPECTION. Agents of the attorney general may enter any jail in this state at any time without prior notice; shall be admitted without unnecessary delay; and may confer privately with any employee or inmate.

History: Effective November 1, 1981.

General Authority	Law Implemented
NDCC 12-44.1-24	NDCC 12-44.1-24

CHAPTER 10-05-19
APPLICATION PROCEDURE FOR JAIL CLASSIFICATION
AND INMATE CATEGORIES

Section

10-05-19-01	Application for Jail Classification
10-05-19-02	Notification of Classification

10-05-19-01. APPLICATION FOR JAIL CLASSIFICATION. The jail administrator of each jail shall submit an application for a grade classification which shall specify that the jail is to be considered for a grade one, grade two, or grade three jail, or a juvenile detention center and shall also specify the number of categories of inmates, as set out in North Dakota Century Code section 12-44.1-09, the jail will detain.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

10-05-19-02. NOTIFICATION OF CLASSIFICATION. Within a reasonable period of time, the attorney general shall notify the jail administrator of the approved jail classification and the approved number of categories of inmates that may be detained in the jail. The attorney general shall also notify the jail administrator of the terms of any variances that have been granted.

History: Effective November 1, 1981.

General Authority
NDCC 12-44.1-24

Law Implemented
NDCC 12-44.1-24

TITLE 13

Banking and Financial Institutions, Department of

AUGUST 1981

STAFF COMMENT: Chapter 13-03-08 contains all new material but is not underscored so as to improve readability.

CHAPTER 13-03-08
ADMINISTRATION OF NEGOTIABLE OR TRANSFERABLE
INSTRUMENTS OF ACCOUNT

Section

13-03-08-01	Definitions
13-03-08-02	Issuance of Negotiable or Transferable Instruments

^x13-03-08-01. DEFINITIONS. Negotiable or transferable instrument of account means an account from which the holder is authorized to withdraw funds by means of a negotiable or transferable instrument or other order.

History: Effective August 1, 1981.

General Authority
NDCC 6-01-04

Law Implemented
NDCC 6-01-04,
6-06-06

^x13-03-08-02. ISSUANCE OF NEGOTIABLE OR TRANSFERABLE INSTRUMENTS. The board of directors, by resolution, may establish negotiable or transferable instrument accounts with different dividend rates in conformance with the following:

1. Any terms and conditions prescribed by the board of directors and concerning the issuance and maintenance of negotiable or transferable instrument accounts must be consistent with the requirements of this section.
2. Negotiable and transferable instrument accounts shall be subject to any notice which may be imposed pursuant to the credit union's bylaws.
3. In addition to the general requirements applicable to the establishment and maintenance of negotiable and transferable instrument accounts, the board of directors shall provide for:
 - a. Surety bond coverage.
 - b. Establishing an account agreement with each member that outlines both credit union and member responsibilities.
 - c. Retaining copies or photo reproductions of paid instruments or other evidence of paid orders of withdrawal on file for a period as required by applicable state law.
 - d. Written operational and program specifications on file at the credit union's principal office.
 - e. A share or deposit account which is separate and apart from all other accounts held by the member to be used for accessing by negotiable or transferable instrument.
4. The board of directors may provide for:
 - a. Fees to be assessed for account usage to include but not limited to, charges for stop-payment orders, overdrafts, failure to maintain required balances, and costs required to maintain the account.
 - b. Participation in guarantee arrangements.
 - c. A dividend to be paid, any terms of which are not inconsistent with the North Dakota Century Code and the bylaws of the credit union.

History: Effective August 1, 1981.

General Authority
NDCC 6-01-04

Law Implemented
NDCC 6-06-06

NOVEMBER 1981

13-03-09-01. INTEREST RATES. Interest rates on loans made by a credit union may exceed one and one-half percent per month on unpaid balances but may not exceed the rate which may lawfully be charged by other lending institutions regulated or funded by an agency of the state or federal government.

History: Effective November 1, 1981.

General Authority
NDCC 6-01-04

Law Implemented
NDCC 6-06-18

TITLE 33
Health, Department of

FEBRUARY 1982

χ 33-15-03-03.1. RESTRICTIONS APPLICABLE TO FLARES. No person shall discharge into the ambient air from any single source of emission whatsoever any air contaminant which exhibits greater than twenty percent opacity except that a maximum of sixty percent opacity shall be permissible for not more than one six-minute period per hour.

History: Effective February 1, 1982.

General Authority
NDCC 23-25-03,
28-32-02

Law Implemented
NDCC 23-25-03

χ 33-15-03-04. EXCEPTIONS. The provisions of sections 33-15-03-01, 33-15-03-02, and 33-15-03-03, and 33-15-03-03.1 shall not apply in the following circumstances:

1. Where the presence of uncombined water is the only reason for failure of an emission to meet the requirements.
2. When smoke is emitted for the purpose of training or research when approved by the department, including training schools for firefighting personnel.
3. Where an applicable opacity standard is established for a specific source.
4. Where the limits specified in this article cannot be met because of operations or processes such as, but not limited to, oil field service and drilling operations, but only so

long as it is not technically feasible to meet said specifications.

5. Where fugitive emissions are caused by agricultural activities related to the normal operations of a farm.

History: Amended effective February 1, 1982.

General Authority
NDCC 23-25-03,
28-32-02

Law Implemented
NDCC 23-25-03

χ 33-15-07-02. REQUIREMENTS FOR ORGANIC COMPOUNDS GAS DISPOSAL.

1. No person shall cause or permit the emission of organic compounds gases and vapors, except from an emergency vapor blowdown system or emergency relief system, unless these gases and vapors are burned by ~~smokeless~~ flares, or an equally effective control device as approved by the department.
2. Organic compounds gases and vapors which are generated as wastes as the result of oil exploration, development, production, refining, or processing operations and which contain hydrogen sulfide, shall be incinerated, flared, or treated in an equally effective manner before being released to the ambient air. The emissions from all devices designed for incinerating, flaring, or treating waste organic compounds gases and vapors shall result in compliance with the ambient air quality standards.
3. Each flare shall be equipped and operated with an automatic ignitor or a continuous burning pilot.

History: Amended effective February 1, 1982.

General Authority
NDCC 23-25-03,
28-32-02

Law Implemented
NDCC 23-25-03

STAFF COMMENT: Equations to be deleted are omitted and new equations are not underscored.

χ 33-15-12-04. STANDARDS OF PERFORMANCE.

1. Standards of performance for fossil-fuel steam generators.
 - a. Applicability and designation of affected facility.

- (1) The affected facilities to which the provisions of this subsection apply are:
 - (a) Each fossil fuel-fired steam generating unit of more than seventy-three megawatts heat input rate [250 million Btu per hour].
 - (b) Each fossil fuel and wood residue-fired steam generating unit capable of firing fossil fuel at a heat input rate of more than seventy-three megawatts [250 million Btu per hour].
 - (2) Any change to an existing fossil fuel-fired steam generating unit to accommodate the use of combustible materials, other than fossil fuels as defined in this subsection, shall not bring that unit under the applicability of this subsection.
 - (3) Except as provided in paragraphs 4 and 5 any facility under paragraph 1 that commenced construction or modification after August 7, 1971, is subject to the requirements of this subsection.
 - (4) The requirements of subparagraphs d and e of paragraph 1 and paragraphs 3 and 4 of subdivision e are applicable to lignite-fired steam generating units that commenced construction or modification after December 22, 1976.
 - (5) Any facility covered under subsection 2 is not covered under this subsection.
- b. Definitions. As used in this subsection, all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25, and in subsection 2 of section 33-15-12-01.
- (1) "Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American society for testing material. Designation D388-66.
 - (2) "Coal refuse" means wasteproducts of coal mining, cleaning, and coal preparation operations, e.g., culm, gob, etc., containing coal, matrix material, clay, and other organic and inorganic material.
 - (3) "Fossil fuel" means natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such materials for the purpose of creating useful heat.

- (4) "Fossil fuel-fired steam generating unit" means furnace or boiler used in the process of burning fossil fuel for the purpose of producing steam by heat transfer.
 - (5) "Fossil fuel and wood residue-fired steam generating unit" means a furnace or boiler used in the process of burning fossil fuel and wood residue for the purpose of producing steam by heat transfer.
 - (6) "Wood residue" means bark, sawdust, slabs, chips, shavings, mill trim, and other wood products derived from wood processing and forest management operations.
- c. Standard for particulate matter. On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility any gases which:
- (1) Contain particulate matter in excess of forty-three nanograms per joule heat input [0.10 pound per million Btu] derived from fossil fuel or fossil fuel and wood residue.
 - (2) Exhibit greater than twenty percent opacity except for one six-minute period per hour of not more than twenty-seven percent opacity.
- d. Standard for sulfur dioxide.
- (1) On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility any gases which contain sulfur dioxide in excess of:
 - (a) Three hundred forty nanograms per joule heat input [0.80 pound per million Btu] derived from liquid fossil fuel or liquid fossil fuel and wood residue.
 - (b) Five hundred twenty nanograms per joule heat input [1.2 pound per million Btu] derived from solid fossil fuel or solid fossil fuel and wood residue.
 - (2) When different fossil fuels are burned simultaneously in any combination, the applicable standard (in

nanograms per joule) shall be determined by proration using the following formula:

$$\text{PSSO2} = \frac{y(340) + z(520)}{y + z}$$

where:

PSSO2 = prorated standard for sulfur dioxide when burning different fuels simultaneously, in nanograms per joule heat input derived from all fossil fuels fired or from all fossil fuels and wood residue fired.

y = percentage of total heat input derived from liquid fossil fuel.

z = percentage of total heat input derived from solid fossil fuel.

- (3) Compliance shall be based on the total heat input from all fossil fuels burned, including gaseous fuels.

e. Standard for nitrogen oxides.

- (1) On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility any gases which contain nitrogen oxides expressed as NO₂ in excess of:
 - (a) Eighty-six nanograms per joule heat input [0.20 pound per million Btu] derived from gaseous fossil fuel or gaseous fossil fuel and wood residue.
 - (b) One hundred thirty nanograms per joule heat input [0.30 pound per million Btu] derived from liquid fossil fuel or liquid fossil fuel and wood residue.
 - (c) Three hundred nanograms per joule heat input [0.70 pound per million Btu] derived from solid fossil fuel or solid fossil fuel and wood residue (except lignite or a solid fossil fuel containing twenty-five percent by weight, or more of coal refuse).
 - (d) Two hundred sixty nanograms per joule heat input [0.60 pound per million Btu] derived from

lignite or lignite and wood residue [except as provided under subparagraph e].

(e) Three hundred forty nanograms per joule heat input [0.80 pound per million Btu] derived from lignite which is mined in North Dakota, South Dakota, or Montana and which is burned in a cyclone-fired unit.

(2) Except as provided under paragraphs 3 and 4, when different fossil fuels are burned simultaneously in any combination, the applicable standard (in nanograms per joule) is determined by proration using the following formula:

$$\text{PSNO}_x = \frac{w(260+x(86))+y(130)+z(300)}{w+x+y+z}$$

where:

PSNO_x = prorated standard for nitrogen oxides when burning different fuels simultaneously, in nanograms per joule heat input derived from all fossil fuels fired or from all fossil fuels and wood residue fired.

w = percentage of total heat input derived from lignite.

x = percentage of total heat input derived from gaseous fossil fuel.

y = percentage of total heat input derived from liquid fossil fuel; and

z = percentage of total heat input derived from solid fossil fuel (except lignite).

(3) When a fossil fuel containing at least twenty-five percent, by weight, of coal refuse is burned in combination with gaseous, liquid, or other solid fossil fuel or wood residue, the standard for nitrogen oxides does not apply.

(4) Cyclone-fired units which burn fuels containing at least twenty-five percent of lignite that is mined in North Dakota, South Dakota, or Montana remain subject to subparagraph e of paragraph 1 regardless of the types of fuel burned in combination with that lignite.

f. Emission and fuel monitoring.

- (1) Each owner or operator shall install, calibrate, maintain, and operate continuous monitoring systems for measuring the opacity of emissions, sulfur dioxide emissions, nitrogen oxides emissions, and either oxygen or carbon dioxide except as provided in paragraph 2.
- (2) Certain of the continuous monitoring system requirements under paragraph 1 do not apply to owners or operators under the following conditions:
 - (a) For a fossil fuel-fired steam generator that burns only gaseous fossil fuel, continuous monitoring systems for measuring the opacity of emissions and sulfur dioxide emissions are not required.
 - (b) For a fossil fuel-fired steam generator that does not use a flue gas desulfurization device, a continuous monitoring system for measuring sulfur dioxide emissions is not required if the owner or operator monitors sulfur dioxide emissions by fuel sampling and analysis under paragraph 4.
 - (c) Notwithstanding subdivision b of subsection 11 of section 33-15-12-01, installation of a continuous monitoring system for nitrogen oxides may be delayed until after the initial performance tests under subsection 7 of section 33-15-12-01 have been conducted. If the owner or operator demonstrates during the performance test that emissions of nitrogen oxides are less than seventy percent of the applicable standards in subdivision e of subsection 1 of section 33-15-12-04 a continuous monitoring system for measuring nitrogen oxides emissions is not required. If the initial performance test results show that nitrogen oxide emissions are greater than seventy percent of the applicable standard, the owner or operator shall install a continuous monitoring system for nitrogen oxides within one year after the date of the initial performance tests under subsection 7 of section 33-15-12-01 and comply with all other applicable monitoring requirements under this subdivision.
 - (d) If an owner or operator does not install any continuous monitoring systems for sulfur oxides and nitrogen oxides, as provided under subparagraphs a and c or subparagraphs b and c a continuous monitoring system for measuring either oxygen or carbon dioxide is not required.

(3) For performance evaluations under subdivision c of subsection 11 of section 33-15-12-01 and calibration checks under subdivision d of subsection 11 of section 33-15-12-01, the following procedures shall be used:

- (a) Reference Method 6 or 7, as applicable, shall be used for conducting performance evaluations of sulfur dioxide and nitrogen oxides continuous monitoring systems.
- (b) Sulfur dioxide or nitric oxide, as applicable, shall be used for preparing calibration gas mixtures under Performance Specification 2 of Appendix B to this chapter.
- (c) For affected facilities burning fossil fuel, the span value for a continuous monitoring system measuring the opacity of emissions shall be eighty, ninety, or one hundred percent and for a continuous monitoring system measuring sulfur oxides or nitrogen oxides the span value shall be determined as follows:

(In parts per million)

Fossil fuel	Span value for sulfur dioxide	Span value for nitrogen oxides
Gas	*	500
Liquid	1,000	500
Solid	1,500	500
Combinations	$1,000y+1,500z$	$500(x+y)+1,000z$

* Not applicable.

where:

x = fraction of total heat input derived from gaseous fossil fuel.

y = fraction of total heat input derived from liquid fossil fuel.

z = fraction of total heat input derived from solid fossil fuel.

- (d) All span values computed under subparagraph c for burning combinations of fossil fuels shall

be rounded to the nearest five hundred parts per million.

- (e) For a fossil fuel-fired steam generator that simultaneously burns fossil fuel and nonfossil fuel, the span value of all continuous monitoring systems shall be subject to the department's approval.

(4) [Reserved]

- (5) For any continuous monitoring system installed under subparagraph 1, the following conversion procedures shall be used to convert the continuous monitoring data into units of the applicable standards (nanograms per joule, pounds per million Btu):

- (a) When a continuous monitoring system for measuring oxygen is selected, the measurement of the pollutant concentration and oxygen concentration shall each be on a consistent basis (wet or dry). Alternative procedures approved by the department shall be used when measurements are on a wet basis. When measurements are on a dry basis, the following conversion procedure shall be used:

$$E = CF \left[\frac{20.9}{20.9 - \text{percent } O_2} \right]$$

where:

E, C, F and %O₂, are determined under paragraph 6.

- (b) When a continuous monitoring system for measuring carbon dioxide is selected, the measurements of the pollutant concentration and carbon dioxide concentration shall each be on a consistent basis (wet or dry) and the following conversion procedure shall be used:

$$E = CFc \left[\frac{100}{\text{percent } CO_2} \right]$$

where:

E, C, Fc, and %CO₂ are determined under paragraph 6.

- (6) The values used in the equations under paragraph 5 are derived as follows:

- (a) E = pollutant emission, ng/j (lb/million Btu).
- (b) C = pollutant concentration, ng/dscm (lb/dscf), determined by multiplying the average concentration (ppm) for each one-hour period by 4.15×10^4 M ng/dscm per ppm [2.59×10^{-9} M lb/dscf per ppm] where M = pollutant molecular weight, g/g-mole (lb/lb-mole). M = 64.07 for sulfur dioxide and 46.01 for nitrogen oxides.
- (c) %O₂, %CO₂ = oxygen or carbon dioxide volume (expressed as percent).
- (d) F, F_c = a factor representing a ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted (F) and a factor representing a ratio of the volume of carbon dioxide generated to the calorific value of the fuel combusted (F_c), respectively. Values of F and F_c are given as follows:
- [1] For anthracite coal as classified according to A.S.T.M. D388-66, $F = 2.723 \times 10^{-7}$ dscm/j [10140 dscf/million Btu] and $F_c = 0.532 \times 10^{-7}$ scm CO₂/j [1980 scf CO₂/million Btu].
 - [2] For subbituminous and bituminous coal as classified according to A.S.T.M. D388-66, $F = 2.637 \times 10^{-7}$ dscm/j [9820 dscf/million Btu] and $F_c = 0.486 \times 10^{-7}$ scm CO₂/j [1810 scf CO₂/million Btu].
 - [3] For liquid fossil fuels including crude, residual, and distillate oils, $F = 2.476 \times 10^{-7}$ dscm/j [9220 dscf/million Btu] and $F_c = 0.384 \times 10^{-7}$ scm CO₂/j [1430 scf CO₂/million Btu].
 - [4] For gaseous fossil fuels, $F = 2.347 \times 10^{-7}$ dscm/j [8740 dscf/million Btu]. For natural gas, propane, and butane fuels, $F_c = 0.279 \times 10^{-7}$ scm CO₂/j [1040 scf CO₂/million Btu] for natural gas, 0.322×10^{-7} scm CO₂/j [1200 scf CO₂/million Btu] for propane, and 0.338×10^{-7} scm CO₂/j [1260 scf CO₂/million Btu] for butane.
 - [5] For bark $F = 1.076$ dscm/j [9,575 dscf/million Btu] and $F_c = 0.217$ dscm/j [1,927 dscf/million Btu]. For wood residue other than bark $F = 1.038$ dscm/j [9,233

dscf/million Btu] and $F_c = 0.207$ dscm/j [1,842 dscf/million Btu].

[6] For lignite coal as classified according to A.S.T.M. D388-66, $F = 2.659 \times 10^{-7}$ dscm/j [9900 dscf/million Btu] and $F_c = 0.516 \times 10^{-7}$ scm CO₂/j [1920 scf CO₂/million Btu].

(e) The owner or operator may use the following equations to determine an F factor (dscm/j, or dscf/million Btu) on a dry basis (if it is desired to calculate F on a wet basis, consult with the department) or F_c factor (scm CO₂/j, or scf CO₂/million Btu) on either basis in lieu of the F or F_c factors specified in subparagraph d of this paragraph:

$$F = 10^{-6} \frac{227.2(\%H) + 95.5(\%C) + 35.6(\%S) + 8.7(\%N) - 28.7(\%O)}{GCV} \quad (\text{metric units})$$

$$F = 106 \frac{3.64\%H + 1.53\%C + 0.57\%S + 0.14\%N - 0.46\%O}{GCV} \quad (\text{English units})$$

$$F_c = \frac{2.0 \times 10^{-5} (\%C)}{GCV} \quad (\text{metric units})$$

$$F_c = \frac{321 \times 10^3 \%C}{GCV} \quad (\text{English units})$$

[1] H, C, S, N, and O are content by weight of hydrogen, carbon, sulfur, nitrogen, and oxygen (expressed as percent), respectively, as determined on the same basis as GCV by ultimate analysis of the fuel fired, using A.S.T.M. method D3178-74 or D3176 (solid fuels), or computed from results using A.S.T.M. methods D1137-53(70), D1945-64(73), or D1946-67(72) (gaseous fuels) as applicable.

[2] GCV is the gross calorific value (kj/kg, Btu/lb) of the fuel combusted, determined by the A.S.T.M. test methods D2015-66(72) for solid fuels and D1826-64(70) for gaseous fuels as applicable.

[3] For affected facilities which fire both fossil fuels and nonfossil fuels, the F or F_c value shall be subject to the department's approval.

(f) For affected facilities firing combinations of fossil fuels or fossil fuels and wood residue,

the F or Fc factors determined by subparagraph (d) or (e) of this paragraph shall be prorated in accordance with the applicable formula as follows:

[1]

$$F = \sum_{i=1}^n X_i F_i \text{ or } F_c = \sum_{i=1}^n X_i (F_c)_i$$

where:

X_i = fraction of total heat input derived from each type fuel (e.g., natural gas, bituminous coal, wood residue, etc.).

F_i or $(F_c)_i$ = applicable Fc factor for each fuel type determined in accordance with subparagraph d or e.

n = number of fuels being burned in combination.

[2] For affected facilities which fire both fossil fuels and nonfossil fuels, the F or Fc value shall be subject to the department's approval.

(7) For the purpose of reports required under subdivision c of subsection 6 of section 33-15-12-01, periods of excess emissions that shall be reported are defined as follows:

(a) Opacity. Excess emissions are defined as any six-minute period during which the average opacity of emissions exceeds twenty percent opacity, except that one six-minute average per hour of up to twenty-seven percent opacity need not be reported.

(b) Sulfur dioxide. Excess emissions for affected facilities are defined as:

[1] Any three-hour period during which the average emissions (arithmetic average of three contiguous one-hour periods) of sulfur dioxide as measured by a continuous monitoring system exceed the applicable

standard under subdivision d of subsection 1.

[2] [Reserved]

- (c) Nitrogen oxides. Excess emissions for affected facilities using a continuous monitoring system for measuring nitrogen oxides are defined as any three-hour period during which the average emissions (arithmetic average of three contiguous one-hour periods) exceed the applicable standards under subdivision e of subsection 1.

g. Test methods and procedures.

- (1) The reference methods in Appendix A of this chapter, except as provided in subdivision b of subsection 7 of section 33-15-12-01, shall be used to determine compliance with the standards as prescribed in subdivisions c, d, and e of this subsection as follows:
 - (a) Method 1 for selection of sampling site and sample traverses.
 - (b) Method 3 for gas analysis to be used when applying Reference Methods 5, 6, and 7.
 - (c) Method 5 for concentration of particulate matter and the associated moisture content.
 - (d) Method 6 for concentration of sulfur dioxide.
 - (e) Method 7 for concentration of nitrogen oxides.
- (2) For Method 5, Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least sixty minutes and the minimum sampling volume shall be 0.85 dscm [30 dscf] except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the department. The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature no greater than four hundred thirty-three degrees Kelvin [320 degrees Fahrenheit].
- (3) For Methods 6 and 7, the sampling site shall be the same as that selected for Method 5. The sampling point in the duct shall be at the centroid of the

cross section or at a point no closer to the walls than one meter [3.28 feet].

- (4) For Method 6, the minimum sampling time shall be twenty minutes and the minimum sampling volume 0.02 dscm [0.71 dscf] for each sample. The arithmetic mean of two samples shall constitute one run. Samples shall be taken at approximately thirty-minute intervals.
- (5) For Method 7, each run shall consist of at least four grab samples taken at approximately fifteen-minute intervals. The arithmetic mean of the samples shall constitute the run value.
- (6) For each run using the methods specified by subparagraphs c, d, and e of paragraph 1, the emissions expressed in nanograms per joule [pounds per million Btu] shall be determined by the following equation:

$$E = CF \frac{20.9}{20.9 - \text{percent } O_2}$$

where:

E = pollutant emission ng/j [lb/million Btu].

C = pollutant concentration, ng/dscm [lb/dscf], determined by Method 5, 6, or 7.

%O₂ = oxygen content by volume (expressed as percent), dry basis. Percent oxygen shall be determined by using the integrated or grab sampling and analysis procedures of Method 3 as applicable. The sample shall be obtained as follows:

For determination of sulfur dioxide and nitrogen oxides emissions, the oxygen sample shall be obtained simultaneously at the same point in the duct as used to obtain the samples for Methods 6 and 7 determinations, respectively paragraph 3 of this subdivision. For Method 7, the oxygen samples shall be obtained using the grab sampling and analysis procedures of Method 3.

For determination of particulate emissions, the oxygen sample shall be obtained simultaneously by traversing the duct at

the same sampling location used for each run of Method 5 under paragraph 2 of this subdivision. Method 1 shall be used for selection of the number of traverse points except that no more than twelve sample points are required.

F = a factor as determined in subparagraphs d, e, and f of paragraph 6 of subdivision f.

- (7) When combinations of fossil fuels or fossil fuel and wood residue are fired, the heat input, expressed in watts (Btu/hr), is determined during each testing period by multiplying the gross calorific value of each fuel fired (in j/kg or Btu/lb) by the rate of each fuel burned (in kg/sec or lb/hr). Gross calorific values are determined in accordance with A.S.T.M. methods D2015-66(72) (solid fuels), D240-64(73) (liquid fuels), or D1826(7) (gaseous fuels) as applicable. The method used to determine calorific value of wood residue must be approved by the department. The owner or operator shall determine the rate of fuels burned during each testing period by suitable methods and shall confirm the rate by a material balance over the steam generation system.

~~2--Standards-of-performance-for-incinerators:~~

~~a--Applicability-and-designation-of-affected-facility--The provisions-of-this-subsection-are-applicable-to-each incinerator-of-more-than-forty-five-metric-tons-per-day charging-rate-{fifty-tons-per-day};-which-is-the-affected facility:~~

~~b--Definitions---As-used-in-this-subsection;-all-terms-not defined-herein-shall-have-the-meaning-given-them-in-North Dakota--Century--Code-chapter-23-25-and-in-subsection-2-of section-33-15-12-01:~~

~~{1}--"Day"--means-twenty-four-hours:~~

~~{2}--"Incinerator"--means-any-furnace-used-in-the-process of-burning-solid-waste-for-the-purpose-of-reducing the-volume-of-the-waste-by-removing-combustible matter:~~

~~{3}--"Solid-waste"--means-refuse;-more-than-fifty-percent of-which-is-municipal-type-waste-consisting-of-a mixture-of-paper;-wood;-yard-wastes;-food-wastes; plastics;-leather;-rubber;-and-other-combustibles; and-noncombustible-materials-such-as-glass-and-rock:~~

e.--Standard-for-particulate-matter.--On-and-after-the-date-on which-the-performance-test-required-to-be-conducted-by subsection-7-of-section-33-15-12-01-is-completed,-no-owner or-operator-subject-to-the-provisions-of--this--subsection shall-cause-to-be-discharged-into-the-atmosphere-from-any affected-facility-any-gases--which--contain--particulate matter--in--excess-of-0.18-g/dscm-{0.08-gr/dsef}-corrected to-twelve-percent-carbon-dioxide-

d.--Monitoring-of-operations:---The-owner-or-operator-of-any incinerator-subject-to-the-provisions-of--this--subsection shall-record-the-daily-charging-rates-and-hours-of operation-

e.--Test-methods-and-procedures-

{1}--The-reference-methods-in-Appendix-A-to-this-chapter, except-as-provided-for-in-subdivision-b-of-subsection 7--of-section-33-15-12-01,-shall-be-used-to-determine compliance---with---the---standard---prescribed---in subdivision-e-of-this-subsection-as-follows-

{a}--Method-5--for--the-concentration-of-particulate matter-and-the-associated-moisture-content-

{b}--Method-1-for-sample-and-velocity-traverses-

{c}--Method-2-for-velocity-and-volumetric-flow-rate-

{d}--Method-3--for--gas--analysis-and-calculation-of excess-air,---using---the---integrated---sample technique-

{2}--For-Method-5,-the-sampling-time-for-each-run-shall-be at-least-sixty-minutes-and-the-minimum-sample-volume shall-be-0.85--dscm-{30.0-dsef}-except-that-smaller sampling-times-or-sample-volumes,-when-necessitated by--process--variables--or--other--factors,-may-be approved-by-the-department-

{3}--If-a-wet-scrubber-is-used,-the-gas-analysis-sample shall-reflect-flue-gas-conditions-after-the-scrubber, allowing-for-carbon-dioxide-absorption-by-sampling the-gas-on-the-scrubber-inlet-and-outlet-sides according-to-either-the-procedure-under-subparagraphs {a}-through-{e}-or-the-procedure-under--subparagraphs {a};-{b};-and-{f}-as-follows-

{a}--The-outlet-sampling-site-shall-be-the-same-as for-the-particulate-matter-measurement:---The inlet-site-shall-be-selected-according-to-Method 1,-or-as-specified-by-the-department-

(b) Randomly select nine sampling points within the cross-section at both the inlet and outlet sampling sites. Use the first set of three for the first run; the second set for the second run; and the third set for the third run.

(c) Simultaneously with each particulate matter run, extract and analyze for carbon dioxide an integrated gas sample according to Method 3, traversing the three sample points and sampling at each point for equal increments of time. Runs shall be conducted at both inlet and outlet sampling sites.

(d) Measure the volumetric flow rate at the inlet during each particulate matter run according to Method 2, using the full number of traverse points. For the inlet make two full velocity traverses approximately one hour apart during each run and average the results. The outlet volumetric flow rate may be determined from the particulate matter run (Method 5).

(e) Calculate the adjusted carbon dioxide percentage using the following equation:

Formula Omitted.

where:

$(\%CO_2)_{adj}$ = adjusted carbon dioxide percentage which removes the effect of carbon dioxide absorption and dilution air.

$(\%CO_2)_{di}$ = percentage of carbon dioxide measured before the scrubber, dry basis.

Q_{di} = volumetric flow rate before the scrubber, average of two runs, $dscf/min$ (using Method 2).

Q_{do} = volumetric flow rate after the scrubber, $dscf/min$ (using Methods 2 and 5).

(f) Alternatively, the following procedures may be substituted for the procedures under subparagraphs (c), (d), and (e):

{1}--Simultaneously with each particulate-matter run,--extract--and--analyze---for---carbon dioxide,--oxygen,--and--nitrogen--an--integrated gas--sample--according---to---Method---3, traversing--the--three--sample--points--and sampling--for--equal--increments--of--time--at each--point:---Conduct--the--runs--at--both--the inlet--and--outlet--sampling--sites:

{2}--After--completing--the--analysis--of--the--gas sample,--calculate--the--percentage--of--excess air--(%--EA)--for--both--the--inlet--and--outlet sampling--sites--using--equation---3-1---in Appendix-A--to--this--chapter:

{3}--Calculate---the---adjusted--carbon--dioxide percentage--using--the--following--equation:

Formula Omitted.

where:

$(\% \text{CO}_2)_{\text{adj}}$ ==adjusted-outlet-carbon-dioxide percentage:

$(\% \text{CO}_2)_{\text{di}}$ ==percentage-of-carbon-dioxide measured-before-the-scrubber, dry-basis:

$(\% \text{EA})_{\text{i}}$ ==percentage-of-excess-air-at the-inlet:

$(\% \text{EA})_{\text{o}}$ ==percentage-of-excess-air-at the-outlet:

{4}--Particulate--matter--emissions,--expressed--in g/dscm,--shall--be--corrected---to---twelve percent---carbon---dioxide---by--using--the following--formula:

Formula Omitted.

where:

e_{12} ==concentration-of-particulate matter--corrected--to--twelve percent--carbon--dioxide:

e ==concentration-of-particulate matter as measured by Method 5.

%-CO₂-=percentage-of-carbon-dioxide
as-measured-by-Method-3;-or-when
applicable;-the-adjusted-outlet
carbon-dioxide-percentage-as
determined-by-paragraph-(3)-of
this-subdivision:

2. Standards of performance of electric utility steam generating units.

a. Applicability and designation of affected facility.

(1) The affected facility to which this subsection applies is each electric utility steam generating unit:

(a) That is capable of combusting more than seventy-three megawatts [250 million Btu/hour] heat input of fossil fuel (either alone or in combination with any other fuel); and

(b) For which construction or modification is commenced after September 18, 1978.

(2) This subsection applies to electric utility combined cycle gas turbines that are capable of combusting more than seventy-three megawatts [250 million Btu/hour] heat input of fossil fuel in the steam generator. Only emissions resulting from combustion of fuels in the steam generating unit are subject to this subsection.

(3) Any change in an existing fossil-fuel-fired steam generating unit to accommodate the use of combustible materials, other than fossil fuels, shall not bring that unit under the applicability of this subsection.

(4) Any change in an existing steam generating unit originally designed to fire gaseous or liquid fossil fuels, to accommodate the use of any other fuel (fossil or nonfossil) shall not bring that unit under the applicability of this subsection.

b. Definitions. As used in this subsection all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01.

(1) "Anthracite" means coal that is classified as anthracite according to the American society of testing and materials' Standard Specification for Classification of Coals by Rank D388-66.

- (2) "Available purchase power" means the lesser of the following:
- (a) The sum of available system capacity in all neighboring companies.
 - (b) The sum of the rated capacities of the power interconnection devices between the principal company and all neighboring companies, minus the sum of the electric power load on these interconnections.
 - (c) The rated capacity of the power transmission lines between the power interconnection devices and the electric generating units (the unit in the principal company that has the malfunctioning flue gas desulfurization system and the units in the neighboring company supplying replacement electrical power) less the electric power load on these transmission lines.
- (3) "Available system capacity" means the capacity determined by subtracting the system load and the system emergency reserves from the net system capacity.
- (4) "Boiler operating day" means a twenty-four-hour period during which fossil fuel is combusted in a steam generating unit for the entire twenty-four hours.
- (5) "Coal refuse" means waste products of coal mining, physical coal cleaning, and coal preparation operations, e.g., culm, gob, etc., containing coal, matrix material, clay, and other organic and inorganic material.
- (6) "Combined cycle gas turbine" means a stationary turbine combustion system where heat from the turbine exhaust gases is recovered by a steam generating unit.
- (7) "Commercial demonstration permit" means a permit which is issued by the administrator of the United States environmental protection agency in accordance with 40 CFR 60.45a.
- (8) "Electric utility combined cycle gas turbine" means any combined cycle gas turbine used for electric generation that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than twenty-five megawatts electric output to any utility power

distribution system for sale. Any steam distribution system that is constructed for the purpose of providing steam to a steam electric generator that would produce electrical power for sale is also considered in determining the electrical energy output capacity of the affected facility.

- (9) "Electric utility company" means the largest interconnected entity that generates electric power for sale, e.g., a holding company with operating subsidiary companies.
- (10) "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than twenty-five megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.
- (11) "Emergency condition" means that period of time when:
- (a) The electric generation output of an affected facility with a malfunctioning flue gas desulfurization system cannot be reduced or electrical output must be increased because:
- [1] All available system capacity in the principal company interconnected with the affected facility is being operated; and
- [2] All available purchase power interconnected with the affected facility is being obtained; or
- (b) The electric generation demand is being shifted as quickly as possible from an affected facility with a malfunctioning flue gas desulfurization system to one or more electrical generating units held in reserve by the principal company or by a neighboring company; or
- (c) An affected facility with a malfunctioning flue gas desulfurization system becomes the only available unit to maintain a part or all of the principal company's system emergency reserves and the unit is operated spinning reserve at the lowest practical electric generation load consistent with not causing significant physical

damage to the unit. If the unit is operated at a higher load to meet load demand, an emergency condition would not exist unless the conditions under subparagraph a apply.

(12) "Fossil fuel" means natural gas, petroleum, coal and any form of solid, liquid, or gaseous fuels derived from such material for the purpose of creating useful heat.

(13) "Interconnected" means that two or more electric generating units are electrically tied together by a network of power transmission lines, and other power transmission equipment.

(14) "Lignite" means coal that is classified as lignite A or B according to the American society of testing and materials' Standard Specification for Classification of Coals by Rank D388-66.

(15) "Neighboring company" means any one of those electric utility companies with one or more electric power interconnections to the principal company and which have geographically adjoining service areas.

(16) "Net system capacity" means the sum of the net electric generating capability (not necessarily equal to rated capacity) of all electric generating equipment owned by an electric utility company (including steam generating units, internal combustion engines, gas turbines, nuclear units, hydroelectric units, and all other electric generating equipment) plus firm contractual purchases that are interconnected to the affected facility that has the malfunctioning flue gas desulfurization system. The electric generating capability of equipment under multiple ownership is prorated based on ownership unless the proportional equipment to electric output is otherwise established by contractual arrangement.

(17) "Potential combustion concentration" means the theoretical emissions (ng/j, lb/million Btu heat input) that would result from combustion of a fuel in an uncleaned state without emission control systems and;

(a) For particulate matter is:

[1] Three thousand nanogram/joule [7.0 lb/million Btu] heat input for solid fuel; and

[2] Seventy-five nanogram/joule [0.17 lb/million Btu] heat input for liquid fuels.

(b) For sulfur dioxide is determined under paragraph 2 of subdivision h.

(c) For nitrogen oxides is:

[1] Two hundred ninety nanogram/joule [0.67 lb/million Btu] heat input for gaseous fuels;

[2] Three hundred ten nanogram/joule [0.72 lb/million Btu] heat input for liquid fuels; and

[3] Nine hundred ninety nanogram/joule [2.30 lb/million Btu] heat input for solid fuels.

(18) "Potential electric output capacity" is defined as thirty-three percent of the maximum design heat input capacity of the steam generating unit, e.g., a steam generating unit with a one hundred megawatt [340 million Btu/hr] fossil-fuel heat input capacity would have a thirty-three megawatt potential electrical output capacity. For electric utility combined cycle gas turbines the potential electrical output capacity is determined on the basis of the fossil-fuel firing capacity of the steam generator exclusive of the heat input and electrical power contribution by the gas turbine.

(19) "Principal company" means the electric utility company or companies which own the affected facility.

(20) "Resource recovery unit" means a facility that combusts more than seventy-five percent nonfossil fuel on a quarterly (calendar) heat input basis.

(21) "Solid-derived fuel" means any solid, liquid, or gaseous fuel derived from solid fuel for the purpose of creating useful heat and includes, but is not limited to, solvent refined coal, liquefied coal, and gasified coal.

(22) "Spare flue gas desulfurization system module" means a separate system of sulfur dioxide emission control equipment capable of treating an amount of flue gas equal to the total amount of flue gas generated by an affected facility when operated at maximum capacity divided by the total number of nonspare flue gas desulfurization modules in the system.

- (23) "Spinning reserve" means the sum of the unutilized net generating capability of all units of the electric utility company that are synchronized to the power distribution system and that are capable of immediately accepting additional load. The electric generating capability of equipment under multiple ownership is prorated based on ownership unless the proportional entitlement to electric output is otherwise established by contractual arrangement.
- (24) "Steam generating unit" means any furnace, boiler, or other device used for combusting fuel for the purpose of producing steam (including fossil-fuel-fired steam generators associated with combined cycle gas turbines; nuclear steam generators are not included).
- (25) "Subbituminous coal" means coal that is classified as subbituminous A, B, or C according to the American society of testing and materials' Standard Specification for Classification of Coals by Rank D388-66.
- (26) "System emergency reserves" means an amount of electric generating capacity equivalent to the rated capacity of the single largest electric generating unit in the electric utility company (including steam generating unit, internal combustion engines, gas turbines, nuclear units, hydroelectric units, and all other electric generating equipment) which is interconnected with the affected facility that has the malfunctioning flue gas desulfurization system. The electric generating capability of equipment under multiple ownership is prorated based on ownership unless the proportional entitlement to electric output is otherwise established by contractual arrangement.
- (27) "System load" means that entire electric demand of an electric utility company's service area interconnected with the affected facility that has the malfunctioning flue gas desulfurization system plus firm contractual sales to other electric utility companies. Sales to other electric utility companies, e.g., emergency power, not on a firm contractual basis may also be included in the system load when no available system capacity exists in the electric utility company to which the power is supplied for sale.
- (28) "Twenty-four-hour period" means the period of time between 12:01 a.m. and 12:00 midnight.

c. Standard for particulate matter.

(1) On and after the date on which the performance test required to be conducted under subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility any gases which contain particulate matter in excess of:

(a) Thirteen nanograms/joule [0.03 lb/million Btu] heat input derived from the combustion of solid, liquid, or gaseous fuel;

(b) One percent of the potential combustion concentration (99 percent reduction) when combusting solid fuel; and

(c) Thirty percent of potential combustion concentration (70 percent reduction) when combusting liquid fuel.

(2) On and after the date the particulate matter performance test required to be conducted under subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility any gases which exhibit greater than twenty percent opacity (six-minute average), except for one six-minute period per hour of not more than twenty-seven percent opacity.

d. Standard for sulfur dioxide.

(1) On and after the date on which the initial performance test required to be conducted under subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility which combusts solid fuel or solid-derived fuel, except as provided under paragraph 3, 4, 5, or 7, any gases which contain sulfur dioxide in excess of:

(a) Five hundred twenty nanograms/joule [1.20 lb/million Btu] heat input and ten percent of the potential combustion concentration (ninety percent reduction); or

(b) Thirty percent of the potential combustion concentration (70 percent reduction), when emissions are less than two hundred sixty nanograms/joule [0.60 lb/million Btu] heat input.

- (2) On and after the date on which the initial performance test required to be conducted under subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility which combusts liquid or gaseous fuels (except for liquid or gaseous fuels derived from solid fuels and as provided under paragraph 7, any gases which contain sulfur dioxide in excess of:
- (a) Three hundred forty nanograms/joule [0.80 lb/million Btu] heat input and ten percent of the potential combustion concentration (ninety percent reduction); or
 - (b) One hundred percent of the potential combustion concentration (zero percent reduction) when emissions are less than eighty-six nanograms/joule [0.20 lb/million Btu] heat input.
- (3) On and after the date on which the initial performance test required to be conducted under subsection 7 of section 33-15-12-01 is complete, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility which combusts solid solvent refined coal (SCR-I) any gases which contain sulfur dioxide in excess of five hundred twenty nanograms/joule [1.20 lb/million Btu] heat input and fifteen percent of the potential combustion concentration (eighty-five percent reduction), except as provided under paragraph 5, compliance with the emission limitation is determined on a thirty-day rolling average basis and compliance with the percent reduction requirement is determined on a twenty-four-hour basis.
- (4) Sulfur dioxide emissions are limited to five hundred twenty nanograms/joule [1.20 lb/million Btu] heat input from any affected facility which:
- (a) Combusts one hundred percent anthracite; and
 - (b) Is classified as a resource recovery facility.
- (5) The emission reduction requirements under this subsection do not apply to any affected facility that is operated under a sulfur dioxide commercial demonstration permit issued by the administrator of the United States environmental protection agency.

(6) Compliance with the emission limitation and percent reduction requirements under this subdivision are both determined on a thirty-day rolling average basis except as provided under paragraph 3.

(7) When different fuels are combusted simultaneously, the applicable standard is determined by proration using the following formula:

(a) If emissions of sulfur dioxide to the atmosphere are greater than two hundred sixty nanograms/joule [0.60 lb/million Btu] heat input:

$$ESO_2 = [340 x + 520 y]/100$$

$$PSO_2 = 10 \text{ percent}$$

(b) If emissions of sulfur dioxide to the atmosphere are equal to or less than two hundred sixty nanograms/joule [0.60 lb/million Btu] heat input:

$$ESO_2 = [340 x + 520 y]/100$$

$$PSO_2 = [90 x + 70 y]/100$$

where:

ESO₂ = the prorated sulfur dioxide emission limited (ng/J heat input),

PSO₂ = the percentage of potential sulfur dioxide emission allowed (percent reduction required = 100-PSO₂).

x = the percentage of total heat input derived from the combustion of liquid or gaseous fuels (excluding solid-derived fuels).

y = the percentage of total heat input derived from the combustion of solid fuel (including solid-derived fuels).

e. Standard for nitrogen oxides.

(1) On and after the date on which the initial performance test required to be conducted under subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility, except as

provided under paragraph 2, any gases which contain nitrogen oxides in excess of the following emission limits, based on a thirty-day rolling average.

(a) Nitrogen oxide emission limits.

<u>Fuel type</u>	<u>ng/j</u>	<u>Emission limit</u> <u>(lb/million Btu)</u> <u>heat input</u>
<u>Gaseous Fuels:</u>		
Coal-derived fuels	210	(0.50)
All other fuels	86	(0.20)
<u>Liquid Fuels:</u>		
Coal-derived fuels	210	(0.50)
Shale oil	210	(0.50)
All other fuels	130	(0.30)
<u>Solid Fuels:</u>		
Coal-derived fuels	210	(0.50)
Any fuel containing more than 25% by weight, coal refuse		<u>Exempt from NO2</u> <u>standards and</u> <u>NO2 monitoring</u> <u>requirements</u>
Any fuel containing more than 25% by weight, lignite if the lignite is mined in North Dakota, South Dakota, or Montana, and is combusted in a slag tap furnace	340	(0.80)
Lignite not subject to the 340 ng/J heat input emission limit	260	(0.60)
Subbituminous coal	210	(0.50)
Bituminous coal	260	(0.60)
Anthracite coal	260	(0.60)
All other fuels	260	(0.60)

(b) Nitrogen oxide reduction requirements.

<u>Fuel type</u>	<u>Percent reduction</u> <u>of potential</u> <u>combustion</u> <u>concentration</u>
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Gaseous fuels	25%
Liquid fuels	30%
Solid fuels	65%

(2) The emission limitations under subparagraph a do not apply to any affected facility which is combusting coal-derived liquid fuel and is operating under a commercial demonstration permit issued by the administrator of the United States environmental protection agency.

(3) When two or more fuels are combusted simultaneously, the applicable standard is determined by proration using the following formula:

$$ENO2 = [86 w + 130 x + 210 y + 260 z]/100$$

where:

ENO2 = the applicable standard for nitrogen oxides when multiple fuels are combusted simultaneously (ng/j heat input);

w = the percentage of total heat input derived from the combustion of fuels subject to the eighty-six nanograms/joule heat input standards.

x = the percentage of total heat input derived from the combustion of fuels subject to the one hundred thirty nanograms/joule heat input standard.

y = the percentage of total heat input derived from the combustion of fuels subject to the two hundred ten nanograms/joule heat input standards.

z = the percentage of total heat input derived from the combustion of fuels subject to the two hundred sixty nanograms/joule heat input standard.

f. Compliance provisions.

(1) Compliance with the particulate matter emission limitation under subparagraph a of paragraph 1 of subdivision c constitutes compliance with the percent reduction requirements for particulate matter under

subparagraphs b and c of paragraph 1 of subdivision c.

- (2) Compliance with the nitrogen oxides emission limitation under paragraph 1 of subdivision e constitutes compliance with the percent reduction requirements under subparagraph b of paragraph 1 of subdivision e.
- (3) The particulate matter emission standards under subdivision c and the nitrogen oxides emission standards under subdivision e apply at all times except during periods of startup, shutdown, or malfunction. The sulfur dioxide emission standards under subdivision d apply at all times except during periods of startup, shutdown, or when both emergency conditions exist and the procedures under paragraph 4 are implemented.
- (4) During emergency conditions in the principal company, an affected facility with a malfunctioning flue gas desulfurization system may be operated if sulfur dioxide emissions are minimized by:
 - (a) Operating all operable flue gas desulfurization system modules, and bringing back into operation any malfunctioned module as soon as repairs are completed.
 - (b) Bypassing flue gases around only those flue gas desulfurization system modules that have been taken out of operation because they were incapable of any sulfur dioxide emission reduction or which would have suffered significant physical damage if they had remained in operation.
 - (c) Designing, constructing, and operating a spare flue gas desulfurization system module for an affected facility larger than three hundred sixty-five megawatts [1250 million Btu/hr] heat input (approximately one hundred twenty-five megawatts electrical output capacity). The department may at its discretion require the owner or operator within sixty days of notification to demonstrate spare module capability. To demonstrate this capability, the owner or operator must demonstrate compliance with the appropriate requirements under paragraphs 1, 2, 4, and 7 of subdivision d for any period of operation lasting from twenty-four hours to thirty days when:

- [1] Any one flue gas desulfurization module is not operated;
 - [2] The affected facility is operating at the maximum heat input rate;
 - [3] The fuel fired during the twenty-four-hour to thirty-day period is representative of the type and average sulfur content of fuel used over a typical thirty-day period; and
 - [4] The owner or operator has given the department at least thirty days notice of the date and period of time over which the demonstration will be performed.
- (5) After the initial performance test required under subsection 7 of section 33-15-12-01 compliance with the sulfur dioxide emission limitations and percentage reduction requirements under subdivision d and the nitrogen oxides emission limitations under subdivision c is based on the average emission rate for thirty successive boiler operating days. A separate performance evaluation based on continuous emission monitoring data shall be completed at the end of each boiler operating day after the initial performance test, and a new thirty-day average emission rate for both sulfur dioxide and nitrogen oxides and a new percent reduction for sulfur dioxide are calculated to show compliance with the standards.
- (6) For the initial performance test required under subsection 7 of section 33-15-12-01 compliance with the sulfur dioxide emission limitations and percent reduction requirements under subdivision d and the nitrogen oxides emission limitation under subdivision e is based on the average emission rates for sulfur dioxide, nitrogen oxides, and percent reduction for sulfur dioxide for the first thirty successive boiler operating days. The initial performance test is the only test in which at least thirty days prior notice is required unless otherwise specified by the department. The initial performance test is to be scheduled so that the first boiler operating day of the thirty successive boiler operating days is completed within sixty days after achieving the maximum production rate at which the affected facility will be operated, but not later than one hundred eighty days after initial startup of the facility.
- (7) Compliance is determined by calculating the arithmetic average of all hourly emission rates for

sulfur dioxide and nitrogen oxide for the thirty successive boiler operating days, except for data obtained during startup, shutdown, malfunction (nitrogen oxide only), or emergency conditions (sulfur dioxide only). Compliance with the percentage reduction requirements for sulfur dioxide is determined based on the average inlet and average outlet sulfur dioxide emission rates for the thirty successive boiler operating days.

- (8) If an owner or operator has not obtained the minimum quantity of emission data as required under subdivision g compliance of the affected facility with the emission requirements under subdivision d and subdivision c for the day on which the thirty-day period ends may be determined by the department by following the applicable procedures in sections 6.0 and 7.0 of Reference Method 19.

g. Emission monitoring.

- (1) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous monitoring system, and record the output of the system, for measuring the opacity of emissions discharged to the atmosphere, except where gaseous fuel is the only fuel combusted. If opacity interference due to water droplets exists in the stack, e.g., from the use of an FGD system, the opacity is monitored upstream of the interference (at the inlet to the FGD system). If opacity interference is experienced at all locations (both at the inlet and outlet of the sulfur dioxide control system), alternate parameters indicative of the particulate matter control system's performance are monitored (subject to the approval of the department).
- (2) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous monitoring system, and record the output of the system, for measuring sulfur dioxide emissions, except where natural gas is the only fuel combusted, as follows:
- (a) Sulfur dioxide emissions are monitored at both the inlet and outlet of the sulfur dioxide control device.
- (b) For a facility which qualifies under the provisions of paragraph 4 of subdivision d, sulfur dioxide emissions are only monitored as discharged to the atmosphere.

- (c) An "as-fired" fuel monitoring system (upstream of coal pulverizers) meeting the requirements of Method 19 may be used to determine potential sulfur dioxide emissions in place of a continuous sulfur dioxide emission monitor at the inlet to the sulfur dioxide control device as required under subparagraph a.
- (3) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous monitoring system, and record the output of the system, for measuring nitrogen oxides emissions discharged to the atmosphere.
- (4) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous monitoring system, and record the output of the system, for measuring the oxygen or carbon dioxide content of the flue gases at each location where sulfur dioxide or nitrogen oxides emissions are monitored.
- (5) The continuous monitoring systems under paragraphs 2, 3, and 4 are operated and data recorded during all periods of operation of the affected facility including periods of startup, shutdown, malfunction, or emergency conditions, except for continuous monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments.
- (6) When emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emission data will be obtained by using other monitoring systems as approved by the department or the reference methods as described in paragraph 8 to provide emission data for a minimum of eighteen hours in at least twenty-two out of thirty successive boiler operating days.
- (7) The one-hour averages required under subdivision h of subsection 11 of section 33-15-12-01 are expressed in nanograms/joule [lbs/million Btu] heat input and used to calculate the average emission rates under subdivision f. The one-hour averages are calculated using the data points required under subdivision b of subsection 11 of section 33-15-12-01. At least two data points must be used to calculate the one-hour average.
- (8) Reference methods used to supplement continuous monitoring system data to meet the minimum data

requirements in paragraph 6 will be used as specified below or otherwise approved by the department.

- (a) Reference Methods 3, 6, and 7, as applicable, are used. The sampling locations are the same as those used for the continuous monitoring system.
- (b) For Method 6, the minimum sampling time is twenty minutes and the minimum sampling volume is 0.02 dscm [0.71 dscf] for each sample. Samples are taken at approximately sixty-minute intervals. Each sample represents a one-hour average.
- (c) For Method 7, samples are taken at approximately thirty-minute intervals. The arithmetic average of these two consecutive samples represent a one-hour average.
- (d) For Method 3, the oxygen or carbon dioxide sample is to be taken for each hour when continuous sulfur dioxide and nitrogen oxide data are taken or when Methods 6 and 7 are required. Each sample shall be taken for a minimum of thirty minutes in each hour using the integrated bag method specified in Method 3. Each sample represents a one-hour average.
- (e) For each one-hour average, the emissions expressed in nanograms/joule [lb/million Btu] heat input are determined and used as needed to achieve the minimum data requirements of paragraph 6.
- (f) The following procedures are used to conduct monitoring system performance evaluations under subdivision c and calibration checks under subdivision d of subsection 11 of section 33-15-12-01.

[1] Reference Method 6 or 7, as applicable, is used for conducting performance evaluations of sulfur dioxide and nitrogen oxides continuous monitoring systems.

[2] Sulfur dioxide or nitrogen oxides, as applicable, is used for preparing calibration gas mixtures under performance specification 2 of Appendix B to this chapter.

[3] For affected facilities burning only fossil fuel, the span value for a continuous monitoring system for measuring opacity is between sixty and eighty percent and for a continuous monitoring system measuring nitrogen oxides is determined as follows:

<u>Fossil fuel</u>	<u>Span value for nitrogen oxides (ppm)</u>
Gas	500
Liquid	500
Solid	1000
Combination	$500(x+y)+1000z$

where:

x = the fraction of total heat input
derived from gaseous fossil fuel.

y = the fraction of total heat input
derived from liquid fossil fuel.

z = the fraction of total heat input
derived from solid fossil fuel.

[4] All span values computed under item 3 for burning combinations of fossil fuels are rounded to the nearest five hundred parts per million.

[5] For affected facilities burning fossil fuel, alone or in combination with nonfossil fuel, the span value of the sulfur dioxide continuous monitoring system at the inlet to the sulfur dioxide control device is one hundred twenty-five percent of the maximum estimated hourly potential emissions of the fuel fired, and the outlet of the sulfur dioxide control device is fifty percent of maximum estimated hourly potential emissions of the fuel fired.

h. Compliance determination procedures and methods.

- (1) The following procedures and reference methods are used to determine compliance with the standards for particulate matter under subdivision c.
- (a) Method 3 is used for gas analysis when applying Method 5 or 17.
 - (b) Method 5 is used for determining particulate matter emissions and associated moisture content. Method 17 may be used for stack gas temperatures less than one hundred sixty degrees centigrade [320° Fahrenheit].
 - (c) For Method 5 or 17, Method 1 is used to select the sampling site and the number of traverse sampling points. The sampling time for each run is at least one hundred twenty minutes and the minimum sampling volume is 1.7 dscm [60 dscf] except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the department.
 - (d) For Method 5, the probe and filter holder heating system in the sampling train is set to provide a gas temperature no greater than one hundred sixty degrees centigrade [320° Fahrenheit].
 - (e) For determination of particulate emissions, the oxygen or carbon dioxide sample is obtained simultaneously with each run of Method 5 or 17 by traversing the duct at the same sampling location. Method 1 is used for selection of the number of traverse points except that no more than twelve sample points are required.
 - (f) For each run using Method 5 or 17, the emission rate expressed in nanograms/joule heat input is determined using the oxygen or carbon dioxide and particulate matter measurements obtained under this paragraph, the dry basis Fc factor and the dry basis emission rate calculation procedure contained in Method 19.
 - (g) Prior to the issuance of a particulate matter reference method that does not experience sulfuric acid mist interference problems, particulate matter emissions may be sampled prior to a wet flue gas desulfurization system.
- (2) The following procedures and methods are used to determine compliance with the sulfur dioxide standards under subdivision d.

(a) Determine the percent of potential combustion concentration (percent PCC) emitted to the atmosphere as follows:

[1] Fuel Pretreatment (% Rf): Determine the percent reduction achieved by any fuel pretreatment using the procedures in Method 19. Calculate the average percent reduction for fuel pretreatment on a quarterly basis using fuel analysis data. The determination of percent Rf to calculate the percent of potential combustion concentration emitted to the atmosphere is optional. For purposes of determining compliance with any percent reduction requirements under subdivision d any reduction in potential sulfur dioxide emissions resulting from the following processes may be credited:

[A] Fuel pretreatment (physical coal cleaning, hydrodesulfurization of fuel oil, etc.).

[B] Coal pulverizers.

[C] Bottom and flyash interactions.

[2] Sulfur Dioxide Control System (% Rg): Determine the percent sulfur dioxide reduction achieved by any sulfur dioxide control system using emission rates measured before and after the control system, following the procedures in Method 19; or, a combination of an "as fired" fuel monitor and emission rates measured after the control system, following the procedures in Method 19. When the "as fired" fuel monitor is used, the percent reduction is calculated using the average emission rate from the sulfur dioxide control device and the average sulfur dioxide input rate from the "as fired" fuel analysis for thirty successive boiler operating days.

[3] Overall Percent Reduction (% Ro): Determine the overall percent reduction using the results obtained in items 1 and 2 following the procedures in Method 19. Results are calculated for each thirty-day period using the quarterly average percent sulfur reduction determined for fuel

pretreatment from the previous quarter and a sulfur dioxide control system for each thirty-day period in the current quarter.

[4] Percent Emitted (% PCC): Calculate the percent of potential combustion concentration emitted to the atmosphere using the following equation: Percent PCC = 100-Percent Ro.

(b) Determine the sulfur dioxide emission rates following the procedures in Method 19.

(3) The procedures and methods outlined in Method 19 are used in conjunction with the thirty-day nitrogen oxides emission data collected under subdivision h to determine compliance with the applicable nitrogen oxides standard under subdivision e.

(4) Electric utility combined cycle gas turbines are performance tested for particulate matter, sulfur dioxide, and nitrogen oxides using the procedures of Method 19. The sulfur dioxide and nitrogen oxides emission rates from the gas turbine used in Method 19 calculations are determined when the gas turbine is performance tested under subsection 28. The potential uncontrolled particulate matter emission rate from a gas turbine is defined as seventeen nanograms/joule [0.04 lb/million Btu] heat input.

i. Reporting requirements.

(1) For sulfur dioxide, nitrogen oxides, and particulate matter emissions, the performance test data from the initial performance test and from the performance evaluation of the continuous monitors (including the transmissometer) are submitted to the department.

(2) For sulfur dioxide and nitrogen oxides the following information is reported to the department for each twenty-four-hour period.

(a) Calendar date.

(b) The average sulfur dioxide and nitrogen oxide emission rates (ng/j or lb/million Btu) for each thirty successive boiler operating days, ending with the last thirty-day period in the quarter; reasons for noncompliance with the emission standards; and description of corrective actions taken.

- (c) Percent reduction of the potential combustion concentration of sulfur dioxide for each thirty successive boiler operating days, ending with the last thirty-day period in the quarter; reasons for noncompliance with the standard; and description of corrective actions taken.
 - (d) Identification of the boiler operating days for which pollutant or diluent data have not been obtained by an approved method for at least eighteen hours of operation of the facility; justification for not obtaining sufficient data; and description of corrective actions taken.
 - (e) Identification of the times when emissions data have been excluded from the calculation of average emission rates because of startup, shutdown, malfunction (nitrogen oxide only), emergency conditions (sulfur dioxide only), or other reasons, and justification for excluding data for reasons other than startup, shutdown, malfunction, or emergency conditions.
 - (f) Identification of "F" factor used for calculations, method of determination, and type of fuel combusted.
 - (g) Identification of times when hourly averages have been obtained based on manual sampling methods.
 - (h) Identification of the times when the pollutant concentration exceeded full span of the continuous monitoring system.
 - (i) Description of any modifications to the continuous monitoring system which could affect the ability of the continuous monitoring system to comply with performance specifications 2 or 3.
- (3) If the minimum quantity of emission data as required by subdivision g is not obtained for any thirty successive boiler operating days, the following information obtained under the requirements of paragraph 8 of subdivision f is reported to the department for that thirty-day period:
- (a) The number of hourly averages available for outlet emission rates (no) and inlet emission rates (nl) as applicable.

- (b) The standard deviation of hourly averages for outlet emission rates (so) and inlet emission rates (sl) as applicable.
 - (c) The lower confidence limit for the mean outlet emission rate (Eo*) and the upper confidence limit for the mean inlet emission rate (EI*) as applicable.
 - (d) The applicable potential combustion concentration.
 - (e) The ratio of the upper confidence limit for the mean outlet emission rate (Eo*) and the allowable emission rate (Estd) as applicable.
- (4) If any standards under subdivision d are exceeded during emergency conditions because of control system malfunction, the owner or operator of the affected facility shall submit a signed statement:
- (a) Indicating if emergency conditions existed and requirements under paragraph 4 of subdivision f were met during each period; and
 - (b) Listing the following information:
 - [1] Time periods the emergency condition existed.
 - [2] Electrical output and demand on the owner's or operator's electric utility system and the affected facility.
 - [3] Amount of power purchased from interconnected neighboring utility companies during the emergency period.
 - [4] Percent reduction in emissions achieved.
 - [5] Atmospheric emission rate (ng/j) of the pollutant discharged.
 - [6] Actions taken to correct control system malfunction.
- (5) If fuel pretreatment credit toward the sulfur dioxide emission standard under subdivision d is claimed, the owner or operator of the affected facility shall submit a signed statement:
- (a) Indicating what percentage cleaning credit was taken for the calendar quarter, and whether the

credit was determined in accordance with the provisions of subdivision h and Method 19; and

- (b) Listing the quantity, heat content, and date each pretreated fuel shipment was received during the previous quarter; the name and location of the fuel pretreatment facility; and the total quantity and total heat content of all fuels received at the affected facility during the previous quarter.
- (6) For any periods for which opacity, sulfur dioxide or nitrogen oxides emissions data are not available, the owner or operator of the affected facility shall submit a signed statement indicating if any changes were made in operation of the emission control system during the period of data unavailability. Operations of the control system and affected facility during periods of data unavailability are to be compared with operation of the control system and affected facility before and following the period of data unavailability.
- (7) The owner or operator of the affected facility shall submit a signed statement indicating whether:

 - (a) The required continuous monitoring system calibration, span, and drift checks or other periodic audits have or have not been performed as specified.
 - (b) The data used to show compliance was or was not obtained in accordance with approved methods and procedures of this part and is representative of plant performance.
 - (c) The minimum data requirements have or have not been met; or the minimum data requirements have not been met for errors that were unavoidable.
 - (d) Compliance with the standards has or has not been achieved during the reporting period.
- (8) For the purposes of the reports required under subsection 6 of section 33-15-12-01, periods of excess emissions are defined as all six-minute periods during which the average opacity exceeds the applicable opacity standards under paragraph 2 of subdivision c. Opacity levels in excess of the applicable opacity standard and the date of such excesses are to be submitted to the department each calendar quarter.

(9) The owner or operator of an affected facility shall submit the written reports required under this subdivision and section 33-15-12-01 to the department for every calendar quarter. All quarterly reports shall be postmarked by the thirtieth day following the end of each calendar quarter.

3. Standards of performance for portland cement plants.

a. Applicability and designation of affected facility. The provisions of this subsection are applicable to the following affected facilities in portland cement plants: kiln, clinker cooler, raw mill system, finish mill system, raw mill dryer, raw material storage, clinker storage, conveyor transfer points, bagging and bulk loading and unloading systems. Any facility that commences construction or modification after August 17, 1971, is subject to the requirements of this subsection.

b. Definitions.

As used in this subsection, all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01.

(1) "Portland cement plant" means any facility manufacturing portland cement by either the wet or dry process.

c. Standard for particulate matter.

(1) On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any kiln any gases which:

(a) Contain particulate matter in excess of fifteen-hundredths kilogram per metric ton [0.30 pound per ton] of feed (dry basis) to the kiln.

(b) Exhibit greater than ten percent opacity.

(2) On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any clinker cooler any gases which:

- (a) Contain particulate matter in excess of five-hundredths kilogram per metric ton [0.10 pound per ton] of feed (dry basis) to the kiln.
 - (b) Exhibit ten percent opacity, or greater.
 - (3) On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility, other than the kiln and clinker cooler, any gases which exhibit ten percent opacity or greater.
- d. Monitoring of operations. The owner or operator of any portland cement plant subject to the provisions of this subsection shall record the daily production rates and kiln feed rates.
- e. Test methods and procedures.
- (1) The reference methods in Appendix A to this chapter, except as provided for in subdivision b of subsection 7 of section 33-15-12-01, shall be used to determine compliance with the standards prescribed in subdivision c as follows:
 - (a) Method 5 for the concentration of particulate matter and the associated moisture content.
 - (b) Method 1 for sample and velocity traverses.
 - (c) Method 2 for velocity and volumetric flow rate.
 - (d) Method 3 for gas analysis.
 - (2) For Method 5, the minimum sampling time and minimum sample volume for each run, except when process variables or other factors justify otherwise to the satisfaction of the department shall be as follows:
 - (a) Sixty minutes and 0.85 dscm [30.0 dscf] for the kiln.
 - (b) Sixty minutes and 1.15 dscm [40.6 dscf] for the clinker cooler.
 - (3) Total kiln feed rate (except fuels), expressed in metric tons per hour on a dry basis, shall be determined during each testing period by suitable methods; and shall be confirmed by a material balance over the production system.

- (4) For each run, particulate matter emissions, expressed in grams per metric ton of kiln feed, shall be determined by dividing the emission rate in grams per hour by the kiln feed rate. The emission rate shall be determined by the equation, $g/hr = Q_s x c$, where Q_s = volumetric flow rate of the total effluent in dscm/hr as determined in accordance with subparagraph c of paragraph 1 and c = particulate concentration in g/dscm as determined in accordance with paragraph 1.

4. Standards of performance for nitric acid plants.

- a. Applicability and designation of affected facility. The provisions of this subsection are applicable to each nitric acid production unit, which is the affected facility. Any facility that commences construction or modification after August 17, 1971, is subject to the requirements of this subsection.
- b. Definitions. As used in this subsection, all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01.
- (1) "Nitric acid production unit" means any facility producing weak nitric acid by either the pressure or atmospheric pressure process.
- (2) "Weak nitric acid" means acid which is thirty to seventy percent in strength.
- c. Standard for nitrogen oxides. On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility any gases which:
- (1) Contain nitrogen oxides, expressed as nitrogen dioxide, in excess of one and five-tenths kilograms per metric ton [3.0 pounds per ton] of acid produced, the production being expressed as one hundred percent nitric acid.
- (2) Exhibit ten percent opacity, or greater.
- d. Emission monitoring.
- (1) A continuous monitoring system for the measurement of nitrogen oxides shall be installed, calibrated, maintained, and operated by the owner or operator. The pollutant gas used to prepare calibration gas mixtures under paragraph 2.1, Performance

Specification 2 and for calibration checks under subdivision d of subsection 11 of section 33-15-12-01 shall be nitrogen dioxide. The span shall be set at five hundred parts per million of nitrogen dioxide. Reference Method 7 shall be used for conducting monitoring system performance evaluations under subdivision c of subsection 11 of section 33-15-12-01.

- (2) The owner or operator shall establish a conversion factor for the purpose of converting monitoring data into units of the applicable standard (kilograms per metric ton, pounds per short ton). The conversion factor shall be established by measuring emissions with the continuous monitoring system concurrent with measuring emissions with the applicable reference method tests. Using only that portion of the continuous monitoring emission data that represents emission measurements concurrent with the reference method test periods, the conversion factor shall be determined by dividing the reference method test data averages by the monitoring data averages to obtain a ratio expressed in units of the applicable standard to units of the monitoring data, i.e., kilograms per metric ton per parts per million [pounds per short ton per parts per million]. The conversion factor shall be reestablished during any performance test under subsection 7 of section 33-15-12-01 or any continuous monitoring system performance evaluation under subdivision c of subsection 11 of section 33-15-12-01.
- (3) The owner or operator shall record the daily production rate and hour of operation.
- (4) [Reserved]
- (5) For the purpose of reports required under subdivision c of subsection 6 of section 33-15-12-01, periods of excess emissions that shall be reported are defined as any three-hour period during which the average nitrogen oxides emissions (arithmetic average of three contiguous one-hour periods) as measured by a continuous monitoring system exceed the standard under subdivision c.

e. Test methods and procedures.

- (1) The reference methods in Appendix A to this chapter, except as provided for in subdivision b of subsection 7 of section 33-15-12-01, shall be used to determine compliance with the standard prescribed in paragraph 3 as follows:

- (a) Method 7 for the concentration of nitrogen oxides.
 - (b) Method 1 for sample and velocity traverses.
 - (c) Method 2 for velocity and volumetric flow rate.
 - (d) Method 3 for gas analysis.
- (2) For Method 7, the sample site shall be selected according to Method 1 and the sampling point shall be the centroid of the stack or duct or at a point no closer to the walls than one meter [3.28 feet]. Each run shall consist of at least four grab samples taken at approximately fifteen-minute intervals. The arithmetic mean of the samples shall constitute the run value. A velocity traverse shall be performed once per run.
- (3) Acid production rate, expressed in metric tons per hour of one hundred percent nitric acid, shall be determined during each testing period by suitable methods and shall be confirmed by a material balance over the production system.
- (4) For each run, nitrogen oxides, expressed in grams per metric ton of one hundred percent nitric acid, shall be determined by dividing the emission rate in grams per hour by the acid production rate. The emission rate shall be determined by the equation:

$$g/hr = Qsxc$$

where:

Qs = volumetric flow rate of the effluent
in dscm/hr, as determined in accordance
with subparagraph c of paragraph 1 and
c = NOx concentration in g/dscm,
as determined in accordance with
subparagraph a of paragraph 1.

5. Standards of performance for sulfuric acid plants.

- a. Applicability and designation of affected facility. The provisions of this subsection are applicable to each sulfuric acid production unit, which is the affected facility. Any facility that commences construction or modification after August 17, 1971, is subject to the requirements of this subsection.
- b. Definitions. As used in this subsection, all terms not defined herein shall have the meaning given them in North

Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01.

- (1) "Acid mist" means sulfuric acid mist, as measured by Method 8 of Appendix A to this chapter or an equivalent or alternative method.
 - (2) "Sulfuric acid production unit" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides and mercaptans, or acid sludge, but does not include facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.
- c. Standard for sulfur dioxide. On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility any gases which contain sulfur dioxide in excess of two kilograms per metric ton [4 pounds per ton] of acid produced, the production being expressed as one hundred percent sulfuric acid.
- d. Standard for acid mist. On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility any gases which:
- (1) Contain acid mist, expressed as sulfuric acid, in excess of seventy-five-thousandths kilogram per metric ton [0.15 pound per ton] of acid produced, the production being expressed as one hundred percent sulfuric acid.
 - (2) Exhibit ten percent opacity, or greater.
- e. Emission monitoring.
- (1) A continuous monitoring system for the measurement of sulfur dioxide shall be installed, calibrated, maintained, and operated by the owner or operator. The pollutant gas used to prepare calibration gas mixtures under paragraph 2.1, Performance Specification 2 and for calibration checks under subdivision d of subsection 11 of section 33-15-12-01 shall be sulfur dioxide. Reference Method 8 shall be used for conducting monitoring system performance evaluations under subdivision c of subsection 11 of

section 33-15-12-01 except that only the sulfur dioxide portion of the Method 8 results shall be used. The span shall be set at one thousand parts per million of sulfur dioxide.

- (2) The owner or operator shall establish a conversion factor for the purpose of converting monitoring data into units of the applicable standard (kilograms per metric ton, pounds per short ton). The conversion factor shall be determined, as a minimum, three times daily by measuring the converter using suitable methods, e.g., the Reich test, national air pollution control administration Publication No. 999-AP-13, and calculating the appropriate conversion factor for each eight-hour period as follows:

$$CF = k \frac{(1.000 - 0.015r)}{r - s}$$

where:

CF = conversion factor (kg/metric ton per ppm, lb/short ton per ppm).

k = constant derived from material balance.
For determining CF in metric units,
k = 0.0653, for determining CF in
English units, k = 0.1306.

r = percentage of sulfur dioxide by volume entering the gas converter. Appropriate corrections must be made for air injection plants subject to the department's approval.

s = percentage of sulfur dioxide by volume in the emissions to the atmosphere determined by the continuous monitoring system required under paragraph 1.

- (3) The owner or operator shall record all conversion factors and values under paragraph 2 from which they were computed, i.e., CF, r, and s.
- (4) [Reserved]
- (5) For the purpose of reports under subdivision c of subsection 6 of section 33-15-12-01 periods of excess emissions shall be all three-hour periods (or the arithmetic average of three consecutive one-hour periods) during which the integrated average sulfur dioxide emissions exceed the applicable standards under subdivision c of subsection 5 of this section.

f. Test methods and procedures.

- (1) The reference methods in Appendix A to this chapter, except as provided for in subdivision b of subsection 7 of section 33-15-12-01, shall be used to determine compliance with the standards prescribed in subdivisions c and d of this subsection as follows:
 - (a) Method 8 for the concentrations of sulfur dioxide and acid mist.
 - (b) Method 1 for sample and velocity traverses.
 - (c) Method 2 for velocity and volumetric flow rate.
 - (d) Method 3 for gas analysis.
- (2) The moisture content can be considered to be zero for Method 8 the sampling time for each run shall be at least sixty minutes and the minimum sample volume shall be 1.15 dscm [40.6 dscf] except that smaller sampling times or sample volumes, when necessitated by process variables or other factors, may be approved by the department.
- (3) Acid production rate, expressed in metric tons per hour of one hundred percent sulfuric acid, shall be determined during each testing period by suitable methods and shall be confirmed by a material balance over the production system.
- (4) Acid mist and sulfur dioxide emissions, expressed in grams per metric ton of one hundred percent sulfuric acid, shall be determined by dividing the emission rate in grams per hour by the acid production rate. The emission rate shall be determined by the equation, $g/hr = Q_s x c$, where Q_s = volumetric flow rate of the effluent in dscm/hr as determined in accordance with subparagraph c of paragraph 1 and c = acid mist and sulfur dioxide concentrations in g/dscm as determined in accordance with subparagraph a of paragraph 1.

6. Standards of performance for asphalt concrete plants.

- a. Applicability and designation of affected facility. The affected facility to which the provisions of this subsection apply is each asphalt concrete plant. For the purpose of this subsection, an asphalt concrete plant is comprised only of any combination of the following: dryers; systems for screening, handling, storing, and weighing hot aggregate; systems for loading, transferring, and storing mineral filler; systems for mixing asphalt

concrete; and the loading, transfer, and storage systems associated with emission control systems. Any facility that commences construction or modification after June 11, 1973, is subject to the requirements of this subsection.

b. Definitions. As used in this subsection, all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01.

(1) "Asphalt concrete plant" means any facility, as described in subdivision a, used to manufacture asphalt concrete by heating and drying aggregate and mixing with asphalt cements.

c. Standard for particulate matter. On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall discharge or cause the discharge into the atmosphere from any affected facility any gases which:

(1) Contain particulate matter in excess of ninety milligrams per dscm [0.04 grains per dscf].

(2) Exhibit twenty percent opacity, or greater.

d. Test methods and procedures.

(1) The reference methods appended to this chapter, except as provided for in subdivision b of subsection 7 of section 33-15-12-01, shall be used to determine compliance with the standards prescribed in subdivision c as follows:

(a) Method 5 for the concentration of particulate matter and the associated moisture content.

(b) Method 1 for sample and velocity traverses.

(c) Method 2 for velocity and volumetric flow rate.

(d) Method 3 for gas analysis.

(2) For Method 5, the sampling time for each run shall be at least sixty minutes and the sampling rate shall be at least nine-tenths dscm per hour [0.53 dscf per minute] except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the department.

7. Standards of performance for petroleum refineries.

- a. Applicability and designation of affected facility. The provisions of this subsection are applicable to the following affected facilities in petroleum refineries: fluid catalytic cracking unit catalyst regenerators, fuel gas combustion devices, and all Claus sulfur recovery plants except Claus plants of twenty long tons per day or less ~~associated with a small petroleum refinery~~. The Claus sulfur recovery plant need not be physically located within the boundaries of a petroleum refinery to be an affected facility, provided it processes gases produced within a petroleum refinery. Any fluid catalytic cracking unit catalyst regeneration or fuel gas combustion device which commences construction or modification after June 11, 1973, or any Claus sulfur recovery plant which commences construction or modification after October 4, 1976, is subject to the requirements of this subsection.
- b. Definitions. As used in this subsection, all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01.
- (1) "Claus sulfur recovery plant" means a process unit which recovers sulfur from hydrogen sulfide by a vapor-phase catalytic reaction of sulfur dioxide and hydrogen sulfide.
 - (2) "Coke burn-off" means the coke removed from the surface of the fluid catalytic cracking unit catalyst by combustion in the catalyst regenerator. The rate of coke burn-off is calculated by the formula specified in subdivision g.
 - (3) "Fuel gas" means any gas which is generated by a petroleum refinery process unit and which is combusted, including any gaseous mixture of natural gas and fuel gas which is combusted.
 - (4) "Fuel gas combustion device" means any equipment, such as process heaters, boilers, and flares used to combust fuel gas, but does not include fluid coking unit and fluid catalytic cracking unit incinerator-waste heat boilers or facilities in which gases are combusted to produce sulfur or sulfuric acid.
 - (5) "Oxidation control system" means an emission control system which reduces emissions from sulfur recovery plants by converting these emissions to sulfur dioxide.
 - (6) "Petroleum" means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

- (7) "Petroleum refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives.
- (8) "Process gas" means any gas generated by a petroleum refinery process unit, except fuel gas and process upset gas as defined in this subdivision.
- (9) "Process upset gas" means any gas generated by a petroleum refinery process unit as a result of startup, shutdown, upset, or malfunction.
- (10) "Reduced sulfur compounds" means hydrogen sulfide (H₂S), carbonyl sulfide (COS) and carbon disulfide (CS₂).
- (11) "Reduction control system" means an emission control system which reduces emissions from sulfur recovery plants by converting these emissions to hydrogen sulfide.
- (12) "Refinery process unit" means any segment of the petroleum refinery in which a specific processing operation is conducted.
- ~~(13) "Small petroleum refinery" means a petroleum refinery which has a crude oil processing capacity of fifty thousand barrels {7,949.36 cubic meters} per stream day or less, and which is owned or controlled by a refinery with a total combined crude oil processing capacity of one hundred thirty seven thousand five hundred barrels {21,869.71 cubic meters} per stream day or less.~~

c. Standard for particulate matter.

- (1) On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall discharge or cause the discharge into the atmosphere from any fluid catalytic cracking unit catalyst regenerator:
 - (a) Particulate matter in excess of one kilogram per one thousand kilograms [1.0 pound per 1000 pounds] of coke burn-off in the catalyst regenerator.

- (b) Gases exhibiting greater than thirty percent opacity, except for one six-minute average opacity reading in any one-hour period.
- (2) Where the gases discharged by the fluid catalytic cracking unit catalyst regenerator pass through an incinerator or waste heat boiler in which auxiliary or supplemental liquid or solid fossil fuel is burned, particulate matter in excess of that permitted by subparagraph a of paragraph 1 may be emitted to the atmosphere, except that the incremental rate of particulate matter emissions shall not exceed forty-three ng/j [0.10 lb/million Btu] of heat input attributable to such liquid or solid fossil fuel.
- d. Standard for carbon monoxide. On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall discharge or cause the discharge into the atmosphere from the fluid catalytic cracking unit catalyst regenerator any gases which contain carbon monoxide in excess of five-hundredths percent by volume.
- e. Standard for sulfur dioxide.
- (1) On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall:
- (a) Burn in any fuel gas combustion device any fuel gas which contains hydrogen sulfide in excess of two hundred thirty mg/dscm [0.10 gr/dscf], except that the gases resulting from the combustion of fuel gas may be treated to control sulfur dioxide emissions provided the owner or operator demonstrates to the satisfaction of the department that this is as effective in preventing sulfur dioxide emissions to the atmosphere as restricting the hydrogen sulfide concentration in the fuel gas to two hundred thirty mg/dscm or less. The combustion in a flare of process upset gas, or fuel gas which is released to the flare as a result of relief valve leakage, is exempt from this subparagraph.
 - (b) Discharge or cause the discharge of any gases into the atmosphere from any Claus sulfur recovery plant containing in excess of:

- [1] Twenty-five-thousandths percent by volume of sulfur dioxide at zero percent oxygen on a dry basis if emissions are controlled by an oxidation control system, or a reduction control system followed by incineration; or
- [2] Thirty-thousandths percent by volume of reduced sulfur compounds and one-thousandths percent by volume of hydrogen sulfide calculated as sulfur dioxide at zero percent oxygen on a dry basis if emissions are controlled by a reduction control system not followed by incineration.

(2) [Reserved]

f. Emission monitoring.

- (1) Continuous monitoring systems shall be installed, calibrated, maintained, and operated by the owner or operator as follows:
 - (a) A continuous monitoring system for the measurement of the opacity of emissions discharged into the atmosphere from the fluid catalytic cracking unit catalyst regenerator. The continuous monitoring system shall be spanned at sixty, seventy, or eighty percent opacity.
 - (b) An instrument for continuously monitoring and recording the concentration of carbon monoxide in gases discharged into the atmosphere from fluid catalytic cracking unit catalyst regenerators. The span of this continuous monitoring system shall be one thousand parts per million.
 - (c) A continuous monitoring system for the measurement of sulfur dioxide in the gases discharged into the atmosphere from the combustion of fuel gases (except where a continuous monitoring system for the measurement of hydrogen sulfide is installed under subparagraph d). The pollutant gas used to prepare calibration gas mixtures under paragraph 2.1, Performance Specification 2, and for calibration checks under subdivision d of subsection 11 of section 33-15-12-01 shall be sulfur dioxide. The span shall be set at one hundred parts per million. For conducting monitoring system performance evaluations under

subdivision c of subsection 11 of section 33-15-12-01, Reference Method 6 shall be used.

- (d) An instrument for continuously monitoring and recording concentrations of hydrogen sulfide in fuel gases burned in any fuel gas combustion device, if compliance with subparagraph a of paragraph 1 of subdivision e is achieved by removing hydrogen sulfide from the fuel gas before it is burned; fuel gas combustion devices having a common source of fuel gas may be monitored at one location, if monitoring at this location accurately represents the concentration of hydrogen sulfide in the fuel gas burned. The span of this continuous monitoring system shall be three hundred parts per million.
- (e) An instrument for continuously monitoring and recording concentrations of sulfur dioxide in the gases discharged into the atmosphere from any Claus sulfur recovery plant if compliance with subparagraph b of paragraph 1 of subdivision e is achieved through the use of an oxidation control system or a reduction control system followed by incineration. The span of this continuous monitoring system shall be set at five hundred parts per million.
- (f) An instrument or instruments for continuously monitoring and recording the concentration of hydrogen sulfide and reduced sulfur compounds in the gases discharged into the atmosphere from any Claus sulfur recovery plant if compliance with subparagraph b of paragraph 1 of subdivision e is achieved through the use of a reduction control system not followed by incineration. The span or spans of this continuous monitoring system or systems shall be set at twenty parts per million for monitoring and recording the concentration of hydrogen sulfide and six hundred parts per million for monitoring and recording the concentration of reduced sulfur compounds.

(2) [Reserved]

- (3) The average coke burn-off rate (thousands of kilograms per hour) and hours of operation for any fluid catalytic cracking unit catalyst regenerator subject to subdivisions c and d shall be recorded daily.

- (4) For any fluid catalytic cracking unit catalyst regenerator which is subject to subdivision c and which utilizes an incinerator-waste heat boiler to combust the exhaust gases from the catalyst regenerator, the owner or operator shall record daily the rate of combustion of liquid or solid fossil fuels (liters per hour or kilograms per hour) and the hours of operation during which liquid or solid fossil fuels are combusted in the incinerator-waste heat boiler.
- (5) For the purpose of reports under subdivision c of subsection 6 of section 33-15-12-01 periods of excess emissions that shall be reported are defined as follows:
- (a) Opacity. All one-hour periods which contain two or more six-minute periods during which the average opacity as measured by the continuous monitoring system exceeds thirty percent.
- (b) Carbon monoxide. All hourly periods during which the average carbon monoxide concentration in the gases discharged into the atmosphere from any fluid catalytic cracking unit catalyst regenerator subject to subdivision d of subsection 7 exceeds five-hundredths percent by volume.
- (c) Sulfur dioxide.

[1] Any three-hour period during which the average concentration of hydrogen sulfide in any fuel gas combusted in any fuel gas combustion device subject to subparagraph a of paragraph 1 of subdivision e exceeds two hundred thirty mg/dscm [0.10 gr/dscf], if compliance is achieved by removing hydrogen sulfide from the fuel gas before it is burned; or any three-hour period during which the average concentration of sulfur dioxide in the gases discharged into the atmosphere from any fuel gas combustion device subject to subparagraph a of paragraph 1 of subdivision e exceeds the level specified in subparagraph a of paragraph 1 of subdivision e if compliance is achieved by removing sulfur dioxide from the combusted fuel gases.

[2] Any twelve-hour period during which the average concentration of sulfur dioxide in the gases discharged into the atmosphere

from any Claus sulfur recovery plant subject to subparagraph b of paragraph 1 of subdivision e exceeds two hundred fifty parts per million at zero percent oxygen on a dry basis if compliance with paragraph 2 of subdivision e is achieved through the use of an oxidation control system or a reduction control system followed by incineration; or any twelve-hour period during which the average concentration of hydrogen sulfide, or reduced sulfur compounds in the gases discharged into the atmosphere of any Claus sulfur plant subject to item 2 of subparagraph b of paragraph 1 of subdivision e exceeds ten parts per million or three hundred parts per million, respectively, at zero percent oxygen and on a dry basis if compliance is achieved through the use of a reduction control system not followed by incineration.

- (d) Any six-hour period during which the average emissions (arithmetic average of six contiguous one-hour periods) of sulfur dioxide as measured by a continuous monitoring system exceed the standard under subdivision e of this subsection.

g. Test methods and procedures.

- (1) For the purpose of determining compliance with subparagraph a of paragraph 1 of subdivision c of this subsection, the following reference methods and calculation procedures shall be used:

- (a) For gases released to the atmosphere from the fluid catalytic cracking unit catalyst regenerator:

- [1] Method 5 for the concentration of particulate matter and moisture content.

- [2] Method 1 for sample and velocity traverses.

- [3] Method 2 for velocity and volumetric flow rate.

- (b) For Method 5, the sampling time for each run shall be at least sixty minutes and the sampling rate shall be at least fifteen-thousandths dscm per minute [0.53 dscf per minute], except that shorter sampling times may be approved by the department when process variables or other

factors preclude sampling for at least sixty minutes.

(c) For exhaust gases from the fluid catalytic cracking unit catalyst regenerator prior to the emission control system: the integrated sample techniques of Method 3 and Method 4 for gas analysis and moisture content, respectively; Method 1 for velocity traverses; and Method 2 for velocity and volumetric flow rate.

(d) Coke burn-off rate shall be determined by the following formula:

$$R_c = 0.2982 Q_{re}(\%CO_2 + \%CO) + 2.088 Q_{ra} - 0.0994 Q_{re} \left(\frac{\%CO + \%CO_2 + \%O_2}{2} \right)$$

(metric units)

or

$$R_c = 0.0186 Q_{re}(\%CO_2 + \%CO) + 0.1303 Q_{ra} - 0.0062 Q_{re} \left(\frac{\%CO + \%CO_2 + \%O_2}{2} \right)$$

(English units)

where:

R_c = coke burn-off rate, kg/hr [English units: lb/hr].

0.2982 = metric units material balance factor divided by 100, kg-min/hr-m³.

0.0186 = English units material balance factor divided by 100, lb-min/hr-ft³.

Q_{re} = fluid catalytic cracking unit catalyst regenerator exhaust gas flow rate before entering the emission control system, as determined by Method 2, dscm/min [English units: dscf/min].

$\%CO_2$ = percent carbon dioxide by volume, dry basis, as determined by Method 3.

$\%CO$ = percent carbon monoxide by volume, dry basis, as determined by Method 3.

$\%O_2$ = percent oxygen by volume, dry basis, as determined by Method 3.

2.088 = metric units material balance factor divided by 100, kg-min/hr-m³.

0.1303 = English units material balance factor divided by 100, lb-min/hr-ft³.

Qra = air rate to fluid catalytic cracking unit catalyst regenerator, as determined from fluid catalytic cracking unit control room instrumentation dscm/min [English units: dscf/min].

0.0994 = metric units material balance factor divided by 100, kg-min/hr-m³.

0.0062 = English units material balance factor by 100, lb-min/hr-ft³.

(e) Particulate emissions shall be determined by the following equation:

$$RE = (60 \times 10^{-6}) QrvC3 \text{ [metric units]}$$

$$RE = (8.57 \times 10^{-3}) QrvC3 \text{ [English units]}$$

where:

RE = particulate emission rate, kg/hr [English units: lb/hr].

60x10⁻⁶ = metric units conversion factor, min-kg/hr-mg.

8.57x10⁻³ = English units conversion factor, min-lb/hr-gr.

Qrv = volumetric flow rate of gases discharged into the atmosphere from the fluid catalytic cracking unit catalyst regenerator following the emission control system, as determined by Method 2, dscm/min [English units: dscf/min].

C3 = particulate emission concentration discharged into the atmosphere, as determined by Method 5, mg/dscm [English units: gr/dscf].

(f) For each run, emissions expressed in kilograms [English units: pounds per one thousand pounds] of coke burn-off in the catalyst regenerator shall be determined by the following equation:

$$Rs = 1000 \frac{RE}{Rc} \text{ (metric or English units)}$$

where:

Rs = particulate emission rate, kilograms per one thousand kilograms [English units: pounds per one thousand pounds] of coke burn-off in the fluid catalytic cracking unit catalyst regenerator.

1000 = conversion factor, kilograms to one thousand kilograms [English units: pounds to one thousand pounds].

RE = particulate emission rate, kilograms per hour [English units: pounds per hour].

Rc = coke burn-off rate, kilograms per hour [English units: pounds per hour].

- (g) In those instances in which auxiliary liquid or solid fossil fuels are burned in an incinerator-waste heat boiler, the rate of particulate matter emissions permitted under paragraph 2 of subdivision c must be determined. Auxiliary fuel heat input, expressed in millions of calories per hour [English units: millions of Btu per hour] shall be calculated for each run by fuel flow rate measurement and analysis of the liquid or solid auxiliary fossil fuels. For each run, the rate of particulate emissions permitted under paragraph 2 of subdivision c shall be calculated from the following equation:

$$Rs = 1.0 + \frac{0.18 H}{Rc} \text{ (metric units)}$$

or

$$Rs = 1.0 + \frac{0.10 H}{Rc} \text{ (English units)}$$

where:

Rs = allowable particulate emission rate, kilograms per one thousand kilograms [English units: pounds per one thousand pounds] of coke burn-off in the fluid catalytic cracking unit catalyst regenerator.

1.0 = emission standard, one kilogram per one thousand kilograms [English units: one pound per one thousand pounds] of coke burn-off in the

fluid catalytic cracking unit re-generator.

0.18 = metric units maximum allowable incremental rate of particulate emissions, grams per million calories.

0.10 = English units maximum allowable incremental rate of particulate emissions, pounds per million Btu.

H = heat input from solid or liquid fossil fuel, million calories per hour [English units: million Btu per hour].

Rc = coke burn-off rate, kilograms per hour [English units: pounds per hour].

- (2) For the purpose of determining compliance with subdivision d, the integrated sample technique of Method 10 shall be used. The sample shall be extracted at a rate proportional to the gas velocity at a sampling point near the centroid of the duct. The sampling time shall not be less than sixty minutes.
- (3) For the purpose of determining compliance with subparagraph a of paragraph 1 of subdivision e, Method 11 shall be used to determine the concentration of hydrogen sulfide and Method 6 shall be used to determine the concentration of sulfur dioxide.
 - (a) If Method 11 is used, the gases sampled shall be introduced into the sampling train at approximately atmospheric pressure. Where refinery fuel gaslines are operating at pressures substantially above atmosphere, this may be accomplished with a flow control valve. If the line pressure is high enough to operate the sampling train without a vacuum pump, the pump may be eliminated from the sampling train. The sample shall be drawn from a point near the centroid of the fuel gasline. The minimum sampling time shall be ten minutes and the minimum sampling volume one-hundredths dscm [0.35 dscf] for each sample. The arithmetic average of two samples of equal sampling time shall constitute one run. Samples shall be taken at approximately one-hour intervals. For most fuel gases, sample times exceeding twenty minutes may result in depletion of the collecting solution, although fuel gases

containing low concentrations of hydrogen sulfide may necessitate sampling for longer periods of time.

- (b) If Method 6 is used, Method 1 shall be used for velocity traverses and Method 2 for determining velocity and volumetric flow rate. The sampling site for determining sulfur dioxide concentration by Method 6 shall be the same as for determining volumetric flow rate by Method 2. The sampling point in the duct for determining sulfur dioxide concentration by Method 6 shall be at the centroid of the cross section if the cross sectional area is less than five square meters [54 square feet] or at a point no closer to the walls than one meter [39 inches] if the cross sectional area is five square meters [54 square feet] or more and the centroid is more than one meter [39 inches] from the wall. The sample shall be extracted at a rate proportional to the gas velocity at the sampling point. The minimum sampling time shall be ten minutes and the minimum sampling volume one-hundredths dscm [0.35 dscf] for each sample. The arithmetic average of two samples of equal sampling time shall constitute one run. Samples shall be taken at approximately one-hour intervals.

- (4) For the purpose of determining compliance with subparagraph b of paragraph 1 of subdivision e, Method 6 shall be used to determine the concentration of sulfur dioxide and Method 15 shall be used to determine the concentration of hydrogen sulfide and reduced sulfur compounds.

- (a) If Method 6 is used, the procedure outlined in subparagraph b of paragraph 3 shall be followed except that each run shall span a minimum of four consecutive hours of continuous sampling. A number of separate samples may be taken for each run, provided the total sampling time of these samples adds up to a minimum of four consecutive hours. Where more than one sample is used, the average sulfur dioxide concentration for the run shall be calculated as the time weighted average of the sulfur dioxide concentration for each sample according to the formula:

$$C_R = \frac{\sum_{i=1}^N C_{S_i} t_{S_i}}{T}$$

where:

CR = SO₂ concentration for the run.

N = number of samples.

CS_i = SO₂ concentration for sample i.

t_{Si} = continuous sampling time of sample i.

T = total continuous sampling time of all
N samples.

- (b) If Method 15 is used, each run shall consist of sixteen samples taken over a minimum of three hours. The sampling point shall be at the centroid of the cross section of the duct if the cross sectional area is less than five square meters [54 square feet] or at a point no closer to the walls than one meter [39 inches] if the cross sectional area is five square meters [54 square feet] or more and the centroid is more than one meter [39 inches] from the wall. To ensure minimum residence time for the sample inside the sample lines, the sampling rate shall be at least three liters per minute [0.1 cubic foot per minute]. The sulfur dioxide equivalent for each run shall be calculated as the arithmetic average of the sulfur dioxide equivalent of each sample during the run. Reference Method 4 shall be used to determine the moisture content of the gases. The sampling point for Method 4 shall be adjacent to the sampling point for Method 15. The sample shall be extracted at a rate proportional to the gas velocity at the sampling point. Each run shall span a minimum of four consecutive hours of continuous sampling. A number of separate samples may be taken for each run provided the total sampling time of these samples adds up to a minimum of four consecutive hours. Where more than one sample is used, the average moisture content for the run shall be calculated as the time weighted average of the moisture content of each sample according to the formula:

$$B_{wo} = \sum_{v=1}^N B_{vi} \left[\frac{t_{vi}}{T} \right]$$

where:

Bwo = proportion by volume of water vapor
in the gas stream for the run.

N = number of samples.

Bvi = proportion by volume of water vapor in
the gas stream for the sample i.

tvi = continuous sampling time for sample i.

T = total continuous sampling time of all
N samples.

- (5) An owner or operator of an affected facility may request the department to determine opacity of emissions from the affected facility during any performance test covered under subsection 7 of section 33-15-12-01. In such event the provisions of paragraphs 2, 3, and 4 of subdivision e of subsection 9 of section 33-15-12-01 shall apply.

8. Standards of performance for storage vessels for petroleum liquids.

a. Applicability and designation of affected facility.

- (1) Except as provided in paragraph 2, the affected facility to which this subsection applies is each storage vessel for petroleum liquids which has a storage capacity greater than one hundred fifty-one thousand four hundred twelve liters [40,000 gallons].
- (2) This subsection does not apply to storage vessels for petroleum or condensate stored, processed, or treated at a drilling and production facility prior to custody transfer.
- (3) Any facility under paragraph 1 that commences construction after March 8, 1974, is subject to the requirements of this subsection.

b. Definitions. As used in this section, all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01.

- (1) "Condensate" means hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature or pressure, or both, and remains liquid at standard conditions.

- (2) "Custody transfer" means the transfer of produced petroleum or condensate, or both, after processing or treating, or both, in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.
- (3) "Drilling and production facility" means all drilling and servicing equipment, wells, flow lines, separators, equipment, gathering lines, and auxiliary non-transportation-related equipment used in the production of petroleum but does not include natural gasoline plants.
- (4) "Floating roof" means a storage vessel cover consisting of a double deck, pontoon single deck, internal floating cover or covered floating roof, which rests upon and is supported by the petroleum liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and tank wall.
- (5) "Hydrocarbon" means any organic compound consisting predominantly of carbon and hydrogen.
- (6) "Petroleum" means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.
- (7) "Petroleum liquids" means petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery but does not mean Number 2 through Number 6 fuel oils as specified in A.S.T.M. D39669, gas turbine fuel oils Numbers 2-GT through 4-GT as specified in A.S.T.M. D2880-71, or diesel fuel oils Numbers 2-D and 4-D as specified in A.S.T.M. D975-68.
- (8) "Petroleum refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives.
- (9) "Reid vapor pressure" is the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids, except liquefied petroleum gases, as determined by A.S.T.M. D323-58 (reapproved 1968).
- (10) "Storage vessel" means any tank, reservoir, or container used for the storage of petroleum liquids, but does not include:

- (a) Pressure vessels which are designed to operate in excess of fifteen pounds [6.80 kilograms] per square inch [6.45 square centimeters] gauge without emissions to the atmosphere except under emergency conditions.
 - (b) Subsurface caverns or porous rock reservoirs.
 - (c) Underground tanks if the total volume of petroleum liquids added to and taken from a tank annually does not exceed twice the volume of the tank.
- (11) "True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American petroleum institute bulletin 2517, Evaporation Loss from Floating Roof Tanks, 1962.
- (12) "Vapor recovery system" means a vapor gathering system capable of collecting all hydrocarbon vapors and gases discharged from the storage vessel and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere.
- c. Standard for hydrocarbons. The owner or operator of any storage vessel to which this subsection applies shall store petroleum liquids as follows:
- (1) If the true vapor pressure of the petroleum liquid, as stored, is equal to or greater than seventy-eight millimeters mercury [1.5 pounds per square inch absolute] but not greater than five hundred seventy millimeters mercury [11.1 pounds per square inch absolute], the storage vessel shall be equipped with a floating roof, a vapor recovery system, or their equivalents.
 - (2) If the true vapor pressure of the petroleum liquid as stored is greater than five hundred seventy millimeters mercury [11.1 pounds per square inch absolute], the storage vessel shall be equipped with a vapor recovery system or its equivalent.
- d. Monitoring of operations.
- (1) The owner or operator of any storage vessel to which this subsection applies shall for each such storage vessel maintain a file of each type of petroleum liquid stored, of the typical Reid vapor pressure of each type of petroleum liquid stored, and of the

dates of storage. Dates on which the storage vessel is empty shall be shown.

- (2) The owner or operator of any storage vessel to which this subsection applies shall for each such storage vessel determine and record the average monthly storage temperature and true vapor pressure of the petroleum liquid stored at such temperature if:
 - (a) The petroleum liquid has a true vapor pressure, as stored, greater than twenty-six millimeters mercury [0.5 pounds per square inch absolute] but not less than seventy-eight millimeters mercury [1.5 pounds per square inch absolute] and is stored in a storage vessel other than one equipped with a floating roof, a vapor recovery system or their equivalents; or
 - (b) The petroleum liquid has a true vapor pressure, as stored, greater than four hundred seventy millimeters mercury [9.1 pounds per square inch absolute] and is stored in a storage vessel other than one equipped with a vapor recovery system or its equivalent.
- (3) The average monthly storage temperature is an arithmetic average calculated for each calendar month, or portion thereof if storage is for less than a month, from bulk liquid storage temperatures determined at least once every seven days.
- (4) The true vapor pressure shall be determined by the procedures in American petroleum institute (API) bulletin 2517. This procedure is dependent upon determination of the storage temperature and the Reid vapor pressure, which requires sampling of the petroleum liquids in the storage vessels. Unless the department requires in specific cases that the stored petroleum liquid be sampled, the true vapor pressure may be determined by using the average monthly storage temperature and the typical Reid vapor pressure. For those liquids for which certified specifications limiting the Reid vapor pressure exist, that Reid vapor pressure may be used. For other liquids, supporting analytical data must be made available on request to the department when typical Reid vapor pressure is used.

~~9. Standards-of-performance-for-secondary-lead-smelters:~~

~~a:--Applicability--and--designation-of-affected-facility:--The provisions--of--this--subsection--are--applicable--to--the following--affected-facilities-in-secondary-lead-smelters:~~

pot-furnaces-of-more-than-two-hundred-fifty-kilograms-{550 pounds}-charging-capacity,-blast-(cupola)-furnaces,-and reverberatory-furnaces-

b--Definitions---As-used-in-this-subsection,-all-terms-not defined-herein-shall-have-the-meaning-given-them-in--North Dakota--Century--Code-chapter-23-25-and-in-subsection-2-of section-33-15-12-01-

{1}--"Lead"--means--elemental--lead-or-alloys-in-which-the predominant-component-is-lead-

{2}--"Reverberatory--furnace"--includes-the-following-types of--reverberatory--furnaces:---stationary,-rotating, rocking,-and-tilting-

{3}--"Secondary-lead-smelter"--means-any-facility-producing lead-from-a-lead-bearing-scrap-material--by--smelting to-the-metallic-form-

c--Standard-for-particulate-matter-

{1}--On--and--after-the-date-on-which-the-performance-test required-to-be-conducted-by-subsection-7--of--section 33-15-12-01---is--completed,-no--owner--or--operator subject-to-the-provisions-of--this--subsection--shall discharge--or-cause-the-discharge-into-the-atmosphere from-a-blast-(cupola)-or--reverberatory--furnace--any gases-which-

{a}--Contain--particulate--matter--in-excess-of-fifty milligrams-per-dscm-{0.022-grains-per-dscf}-

{b}--Exhibit-twenty-percent-opacity-or-greater-

{2}--On--and--after-the-date-on-which-the-performance-test required-to-be-conducted-by-subsection-7--of--section 33-15-12-01---is--completed,-no--owner--or--operator subject-to-the-provisions-of--this--regulation--shall discharge--or-cause-the-discharge-into-the-atmosphere from-any-pot-furnace--any-gases--which--exhibit--ten percent-opacity-or-greater-

d--Test-methods-and-procedures-

{1}--The--reference--methods--appended--to--this--chapter, except-as-provided-for-in-subdivision-b-of-subsection 7--of--section-33-15-12-01-shall-be-used-to-determine compliance---with---the---standards---prescribed---in subdivision-e-of-this-subsection-as-follows-

{a}--Method--5--for--the-concentration-of-particulate matter-and-the-associated-moisture-content-

~~(b) Method 1 for sample and velocity traverses.~~

~~(c) Method 2 for velocity and volumetric flow rate.~~

~~(d) Method 3 for gas analysis.~~

~~(2) For Method 5, the sampling time for each run shall be at least sixty minutes and the sampling rate shall be at least nine tenths dscm per hour {0.53 dscf per minute} except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the department. Particulate sampling shall be conducted during representative periods of furnace operation, including charging and tapping.~~

Standards of performance for incinerators.

a. Applicability and designation of affected facility. The provisions of this subsection are applicable to each incinerator of more than forty-five metric tons [fifty tons] per day charging rate, which is the affected facility. Any facility that commences construction or modification after August 17, 1971, is subject to the requirements of this subsection.

b. Definitions. As used in this subsection, all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01.

(1) "Day" means twenty-four hours.

(2) "Incinerator" means any furnace used in the process of burning solid waste for the purpose of reducing the volume of the waste by removing combustible matter.

(3) "Solid waste" means refuse, more than fifty percent of which is municipal type waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustibles, and noncombustible materials such as glass and rock.

c. Standard for particulate matter. On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility any gases which contain particulate matter in excess of 0.18 g/dscm [0.08 gr/dscf] corrected to twelve percent carbon dioxide.

d. Monitoring of operations. The owner or operator of any incinerator subject to the provisions of this subsection shall record the daily charging rates and hours of operation.

e. Test methods and procedures.

(1) The reference methods in Appendix A to this chapter, except as provided for in subdivision b of subsection 7 of section 33-15-12-01, shall be used to determine compliance with the standard prescribed in subdivision c of this subsection as follows:

(a) Method 5 for the concentration of particulate matter and the associated moisture content.

(b) Method 1 for sample and velocity traverses.

(c) Method 2 for velocity and volumetric flow rate.

(d) Method 3 for gas analysis and calculation of excess air, using the integrated sample technique.

(2) For Method 5, the sampling time for each run shall be at least sixty minutes and the minimum sample volume shall be 0.85 dscm [30.0 dscf] except that smaller sampling times or sample volumes, when necessitated by process variables or other factors, may be approved by the department.

(3) If a wet scrubber is used, the gas analysis sample shall reflect flue gas conditions after the scrubber, allowing for carbon dioxide absorption by sampling the gas on the scrubber inlet and outlet sides according to either the procedure under subparagraphs a through e or the procedure under subparagraphs a, b, and f as follows:

(a) The outlet sampling site shall be the same as for the particulate matter measurement. The inlet site shall be selected according to Method 1, or as specified by the department.

(b) Randomly select nine sampling points within the cross section at both the inlet and outlet sampling sites. Use the first set of three for the first run, the second set for the second run, and the third set for the third run.

(c) Simultaneously with each particulate matter run, extract and analyze for carbon dioxide an integrated gas sample according to Method 3,

traversing the three sample points and sampling at each point for equal increments of time. Runs shall be conducted at both inlet and outlet sampling sites.

(d) Measure the volumetric flow rate at the inlet during each particulate matter run according to Method 2, using the full number of traverse points. For the inlet make two full velocity traverses approximately one hour apart during each run and average the results. The outlet volumetric flow rate may be determined from the particulate matter run (Method 5).

(e) Calculate the adjusted carbon dioxide percentage using the following equation:

$$(\% \text{ CO}_2)_{\text{adj}} = (\% \text{ CO}_2)_{\text{di}} (Q_{\text{di}}/Q_{\text{do}})$$

where:

(% CO₂)_{adj} = adjusted carbon dioxide percentage which removes the effect of carbon dioxide absorption and dilution air.

(% CO₂)_{di} = percentage of carbon dioxide measured before the scrubber, dry basis.

Q_{di} = volumetric flow rate before the scrubber, average of two runs, dscf/min (using Method 2).

Q_{do} = volumetric flow rate after the scrubber, dscf/min (using Methods 2 and 5).

(f) Alternatively, the following procedures may be substituted for the procedures under subparagraphs c, d, and e.

[1] Simultaneously with each particulate matter run, extract and analyze for carbon dioxide, oxygen, and nitrogen an integrated gas sample according to Method 3, traversing the three sample points and sampling for equal increments of time at each point. Conduct the runs at both the inlet and outlet sampling sites.

[2] After completing the analysis of the gas sample, calculate the percentage of excess

air (% EA) for both the inlet and outlet sampling sites using equation 3-1 in Appendix A to this chapter.

[3] Calculate the adjusted carbon dioxide percentage using the following equation:

$$(\% \text{ CO}_2)_{\text{adj}} = (\% \text{ CO}_2)_{\text{di}} \frac{100 + (\% \text{ EA})_{\text{i}}}{100 + (\% \text{ EA})_{\text{o}}}$$

where:

(% CO₂)_{adj} = adjusted outlet carbon dioxide percentage.

(% CO₂)_{di} = percentage of carbon dioxide measured before the scrubber, dry basis.

(% EA)_i = percentage of excess air at the inlet.

(% EA)_o = percentage of excess air at the outlet.

[4] Particulate matter emissions, expressed in g/dscm, shall be corrected to twelve percent carbon dioxide by using the following formula:

$$c_{12} = \frac{12c}{\% \text{ CO}_2}$$

where:

c₁₂ = concentration of particulate matter corrected to twelve percent carbon dioxide.

c = concentration of particulate matter as measured by Method 5.

% CO₂ = percentage of carbon dioxide as measured by Method 3, or when applicable, the adjusted outlet carbon dioxide percentage as determined by this paragraph.

10. ~~Standards--of--performance--for--secondary--brass--and--bronze--ingot production--plants:~~

~~a.--Applicability--and--designation--of--affected--facility.--The provisions--of--this--subsection--are--applicable--to--the~~

following-affected-facilities-in-secondary-brass-or-bronze
ingot--production--plants:---reverberatory--and---electric
furnaces--of--one--thousand--kilograms--{2,205--pounds}-or
greater-production-capacity-and-blast-(cupola)-furnaces-of
two-hundred-fifty-kilograms-per-hour-{550-pounds-per-hour}
or-greater-production-capacity:

b.--Definitions:---As--used--in--this--subsection,--all--terms--not
defined--herein--shall--have--the--meaning--given--them--in--North
Dakota--Century--Code--chapter--23-25--and--in--subsection--2--of
section--33-15-12-01:

{1}--"Blast--furnace"--means--any--furnace--used--to--recover
metal--from--slag:

{2}--"Brass--or--bronze"--means--any--metal--alloy--containing
copper--as--its--predominant--constituent,--and--lesser
amounts--of--zinc,--tin,--lead,--or--other--metals:

{3}--"Electric--furnace"--means--any--furnace--which--uses
electricity--to--produce--over--fifty--percent--of--the--heat
required--in--the--production--of--refined--brass--or
bronze:

{4}--"Reverberatory--furnace"--includes--the--following--types
of--reverberatory--furnaces:---stationary,--rotating,
rocking,--and--tilting:

e.--Standard--for--particulate--matter:

{1}--On--and--after--the--date--on--which--the--performance--test
required--to--be--conducted--by--subsection--7--of--section
33-15-12-01---is--completed,--no--owner--or--operator
subject--to--the--provisions--of--this--subsection--shall
discharge--or--cause--the--discharge--into--the--atmosphere
from--a--reverberatory--furnace--any--gases--which:

{a}--Contain--particulate--matter--in--excess--of--fifty
milligrams--per--dscm--{0.022--grains--per--dscf}:

{b}--Exhibit--twenty--percent--opacity--or--greater:

{2}--On--and--after--the--date--on--which--the--performance--test
required--to--be--conducted--by--subsection--7--of--section
33-15-12-01---is--completed,--no--owner--or--operator
subject--to--the--provisions--of--this--subsection--shall
discharge--or--cause--the--discharge--into--the--atmosphere
from--any--blast--(cupola)--or--electric--furnace--any--gases
which--exhibit--ten--percent--opacity--or--greater:

d.--Test--methods--and--procedures:

{1}--The-reference-methods-appended-to-this-chapter-except as-provided-for-in-subdivision-b-of-subsection--7--of section--33-15-12-01,--shall-be-used-to-determine compliance---with---the---standards---prescribed---in subdivision-c-of-this-subsection-as-follows:

{a}--Method--5--for--the-concentration-of-particulate matter-and-the-associated-moisture-content-

{b}--Method-1-for-sample-and-velocity-traverses-

{c}--Method--2-for-velocity-and-volumetric-flow-rate-

{d}--Method-3-for-gas-analysis-

{2}--For-Method-5,--the-sampling-time-for-each-run-shall-be at-least-one-hundred-twenty-minutes-and-the--sampling rate--shall--be--at--least--nine-tenths-dscm-per-hour {0.53-dscf-per-minute}-except-that--shorter--sampling times,--when--necessitated--by--process--variables-or other-factors,--may-be--approved--by--the--department. Particulate-matter-sampling-shall-be-conducted-during representative-periods-of-charging-and-refining,--but not-during-pouring-of-the-heat-

11---Standards-of-performance-for-iron-and-steel-plants-

a---Applicability--and--designation-of-affected-facility---The affected--facility--to--which--the--provisions---of---this subsection-apply-is-each-basic-oxygen-process-furnace-

b---Definitions---As--used--in-this-subsection,--all-terms-not defined-herein-shall-have-the-meaning-given-them-in--North Dakota--Century--Code-chapter-23-25-and-in-subsection-2-of section-33-15-12-01-

{1}--"Basic--oxygen--process--furnace"--(BOPF)--means--any furnace-producing-steel-by-charging-scrap-steel,--hot metal,--and--flux--materials--into--a--vessel--and introducing-a-high-volume-of-an-oxygen-rich-gas-

{2}--"Steel---production---cycle"---means--the--operations required-to-produce-each-batch-of-steel-and--includes the---following--major--functions:---scrap--charging; preheating-(when-used);--hot-metal--charging;--primary oxygen---blowing;--additional--oxygen--blowing--(when used);--and-tapping-

c---Standard-for-particulate-matter---On-and-after-the-date-on which-the-performance-test-required--to--be--conducted--by subsection-7-of-section-33-15-12-01-is-completed,--no-owner or-operator-subject-to-the-provisions-of--this--subsection

shall discharge or cause the discharge into the atmosphere from any affected facility any gases which:

(1) Contain particulate matter in excess of fifty milligrams per dscm {0.022 grains per dscf}:

(2) {Reserved}

d. {Reserved}

e. Test methods and procedures:

(1) The reference methods appended to this chapter, except as provided for in subdivision b of subsection 7 of section 33-15-12-01 shall be used to determine compliance with the standards prescribed in subdivision c of this subsection as follows:

(a) Method 5 for concentration of particulate matter and associated moisture content:

(b) Method 1 for sample and velocity traverses:

(c) Method 2 for volumetric flow rate:

(d) Method 3 for gas analysis:

(2) For Method 5, the sampling for each run shall continue for an integral number of cycles with total duration of at least sixty minutes. The sampling rate shall be at least nine tenths dscm per hour {0.53 dscf per minute} except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the department. A cycle shall start at the beginning of either the scrap preheat or the oxygen blow and shall terminate immediately prior to tapping.

12. Standards of performance for sewage treatment plants.

a. Applicability and designation of affected facility. The affected facility is each incinerator that combusts wastes containing more than ten percent sewage sludge (dry basis) produced by municipal sewage treatment plants, or each incinerator that charges more than one thousand kilograms [2204 pounds] per day municipal sewage sludge (dry basis). Any facility that commences construction after June 11, 1973, is subject to the requirements of this subsection.

b. Definitions. As used in this subsection, all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01.

- c. Standard for particulate matter. On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator of any sewage sludge incinerator subject to the provisions of this subsection shall discharge or cause the discharge into the atmosphere of:
 - (1) Particulate matter at a rate in excess of sixty-five-hundredths grams per kilogram dry sludge input [1.30 pounds per ton dry sludge input].
 - (2) Any gases which exhibit twenty percent opacity or greater.

- d. Monitoring of operations. The owner or operator of any sludge incinerator subject to the provisions of this subsection shall:
 - (1) Install, calibrate, maintain, and operate a flow measuring device which can be used to determine either the mass or volume of sludge charged to the incinerator. The flow measuring device shall have an accuracy of \pm five percent over its operating range.
 - (2) Provide access to the sludge charged so that a well-mixed representative grab sample of the sludge can be obtained.
 - (3) Install, calibrate, maintain, and operate a weighing device for determining the mass of any municipal solid waste charged to the incinerator when sewage sludge and municipal solid waste are incinerated together. The weighing device shall have an accuracy of \pm five percent over its operating range.

- e. Test methods and procedures.
 - (1) The reference methods appended to this chapter, except as provided for in subdivision b of subsection 7 of section 33-15-12-01, shall be used to determine compliance with the standards prescribed in subdivision c of this subsection as follows:
 - (a) Method 5 for concentration of particulate matter and associated moisture content.
 - (b) Method 1 for sample and velocity traverses.
 - (c) Method 2 for volumetric flow rate.
 - (d) Method 3 for gas analysis.

- (2) For Method 5, the sampling time for each run shall be at least sixty minutes and the sampling rate shall be at least fifteen-thousandths dscm per minute [0.53 dscf per minute], except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the department.
- (3) Dry sludge charging rate shall be determined as follows:
 - (a) Determine the mass or volume of sludge charged to the incinerator during each run using a flow measuring device meeting the requirements of paragraph 1 of subdivision d. If total input during a run is measured by a flow measuring device, such readings shall be used. Otherwise, record the flow measuring device readings at five-minute intervals during a run. Determine the quantity charged during each interval by averaging the flow rates at the beginning and end of the interval and then multiplying the average for each interval by the time for each interval. Then add the quantity for each interval to determine the total quantity charged during the entire run, sludge mass or sludge volume.
 - (b) Collect samples of the sludge charged to the incinerator in nonporous collecting jars at the beginning of each run and at approximately one-hour intervals thereafter until the test ends, and determine for each sample the dry sludge content (total solids residue) in accordance with "224 G. Method for Solid and Semisolid Samples," Standard Methods for the Examination of Water and Wastewater, Thirteenth Edition, American Public Health Association, Incorporated, New York, New York, 1971, pages 539-41, except that:
 - [1] Evaporating dishes shall be ignited to at least one hundred three degrees Celsius rather than the five hundred fifty degrees Celsius specified in step 3(a)(1).
 - [2] Determination of volatile residue, step 3(b) may be deleted.
 - [3] The quantity of dry sludge per unit sludge charged shall be determined in terms of either R_{dv} (metric units: mg dry sludge/liter sludge charged or English units: lb/ft³) or R_{dm} (metric units: mg

dry sludge/mg sludge charged or English units: lb/lb).

- (c) Determine the quantity of dry sludge per unit sludge charged in terms of either Rdv or Rdm.

- [1] If the volume of sludge charged is used:

$$S_d = (60 \times 10^{-3}) \frac{R \, dvS_v}{T} \text{ (metric units)}$$

or

$$S_d = (8.021) \frac{RdvS_v}{T} \text{ (English units)}$$

where:

S_d = average dry sludge charging rate during the run, kg/hr [English units: lb/hr].

Rdv = average quantity of dry sludge per unit volume of sludge charged to the incinerator, mg/l [English units: lb/ft³].

S_v = sludge charged to the incinerator during the run, m³ [English units: gal].

T = duration of run, min [English units: min].

60×10^{-3} = metric units conversion factor, 1-kg-min/m³-mg-hr.

8.021 = English units conversion factor, ft³-min/gal-hr.

- [2] If the mass of sludge charged is used:

$$S_d = (60) \frac{RdmS_m}{T} \text{ [metric or English units]}$$

where:

S_d = average dry sludge charging rate during the run, kg/hr [English units: lb/hr].

Rdm = average ratio of quantity of dry

sludge to quantity of sludge charged to the incinerator mg/mg [English units: lb/lb].

S_m = sludge charged during the run, kg [English units: lb].

T = duration of run, min (metric or English units).

60 = conversion factor, min/hr (metric or English units).

- (4) Particulate emission rate shall be determined by:

$$C_{aw} = C_s Q_s \text{ (metric or English units)}$$

where:

C_{aw} = particulate matter mass emissions, mg/hr [English units: lb/hr].

C_s = particulate matter concentration, mg/m³ [English units: lb/dscf].

Q_s = volumetric stack gas flow rate, dscm/hr [English units: dscf/hr]. Q_s and C_s , shall be determined using Methods 2 and 5, respectively.

- (5) Compliance with subdivision c shall be determined as follows:

$$C_{ds} = (10^{-3}) \frac{C_{aw}}{S_d} \text{ (metric units)}$$

or

$$C_{ds} = (2000) \frac{C_{aw}}{S_d} \text{ (English units)}$$

where:

C_{ds} = particulate emission discharge, g/kg dry sludge [English units: lb/ton dry sludge].

10-3 = metric conversion factor, g/mg.

2000 = English conversion factor, lb/ton.

~~13.---Standards-of-performance-for-primary-copper-smelters---~~

a--Applicability--and--designation--of--affected--facility--The provisions--of--this--subsection--are--applicable--to--the following--affected--facilities--in--primary--copper--smelters: dryer,--roaster,--smelting--furnace,--and--copper--converter-

b--Definitions---As--used--in--this--subsection,--all--terms--not defined--herein--shall--have--the--meaning--given--them--in--North Dakota--Century--Code--chapter--23--25--and--in--subsection--2--of section--33--15--12--01-

{1}--"Calcine"--means--the--solid--materials--produced--by--a roaster-

{2}--"Copper--converter"--means--any--vessel--to--which--copper matte--is--charged--and--oxidized--to--copper-

{3}--"Dryer"--means--any--facility--in--which--a--copper--sulfide ore--concentrate--charge--is--heated--in--the--presence--of air--to--eliminate--a--portion--of--the--moisture--from--the charge,--provided--less--than--five--percent--of--the--sulfur contained---in---the--charge--is--eliminated--in--the facility-

{4}--"Fossil--fuel"--means--natural--gas,--petroleum,--coal,--and any--form--of--solid,--liquid,--or--gaseous--fuel--derived from--such--materials--for--the--purpose--of--creating useful--heat-

{5}--"High--level--of--volatile--impurities"--means--a--total smelter--charge--containing--more--than--two--tenths--weight percent--arsenic,--one--tenth--weight--percent--antimony, four--and--five--tenths--weight--percent--lead--or--five--and five--tenths--weight--percent--zinc,--on--a--dry--basis-

{6}--"Primary--copper--smelter"--means--any--installation--or any--intermediate--process--engaged--in--the--production--of copper--from--copper--sulfide--ore--concentrates--through the--use--of--pyrometallurgical--techniques-

{7}--"Reverberatory--smelting--furnace"--means--any--vessel--in which--the--smelting--of--copper--sulfide--ore--concentrates or--calcines--is--performed--and--in--which--the--heat necessary--for--smelting--is--provided--primarily--by combustion--of--a--fossil--fuel-

{8}--"Roaster"--means--any--facility--in--which--a--copper sulfide--ore--concentrate--charge--is--heated--in--the presence--of--air--to--eliminate--a--significant--portion (five--percent--or--more)--of--the--sulfur--contained--in--the charge-

{9}--"Smelting"--means---processing--techniques--for--the melting--of--a--copper--sulfide--ore--concentrate--or

calcine--charge--leading-to-the-formation-of-separate
layers-of--molten--slag;--molten--copper;--or--copper
matte:

{10}--"Smelting--furnace"--means--any--vessel--in-which-the
smelting--of--copper--sulfide--ore--concentrates--or
calcines-is-performed-and-in-which-the-heat-necessary
for-smelting-is--provided--by--an--electric--current;
rapid--oxidation-of-a-portion-of-the-sulfur-contained
in-the-concentrate-as-it-passes-through-an--oxidizing
atmosphere;--or-the-combustion-of-a-fossil-fuel:

{11}--"Sulfuric--acid--plant"--means-any-facility-producing
sulfuric-acid-by-the-contact-process:

{12}--"Total--smelter--charge"--means-the-weight-(dry-basis)
of-all-copper-sulfide-ore-concentrates-processed-at-a
primary--copper-smelter;--plus-the-weight-of-all-other
solid-materials--introduced--into--the--roasters--and
smelting-furnaces-at-a-primary-copper-smelter;--except
calcine;--over-a-one-month-period:

c.--Standard-for-particulate-matter.--On-and-after-the-date-on
which-the-performance-test-required--to--be--conducted--by
subsection-7-of-section-33-15-12-01-is-completed;--no-owner
or-operator-subject-to-the-provisions-of--this--subsection
shall--cause-to-be-discharged-into-the-atmosphere-from-any
dryer-any-gases-which-contain-particulate-matter-in-excess
of-fifty-mg/dscm-{0:022-gr/dscf}:

d.--Standard-for-sulfur-dioxide:

{1}--On--and--after-the-date-on-which-the-performance-test
required-to-be-conducted-by-subsection-7--of--section
33-15-12-01--is--completed;--no--owner--or--operator
subject-to-the-provisions-of--this--subsection--shall
cause--to--be-discharged-into-the-atmosphere-from-any
roaster;--smelting-furnace;--or--copper--converter--any
gases--which--contain--sulfur--dioxide--in--excess-of
sixty-five-thousandths-percent-by-volume;--except--as
provided--in--paragraphs---{2}---and--{3}--of--this
subdivision:

{2}--Reverberatory--smelting--furnaces--shall--be-exempted
from-paragraph-(1)--during--periods--when--the--total
smelter-charge-at-the-primary-copper-smelter-contains
a-high-level-of-volatile-impurities:

{3}--A--change--in--the--fuel-combusted-in-a-reverberatory
smelting--furnace--shall--not--be--considered--a
modification-under-this-subsection:

e.--Standard-for-visible-emissions:

(1) On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any dryer any visible emissions which exhibit greater than twenty percent opacity.

(2) On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility that uses a sulfuric acid plant to comply with the standard set forth in subdivision d of this subsection, any visible emissions which exhibit greater than twenty percent opacity.

f. Monitoring of operations:

(1) The owner or operator of any primary copper smelter subject to paragraph (2) of subdivision d of this subsection shall keep a monthly record of the total smelter charge and the weight percent (dry basis) of arsenic, antimony, lead and zinc contained in this charge. The analytical methods and procedures employed to determine the weight of the total smelter charge and the weight percent of arsenic, antimony, lead and zinc shall be approved by the department and shall be accurate to within ten percent.

(2) The owner or operator of any primary copper smelter subject to the provisions of this subsection shall install and operate:

(a) A continuous monitoring system to monitor and record the opacity of gases discharged into the atmosphere from any dryer. The span of this system shall be set at eighty to one hundred percent opacity.

(b) A continuous monitoring system to monitor and record sulfur dioxide emissions discharged into the atmosphere from any roaster, smelting furnace or copper converter subject to paragraph (1) of subdivision d of this subsection. The span of this system shall be set at a sulfur dioxide concentration of two tenths percent by volume.

{1} The continuous monitoring system performance evaluation required under subsection 11 of section 33-15-12-01 shall

be completed prior to the initial performance test required under subsection 7 of section 33-15-12-01. During the performance evaluation, the span of the continuous monitoring system may be set at a sulfur dioxide concentration of fifteen hundredths percent by volume if necessary to maintain the system output between twenty percent and ninety percent of full scale. Upon completion of the continuous monitoring system performance evaluation, the span of the continuous monitoring system shall be set at a sulfur dioxide concentration of two tenths percent by volume.

{2} For the purpose of the continuous monitoring system performance evaluation required under subdivision c of subsection 11 of section 33-15-12-01, the reference method referred to under the Field Test for Accuracy (Relative) in Performance Specification 2 of Appendix B to this chapter shall be Reference Method 6. For the performance evaluation of each concentration measurement shall be of one hour duration. The pollutant gas used to prepare the calibration gas mixtures required under paragraph 2.1, Performance Specification 2 of Appendix B, and for calibration checks under subdivision d of subsection 11 of section 33-15-12-01, shall be sulfur dioxide.

{3} Six-hour average sulfur dioxide concentrations shall be calculated and recorded daily for the four consecutive six-hour periods of each operating day. Each six-hour average shall be determined as the arithmetic mean of the appropriate six contiguous one-hour average sulfur dioxide concentrations provided by the continuous monitoring system installed under paragraph {2}.

{4} For the purpose of reports required under subdivision e of subsection 6 of section 33-15-12-01, periods of excess emissions that shall be reported are defined as follows:

{a} Opacity: Any six-minute period during which the average opacity, as measured by the continuous monitoring system installed under paragraph {2}, exceeds the standard under paragraph {1} of subdivision e.

(b) Sulfur dioxide. All six-hour periods during which the average emissions of sulfur dioxide, as measured by the continuous monitoring system installed under paragraph (2) of subdivision f exceed the level of the standard. The department will not consider emissions in excess of the level of the standard for less than or equal to one and one-half percent of the six-hour periods during the quarter as indicative of a potential violation of subdivision d of subsection 9 of section 33-15-12-01 provided the affected facility, including air pollution control equipment, is maintained and operated in a manner consistent with good air pollution control practice for minimizing emissions during these periods. Emissions in excess of the level of the standard during periods of startup, shutdown, and malfunction are not to be included within the one and one-half percent.

g. Test methods and procedures:

(1) The reference methods in Appendix A to this chapter, except as provided for in subdivision 2 of subsection 7 of section 33-15-12-01, shall be used to determine compliance with the standards prescribed in subdivisions c, d, and e of this subsection as follows:

(a) Method 5 for the concentration of particulate matter and the associated moisture content:

(b) Sulfur dioxide concentrations shall be determined using the continuous monitoring system installed in accordance with paragraph (2) of subdivision f. One six-hour average period shall constitute one run. The monitoring system drift during any run shall not exceed two percent of span:

(2) For Method 5, Method 1 shall be used for selecting the sampling site and the number of traverse points; Method 2 for determining velocity and volumetric flow rate and Method 3 for determining the gas analysis. The sampling time for the minimum sampling volume shall be eighty-five hundredths dscm {30 dscf} except that smaller times or volumes, when necessitated by process variables or other factors, may be approved by the department.

14. Standards of performance for primary zinc smelters:

a.--Applicability--and--designation-of-affected-facility:--The provisions--of--this--subsection--are--applicable--to--the following--affected--facilities--in--primary-zinc-smelters: roaster-and-sintering-machine:

b.--Definitions:---As--used--in--this--subsection,--all--terms--not defined--herein--shall--have--the--meaning--given--them--in--North Dakota--Century--Code--chapter--23-25--and--in--subsection--2--of section--33-15-12-01:

(1)--"Primary-zinc-smelter"--means--any--installation--engaged in--the--production,--or--any--intermediate--process--in--the production,--of--zinc--or--zinc-oxide--from--zinc-sulfide ore--concentrates--through--the--use--of--pyrometallurgical techniques:

(2)--"Roaster"--means--any--facility--in--which--a--zinc-sulfide ore--concentrate--charge--is--heated--in--the--presence--of air--to--eliminate--a--significant--portion--(more--than--ten percent)--of--the--sulfur--contained--in--the--charge:

(3)--"Sintering---machine"--means--any--furnace--in--which calcines--are--heated--in--the--presence--of--air--to agglomerate--the--calcines--into--a--hard-porous--mass called--"sinter":

(4)--"Sulfuric--acid--plant"--means--any--facility--producing sulfuric--acid--by--the--contact--process:

c.--Standard-for-particulate-matter:--On--and--after--the--date--on which--the--performance--test--required--to--be--conducted--by subsection--7--of--section--33-15-12-01--is--completed,--no--owner or--operator--subject--to--the--provisions--of--this--subsection shall--cause--to--be--discharged--into--the--atmosphere--from--any sintering--machine--any--gases--which--contain--particulate matter--in--excess--of--fifty-mg/dsem--{0.022-gr/dsef}:

d.--Standard-for-sulfur-dioxide:

(1)--On--and--after--the--date--on--which--the--performance--test required--to--be--conducted--by--subsection--7--of--section 33-15-12-01--is--completed,--no--owner--or--operator subject--to--the--provisions--of--this--subsection--shall cause--to--be--discharged--into--the--atmosphere--from--any roaster--any--gases--which--contain--sulfur--dioxide--in excess--of--sixty-five--thousandths--percent--by--volume:

(2)--Any--sintering--machine--which--eliminates--more--than--ten percent--of--the--sulfur--initially--contained--in--the--zinc sulfide--ore--concentrates--will--be--considered--as--a roaster--under--paragraph--(1):

e.--Standard-for-visible-emissions:

{1}--On--and--after--the--date--on--which--the--performance--test
required--to--be--conducted--by--subsection--7--of--section
33-15-12-01--is--completed,--no--owner--or--operator
subject--to--the--provisions--of--this--subsection--shall
cause--to--be--discharged--into--the--atmosphere--from--any
sintering--machine--any--visible--emissions--which--exhibit
greater--than--twenty--percent--opacity-

{2}--On--and--after--the--date--on--which--the--performance--test
required--to--be--conducted--by--subsection--7--of--section
33-15-12-01--is--completed,--no--owner--or--operator
subject--to--the--provisions--of--this--subsection--shall
cause--to--be--discharged--into--the--atmosphere--from--any
affected--faciility--that--uses--a--sulfuric--acid--plant--to
comply--with--the--standard--set--forth--in--subdivision--d
of--this--subsection--any--visible--emissions---which
exhibit--greater--than--twenty--percent--opacity-

f--Monitoring--of--operations-

{1}--The--owner--or--operator--of--any--primary--zinc--smelter
subject--to--the--provisions--of--this--subsection--shall
install--and--operate-

{a}--A--continuous--monitoring--system--to--monitor--and
record--the--opacity--of--gases--discharged--into--the
atmosphere--from--any--sintering--machine---The--span
of--this--system--shall--be--set--at--eighty--to--one
hundred--percent--opacity-

{b}--A--continuous--monitoring--system--to--monitor--and
record--sulfur--dioxide--emissions--discharged--into
the--atmosphere--from--any--roaster--subject--to
subdivision--d--of--this--subsection---The--span--of
this--system--shall--be--set--at--a--sulfur--dioxide
concentration--of--two--tenths--percent--by--volume-

{1}--The-----continuous-----monitoring-----system
performance---evaluation---required---under
subdivision--e--of--subsection--11--of--section
33-15-12-01--shall--be--completed--prior--to--the
initial--performance--test--required--under
subsection--7---of---section---33-15-12-01.
During--the--performance--evaluation,--the--span
of--the--continuous--monitoring--system--may--be
set--at--a--sulfur--dioxide--concentration--of
fifteen--hundredths--percent--by--volume--if
necessary--to--maintain--the--system--output
between--twenty--percent--and--ninety--percent
of--full--scale---Upon--completion--of--the
continuous--monitoring--system--performance
evaluation,--the--span--of--the--continuous
monitoring--system--shall--be--set--at--a--sulfur

dioxide-concentration-of-two-tenths-percent
by-volume-

{2}-For-the-purpose-of-the-continuous
monitoring-system-performance-evaluation
required-under-subdivision-e-of-subsection
11-of-section-33-15-12-01,-the-reference
method-referred-to-under-the-Field-Test-for
Accuracy-(Relative)-in-Performance
Specification-2-of-Appendix-B-to-this
chapter-shall-be-Reference-Method-6.-For
the-performance-evaluation,-each
concentration-measurement-shall-be-of-one
hour-duration.-The-pollutant-gas-used-to
prepare-the-calibration-gas-mixtures
required-under-paragraph-2-1,-Performance
Specification-2-of-Appendix-B,-and-for
calibration-checks-under-subdivision-d-of
subsection-11-of-section-33-15-12-01,-shall
be-sulfur-dioxide-

(2)-Two-hour-average-sulfur-dioxide-concentrations-shall
be-calculated-and-recorded-daily-for-the-twelve
consecutive-two-hour-periods-of-each-operating-day.
Each-two-hour-average-shall-be-determined-as-the
arithmetic-mean-of-the-appropriate-two-contiguous
one-hour-average-sulfur-dioxide-concentrations
provided-by-the-continuous-monitoring-system
installed-under-paragraph-(1)-

(3)-For-the-purpose-of-reports-required-under-subdivision
e-of-subsection-6-of-section-33-15-12-01,-periods-of
excess-emissions-that-shall-be-reported-are-defined
as-follows-

(a)-Opacity.-Any-six-minute-period-during-which-the
average-opacity,-as-measured-by-the-continuous
monitoring-system-installed-under-paragraph-(1),
exceeds-the-standard-under-paragraph-(1)-of
subdivision-e-

(b)-Sulfur-dioxide.-Any-two-hour-period,-as
described-in-paragraph-(2),-during-which-the
average-emissions-of-sulfur-dioxide,-as-measured
by-the-continuous-monitoring-system-installed
under-paragraph-(1),-exceeds-the-standard-under
subdivision-d-

g.-Test-methods-and-procedures-

(1)-The-reference-methods-in-Appendix-A-of-this
regulation-except-as-provided-for-in-subdivision-b-of
subsection-7-of-section-33-15-12-01,-shall-be-used-to

determine compliance with the standards prescribed in subdivisions c, d, and e of this subsection as follows:

(a) Method 5 for the concentration of particulate matter and the associated moisture content:

(b) Sulfur dioxide concentrations shall be determined using the continuous monitoring system installed in accordance with paragraph (1) of subdivision f. One two-hour average period shall constitute one run:

(2) For Method 5, Method 1 shall be used for selecting the sampling site and the number of traverse points; Method 2 for determining velocity and volumetric flow rate and Method 3 for determining the gas analysis. The sampling time for each run shall be at least sixty minutes and the minimum sampling volume shall be eighty-five hundredths dscm {30 dscf} except that smaller times or volumes, when necessitated by process variables or other factors, may be approved by the department:

15. Standards of performance for primary lead smelters:

a. Applicability and designation of affected facility. The provisions of this subsection are applicable to the following affected facilities in primary lead smelters: sintering machine, sintering machine discharge end, blast furnace, dross reverberatory furnace, electric smelting furnace, and converter:

b. Definitions. As used in this subsection, all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01:

(1) "Blast furnace" means any reduction furnace to which sinter is charged and which forms separate layers of molten slag and lead bullion:

(2) "Converter" means any vessel to which lead concentrate or bullion is charged and refined:

(3) "Dross reverberatory furnace" means any furnace used for the removal or refining of impurities from lead bullion:

(4) "Electric smelting furnace" means any furnace in which the heat necessary for smelting of the lead sulfide ore concentrate charge is generated by

passing an electric current through a portion of the molten mass in the furnace.

(5) "Primary lead smelter" means any installation or any intermediate process engaged in the production of lead from lead sulfide ore concentrates through the use of pyrometallurgical techniques.

(6) "Sinter bed" means the lead sulfide ore concentrate charge within a sintering machine.

(7) "Sintering machine" means any furnace in which a lead sulfide ore concentrate charge is heated in the presence of air to eliminate sulfur contained in the charge and to agglomerate the charge into a hard porous mass called "sinter".

(8) "Sintering machine discharge end" means any apparatus which receives sinter as it is discharged from the conveying grate of a sintering machine.

(9) "Sulfuric acid plant" means any facility producing sulfuric acid by the contact process.

c. Standard for particulate matter. On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any blast furnace, dross reverberatory furnace, or sintering machine discharge end any gases which contain particulate matter in excess of fifty mg/dscm {0.022 gr/dscf}.

d. Standard for sulfur dioxide. On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any sintering machine, electric smelting furnace, or converter gases which contain sulfur dioxide in excess of sixty-five thousandths percent by volume.

e. Standard for visible emissions.

(1) On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any blast furnace, dross reverberatory furnace, or sintering machine discharge end any visible emissions which exhibit greater than twenty percent opacity.

(2) On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility that uses a sulfuric acid plant to comply with the standard set forth in subdivision d of this subsection, any visible emissions which exhibit greater than twenty percent opacity.

f. Monitoring of operations:

(1) The owner or operator of any primary lead smelter subject to the provisions of this subsection shall install and operate:

(a) A continuous monitoring system to monitor and record the opacity of gases discharged into the atmosphere from any blast furnace, dross reverberatory furnace, or sintering machine discharge end. The span of this system shall be set at eighty to one hundred percent opacity.

(b) A continuous monitoring system to monitor and record sulfur dioxide emissions discharged into the atmosphere from any sintering machine, electric furnace or converter subject to subdivision d of this subsection. The span of this system shall be set at a sulfur dioxide concentration of two tenths percent by volume.

{1} The continuous monitoring system performance evaluation required under subdivision e of subsection 11 of section 33-15-12-01 shall be completed prior to the initial performance test required under subsection 7 of section 33-15-12-01. During the performance evaluation, the span of the continuous monitoring system may be set at a sulfur dioxide concentration of fifteen hundredths percent by volume if necessary to maintain the system output between twenty percent and ninety percent of full scale. Upon completion of the continuous monitoring system performance evaluation, the span of the continuous monitoring system shall be set at a sulfur dioxide concentration of two tenths percent by volume.

{2} For the purpose of the continuous monitoring system performance evaluation required under subdivision e of subsection

11 of section 33-15-12-01, the reference method referred to under the Field Test for Accuracy (Relative) in Performance Specification 2 of Appendix B of this regulation shall be Reference Method 6. For the performance evaluation, each concentration measurement shall be of one hour duration. The pollutant gases used to prepare the calibration gas mixtures required under paragraph 2.1, Performance Specification 2 of Appendix B, and for calibration checks under subdivision d of subsection 11 of section 33-15-12-01, shall be sulfur dioxide.

(2) Two-hour average sulfur dioxide concentrations shall be calculated and recorded daily for the twelve consecutive two-hour periods of each operating day. Each two-hour average shall be determined as the arithmetic mean of the appropriate two contiguous one-hour average sulfur dioxide concentrations provided by the continuous monitoring system installed under paragraph (1).

(3) For the purpose of reports required under subdivision e of subsection 6 of section 33-15-12-01, periods of excess emissions that shall be reported are defined as follows:

(a) Opacity: Any six-minute period during which the average opacity, as measured by the continuous monitoring system installed under paragraph (1), exceeds the standard under paragraph (1) of subdivision e of this subsection.

(b) Sulfur dioxide: Any two-hour period, as described in paragraph (2), during which the average emissions of sulfur dioxide, as measured by the continuous monitoring system installed under paragraph (1), exceeds the standard under subdivision d of this subsection.

g. Test methods and procedures:

(1) The reference methods in Appendix A of this chapter, except as provided for in subdivision b of subsection 7 of section 33-15-12-01, shall be used to determine compliance with the standards prescribed in subdivisions c, d, and e of this subsection as follows:

(a) Method 5 for the concentration of particulate matter and the associated moisture content:

(b) Sulfur dioxide concentrations shall be determined using the continuous monitoring system installed in accordance with paragraph (1) of subdivision f of this subsection. One two-hour average period shall constitute one run.

(2) For Method 5, Method 1 shall be used for selecting the sampling site and the number of traverse points; Method 2 for determining velocity and volumetric flow rate and Method 3 for determining the gas analysis. The sampling time for each run shall be at least sixty minutes and the minimum sampling volume shall be eighty-five hundredths dscm {30 dscf} except that smaller times or volumes, when necessitated by process variables or other factors, may be approved by the department.

16. Standards of performance for primary aluminum reduction plants:

a. Applicability and designation of affected facility. The affected facilities in primary aluminum reduction plants to which this subsection applies are potroom groups and anode bake plants:

b. Definitions. As used in this subsection, all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01:

(1) "Aluminum equivalent" means an amount of aluminum which can be produced from a ton of anodes produced by an anode bake plant as determined by paragraph (5) of subdivision f of this subsection:

(2) "Anode bake plant" means a facility which produces carbon anodes for use in a primary aluminum reduction plant:

(3) "Potroom" means a building unit which houses a group of electrolytic cells in which aluminum is produced:

(4) "Potroom group" means an uncontrolled potroom; a potroom which is controlled individually; or a group of potrooms ducted to the same control system:

(5) "Primary aluminum reduction plant" means any facility manufacturing aluminum by electrolytic reduction:

(6) "Primary control system" means an air pollution control system designed to remove gaseous and

particulate--fluorides--from--exhaust-gases-which-are
captured-at-the-cell:

- {7}--"Roof--monitor"--means--that-portion-of-the-roof-of-a
potroom-where-gases-not-captured--at--the--cell--exit
from-the-potroom:
- {8}--"Secondary--control--system"--means--an-air-pollution
control--system--designed--to--remove---gaseous---and
particulate-fluorides-from-gases-which-escape-capture
by-the-primary-control-system:
- {9}--"Total--fluorides"--means--elemental-fluorine-and-all
fluoride-compounds-as-measured-by--reference--methods
specified--in--subdivision-f-of-this-subsection-or-by
equivalent-or-alternative-methods-(see-subdivision--b
of-subsection-7-of-section-33-15-12-01):

c.--Standards-for-fluorides:

- {1}--On--and--after--the--date--on--which--the--performance--test
required-to-be-conducted-by-subsection-7--of--section
33-15-12-01--is--completed,--no--owner--or--operator
subject-to-the-provisions-of--this--subsubsection--shall
cause--to--be--discharged--into--the--atmosphere--from--any
affected--facility--any--gases--which--contain--total
fluorides-in-excess-of:
 - {a}--One--kilogram--per--metric--ton--{2-pounds-per-ton}
of-aluminum-produced-for-vertical-stud-Soderberg
and-horizontal-stud-Soderberg-plants:
 - {b}--Ninety-five-hundredths--kilogram--per--metric--ton
{1.9-pound-per-ton}--of--aluminum--produced--for
potroom-groups-at-prebake-plants:
 - {c}--Five-hundredths--kilogram--per--metric--ton--{0.1
pound-per-ton}--of--aluminum-equivalent--for--anode
bake-plants:

d.--Standard--for-visible-emissions:--On-and-after-the-date-on
which-the-performance-test-required--to--be--conducted--by
subsection-7-of-section-33-15-12-01-is-completed,--no-owner
or-operator-subject-to-the-provisions-of--this--subsubsection
shall-cause-to-be-discharged-into-the-atmosphere:

- {1}--From--any--potroom--group-any-gases-which-exhibit-ten
percent-opacity-or-greater:
- {2}--From--any--anode--bake--plant-any-gases-which-exhibit
twenty-percent-opacity-or-greater:

e.--Monitoring-of-operations:

{1}--The--owner--or--operator--of--any--affected--facility subject-to-the-provisions-of--this--subsection--shall install,--calibrate,--maintain,--and--operate--monitoring devices--which--can--be--used--to--determine--daily--the weight--of--aluminum--and--anode--produced---The--weighing devices--shall--have--an--accuracy--of--five-percent--over their--operating--range-

{2}--The--owner--or--operator--of--any--affected--facility--shall maintain--a--record--of--daily--production--rates--of aluminum--and--anodes,--raw--material--feed--rates,--and cell--or--potline--voltages-

f.--Test-methods-and-procedures-

{1}--Except--as--provided--in--subdivision--b--of--subsection--7 of--section--33-15-12-01,--reference--methods--specified in--Appendix--A--of--this--chapter--shall--be--used--to determine--compliance--with--the--standards--prescribed--in subdivision--e--of--this--subsection--as--follows-

{a}--For--sampling--emissions--from--stacks-

{1}--Method--13A--or--13B--for--the--concentration--of total--fluorides--and--the--associated--moisture content-

{2}--Method--1--for--sample--and--velocity--traverses-

{3}--Method--2--for--velocity--and--volumetric--flow rate-

{4}--Method--3--for--gas--analysis-

{b}--For--sampling--emissions--from--roof--monitors--not employing--stacks--or--pollutant--collection systems-

{1}--Method--14--for--the--concentration--of--total fluorides--and--associated--moisture--content-

{2}--Method--1--for--sample--and--velocity--traverses-

{3}--Method--2--and--Method--14--for--velocity--and volumetric--flow--rate-

{4}--Method--3--for--gas--analysis-

{c}--For--sampling--emissions--from--roof--monitors--not employing--stacks--but--equipped--with--pollutant collection--systems,--the--procedures--under subdivision--b--of--subsection--7--of--section 33-15-12-01--shall--be--followed-

- (2) For Method 13A or 13B, the sampling time for each run shall be at least eight hours for any potroom samples and at least four hours for any anode bake plant sample; and the minimum sample volume shall be six and eight-tenths dscm {240 dscf} for any potroom sample and three and four-tenths dscm {120 dscf} for any anode bake plant sample except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the department.
- (3) The air pollution control system for each affected facility shall be constructed so that volumetric flow rates and total fluoride emissions can be accurately determined using applicable methods specified under paragraph (1).
- (4) The rate of aluminum production shall be determined as follows:
- (a) Determine the weight of aluminum in metric tons produced during a period from the last tap before a run starts until the first tap after the run ends using a monitoring device which meets the requirements of paragraph (1) of subdivision e.
 - (b) Divide the weight of aluminum produced by the length of the period in hours.
- (5) For anode bake plants, the aluminum equivalent for anodes produced shall be determined as follows:
- (a) Determine the average weight (metric tons) of anode produced in the anode bake plant during a representative oven cycle using a monitoring device which meets the requirements of paragraph (1) of subdivision e.
 - (b) Determine the average rate of anode production by dividing the total weight of anodes produced during the representative oven cycle by the length of the cycle in hours.
 - (c) Calculate the aluminum equivalent for anodes produced by multiplying the average rate of anode production by two. (Note: an owner or operator may establish a different multiplication factor by submitting production records of the tons of aluminum produced and the concurrent tons of anode consumed by potrooms).

{6)--For--each--run,--potroom-group-emissions-expressed-in kilograms-per-metric-ton-of-aluminum--produced--shall be-determined-using-the-following-equation:

Formula Omitted.

where:

E_{pg}--potroom-group-emissions-of-total fluorides-in-kg/metric-ton-of-aluminum produced:

E_s--concentration-of-total-fluorides in-mg/dscm-as-determined-by-Method-13A or-13B-or-by-Method-14,-as-applicable:

Q_s--volumetric-flow-rate-of-the-effluent gas-stream-in-dscm/hr-as-determined-by Method-2-and/or-Method-14,-as-applicable:

10⁻⁶--conversion-factor-from-milligrams-to kilograms:

M--rate-of-aluminum-production-in-metric ton/hr-as-determined-by-paragraph-(4):

{E_sQ_s}₂--product-of-E_s-and-Q_s, -for-measurements-of primary-control-system-effluent-gas-streams:

{E_sQ_s}₁--product-of-E_s-and-Q_s-for-measurements-of secondary-control-system-or-roof-monitor effluent-gas-streams:

{7)--For---each--run,--as--applicable,--anode--bake--plant emissions-expressed-in-kilograms-per--metric--ton--of aluminum--equivalent--shall--be--determined-using-the following-equation:

Formula Omitted.

where:

E_{bp}--anode-bake-plant-emissions-of-total fluorides-in-kilograms-per-metric-ton-of aluminum-equivalent:

E_s--concentration-of-total-fluorides-in mg/dscm-as-determined-by-Method-13A-or-13B:

Q_s--volumetric-flow-rate-of-the-effluent gas-stream-in-dscm/hr-as-determined-by-Method-2:

~~10-6--conversion-factor-from-milligrams-to kilograms:~~

~~Me--aluminum-equivalent-for-anodes-produced by-anode-bake-plants-in-metric-ton-per-hour as-determined-by-paragraph-(5):~~

~~17-~~ 11. Standards of performance for the phosphate fertilizer industry - wet-process phosphoric acid plants.

- a. Applicability and designation of affected facility. The affected facility to which the provisions of this subsection apply is each wet-process phosphoric acid plant. For the purpose of this subsection, the affected facility includes any combination of reactors, filters, evaporators, and hotwells. Any facility that commences construction or modification after October 22, 1974, is subject to the requirements of this subsection.
- b. Definitions. As used in this subsection, all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01.
 - (1) "Equivalent P205 feed" means the quantity of phosphorus, expressed as phosphorus pentoxide, fed to the process.
 - (2) "Total fluorides" means elemental fluorine and all fluoride compounds as measured by reference methods specified in subdivision e, or equivalent or alternative methods.
 - (3) "Wet-process phosphoric acid plant" means any facility manufacturing phosphoric acid by reacting phosphate rock and acid.
- c. Standard for fluorides. On and after the date of which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility any gases which contain total fluorides in excess of ten grams per metric ton of equivalent P205 feed [0.020 pound per ton].
- d. Monitoring of operations.
 - (1) The owner or operator of any wet-process phosphoric acid plant subject to the provisions of this subsection shall install, calibrate, maintain, and operate a monitoring device which can be used to

determine the mass flow of phosphorus-bearing feed material to the process. The monitoring device shall have an accuracy of \pm five percent over its operating range.

- (2) The owner or operator of any wet-process phosphoric acid plant shall maintain a daily record of equivalent P2O5 feed by first determining the total mass rate in metric ton per hour of phosphorus-bearing feed using a monitoring device for measuring mass flow rate which meets the requirements of paragraph 1 and then by proceeding according to subparagraph b of paragraph 4 of subdivision e.
- (3) The owner or operator of any wet-process phosphoric acid plant subject to the provisions of this subsection shall install, calibrate, maintain, and operate a monitoring device which continuously measures and permanently records the total pressure drop across the process scrubbing system. The monitoring device shall have an accuracy of \pm five percent over its operating range.

e. Test methods and procedures.

- (1) Reference methods in Appendix A of this chapter, except as provided in subdivision b of subsection 7 of section 33-15-12-01, shall be used to determine compliance with the standard prescribed in subdivision c of this subsection as follows:
 - (a) Method 13A or 13B for the concentration of total fluorides and the associated moisture content.
 - (b) Method 1 for sample and velocity traverses.
 - (c) Method 2 for velocity and volumetric flow rate.
 - (d) Method 3 for gas analysis.
- (2) For Method 13A or 13B, the sampling time for each run shall be at least sixty minutes and the minimum sample volume shall be eighty-five-hundredths dscm [30 dscf] except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the department.
- (3) The air pollution control system for the affected facility shall be constructed so that volumetric flow rates and total fluoride emissions can be accurately determined by applicable test methods and procedures.

- (4) Equivalent P205 feed shall be determined as follows:
- (a) Determine the total mass rate in metric ton per hour of phosphorus-bearing feed during each run using a flow monitoring device meeting the requirements of paragraph 1 of subdivision d.
 - (b) Calculate the equivalent P205 feed by multiplying the percentage phosphorous pentoxide content, as measured by the spectrophotometric molybdovanadophosphate method (A.O.A.C. Method 9), times the total mass rate of phosphorus-bearing feed. A.O.A.C. Method 9 is published in the Official Methods of Analysis of the Association of Official Analytical Chemists, 11th edition, 1970, pages 11-12. Other methods may be approved by the department.
- (5) For each run, emissions expressed in grams per metric ton of equivalent P205 feed shall be determined using the following equation:

$$E = \frac{(C_s Q_s) 10^{-3}}{M_{P_2O_5}}$$

where:

E = emissions of total fluorides in grams per metric ton of equivalent P205 feed.

Cs = concentration of total fluorides in milligrams per dscm as determined by Method 13A or 13B.

Qs = volumetric flow rate of the effluent gas stream in dscm per hour as determined by Method 2.

10⁻³ = conversion factor for milligrams to grams.

Mp_{2o5} = equivalent P205 feed in metric ton per hour as determined by paragraph 4.

18- 12. Standards of performance for the phosphate fertilizer industry - superphosphoric acid plants.

- a. Applicability and designation of affected facility. The affected facility to which the provisions of this subsection apply is each superphosphoric acid plant. For the purpose of this subsection, the affected facility

includes any combination of evaporators, hotwells, acid sumps, and cooling tanks. Any facility that commences construction or modification after October 22, 1974, is subject to the requirements of this subsection.

b. Definitions. As used in this subsection, all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01.

(1) "Equivalent P205 feed" means the quantity of phosphorus, expressed as phosphorous pentoxide, fed to the process.

(2) "Superphosphoric acid plant" means any facility which concentrates wet-process phosphoric acid to sixty-six percent or greater phosphorous pentoxide content by weight for eventual consumption as a fertilizer.

(3) "Total fluorides" means elemental fluorine and all fluoride compounds as measured by reference methods specified in subdivision e, or equivalent or alternative methods.

c. Standard for fluorides. On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility any gases which contain total fluorides in excess of five grams per metric ton of equivalent P205 feed [0.010 pound per ton].

d. Monitoring of operations.

(1) The owner or operator of any superphosphoric acid plant subject to the provisions of this subsection shall install, calibrate, maintain, and operate a flow monitoring device which can be used to determine the mass flow of phosphorus-bearing feed material to the process. The flow monitoring device shall have an accuracy of \pm five percent over its operating range.

(2) The owner or operator of any superphosphoric acid plant shall maintain a daily record of equivalent P205 feed by first determining the total mass rate in metric ton per hour of phosphorus-bearing feed using a flow monitoring device meeting the requirements of paragraph 1 and then by proceeding according to subparagraph b of paragraph 4 of subdivision e.

- (3) The owner or operator of any superphosphoric acid plant subject to the provisions of this subsection shall install, calibrate, maintain, and operate a monitoring device which continuously measures and permanently records the total pressure drop across the process scrubbing system. The monitoring device shall have an accuracy of \pm five percent over its operating range.

e. Test methods and procedures.

- (1) Reference methods in Appendix A of this chapter, except as provided in subdivision b of subsection 7 of section 33-15-12-01, shall be used to determine compliance with the standard prescribed in subdivision c of this subsection as follows:
 - (a) Method 13A or 13B for the concentration of total fluorides and the associated moisture content.
 - (b) Method 1 for sample and velocity traverses.
 - (c) Method 2 for velocity and volumetric flow rate.
 - (d) Method 3 for gas analysis.
- (2) For Method 13A or 13B, the sampling time for each run shall be at least sixty minutes and the minimum sample volume shall be at least eighty-five-hundredths dscm [30 dscf] except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors may be approved by the department.
- (3) The air pollution control system for the affected facility shall be constructed so that volumetric flow rates and total fluoride emissions can be accurately determined by applicable test methods and procedures.
- (4) Equivalent P205 feed shall be determined as follows:
 - (a) Determine the total mass rate in metric ton per hour of phosphorus-bearing feed during each run using a flow monitoring device meeting the requirements of paragraph 1 of subdivision d.
 - (b) Calculate the equivalent P205 feed by multiplying the percentage phosphorus pentoxide content, as measured by the spectrophotometric molybdovanadophosphate method (A.O.A.C. Method 9), times the total mass rate of phosphorus-bearing feed. A.O.A.C. Method 9 is published in the Official Methods of Analysis of the

Association of Official Analytical Chemists, 11th edition, 1970, pages 11-12. Other methods may be approved by the department.

- (5) For each run, emissions expressed in grams per metric ton of equivalent P2O5 feed, shall be determined using the following equation:

$$E = \frac{(CsQs) 10^{-3}}{Mp_{2o5}}$$

where:

E = emissions of total fluorides in grams per metric ton of equivalent P2O5 feed.

Cs = concentration of total fluorides in milligrams per dscm as determined by Method 13A or 13B.

Qs = volumetric flow rate of the effluent gas stream in dscm per hour as determined by Method 2.

10⁻³ = conversion factor for milligrams to grams.

Mp_{2o5} = equivalent P2O5 feed in metric ton per hour as determined by this subsection.

19- 13. Standards of performance for the phosphate fertilizer industry - diammonium phosphate plants.

- a. Applicability and designation of affected facility. The affected facility to which the provisions of this subsection apply is each granular diammonium phosphate plant. For the purpose of this subsection, the affected facility includes any combination of reactors, granulators, dryers, coolers, screens, and mills. Any facility that commences construction or modification after October 22, 1974, is subject to the requirements of this subsection.
- b. Definitions. As used in this subsection, all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01.
- (1) "Equivalent P2O5 feed" means the quantity of phosphorus, expressed as phosphorous pentoxide, fed to the process.

- (2) "Granular diammonium phosphate plant" means any plant manufacturing granular diammonium phosphate by reacting phosphoric acid with ammonia.
 - (3) "Total fluorides" means elemental fluorine and all fluoride compounds as measured by reference methods specified in subdivision e or equivalent or alternative methods.
- c. Standard for fluorides. On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility any gases which contain total fluorides in excess of thirty grams per metric ton of equivalent P205 feed [0.060 pounds per ton].
- d. Monitoring of operations.
- (1) The owner or operator of any granular diammonium phosphate plant subject to the provisions of this subsection shall install, calibrate, maintain, and operate a flow monitoring device which can be used to determine the mass flow of phosphorus-bearing feed material to the process. The flow monitoring device shall have an accuracy of \pm five percent over its operating range.
 - (2) The owner or operator of any granular diammonium phosphate plant shall maintain a daily record of equivalent P205 feed by first determining the total mass rate in metric ton per hour of phosphorus-bearing feed using a flow monitoring device meeting the requirements of paragraph 1 and then by proceeding according to subparagraph a of paragraph 4 of subdivision e.
 - (3) The owner or operator of any granular diammonium phosphate plant subject to the provisions of this subsection shall install, calibrate, maintain, and operate a monitoring device which continuously measures and permanently records the total pressure drop across the scrubbing system. The monitoring device shall have an accuracy of \pm five percent over its operating range.
- e. Test methods and procedures.
- (1) Reference methods in Appendix A of this chapter, except as provided for in subdivision b of subsection 7 of section 33-15-12-01, shall be used to determine

compliance with the standard prescribed in subdivision c of this subsection as follows:

- (a) Method 13A or 13B for the concentration of total fluorides and the associated moisture content.
 - (b) Method 1 for sample and velocity traverses.
 - (c) Method 2 for velocity and volumetric flow rate.
 - (d) Method 3 for gas analysis.
- (2) For Method 13A or 13B, the sampling time for each run shall be at least sixty minutes and the minimum sample volume shall be at least eighty-five-hundredths dscm [30 dscf] except that shorter sampling times or smaller volumes when necessitated by process variables or other factors, may be approved by the department.
- (3) The air pollution control system for the affected facility shall be constructed so that volumetric flow rates and total fluoride emissions can be accurately determined by applicable test methods and procedures.
- (4) Equivalent P205 feed shall be determined as follows:
- (a) Determine the total mass rate in metric ton per hour of phosphorus-bearing feed during each run using a flow monitoring device meeting the requirements of paragraph 1 of subdivision d.
 - (b) Calculate the equivalent P205 feed by multiplying the percentage phosphorus pentoxide content, as measured by the spectrophotometric molybdovanadophosphate method (A.O.A.C. Method 9), times the total mass rate of phosphorus-bearing feed. A.O.A.C. Method 9 is published in the Official Methods of Analysis of the Association of Official Analytical Chemists, 11th edition, 1970, pages 11-12. Other methods may be approved by the department.
- (5) For each run, emissions expressed in grams per metric ton of equivalent P205 feed shall be determined using the following equation:

$$E = \frac{(CsQs) 10^{-3}}{Mp_{205}}$$

where:

E = emissions of total fluorides in grams per metric ton of equivalent P2O5.

Cs = concentration of total fluorides in milligrams per dscm as determined by Method 13A or 13B.

Qs = volumetric flow rate of the effluent gas stream in dscm per hour as determined by Method 2.

10^{-3} = conversion factor for milligrams to grams.

Mp = equivalent P2O5 feed in metric ton per hour as determined by paragraph 4.

20- 14. Standards of performance for the phosphate fertilizer industry - triple superphosphate plants.

a. Applicability and designation of affected facility. The affected facility to which the provisions of this subsection apply is each triple superphosphate plant. For the purpose of this subsection, the affected facility includes any combination of mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills, and facilities which store run-of-pile triple superphosphate. Any facility that commences construction or modification after October 22, 1974, is subject to the requirements of this subsection.

b. Definitions. As used in this subsection, all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01.

(1) "Equivalent P2O5 feed" means the quantity of phosphorus, expressed as phosphorus pentoxide, fed to the process.

(2) "Run-of-pile triple superphosphate" means any triple superphosphate that has not been processed in a granulator and is composed of particles at least twenty-five percent by weight of which (when not caked) will pass through a sixteen mesh screen.

(3) "Total fluorides" means elemental fluorine and all fluoride compounds as measured by reference methods specified in subdivision e, or equivalent or alternative methods.

(4) "Triple superphosphate plant" means any facility manufacturing triple superphosphate by reacting

phosphate rock with phosphoric acid. A run-of-pile triple superphosphate plant includes curing and storing.

- c. Standard for fluorides. On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility any gases which contain total fluorides in excess of one hundred grams per metric ton [0.20 pound per ton] of equivalent P2O5 feed.
- d. Monitoring of operations.
 - (1) The owner or operator of any triple superphosphate plant subject to the provisions of this subsection shall install, calibrate, maintain, and operate a flow monitoring device which can be used to determine the mass flow of phosphorus-bearing feed material to the process. The flow monitoring device shall have an accuracy of \pm five percent of its operating range.
 - (2) The owner or operator of any triple superphosphate plant shall maintain a daily record of equivalent P2O5 feed by first determining the total mass rate in metric ton per hour of phosphorus-bearing feed using a flow monitoring device meeting the requirements of paragraph 1 and then by proceeding according to subparagraph b of paragraph 4 of subdivision e.
 - (3) The owner or operator of any triple superphosphate plant subject to the provisions of this subsection shall install, calibrate, maintain, and operate a monitoring device which continuously measures and permanently records the total pressure drop across the process scrubbing system. The monitoring device shall have an accuracy of \pm five percent over its operating range.
- e. Test methods and procedures.
 - (1) Reference methods in Appendix A of this chapter, except as provided for in subdivision b of subsection 7 of section 33-15-12-01, shall be used to determine compliance with the standard prescribed in subdivision c of this subsection as follows:
 - (a) Method 13A or 13B for the concentration of total fluorides and the associated moisture content.
 - (b) Method 1 for sample and velocity traverses.

- (c) Method 2 for velocity and volumetric flow rate.
 - (d) Method 3 for gas analysis.
- (2) For Method 13A or 13B, the sampling time for each run shall be at least sixty minutes and the minimum sample volume shall be at least eighty-five-hundredths dscm [30 dscf] except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the department.
 - (3) The air pollution control system for the affected facility shall be constructed so that volumetric flow rates and total fluoride emissions can be accurately determined by applicable test methods and procedures.
 - (4) Equivalent P205 feed shall be determined as follows:
 - (a) Determine the total mass rate in metric ton per hour of phosphorus-bearing feed during each run using a flow monitoring device meeting the requirements of paragraph 1 of subdivision d.
 - (b) Calculate the equivalent P205 feed by multiplying the percentage phosphorus pentoxide content, as measured by the spectrophotometric molybdovanadophosphate method (A.O.A.C. Method 9), times the total mass rate of phosphorus-bearing feed. A.O.A.C. Method 9 is published in the Official Methods of Analysis of the Association of Official Analytical Chemists, 11th edition, 1970, pages 11-12. Other methods may be approved by the department.
 - (5) For each run, emissions expressed in grams per metric ton of equivalent P205 feed shall be determined using the following equation:

$$E = \frac{(CsQs) 10^{-3}}{Mp_{205}}$$

where:

E = emissions of total fluorides in grams per metric ton of equivalent P205 feed.

Cs = concentration of total fluorides in milligrams per dscm as determined by Method 13A or 13B.

Q_s = volumetric flow rate of the effluent gas stream in dscm per hour as determined by Method 2.

10^{-3} = conversion factor for milligrams to grams.

M_p = equivalent P2O5 feed in metric ton per 205 hour as determined by paragraph 4.

~~21-~~ 15. Standards of performance for the phosphate fertilizer industry - granular triple superphosphate storage facilities.

- a. Applicability and designation of affected facility. The affected facility to which the provisions of this subsection apply is each granular triple superphosphate storage facility. For the purpose of this subsection, the affected facility includes any combination of storage or curing piles, conveyors, elevators, screens, and mills. Any facility that commences construction or modification after October 22, 1974, is subject to the requirements of this subsection.
- b. Definitions. As used in this subsection, all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01.
 - (1) "Equivalent P2O5 stored" means the quantity of phosphorus, expressed as phosphorus pentoxide, being cured or stored in the affected facility.
 - (2) "Fresh granular triple superphosphate" means granular triple superphosphate produced no more than ten days prior to the date of the performance test.
 - (3) "Granular triple superphosphate storage facility" means any facility curing or storing granular triple superphosphate.
 - (4) "Total fluorides" means elemental fluorine and all fluoride compounds as measured by reference methods specified in subdivision e, or equivalent or alternative methods.
- c. Standard for fluorides. On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility any gases which contain total fluorides in excess of twenty-five-hundredths gram per hour per metric ton of equivalent P2O5 stored [5.0×10^{-4} pounds per hour per ton of equivalent P2O5 stored].

d. Monitoring of operations.

- (1) The owner or operator of any granular triple superphosphate storage facility subject to the provisions of this subsection shall maintain an accurate account of triple superphosphate in storage to permit the determination of the amount of equivalent P₂O₅ stored.
- (2) The owner or operator of any granular triple superphosphate storage facility shall maintain a daily record of total equivalent P₂O₅ stored by multiplying the percentage phosphorus pentoxide content, as determined by subparagraph b of paragraph 6 of subdivision e, times the total mass of granular triple superphosphate stored.
- (3) The owner or operator of any granular triple superphosphate storage facility subject to the provisions of this subsection shall install, calibrate, maintain, and operate a monitoring device which continuously measures and permanently records the total pressure drop across the process scrubbing system. The monitoring device shall have an accuracy of \pm five percent over its operating range.

e. Test methods and procedures.

- (1) Reference methods in Appendix A of this chapter, except as provided for in subdivision b of subsection 7 of section 33-15-12-01, shall be used to determine compliance with the standard prescribed in subdivision c of this subsection as follows:
 - (a) Method 13A or 13B for the concentration of total fluorides and the associated moisture content.
 - (b) Method 1 for sample and velocity traverses.
 - (c) Method 2 for velocity and volumetric flow rate.
 - (d) Method 3 for gas analysis.
- (2) For Method 13A or 13B, the sampling rate time for each run shall be at least sixty minutes and the minimum sample volume shall be at least eighty-five-hundredths dscm [30 dscf] except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the department.
- (3) The air pollution control system for the affected facility shall be constructed so that volumetric flow

rates and total fluoride emissions can be accurately determined by applicable test methods and procedures.

- (4) Except as provided under paragraph 5, all performance tests on granular triple superphosphate storage facilities shall be conducted only when the following quantities of product are being cured or stored in the facility:
 - (a) Total granular triple superphosphate - at least ten percent of the building capacity.
 - (b) Fresh granular triple superphosphate - at least twenty percent of the amount of triple superphosphate in the building.
- (5) If the provisions set forth in subparagraph b of paragraph 4 exceed production capabilities for fresh granular triple superphosphate, the owner or operator shall have at least five days maximum production of fresh granular triple superphosphate in the building during a performance test.
- (6) Equivalent P205 stored shall be determined as follows:
 - (a) Determine the total mass stored during each run using an accountability system meeting the requirements of paragraph 1 of subdivision d.
 - (b) Calculate the equivalent P205 stored by multiplying the percentage phosphorus pentoxide content, as measured by the spectrophotometric molybdovanadophosphate method (A.O.A.C. Method 9), times the total mass stored, A.O.A.C. Method 9 is published in the Official Methods of Analysis of the Association of Official Analytical Chemist, 11th edition, 1970, pages 11-12. Other methods may be approved by the department.
- (7) For each run, emissions expressed in grams per hour per metric ton of equivalent P205 stored shall be determined using the following equation:

$$E = \frac{(CsQs) 10^{-3}}{Mp_{205}}$$

where:

E = emissions of total fluorides in grams per

hour per metric ton of equivalent
P205 stored.

Cs = concentration of total fluorides in
milligrams per dscm as determined
by Method 13A or 13B.

Qs = volumetric flow rate of the
effluent gas stream in dscm per hour
as determined by Method 2.

10⁻³ = conversion factor for milligrams
to grams.

Mp = equivalent P205 feed in metric tons
2o5 as measured by paragraph 4.

22- 16. Standards of performance for coal preparation plants.

- a. Applicability and designation of affected facility. The provisions of this subsection are applicable to any of the following affected facilities in coal preparation plants which process more than two hundred tons [181.44 metric tons] per day: thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems. Any facility that commences construction or modification after October 24, 1974, is subject to the requirements of this subsection.
- b. Definitions. As used in this subsection, all terms not defined herein have the meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01.
 - (1) "Bituminous coal" means solid fossil fuel classified as bituminous coal by A.S.T.M. Designation D-388-66.
 - (2) "Coal" means all solid fossil fuels classified as anthracite, bituminous, subbituminous, or lignite by A.S.T.M. Designation D-388-66.
 - (3) "Coal preparation plant" means any facility (excluding underground mining operations) which prepares coal by one or more of the following processes: breaking, crushing, screening, wet or dry cleaning, and thermal drying.
 - (4) "Coal processing and conveying equipment" means any machinery used to reduce the size of coal or to separate coal from refuse, and the equipment used to convey coal to or remove coal and refuse from the

machinery. This includes, but is not limited to, breakers, crushers, screens, and conveyor belts.

- (5) "Coal storage system" means any facility used to store coal except for open storage piles.
- (6) "Cyclonic flow" means a spiraling movement of exhaust gases within a duct or stack.
- (7) "Pneumatic coal-cleaning equipment" means any facility which classifies bituminous coal by size or separates bituminous coal from refuse by application of air streams.
- (8) "Thermal dryer" means any facility in which the moisture content of bituminous coal is reduced by contact with a heated gas stream which is exhausted to the atmosphere.
- (9) "Transfer and loading system" means any facility used to transfer and load coal for shipment.

c. Standards for particulate matter.

- (1) On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, an owner or operator subject to the provisions of this subsection shall not cause to be discharged into the atmosphere from any thermal dryer gases which:
 - (a) Contain particulate matter in excess of seven-hundredths gram per dscm [0.031 gr/dscf].
 - (b) Exhibit twenty percent opacity or greater.
- (2) On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, an owner or operator subject to the provisions of this subsection shall not cause to be discharged into the atmosphere from any pneumatic coal-cleaning equipment, gases which:
 - (a) Contain particulate matter in excess of four-hundredths gram per dscm [0.018 gr/dscf].
 - (b) Exhibit ten percent opacity or greater.
- (3) On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, an owner or operator subject to the provisions of this subsection shall not cause to be discharged into the atmosphere from

any coal processing and conveying equipment, coal storage system, or coal transfer and loading system processing coal, gases which exhibit twenty percent opacity or greater.

d. Monitoring of operations.

(1) The owner or operator of any thermal dryer shall install, calibrate, maintain, and continuously operate monitoring devices as follows:

(a) A monitoring device for the measurement of the temperature of the gas stream at the exit of the thermal dryer on a continuous basis. The monitoring device is to be certified by the manufacturer to be accurate within \pm three degrees Fahrenheit.

(b) For affected facilities that use venturi scrubber emission control equipment:

[1] A monitoring device for the continuous measurement of the pressure loss through the venturi constriction of the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within \pm one inch [2.54 centimeters] water gauge.

[2] A monitoring device for the continuous measurement of the water supply pressure to the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within \pm five percent of design water supply pressure. The pressure sensor or tap must be located close to the water discharge point. The department may be consulted for approval of alternative locations.

(2) All monitoring devices under paragraph 1 are to be recalibrated annually in accordance with procedures under paragraph 3 of subdivision b of subsection 11 of section 33-15-12-01.

e. Test methods and procedures.

(1) The reference methods in Appendix A of this chapter, except as provided in subdivision b of subsection 7 of section 33-15-12-01, are used to determine compliance with the standards prescribed in subdivision b of this subsection as follows:

- (a) Method 5 for the concentration of particulate matter and associated moisture content.
 - (b) Method 1 for sample and velocity traverses.
 - (c) Method 2 for velocity and volumetric flow rate.
 - (d) Method 3 for gas analysis.
- (2) For Method 5, the sampling time for each run is at least sixty minutes and the minimum sample volume is eighty-five-hundredths dscm [30 dscf] except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the department. Sampling is not to be started until thirty minutes after startup and is to be terminated before shutdown procedures commence. The owner or operator of the affected facility shall eliminate cyclonic flow during performance tests in a manner acceptable to the department.
- (3) The owner or operator shall construct the facility so that particulate emissions from thermal dryers or pneumatic coal-cleaning equipment can be accurately determined by applicable test methods and procedures under paragraph 1.

~~23--Standards-of-performance-for-ferroalloy-production-~~

~~a--Applicability-and-designation-of-affected-facility--The provisions-of-this-subsection-are-applicable-to-the following-affected-facilities---electric-submerged-arc furnaces-which-produce-silicon---metal;---ferrosilicon; calcium-silicon;--silicomanganese;--zirconium;--ferrochrome silicon;--silvery-iron;--high-carbon--ferrochrome;--charge chrome-----standard-----ferromanganese;-----silimanganese; ferromanganese-silicon;--or--calcium--carbide;--and--dust-handling-equipment-~~

~~b--Definitions---As-used-in-this-subsection,-all-terms-not defined-herein-shall-have-the-meaning-given-them-in--North Dakota--Century--Code-chapter-23-25-and-in-subsection-2-of section-33-15-12-01-~~

~~(1)--"Blowing-tap"--means-any-tap-in-which-an-evaluation-of gas-forces-or-projects-jets-of-flame-or-metal--sparks beyond-the-ladle;-runner;-or-collection-hood-~~

~~(2)--"Calcium--carbide"--means-material-containing-seventy to-eighty-five-percent-calcium-carbide-by-weight-~~

- (3) -- "Calcium-silicon" means that alloy as defined by A.S.T.M. designation A495-64.
- (4) -- "Capture system" means the equipment (including hoods, ducts, fans, dampers, etc.) used to capture or transport particulate matter generated by an affected electric submerged arc furnace to the control device.
- (5) -- "Charge chrome" means that alloy containing fifty-two to seventy percent by weight chromium, five to eight percent by weight carbon, and three to six percent by weight silicon.
- (6) -- "Control device" means the air pollution control equipment used to remove particulate matter generated by an electric submerged arc furnace from an effluent gas stream.
- (7) -- "Dust handling equipment" means any equipment used to handle particulate matter collected by the air pollution control device (and located at or near such device) serving any electric submerged arc furnace subject to this subsection.
- (8) -- "Electric submerged arc furnace" means any furnace wherein electrical energy is converted to heat energy by transmission of current between electrodes partially submerged in the furnace charge.
- (9) -- "Ferrochrome-silicon" means that alloy as defined by A.S.T.M. designation A482-66.
- (10) -- "Ferromanganese-silicon" means that alloy containing sixty-three to sixty-six percent by weight manganese, twenty-eight to thirty-two percent by weight silicon, and a maximum of eight hundredths percent by weight carbon.
- (11) -- "Ferrosilicon" means that alloy as defined by A.S.T.M. designation A100-69 grades A, B, C, D, and E which contains fifty or more percent by weight silicon.
- (12) -- "Furnace charge" means any material introduced into the electric submerged arc furnace and may consist of, but is not limited to, ores, slag, carbonaceous material, and limestone.
- (13) -- "Furnace cycle" means the time period from completion of a furnace product tap to the completion of the next consecutive product tap.

- {14}--"Furnace--power-input"--means--the--resistive--electrical power--consumption--of--an--electric--submerged--arc furnace--as--measured--in--kilowatts--:
- {15}--"High-carbon-ferrochrome"--means--that--alloy--as--defined by--A.S.T.M.--designation--A101-66--grade--HC1--through HC6--:
- {16}--"Product--change"--means--any--change--in--the--composition of--the--furnace--charge--that--would--cause--the--electric submerged--arc--furnace--to--become--subject--to--a different--mass--standard--applicable--under--this subsection--:
- {17}--"Silicomanganese"--means--that--alloy--as--defined--by A.S.T.M.--designation--A483-66--:
- {18}--"Silicomanganese--zirconium"--means--that--alloy containing--sixty--to--sixty-five--percent--by--weight silicon;--one--and--five-tenths--to--two--and--five-tenths percent--by--weight--calcium;--five--to--seven--percent--by weight--zirconium;--seventy-five-hundredths--to--one--and twenty-five-hundredths--percent--by--weight--aluminum; five--to--seven--percent--by--weight--manganese;--and--two--to three--percent--by--weight--barium--:
- {19}--"Silicon--metal"--means--any--silicon--alloy--containing more--than--ninety-six--percent--silicon--by--weight--:
- {20}--"Silvery--iron"--means--any--ferrosilicon;--as--defined--by A.S.T.M.--designation--A100-69;--which--contains--less than--thirty--percent--silicon--:
- {21}--"Standard-ferromanganese"--means--that--alloy--as--defined by--A.S.T.M.--designation--A99-66--:
- {22}--"Slag"--means--the--more--or--less--completely--fused--and vitrified--matter--separated--during--the--reduction--of--a metal--from--its--ore--:
- {23}--"Tapping"--means--the--removal--of--slag--or--product--from the--electric--submerged--arc--furnace--under--normal operating--conditions--such--as--removal--of--metal--under normal--pressure--and--movement--by--gravity--down--the spout--into--the--ladle--:
- {24}--"Tapping--period"--means--the--time--duration--from initiation--of--the--process--of--opening--the--tap--hole until--plugging--of--the--tap--hole--is--complete--:
- {25}--"Tapping--station"--means--that--general--area--where molten--product--or--slag--is--removed--from--the--electric submerged--arc--furnace--:

c.--Standard-for-particulate-matter-

(1)--On--and--after--the--date--on--which--the--performance--test
required--to--be--conducted--by--subsection--7--of--section
33-15-12-01--is--completed,--no--owner--or--operator
subject--to--the--provisions--of--this--subsection--shall
cause--to--be--discharged--into--the--atmosphere--from--any
electric--submerged--arc--furnace--any--gases--which:

(a)--Exit--from--a--control--device--and--contain
particulate--matter--in--excess--of--forty-five-
hundredths--kilograms--{.99-pounds}--per--megawatt-
hour--while--silicon--metal,--ferrosilicon,--calcium
silicon,--or--silicomanganese--zirconium--is--being
produced:

(b)--Exit--from--a--control--device--and--contain
particulate--matter--in--excess--of--twenty-three-
hundredths--kilogram--{.51-pounds}--per--megawatt-
hour--while--high--carbon--ferrochrome,--charge
chrome,-----standard-----ferromanganese,
silicomanganese,--calcium--carbide,--ferrochrome
silicon,--ferromanganese--silicon,--or--silvery--iron
is--being--produced:

(c)--Exit--from--a--control--device--and--exhibit--fifteen
percent--opacity--or--greater:

(d)--Exit--from--an--electric--submerged--arc--furnace--and
escape--the--capture--system--and--are--visible
without--the--aid--of--instruments:--The
requirements--under--this--paragraph--apply--only
during--periods--when--flow--rates--are--being
established--under--paragraph--(4)--of--subdivision
f:

(e)--Escape--the--capture--system--at--the--tapping--station
and--are--visible--without--the--aid--of--instruments
for--more--than--forty--percent--of--each--tapping
period:--There--are--no--limitations--on--visible
emissions--under--this--subparagraph--when--a--blowing
tap--occurs:--The--requirements--under--this
subparagraph--apply--only--during--periods--when--flow
rates--are--being--established--under--paragraph--(4)
of--subdivision--f:

(2)--On--and--after--the--date--on--which--the--performance--test
required--to--be--conducted--by--subsection--7--of--section
33-15-12-01--is--completed,--no--owner--or--operator
subject--to--the--provisions--of--this--subsection--shall
cause--to--be--discharged--into--the--atmosphere--from--any
dust--handling--equipment--any--gases--which--exhibit--ten
percent--opacity--or--greater:

d.--Standard--for--carbon--monoxide.--On--and--after--the--date--on--which--the--performance--test--required--to--be--conducted--by--subsection--7--of--section--33--15--12--01--is--completed,--no--owner--or--operator--subject--to--the--provisions--of--this--subsection--shall--cause--to--be--discharged--into--the--atmosphere--from--any--electric--submerged--arc--furnace--any--gases--which--contain,--on--a--dry--basis,--twenty--or--greater--volume--percent--of--carbon--monoxide:--Combustion--of--such--gases--under--conditions--acceptable--to--the--department--constitutes--compliance--with--this--subdivision:--Acceptable--conditions--include,--but--are--not--limited--to,--flaring--of--gases--or--use--of--gases--as--fuel--for--other--processes:

e.--Emission--monitoring:

{1)--The--owner--or--operator--subject--to--the--provisions--of--this--subsection--shall--install,--calibrate,--maintain--and--operate--a--continuous--monitoring--system--for--measurement--of--the--opacity--of--emissions--discharged--into--the--atmosphere--from--the--control--device:

{2)--For--the--purpose--of--reports--required--under--subdivision--e--of--subsection--6--of--section--33--15--12--01,--the--owner--or--operator--shall--report--as--excess--emissions--all--six--minute--periods--in--which--the--average--opacity--is--fifteen--percent--or--greater:

{3)--The--owner--or--operator--subject--to--the--provisions--of--this--subsection--shall--submit--a--written--report--of--any--product--change--to--the--department:--Reports--of--product--changes--must--be--postmarked--not--later--than--thirty--days--after--implementation--of--the--product--change:

f.--Monitoring--of--operations:

{1)--The--owner--or--operator--of--any--electric--submerged--arc--furnace--subject--to--the--provisions--of--this--subsection--shall--maintain--daily--records--of--the--following--information:

{a)--Product--being--produced:

{b)--Description--of--constituents--of--furnace--charge,--including--the--quantity,--by--weight:

{c)--Time--and--duration--of--each--tapping--period--and--the--identification--of--material--tapped--(slag--or--product):

{d)--All--furnace--power--input--data--obtained--under--paragraph--(2):

(e) All flow rate data obtained under paragraph (3) or all fan motor power consumption and pressure drop data obtained under paragraph (5):

(2) The owner or operator subject to the provisions of this subsection shall install, calibrate, maintain, and operate a device to measure and continuously record the furnace power input. The furnace power input may be measured at the output or input side of the transformer. The device must have an accuracy of five percent over its operating range:

(3) The owner or operator subject to the provisions of this subsection shall install, calibrate, and maintain a monitoring device that continuously measures and records the volumetric flow rate through each separately ducted hood of the capture system, except as provided under paragraph (5). The owner or operator of an electric submerged arc furnace that is equipped with a water-cooled cover which is designed to contain and prevent escape of the generated gas and particulate matter shall monitor only the volumetric flow rate through the capture system for control of emissions from the tapping station. The owner or operator may install the monitoring device in any appropriate location in the exhaust duct such that reproducible flow rate monitoring will result. The flow rate monitoring device must have an accuracy of ten percent over its normal operating range and must be calibrated according to the manufacturer's instructions. The department may require the owner or operator to demonstrate the accuracy of the monitoring device relative to Method 1 and 2 of Appendix A to this chapter:

(4) When performance tests are conducted under the provisions of subsection 7 of section 33-15-12-01 to demonstrate compliance with the standards under subparagraphs (d) and (e) of paragraph (1) of subdivision c of this subsection, the volumetric flow rate through each separately ducted hood of the capture system must be determined using the monitoring device required under paragraph (3) of this subdivision. The volumetric flow rates must be determined for furnace power input levels at fifty and one hundred percent of the nominal rated capacity of the electric submerged arc furnace. At all times the electric submerged arc furnace is operated, the owner or operator shall maintain the volumetric flow rate at or above the appropriate levels for that furnace power plant level determined during the most recent performance test. If emissions due to tapping are captured and ducted separately from emissions of

the electric submerged arc furnace; during each tapping period the owner or operator shall maintain the exhaust flow rates through the capture system over the tapping station at or above the levels established during the most recent performance test. Operation at lower flow rates may be considered by the department to be unacceptable operation and maintenance of the affected facility. The owner or operator may request that these flow rates be reestablished by conducting new performance tests under subsection 7 of section 33-15-12-01.

{5}--The owner or operator may as an alternative to paragraph {3} determine the volumetric flow rate through each fan of the capture system from the fan power consumption, pressure drop across the fan and the fan performance curve. Only data specific to the operation of the affected electric submerged arc furnace are acceptable for demonstration of compliance with the requirements of this paragraph. The owner or operator shall maintain on file a permanent record of the fan performance curve (prepared for a specific temperature) and shall:

(a) Install, calibrate, maintain, and operate a device to continuously measure and record the power consumption of the fan motor (measured in kilowatts):

(b) Install, calibrate, maintain, and operate a device to continuously measure and record the pressure drop across the fan. The fan power consumption and pressure drop measurements must be synchronized to allow real-time comparisons of the data. The monitoring devices must have an accuracy of five percent over their normal operating ranges:

{6}--The volumetric flow rate through each fan of the capture system must be determined from the fan power consumption, fan pressure drop, and fan performance curve specified under paragraph {5}; during any performance test required under subsection 7 of section 33-15-12-01 to demonstrate compliance with the standards under subparagraphs {d} and {e} of paragraph {1} of subdivision c of this subsection. The owner or operator shall determine the volumetric flow rate at a representative temperature for furnace power input levels of fifty and one hundred percent of the nominal rated capacity of the electric submerged arc furnace. At all times the electric submerged arc furnace is operated, the owner or operator shall maintain the fan power consumption and

fan-pressure-drop-at-levels-such-that-the-volumetric-flow-rate-is-at-or-above-the-levels-established-during-the-most-recent-performance-test-for-that-furnace-power-input-level.---If-emissions-due-to-tapping-are-captured-and-ducted-separately-from-emissions-of-the-electric-submerged-arc-furnace; during-each-tapping-period-the-owner-or-operator shall-maintain-the-fan-power-consumption-and-fan-pressure-drop-at-levels-such-that-the-volumetric-flow-rate-is-at-or-above-the-levels-established-during-the-most-recent-performance-test.---Operation-at-lower-flow-rates-may-be-considered-by-the-department-to-be-unacceptable-operation-and-maintenance-of-the-affected-facility.---The-owner-or-operator-may-request-that-these-flow-rates-be-reestablished-by-conducting-new-performance-tests-under-subsection-7-of-section-33-15-12-01.---The-department-may-require-the-owner-or-operator-to-verify-the-fan-performance-curve-by-monitoring-necessary-fan-operating-parameters-and-determining-the-gas-volume-moved-relative-to-Methods-1-and-2-of-Appendix-A-to-this-chapter.

(7)---All-monitoring-devices-required-under-paragraphs-(3) and-(5)-are-to-be-checked-for-calibration-annually-in-accordance-with-the-procedures-under-subdivision-b-of-subsection-11-of-section-33-15-12-01.

g.---Test-methods-and-procedures:

(1)---Reference-methods-in-Appendix-A-to-this-chapter; except-as-provided-in-subdivision-b-of-subsection-7 of-section-33-15-12-01;---shall-be-used-to-determine-compliance-with-the-standards-prescribed-in-subdivisions-e-and-d-of-this-subsection-as-follows:

(a)---Method-5-for-the-concentration-of-particulate-matter-and-the-associated-moisture-content except-that-the-heating-systems-specified-in-paragraphs-2.1.2-and-2.1.4-of-Method-5-are-not-to-be-used-when-the-carbon-monoxide-content-of-the-gas-stream-exceeds-ten-percent-by-volume; dry-basis:

(b)---Method-1-for-sample-and-velocity-traverses:

(c)---Method-2-for-velocity-and-volumetric-flow-rate:

(d)---Method-3-for-gas-analysis;---including-carbon-monoxide:

(2)---For-Method-5;---the-sampling-time-for-each-run-is-to-include-an-integral-number-of-furnace-cycles.---The-sampling-time-for-each-run-must-be-at-least-sixty

minutes and the minimum sample volume must be one and eight-tenths dscm {64 dscf} when sampling emissions from open electric submerged arc furnaces with wet scrubber control devices; sealed electric submerged arc furnaces; or semi-enclosed electric submerged arc furnaces. When sampling emissions from other types of installations, the sampling time for each run must be at least two hundred minutes and the minimum sample volume must be five and seven-tenths dscm {200 dscf}. Shorter sampling times or smaller sampling volumes, when necessitated by process variables or other factors, may be approved by the department.

- (3) During the performance test, the owner or operator shall record the maximum open hood area (in hoods with segmented or otherwise movable sides) under which the process is expected to be operated and remain in compliance with all standards. Any future operation of the hooding system with open areas in excess of the maximum is not permitted.
- (4) The owner or operator shall construct the control device so that volumetric flow rates and particulate matter emissions can be accurately determined by applicable test methods and procedures.
- (5) During any performance test required under subsection 7 of section 33-15-12-01, the owner or operator shall not allow gaseous diluents to be added to the effluent gas stream after the fabric in an open pressurized fabric filter collector unless the total gas volume flow from the collector is accurately determined and considered in the determination of emissions.
- (6) When compliance with subdivision d of this subsection is to be attained by combusting the gas stream in a flare, the location of the sampling site for particulate matter is to be upstream of the flare.
- (7) For each run, particulate matter emissions, expressed in kilograms per hour {pounds per hour}, must be determined for each exhaust stream at which emissions are quantified using the following equation:

Formula Omitted.

where:

E_n = emissions of particulate matter in kilograms per hour {pounds per hour}:

C_s -- concentration of particulate matter in kilograms per dscm {pounds per dscf} as determined by Method 5.

Q_s -- volumetric flow rate of the effluent gas stream in dscm per hour {dscf per hour} as determined by Method 2.

(8) -- For Method 5, particulate matter emissions from the affected facility, expressed in kilograms per megawatt-hour {pounds per megawatt-hour} must be determined for each run using the following equation:

Formula Omitted.

where:

E -- emissions of particulate from the affected facility, in kilograms per megawatt-hour {pounds per megawatt-hour};

N -- total number of exhaust streams at which emissions are quantified;

E_n -- emission of particulate matter from each exhaust stream in kilograms per hour {pounds per hour}; as determined in paragraph (7);

P -- average furnace power input during the sampling period, in megawatts as determined according to paragraph (2) of subdivision f.

24. -- Standard of performance for steel plants ---- electric arc furnaces:

a. -- Applicability and designation of affected facility: -- The provisions of this subsection are applicable to the following affected facilities in steel plants: -- electric arc furnaces and dust handling equipment:

b. -- Definitions: -- As used in this subsection, all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01:

(1) -- "Capture system" means the equipment (including ducts, hoods, fans, dampers, etc.) used to capture or transport particulate matter generated by an electric arc furnace to the air pollution control device:

- (2) -- "Charge" -- means -- the addition of iron and steel scrap or other materials into the top of -- an -- electric -- arc furnace:
- (3) -- "Charging period" -- means -- the time period commencing at the moment an electric arc furnace starts to open and ending -- either -- three -- minutes after the electric arc furnace roof is returned to its -- closed -- position -- or six -- minutes -- after -- commencement -- of -- opening of the roof, -- whichever is longer:
- (4) -- "Control -- device" -- means -- the -- air -- pollution control equipment used to remove particulate matter generated by -- an -- electric -- arc -- furnace -- from the effluent gas stream:
- (5) -- "Direct -- shell -- evacuation -- system" -- means -- any system that -- maintains -- a -- negative -- pressure -- within -- the electric -- arc -- furnace -- above -- the -- slag or metal and ducts these emissions to the control device:
- (6) -- "Dust handling equipment" -- means -- any equipment used to handle particulate matter collected -- by -- the -- control device -- and located at or near the control device for an electric arc furnace subject to this subsection:
- (7) -- "Electric -- arc -- furnace" -- means -- any -- furnace -- that produces molten steel and heats the charge -- materials with -- electric arcs from carbon electrodes: -- Furnaces from which the molten steel is cast into the shape of finished -- products, -- such -- as -- in -- a foundry, -- are not affected -- facilities included within the scope of this definition: -- Furnaces which, -- as the primary source of iron, -- continuously feed prerduced -- ore -- pellets -- are not -- affected -- facilities -- within -- the -- scope of this definition:
- (8) -- "Heat time" -- means -- the period commencing when scrap is charged -- to -- an -- empty -- electric -- arc -- furnace -- and terminating -- when -- the -- electric -- arc -- furnace tap is completed:
- (9) -- "Meltdown and refining" -- means -- that phase of the steel production cycle when charge material is -- melted -- and undesirable elements are removed from the metal:
- (10) -- "Meltdown -- and refining period" -- means -- the time period commencing at the termination of the initial charging period -- and -- ending -- at the initiation of the tapping period, -- excluding any intermediate charging -- periods:
- (11) -- "Shop" -- means -- the -- building which houses one or more electric arc furnaces:

(12) -- "Shop opacity" means the arithmetic average of twenty-four or more opacity observations of emissions from the shop taken in accordance with Method 9 of Appendix A to this chapter for the applicable time periods:

(13) -- "Tap" means the pouring of molten steel from an electric arc furnace:

(14) -- "Tapping period" means the time period commencing at the moment an electric arc furnace begins to tilt to pour and ending either three minutes after an electric arc furnace returns to an upright position or six minutes after commencing to tilt, whichever is longer:

e. -- Standard for particulate matter:

(1) -- On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from an electric arc furnace any gases which:

(a) -- Exit from a control device and contain particulate matter in excess of twelve milligrams per dscm {0.0052 grains per dscf}:

(b) -- Exit from a control device and exhibit three percent opacity or greater:

(c) -- Exit from a shop and, due solely to operation of any electric arc furnace, exhibit greater than zero percent shop opacity except:

{1} -- Shop opacity greater than zero percent, but less than twenty percent, may occur during charging periods:

{2} -- Shop opacity greater than zero percent, but less than forty percent, may occur during tapping periods:

{3} -- Opacity standards under subparagraph (c) of this paragraph shall apply only during periods when flow rates and pressures are being established under paragraphs (3) and (6) of subdivision e:

{4} -- Where the capture system is operated such that the roof of the shop is closed during the charge and the tap, and emissions to

the atmosphere are prevented until the roof is opened after completion of the charge or tap; the shop opacity standards under subparagraph (c) shall apply when the roof is opened and shall continue to apply for the length of time defined by the charging or tapping periods, or both:

(2) On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from dust-handling equipment any gases which exhibit ten percent opacity or greater:

d. Emission monitoring:

(1) A continuous monitoring system for the measurement of the opacity of emissions discharged into the atmosphere from the control device or devices shall be installed, calibrated, maintained, and operated by the owner or operator subject to the provisions of this subsection:

(2) For the purpose of reports under subdivision c of subsection 6 of section 33-15-12-01, periods of excess emissions that shall be reported are defined as all six-minute periods during which the average opacity is three percent or greater:

e. Monitoring of operations:

(1) The owner or operator subject to the provisions of this subsection shall maintain records daily of the following information:

(a) Time and duration of each charge:

(b) Time and duration of each tap:

(c) All flow rate data obtained under paragraph (2); or equivalent obtained under paragraph (4):

(d) All pressure data obtained under paragraph (5):

(2) Except as provided under paragraph (4), the owner or operator subject to the provisions of this subsection shall install, calibrate, and maintain a monitoring device that continuously records the volumetric flow rate through each separately ducted hood. The monitoring device or devices may be installed in any appropriate location in the exhaust duct such that

reproducible flow rate monitoring will result. The flow rate monitoring device or devices shall have an accuracy of ten percent over its normal operating range and shall be calibrated according to the manufacturer's instructions. The department may require the owner or operator to demonstrate the accuracy of the monitoring device or devices relative to Methods 1 and 2 of Appendix A of this chapter.

- (3) When the owner or operator of an electric arc furnace is required to demonstrate compliance with the standard under subparagraph (c) of paragraph (1) of subdivision c and at any other time the department may require, the volumetric flow rate through each separately ducted hood shall be determined during all periods in which the hood is operated for the purpose of capturing emission from the electric arc furnace using the monitoring device under paragraph (2). The owner or operator may petition the department for reestablishment of these flow rates whenever the owner or operator can demonstrate to the department's satisfaction that the electric arc furnace operating conditions upon which the flow rates were previously established are no longer applicable. The flow rates determined during the most recent demonstration of compliance shall be maintained (or may be exceeded) at the appropriate level for each applicable period. Operation at lower flow rates may be considered by the department to be unacceptable operation and maintenance of the affected facility.
- (4) The owner or operator may petition the department to approve any alternative method that will provide a continuous record of operation of each emission capture system.
- (5) Where emissions during any phase of the heat time are controlled by use of a direct shell evacuation system, the owner or operator shall install, calibrate, and maintain a monitoring device that continuously records the pressure in the free space inside the electric arc furnace. The pressure shall be recorded as fifteen-minute integrated averages. The monitoring device may be installed in any appropriate location in the electric arc furnace such that reproducible results will be obtained. The pressure monitoring device shall have an accuracy of five millimeters of water gauge over its normal operating range and shall be calibrated according to the manufacturer's instructions.
- (6) When the owner or operator of an electric arc furnace is required to demonstrate compliance with the

standard--under--subparagraph-(c)-of-paragraph-(1)-of
subdivision-e-and-at-any-other--time--the--department
may--require;--the--pressure-in-the-free-space-inside
the-furnace-shall-be-determined-during--the--meltdown
and--refining--period-or-periods-using-the-monitoring
device-under-paragraph-(5);--The--owner--or--operator
may--petition--the--department-for-reestablishment-of
the--fifteen-minute---integrated---average---pressure
whenever-the-owner-or-operator-can-demonstrate-to-the
department's--satisfaction--that--the--electric---arc
furnace-operating-conditions-upon-which-the-pressures
were-previously-established-are-no-longer-applicable.
The---pressure--determined--during--the--most--recent
demonstration-of-compliance-shall-be-maintained--at
all-times--the-electric-arc-furnace-is-operating-in-a
meltdown-and-refining-period;---Operation--at--higher
pressures--may--be-considered-by-the-department-to-be
unacceptable--operation--and---maintenance---of---the
affected-facility.

(7)--Where--the--capture--system--is--designed--and--operated
such--that--all--emissions--are--captured--and--ducted--to--a
control--device;--the--owner--or--operator--shall--not--be
subject--to--the--requirements--of--this--subdivision.

f.--Test-methods-and-procedures:

(1)--Reference--methods--in--Appendix--A--of--this--chapter;
except--as--provided--under--subdivision-b--of--subsection
7--of--section-33-15-12-01;--shall--be--used--to--determine
compliance--with--the--standards---prescribed---under
subdivision-e-of-this-subsection-as-follows:

(a)--Method-5-for-concentration-of-particulate-matter
and-associated-moisture-content:

(b)--Method-1-for-sample-and-velocity-traverses:

(c)--Method--2-for-velocity-and-volumetric-flow-rate:

(d)--Method-3-for-gas-analysis:

(2)--For-Method-5;--the-sampling-time-for-each-run-shall-be
at-least-four-hours;---When--a--single--electric--arc
furnace--is--sampled;--the-sampling-time-for-each-run
shall-also--include--an--integral--number--of--heats.
Shorter--sampling-times;--when-necessitated-by-process
variables-or-other-factors;--may-be--approved--by--the
department;---The-minimum-sample-volume-shall-be-four
and-five-tenths-dscm-[160-dscf]:

(3)--For--the--purpose--of--this--subsection;--the-owner-or
operator---shall---conduct---the---demonstration---of

compliance--with-subparagraph-(c)-of-paragraph-(1)-of
subdivision-c-and-furnish-the--department--a--written
report-of-the-results-of-the-test:

(4)--During-any-performance-test-required-under-subsection
7-of-section-33-15-12-01,-no-gaseous-diluents-may-be
added--to-the-effluent-gas-stream-after-the-fabric-in
any-pressurized-fabric-filter-collector;--unless--the
amount--of--dilution--is--separately--determined--and
considered-in-the-determination-of-emissions:

(5)--When-more-than-one-control-device-serves-the-electric
arc---furnace---or---furnaces---being---tested;---the
concentration---of---particulate---matter---shall-be
determined-using-the-following-equation:

Formula Omitted.

where:

C_s --concentration-of-particulate-matter-in
milligrams-per-dscm-{grains-per-dsef}-as
determined-by-Method-5:

N --total-number-of-control-devices-tested:

Q_s --volumetric-flow-rate-of-the-effluent
gas-stream-in-dscm-per-hour-{dsef-per-hour}
as-determined-by-Method-2:

$\{C_s Q_s\}^n$ -or- $\{Q_s\}^n$ --value-of-the-applicable
parameter-for-each-control-device-tested:

(6)--Any--control-device-subject-to-the-provisions-of-this
subsection-shall-be-designed-and-constructed-to-allow
measurement---of---emissions--using--applicable--test
methods-and-procedures:

(7)--Where--emissions--from--any--electric-arc-furnace-are
combined-with-emissions-from-facilities--not--subject
to--the--provisions-of-this-subsection-but-controlled
by-a-common-capture-system-and--control--device;--the
owner--or--operator--may--use--any--of--the-following
procedures-during-a-performance-test:

(a)--Base---compliance---on---control---of---combined
emissions:

(b)--Utilize--a--method--acceptable-to-the-department
which-compensates-for--the--emissions--from--the
facilities-not-subject-to-the-provisions-of-this
subsection:

(c) Any combination of the criteria of subparagraphs (a) and (b):

(8) Where emissions from any electric arc furnace are combined with emissions from facilities not subject to the provisions of this subsection, the owner or operator may use any of the following procedures for demonstrating compliance with subparagraph (c) of paragraph (1) of subdivision e:

(a) Base compliance on control of the combined emissions:

(b) Shutdown operation of facilities not subject to the provisions of this subsection:

(c) Any combination of the criteria of subparagraphs (a) and (b):

25. Standards of performance for kraft pulp mills:

a. Applicability and designation of affected facility: The provisions of this subsection are applicable to the following affected facilities in kraft pulp mills: digester system; brown stock washer system; multiple effect evaporator system; black liquor oxidation system; recovery furnace; smelt dissolving tank; lime kiln; and condensate stripper system. In pulp mills where kraft pulping is combined with neutral sulfite semichemical pulping, the provisions of this subsection are applicable when any portion of the material charged to an affected facility is produced by the kraft pulping operation:

b. Definitions: As used in this subsection, all terms not defined herein shall have the same meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01:

(1) "Black liquor oxidation system" means the vessels used to oxidize, with air or oxygen, the black liquor; and associated storage tanks:

(2) "Black liquor solids" means the dry weight of the solids which enter the recovery furnace in the black liquor:

(3) "Brown stock washer system" means brown stock washers and associated knotters, vacuum pumps, and filtrate tanks used to wash the pulp following the digester system:

(4) "Condensate stripper system" means a column, and associated condensers, used to strip, with air or

steam, total reduced sulfur compounds from condensate streams from various processes within a kraft pulp mill:

- (5) "Cross-recovery furnace" means a furnace used to recover chemicals consisting primarily of sodium and sulfur compounds by burning black liquor which on a quarterly basis contains more than seven weight percent of the total pulp solids from the neutral sulfite semichemical process and has a green liquor sulfidity of more than twenty-eight percent:
- (6) "Digester system" means each continuous digester or each batch digester used for the cooking of wood in white liquor, and associated flash tanks, below tanks, chip steamers, and condensers:
- (7) "Green liquor sulfidity" means the sulfidity of the liquor which leaves the smelt dissolving tank:
- (8) "Kraft pulp mill" means any stationary source which produces pulp from wood by cooking (digesting) wood chips in a water solution or sodium hydroxide and sodium sulfide (white liquor) at high temperature and pressure. Regeneration of the cooking chemicals through a recovery process is also considered part of the kraft pulp mill:
- (9) "Lime kiln" means a unit used to calcine lime mud, which consists primarily of calcium carbonate, into quicklime, which is calcium oxide:
- (10) "Multiple-effect evaporator system" means the multiple-effect evaporators and associated condensers and hotwells used to concentrate the spent cooking liquid that is separated from the pulp (black liquor):
- (11) "Neutral sulfite semichemical pulping operation" means any operation in which pulp is produced from wood by cooking (digesting) wood chips in a solution of sodium sulfite and sodium bicarbonate, followed by mechanical defibrating (grinding):
- (12) "Recovery furnace" means either a straight kraft recovery furnace or a cross-recovery furnace, and includes the direct contact evaporator for a direct contact furnace:
- (13) "Smelt dissolving tank" means a vessel used for dissolving the smelt collected from the recovery furnace:

{14}--"Straight--kraft--recovery--furnace"--means-a-furnace used-to-recover--chemicals--consisting--primarily--of sodium--and--sulfur-compounds-by-burning-black-liquor which-on-a--quarterly--basis--contains--seven--weight percent--or--less--of--the-total-pulp-solids-from-the neutral-sulfite-semichemical--process--or--has--green liquor-sulfidity-of-twenty-eight-percent-or-less:

{15}--"Total--reduced--sulfur"--means-the-sum-of-the-sulfur compounds---hydrogen---sulfide,---methyl---mercaptan; dimethyl--sulfide,--and--dimethyl-disulfide,--that-are released--during--the--kraft--pulp--operation--and measured-by-Reference-Method-16:

e.--Standard-for-particulate-matter---On-and-after-the-date-on which-the-performance-test-required--to--be--conducted--by subsection-7-of-section-33-15-12-01-is-completed,--no-owner or-operator-subject-to-the-provisions-of--this--subsection shall-cause-to-be-discharged-into-the-atmosphere:

{1}--From-any-recovery-furnace-any-gases-which:

{a}--Contain--particulate--matter--in--excess-of-one-tenth-gram-per--dscm--{0.044--grain--per--dscf} corrected-to-eight-percent-oxygen:

{b}--Exhibit--thirty-five-percent-opacity-or-greater:

{2}--From--any--smelt--dissolving--tank--any--gases--which contain-particulate-matter--in--excess--of--one-tenth gram--per--kilogram--black-liquor-solids-(dry-weight) {0.2-pound-per-ton-black-liquor-solids-(dry-weight)}:

{3}--From---any---lime---kiln---any--gases--which--contain particulate-matter-in-excess-of:

{a}--Fifteen-hundredths--gram--per--dscm--{0.067-grain per-dscf}-corrected-to-ten-percent-oxygen,--when gaseous-fossil-fuel-is-burned:

{b}--Three-tenths-gram-per-dscm--{0.13-grain-per-dscf} corrected-to-ten--percent--oxygen,--when--liquid fossil-fuel-is-burned:

d.--Standard--for-total-reduced-sulfur,--On-and-after-the-date on-which-the-performance-test-required-to-be-conducted--by subsection-7-of-section-33-15-12-01-is-completed,--no-owner or-operator-subject-to-the-provisions-of--this--subsection shall-cause-to-be-discharged-into-the-atmosphere:

{1}--From--any-digester-system,--brown-stock-washer-system, multiple-effect--evaporator--system,---black---liquor oxidation--system,--or-condensate-stripper-system-any

gases which contain total reduced sulfur in excess of five parts per million by volume on a dry basis, corrected to ten percent oxygen, unless the following conditions are met:

(a) The gases are combusted in a lime kiln subject to the provisions of paragraph (5);

(b) The gases are combusted in a recovery furnace subject to the provisions of paragraphs (2) or (3);

(c) The gases are combusted with other waste gases in an incinerator or other device, or combusted in a lime kiln or recovery furnace not subject to the provisions of this subsection, and are subjected to a minimum temperature of one thousand two hundred degrees Fahrenheit {648.89 degrees Celsius} for at least five tenths of a second; or

(d) It has been demonstrated to the department's satisfaction by the owner or operator that incinerating the exhaust gases from a new, modified, or reconstructed black liquor oxidation system or brown stock washer system in an existing facility is technologically or economically not feasible. Any exempt system will become subject to the provisions of this subsection if the facility is changed so that the gases can be incinerated.

(2) From any straight kraft recovery furnace any gases which contain total reduced sulfur in excess of five parts per million by volume on a dry basis, corrected to eight percent oxygen.

(3) From any cross recovery furnace any gases which contain total reduced sulfur in excess of twenty-five parts per million by volume on a dry basis, corrected to eight percent oxygen.

(4) From any smelt dissolving tank any gases which contain total reduced sulfur in excess of eighty-four ten thousandths of a gram per kilogram black liquor solids (dry weight) {0.0168 pound per ton liquor solids (dry weight)}.

(5) From any lime kiln any gases which contain total reduced sulfur in excess of eight parts per million by volume on a dry basis, corrected to ten percent oxygen.

e.--Monitoring-of-emissions-and-operations:

{1}--Any-owner-or-operator-subject-to-the-provisions-of this-subsection-shall-install;--calibrate;--maintain; and--operate--the--following--continuous--monitoring systems:

{a)--A--continuous--monitoring--system-to-monitor-and record-the-opacity-of-the-gases-discharged--into the--atmosphere--from-any-recovery-furnace:--The span-of-this-system--shall-be-set--at--seventy percent-opacity:

{b)--Continuous--monitoring--systems--to--monitor-and record-the-concentration-of-total-reduced-sulfur emissions--on--a--dry--basis--and-the-percent-of oxygen-by-volume-on-a-dry--basis--in--the--gases discharged--into--the--atmosphere--from-any-lime kiln;--recovery-furnace;--digester--system;--brown stock--washer-system;--multiple-effect-evaporator system;--black-liquor-oxidation--system;--or condensate--stripper--system;--except--where-the provisions--of--subparagraph--(c)--or--(d)--of paragraph--(1)--of--subdivision--d--apply:--These systems--shall--be--located--downstream--of--the control--devices--and--the--spans--of--these continuous-monitoring-systems--shall-be-set:

{1}--At--a-total-reduced-sulfur-concentration-of thirty-parts--per--million--for--the--total reduced--sulfur--continuous--monitoring system;--except--that--for--any-cross--recovery furnace--the--span--shall--be--set--at--fifty parts-per-million:

{2}--At--twenty-percent-oxygen--for--the--continuous oxygen-monitoring-system:

{2}--Any-owner-or-operator-subject-to-the-provisions-of this-subsection-shall-install;--calibrate;--maintain; and--operate--the--following--continuous--monitoring devices:

{a)--A--monitoring--device--which--measures--the combustion--temperature--at--the--point--of incineration-of-effluent-gases-which-are-emitted from-any-digester--system;--brown--stock--washer system;--multiple-effect-evaporator-system;--black liquor-oxidation-system;--or--condensate--stripper system--where-the-provisions-of-subparagraph--(c) of-paragraph--(1)--of-subdivision--d--apply:--The monitoring--device--is--to--be--certified-by-the

manufacturer-to-be-accurate-within-one-percent
of-the-temperature-being-measured:

(b)--For-any-lime-kiln-or-smelt-dissolving-tank-using
a-scrubber-emission-control-device:

{1}--A-monitoring-device-for-the-continuous
measurement-of-the-pressure-loss-of-the-gas
stream-through-the-control-equipment--The
monitoring-device-is-to-be-certified-by-the
manufacturer-to-be-accurate-to-within-a
gauge-pressure-of-#five-hundred-pascals
{circa-#2-inches-water-gauge-pressure}:

{2}--A-monitoring-device-for-the-continuous
measurement-of-the-scrubbing-liquid-supply
pressure-to-the-control-equipment--The
monitoring-device-is-to-be-certified-by-the
manufacturer-to-be-accurate-within-#fifteen
percent-of-design-scrubbing-liquid-supply
pressure--The-pressure-sensor-or-tap-is-to
be-located-close-to-the-scrubber-liquid
discharge-point---The-department-may-be
consulted-for-approval-of-alternative
locations:

(3)--Any-owner-or-operator-subject-to-the-provisions-of
this-subsection-shall,-except-where-the-provisions-of
subparagraph-(d)-of-paragraph-(1)-of-subdivision-d-or
paragraph-(4)-of-subdivision-d-apply:

(a)--Calculate-and-record-on-a-daily-basis-twelve-
hour-average-total-reduced-sulfur-concentrations
for-the-two-consecutive-periods-of-each
operating-day--Each-twelve-hour-average-shall
be-determined-as-the-arithmetic-mean-of-the
appropriate-twelve-contiguous-one-hour-average
total-reduced-sulfur-concentrations-provided-by
each-continuous-monitoring-system-installed
under-subparagraph-(b)-of-paragraph-(2):

(b)--Calculate-and-record-on-a-daily-basis-twelve-
hour-average-oxygen-concentrations-for-the-two
consecutive-periods-of-each-operating-day-for
the-recovery-furnace-and-lime-kiln---These
twelve-hour-averages-shall-correspond-to-the
twelve-hour-average-total-reduced-sulfur
concentrations-under-subparagraph-(a)-and-shall
be-determined-as-an-arithmetic-mean-of-the
appropriate-twelve-contiguous-one-hour-average
oxygen-concentrations-provided-by-each
continuous-monitoring-system-installed-under
subparagraph-(b)-of-paragraph-(1):

(c) -- Correct all twelve-hour average total reduced sulfur concentrations to ten volume percent oxygen, except that all twelve-hour average total reduced sulfur concentration from a recovery furnace shall be corrected to eight volume percent using the following equation:

Formula Omitted.

where:

C_{corr} -- concentration corrected for oxygen:

C_{meas} -- concentration uncorrected for oxygen:

X -- volumetric oxygen concentration in percentage to be corrected to (eight percent for recovery furnaces and ten percent for lime kilns, incinerators, or other devices):

Y -- measured twelve-hour average volumetric oxygen concentration:

(4) -- For the purpose of reports required under subdivision e of subsection 6 of section 33-15-12-01, any owner or operator subject to the provisions of this subsection shall report periods of excess emissions as follows:

(a) -- For emissions from any recovery furnace periods of excess emissions are:

{1} -- All twelve-hour averages of total reduced sulfur concentrations above five parts per million by volume for straight kraft recovery furnaces and above twenty-five parts per million by volume for cross recovery furnaces:

{2} -- All six-minute average opacities that exceed thirty-five percent:

(b) -- For emissions from any lime kiln, periods of excess emissions are all twelve-hour average total reduced sulfur concentration above eight parts per million by volume:

(c) -- For emissions from any digester system, brown stock washer system, multiple effect evaporator system, black liquor oxidation system, or condensate stripper system periods of excess emissions are:

{1}--All---twelve-hour---average--total--reduced sulfur concentrations above five parts per million by volume unless the provisions of subparagraph (a), (b), or (d) of paragraph (1) of subdivision d apply; or

{2}--All--periods--in--excess--of--five--minutes--and their duration during which the combustion temperature at the point of incineration is less than one thousand two hundred degrees Fahrenheit {648.89--degrees--Celsius} where the provisions of subparagraph (b) of paragraph (1) of subdivision d apply.

{5}--The--department--will--not--consider--periods--of--excess emissions reported under paragraph (4) to be indicative of a violation of subdivision d of subsection 9 of section 33-15-12-01, provided that:

{a}--The--percent--of--the--total--number--of--possible contiguous periods of excess emissions in a quarter (excluding periods of startup, shutdown, or malfunction and periods when the facility is not operating) during which excess emissions occur does not exceed:

{1}--One---percent---for--total--reduced--sulfur emissions from recovery furnaces:

{2}--Six--percent--for--average--opacities--from recovery furnaces:

{b}--The--department--determines--that--the--affected facility, including air pollution control equipment, is maintained and operated in a manner which is consistent with good air pollution control practice for minimizing emissions during periods of excess emissions:

f--Test methods and procedures:

{1}--Reference--methods--in--Appendix--A--to--this--chapter, except as provided under subdivision b of subsection 7 of section 33-15-12-01, shall be used to determine compliance with paragraph (1) of subdivision e of this subsection as follows:

{a}--Method--5--for--the--concentration--of--particulate matter and the associated moisture content:

{b}--Method--1--of--sample--and--velocity--traverses:

{e}--When--determining--compliance--with--paragraph--(1)
of--subdivision--e;--Method--2--for--velocity--and
volumetric--flow--rate:

{d}--Method--3--for--gas--analysis:

{e}--Method--9--for--visible--emissions:

{2}--For--Method--5;--the--sampling--time--for--each--run--shall--be
at--least--sixty--minutes--and--the--sampling--rate--shall--be
at--least--eighty--five--hundredths--dscm--per--hour--{0.53
dscf--per--minute}--except--that--shorter--sampling--times;
when--necessitated--by--process--variables--or--other
factors;--may--be--approved--by--the--department.---Water
shall--be--used--as--the--cleanup--solvent--instead--of
acetone--in--the--sample--recovery--procedure--outlined--in
Method--5:

{3}--Method--17--(in--stack--filtration)--may--be--used--as--an
alternate--method--for--Method--5---for---determining
compliance--with--subparagraph--(a)--of--paragraph--(1)--of
subdivision--e;--provided;--that--a--constant--value--of
nine--thousandths--of--a--gram--per--dscm--{0.004--grain--per
dscf}--is--added--to--the--results--of--Method--17--and--the
stack--temperature--is--no--greater--than--two--hundred--five
degrees--Celsius--{circa--400--degrees--Fahrenheit}:-
Water--shall--be--used--as--the--cleanup--solvent--instead--of
acetone--in--the--sample--recovery--procedure--outlined--in
Method--17:

{4}--For---the--purpose--of--determining--compliance--with
paragraphs--(1);--(2);--(3);--(4);--and--(5)--of--subdivision
d;--the--following--reference--methods--shall--be--used:

{a}--Method--16--for--the--concentration--of--total--reduced
sulfur:

{b}--Method--3--for--gas--analysis;--and

{c}--When--determining--compliance--with--paragraph--(4)
of--subdivision--d;--use--the--results--of--Method--2;
Method--16;--and--the--black--liquor--solids--feed--rate
in--the--following--equation--to--determine--the--total
reduced--sulfur--emission--rate:

Formula Omitted.

where:

E---mass--of--TRS--emitted--per--unity--of
black--liquor--solids--{grams--per--kilogram}
{pound--per--ton}:-

EH₂S---average-concentration-of-hydrogen sulfide-(H₂S)--during-the-test period;-ppm-

EMeSH---average-concentration-of-methyl mercaptan-(MeSH)-during-the-test period;-ppm-

EDMS---average-concentration-of-dimethyl sulfide-(DMS)-during-the-test period;-ppm-

EDMS---average-concentration-of-dimethyl disulfide-(DMDS)-during-the-test period;-ppm-

FH₂S---0:001417-g/m³-ppm-{0:08844-lb/ft³-ppm}

FMeSH---0:00200-g/m³-ppm-{0:1248-lb/ft³-ppm}

FDMS---0:002583-g/m³-ppm-{0:1612-lb/ft³-ppm}

FDMS---0:003917-g/m³-ppm-{0:2445-lb/ft³-ppm}

Q_{sd}---dry-volumetric-stack-gas-flow-rate corrected-to-standard-conditions;-dscm/hr {dscf/hr}

BLS---black-liquor-solids-feed-rate; kilogram-per-hour-{pound-per-hour}

(d)---When-determining-whether-a-furnace-is-straight kraft-recovery-furnace-or-a-cross-recovery furnace;---TAPPI-Method-T:624---shall-be-used-to determine-sodium-sulfide; sodium-hydroxide-and sodium-carbonate:---These-determinations-shall-be made-three-times-daily-from-the-green-liquor-and the-daily-average-values-shall-be-converted-to sodium-oxide-(Na₂O)---and---substituted---into---the following-equation-to-determine-the-green-liquor sulfidity:

Formula Omitted.

where:

GLS---percent-green-liquor-sulfidity

CNa₂S---average-concentration-of-Na₂O (milligrams-per-liter)

~~CNaOH--average-concentration-of-NaOH
expressed-as-Na2O-(milligrams
per-liter)~~

~~CNa2CO3--average-concentration-of-Na2CO3
expressed-as-Na2O-(milligrams-per
liter)~~

~~{5}--All--concentrations--of--particulate-matter-and-total
reduced--sulfur--required--to--be--measured--by--this
section--from--lime--kilns--or--incinerators--shall--be
corrected--ten--volume--percent--oxygen---and---those
concentrations---from---recovery--furnaces--shall--be
corrected-to--eight--volume--percent--oxygen.---These
corrections--shall-be-made-in-the-manner-specified-in
subparagraph-(c)-of-paragraph-(3)-of-subdivision-e-~~

26- 17. Standards of performance for lime manufacturing plants.

a. Applicability and designation of affected facility.

- (1) The provisions of this subsection are applicable to the following affected facilities used in the manufacture of lime: rotary lime kilns and lime hydrators.
- (2) The provisions of this subsection are not applicable to facilities used in the manufacture of lime at kraft pulp mills.
- (3) Any facility under paragraph 1 that commences construction or modification after May 3, 1977, is subject to the requirements of this subsection.

b. Definitions. As used in this subsection, all terms not defined herein shall have the same meaning given them in North Dakota Century Code chapter 23-25 and in subsection 2 of section 33-15-12-01.

- (1) "Lime hydrator" means a unit used to produce hydrated lime product.
- (2) "Lime manufacturing plant" includes any plant which produces a lime product from limestone by calcination. Hydration of the lime product is also considered to be part of the source.
- (3) "Lime product" means the product of the calcination process including, but not limited to, calcitic lime, dolomitic lime, and dead-burned dolomite.

- (4) "Rotary lime kiln" means a unit with an inclined rotating drum which is used to produce a lime product from limestone by calcination.
- c. Standard for particulate matter. On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere:
 - (1) From any rotary lime kiln any gases which:
 - (a) Contain particulate matter in excess of fifteen-hundredths kilogram per megagram [0.30 pound per ton] of limestone feed.
 - (b) Exhibit ten percent opacity or greater.
 - (2) From any lime hydrator any gases which contain particulate matter in excess of seventy-five-thousandths kilogram per megagram [0.15 pound per ton] of lime feed.
 - d. Monitoring of emissions and operations.
 - (1) The owner or operator subject to the provisions of this subsection shall install, calibrate, maintain, and operate a continuous monitoring system, except as provided in paragraph 2, to monitor and record the opacity of a representative portion of the gases discharged into the atmosphere from any rotary lime kiln. The span of this system shall be set at forty percent opacity.
 - (2) The owner or operator of any rotary lime kiln using a wet scrubbing emission control device subject to the provisions of this subsection shall not be required to monitor the opacity of the gases discharged as required in paragraph 1 but shall install, calibrate, maintain, and operate the following continuous monitoring devices:
 - (a) A monitoring device for the continuous measurement of the pressure loss of the gas stream through the scrubber. The monitoring device must be accurate within \pm two hundred fifty pascals [one inch of water].
 - (b) A monitoring device for the continuous measurement of the scrubbing liquid supply pressure to the control device. The monitoring device must be accurate within \pm five percent of design scrubbing liquid supply pressure.

- (3) The owner or operator of any lime hydrator using a wet scrubbing emission control device subject to the provisions of this subsection shall install, calibrate, maintain, and operate the following continuous monitoring devices:
 - (a) A monitoring device for the continuous measuring of the scrubbing liquid flow rate. The monitoring device must be accurate within \pm five percent of design scrubbing liquid flow rate.
 - (b) A monitoring device for the continuous measurement of the electric current, in amperes, used by the scrubber. The monitoring device must be accurate within \pm ten percent over its normal operating range.
- (4) For the purpose of conducting a performance test under subsection 7 of section 33-15-12-01, the owner or operator of any lime manufacturing plant subject to the provisions of this subsection shall install, calibrate, maintain, and operate a device for measuring the mass rate of limestone feed to any affected rotary lime kiln and the mass rate of lime feed to any affected lime hydrator. The measuring device used must be accurate to within \pm five percent of the mass rate over its operating range.
- (5) For the purpose of reports required under subdivision c of subsection 6 of section 33-15-12-01, periods of excess emissions that shall be reported are defined as all six-minute periods during which the average opacity of the plume from any lime kiln subject to paragraph 1 is ten percent or greater.

e. Test methods and procedures.

- (1) Reference methods in Appendix A to this chapter, except as provided under subdivision b of subsection 7 of section 33-15-12-01, shall be used to determine compliance with paragraph 1 of subdivision c of this subsection as follows:
 - (a) Method 5 for the measurement of particulate matter.
 - (b) Method 1 for sample and velocity traverses.
 - (c) Method 2 for velocity and volumetric flow rate.
 - (d) Method 3 for gas analysis.
 - (e) Method 4 for stack gas moisture.

(f) Method 9 for visible emissions.

- (2) For Method 5, the sampling time for each run shall be at least sixty minutes and the sampling rate shall be at least eighty-five-hundredths standard cubic meter per hour [0.53 dscf/min], dry basis, except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the department.
- (3) Because of the high moisture content (forty to eighty-five percent by volume) of the exhaust gases from hydrators, the Method 5 sample train may be modified to include a calibrated orifice immediately following the sample nozzle when testing lime hydrators. In this configuration, the sampling rate necessary for maintaining isokinetic conditions can be directly related to exhaust gas velocity without a correction for moisture content. Extra care should be exercised when cleaning the sample train with the orifice in this position following the test runs.

18. Standards of performance for stationary gas turbines.

a. Applicability and designation of affected facility. The provisions of this subsection are applicable to the following affected facilities; all stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules per hour, based on the lower heating value of the fuel fired. Any facility that commences construction after October 3, 1977, is subsection to the requirements of this subsection.

b. Definitions. As used in this subsection, all terms not defined herein shall have the meaning given them in section 33-15-12-01.

- (1) "Base load" means the load level at which a gas turbine is normally operated.
- (2) "Combined cycle gas turbine" means any stationary gas turbine which recovers heat from the gas turbine exhaust gases to heat water or generate steam.
- (3) "Efficiency" means the gas turbine manufacturer's rated heat rate at peak load in terms of heat input per unit of power output based on the lower heating value of the fuel.
- (4) "Emergency gas turbine" means any stationary gas turbine which operates as a mechanical or electrical power source only when the primary power source for a

facility has been rendered inoperable by an emergency situation.

- (5) "Firefighting turbine" means any stationary gas turbine that is used solely to pump water for extinguishing fires.
- (6) "Garrison facility" means any permanent military installation.
- (7) "Gas turbine model" means a group of gas turbines having the same nominal air flow, combustor inlet pressure, combustor inlet temperature, firing temperature, turbine inlet temperature, and turbine inlet pressure.
- (8) "Ice fog" means an atmospheric suspension of highly reflective ice crystals.
- (9) "ISO standard day conditions" means two hundred eighty-eight degrees Kelvin, sixty percent relative humidity and 101.3 kilopascals pressure.
- (10) "Metropolitan statistical area" is as defined by the department of commerce.
- (11) "Peak load" means one hundred percent of the manufacturer's design capacity of the gas turbine at ISO standard day conditions.
- (12) "Regenerative cycle gas turbine" means any stationary gas turbine which recovers heat from the gas turbine exhaust gases to preheat the inlet combustion air to the gas turbine.
- (13) "Simple cycle gas turbine" means any stationary gas turbine which does not recover heat from the gas turbine exhaust gases to preheat the inlet combustion air to the gas turbine, or which does not recover heat from the gas turbine exhaust gases to heat water or generate steam.
- (14) "Stationary gas turbine" means any simple cycle gas turbine, regenerative cycle gas turbine, or any gas turbine portion of a combined cycle steam/electric generating system that is not self-propelled. It may, however, be mounted on a vehicle for portability.
- (15) "Turbines employed in oil/gas production or oil/gas transportation" means any stationary gas turbine used to provide power to extract crude oil/natural gas from the earth or to move crude oil/natural gas, or

products refined from the substances through pipelines.

c. Standard for nitrogen oxides.

(1) On and after the date on which the performance test required by subsection 7 of section 33-15-12-01 is completed, every owner or operator subject to the provisions of this subsection, as specified in paragraphs 2, 3, and 4 shall comply with one of the following, except as provided in paragraphs 5, 6, 7, 8, and 9.

(a) No owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any stationary gas turbine, any gases which contain nitrogen oxides in excess of:

$$\text{STD} = 0.0075 \frac{(14.4)}{Y} + F$$

where:

STD = allowable NO2 emissions (percent by volume at 15 percent oxygen and on a dry basis).

Y = manufacturer's rated load (kilojoules per watt hour) or, actual measured heat rate based on lower heating value of fuel as measured at actual peak load for the facility. The value of Y shall not exceed 14.4 kilojoules per watt hour.

F = NO2 emission allowance for fuel-bound nitrogen as defined in subparagraph c.

(b) No owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any stationary gas turbine, any gases which contain nitrogen oxides in excess of:

$$\text{STD} = 0.0150 \frac{(14.4)}{Y} + F$$

where:

STD = allowable NO2 emissions (percent by volume at 15 percent oxygen and on

a dry basis).

Y = manufacturer's rated heat rate at manufacturer's rated peak load (kilojoules per watt hour), or actual measured heat rate based on lower heating value of fuel as measured at actual peak load for the facility. The value of Y shall not exceed 14.4 kilojoules per watt hour.

F = NO₂ emission allowance for fuel-bound nitrogen as defined in subparagraph c.

(c) F shall be defined according to the nitrogen content of the fuel as follows:

<u>Fuel-Bound Nitrogen (percent by weight)</u>	<u>F (NO_x percent by volume)</u>
$N < 0.015$	0
$0.015 < N < 0.1$	0.04 (N)
$0.1 < M < 0.25$	$0.004 + 0.0057(N - 0.1)$
$N < 0.25$	0.005

where:

N = the nitrogen content of the fuel
(percent by weight)

or:

Manufacturers may develop custom fuel-bound nitrogen allowances for each gas turbine model they manufacture. These fuel-bound nitrogen allowances shall be substantiated with data and must be approved for use by the department before the initial performance test required by subsection 7 of section 33-15-12-01.

- (2) Stationary gas turbines with a heat input at peak load greater than 107.2 gigajoules per hour [100 million Btu/hour] based on the lower heating value of the fuel fired except as provided in paragraph 4 shall comply with the provisions of subparagraph a of paragraph 1.
- (3) Stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules per hour [10 million Btu/hour] but less than or equal to 107.2 gigajoules per hour [100 million Btu/hour] based on the lower heating value of the fuel fired, shall comply with the provisions of subparagraph b of paragraph 1.

- (4) Stationary gas turbines employed in oil/gas production or oil/gas transportation and not located in metropolitan statistical areas shall comply with the provisions of subparagraph b of paragraph 1.
- (5) Stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules per hour [10 million Btu/hour] but less than or equal to 107.2 gigajoules per hour [100 million Btu/hour] based on the lower heating value of the fuel fired and that have commenced construction prior to October 3, 1982, are exempt from paragraph 1.
- (6) Stationary gas turbines using water or steam injection for control of nitrogen oxide emissions are exempt from paragraph 1 when ice fog is deemed a traffic hazard by the owner or operator of the gas turbine.
- (7) Emergency gas turbines, military gas turbines for use in other than a garrison facility, military gas turbines installed for use as military training facilities, and firefighting gas turbines are exempt from paragraph 1.
- (8) Stationary gas turbines engaged by manufacturers in research and development of equipment for both gas turbine emission control techniques and gas turbine efficiency improvements are exempt from paragraph 1 on a case-by-case basis as determined by the department.
- (9) Exemptions from the requirements of paragraph 1 will be granted on a case-by-case basis as determined by the department in specific geographical areas where mandatory water restrictions are required by governmental agencies because of drought conditions. These exemptions will be allowed only while the mandatory water restrictions are in effect.

d. Standard for sulfur dioxide. On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, every owner or operator subject to the provision of this subsection shall comply with one or the other of the following conditions:

- (1) No owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any stationary gas turbine any gases which contain sulfur dioxide in excess of 0.015 percent by volume at fifteen percent oxygen and on a dry basis.

(2) No owner or operator subject to the provisions of this subsection shall burn in any stationary gas turbine any fuel which contains sulfur in excess of 0.8 percent by weight.

e. Monitoring or operations.

(1) The owner or operator of any stationary gas turbine subject to the provisions of this subsection and using water injection to control nitrogen oxide emissions shall install and operate a continuous monitoring system to monitor and record the fuel consumption and the ratio of water to fuel being fired in the turbine. This system shall be accurate to within \pm five percent and shall be approved by the department.

(2) The owner or operator of any stationary gas turbine subject to the provisions of this subsection shall monitor sulfur content and nitrogen content of the fuel being fired in the turbine. The frequency of determination of these values shall be as follows:

(a) If the turbine is supplied its fuel from a bulk storage tank, the values shall be determined on each occasion that fuel is transferred to the storage tank from any other source.

(b) If the turbine is supplied its fuel without intermediate bulk storage the values shall be determined and recorded daily. Owners, operators, or fuel vendors may develop custom schedules for determination of the values based on the design and operation of the affected facility and the characteristics of the fuel supply. These custom schedules shall be substantiated with data and must be approved by the department before they can be used to comply with this paragraph.

(3) For the purpose of reports required under subdivision c of subsection 6 of section 33-15-12-01, periods of excess emissions that shall be reported are defined as follows:

(a) Nitrogen oxides. Any one-hour period during which the average water-to-fuel ratio, as measured by the continuous monitoring system, falls below the water-to-fuel ratio determined to demonstrate compliance with subdivision c by the performance test required in subsection 7 of section 33-15-12-01 of any period during which the fuel-bound nitrogen of the fuel is greater

than the maximum nitrogen content allowed by the fuel-bound nitrogen allowance used during the performance test required in subsection 7 of section 33-15-12-01. Each report shall include the average water-to-fuel ratio, average fuel consumption, ambient conditions, gas turbine load, and nitrogen content of the fuel during the period of excess emissions, and the graphs or figures developed under paragraph 1 of subdivision f.

(b) Sulfur dioxide. Any daily period during which the sulfur content of the fuel being fired in the gas turbine exceeds 0.8 percent.

(c) Ice fog. Each period during which an exemption provided in paragraph 7 of subdivision c is in effect shall be reported in writing to the department quarterly. For each period, the ambient conditions existing during the period, the date and time the air pollution control system was deactivated, and the date and time the air pollution control system was reactivated shall be reported. All quarterly reports shall be postmarked by the thirtieth day following the end of each calendar quarter.

f. Test methods and procedures.

(1) The reference methods in Appendix A to this chapter, except as provided in subdivision b of subsection 7 of section 33-15-12-01 shall be used to determine compliance with the standards prescribed in subdivision c as follows:

(a) Reference Method 20 for the concentration of nitrogen oxides and oxygen. For affected facilities under this subsection, the span value shall be three hundred parts per million of nitrogen oxides.

[1] The nitrogen oxides emission level measured by Reference Method 20 shall be adjusted to ISO standard day conditions by the following ambient condition correction factor:

$$NO_x = (NO_{x_{obs}}) \left(\frac{P_{ref}}{P_{obs}} \right)^{0.5} e^{19} (H_{obs} - 0.00633) \left(\frac{T_{AMB}}{288^{\circ}K} \right)^{1.53}$$

where:

NOx = emissions of NOx at 15 percent oxygen and ISO standard ambient conditions.

NOx_{obs} = measured NOx emissions at fifteen percent oxygen ppmv.

Pref = reference combustor inlet absolute pressure at 101.3 kilopascals ambient pressure.

Pobs = measured combustor inlet absolute pressure at test ambient pressure.

Hobs = specific humidity of ambient air at test.

e = transcendental constant (2.718)

TAMB = temperature of ambient air at test.

The adjusted nitrogen oxide emission level shall be used to determine compliance with subdivision c.

[2] Manufacturers may develop custom ambient condition correction factors for each gas turbine model they manufacture in terms of combustor inlet pressure, ambient air pressure, ambient air humidity, and ambient air temperature to adjust the nitrogen oxides emission level measured by the performance test as provided for in subsection 7 of section 33-15-12-01 to ISO standard day conditions. These ambient condition correction factors shall be substantiated with data and must be approved for use by the department before the initial performance test required by subsection 7 of section 33-15-12-01.

[3] The water-to-fuel ratio necessary to comply with subdivision c will be determined during the initial performance test by measuring nitrogen oxide emission using Reference Method 20 and the water-to-fuel ratio necessary to comply with subdivision c at thirty, fifty, seventy-five, and one hundred percent of

peak load or at four points in the normal operating range of the gas turbine, including the minimum point in the range and peak load. All loads shall be corrected to ISO standard day conditions using the appropriate equation supplied by the manufacturer.

(b) The analytical methods and procedures employed to determine the nitrogen content of the fuel being fired shall be approved by the department and shall be accurate to within \pm five percent.

(2) The method for determining compliance with subdivision d, except as provided in subdivision b of subsection 7 of section 33-15-12-01, shall be as follows:

(a) Reference Method 20 for the concentration of sulfur dioxide and oxygen; or

(b) American society of testing and materials D2880-71 for the sulfur content of liquid fuels and American society of testing and materials D1072-70 for the sulfur content of gaseous fuels. These methods shall also be used to comply with paragraph 2 of subdivision e.

(3) Analysis for the purpose of determining the sulfur content and the nitrogen content of the fuel as required by paragraph 2 of subdivision e, may be performed by the owner/operator, a service contractor retained by the owner/operator, the fuel vendor, or any other qualified agency; provided, that the analytical methods employed by these agencies comply with the applicable paragraphs of this subdivision.

19. Standards of performance for grain elevators.

a. Applicability and designation of affected facility. The provisions of this subsection apply to each affected facility at any grain terminal elevator or any grain storage elevator, except as provided under subdivision e. The affected facilities are each truck loading or unloading station, barge and ship loading or unloading station, railcar loading or unloading station, grain dryer, and all grain handling operations. Any facility which commences construction, modification, or reconstruction, after August 3, 1978, is subject to the requirements of this subsection.

b. Definitions. As used in this subsection, all terms not defined herein shall have the meaning given them in the

North Dakota Century Code chapter 23-25 and in section 33-15-12-01.

- (1) "Capture system" means the equipment such as sheds, hoods, ducts, fans, dampers, etc., used to collect particulate matter generated by an affected facility at a grain elevator.
- (2) "Column dryer" means any equipment used to reduce the moisture content of grain in which the grain flows from the top to the bottom in one or more continuous packed columns between two perforated metal sheets.
- (3) "Fugitive emission" means the particulate matter which is not collected by a capture system and is released directly into the atmosphere from an affected facility at a grain elevator.
- (4) "Grain elevator" means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded.
- (5) "Grain handling operations" include bucket elevators or legs (excluding legs used to unload barges or ships), scale hoppers and surge bins (garners), turn heads, scalpors, cleaners, trippers, and the headhouse and other such structures.
- (6) "Grain loading station" means that portion of a grain elevator where the grain is transferred from the elevator to a truck, railcar, barge, or ship.
- (7) "Grain" means corn, wheat, sorghum, rice, rye, oats, barley, and soybeans.
- (8) "Grain storage elevator" means any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant which has a permanent grain storage capacity of thirty-five thousand two hundred cubic meters [circa 1,000,000 bushels].
- (9) "Grain terminal elevator" means any grain elevator which has a permanent storage capacity of more than eighty-eight thousand one hundred cubic meters [circa 2,500,000 bushels], except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots.
- (10) "Grain unloading station" means that portion of a grain elevator where the grain is transferred from a truck, railcar, barge, or ship to a receiving hopper.

- (11) "Permanent storage capacity" means grain storage capacity which is inside a building, bin, or silo.
- (12) "Process emission" means the particulate matter which is collected by a capture system.
- (13) "Rack dryer" means any equipment used to reduce the moisture content of grain in which the grain flows from the top to the bottom in a cascading flow around rows of baffles (racks).
- (14) "Railcar" means railroad hopper car or boxcar.
- (15) "Unloading leg" means a device which includes a bucket-type elevator which is used to remove grain from a barge or ship.

c. Standard for particulate matter.

- (1) On and after the sixtieth day of achieving the maximum production rate at which the affected facility will be operated, but no later than one hundred eighty days after initial startup, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere any gases which exhibit greater than zero percent opacity from any:
 - (a) Column dryer with column plate perforation exceeding two and four-tenths millimeters diameter [circa 0.094 inch].
 - (b) Rack dryer in which exhaust gases pass through a screen filter coarser than fifty mesh.
- (2) On and after the date on which the performance test required to be conducted by subsection 7 of section 33-15-12-01 is completed, no owner or operator subject to the provisions of this subsection shall cause to be discharged into the atmosphere from any affected facility except a grain dryer any process emission which:
 - (a) Contains particulate matter in excess of 0.023 g/dscm [circa 0.01 gr/dscf].
 - (b) Exhibits greater than zero percent opacity.
- (3) On and after the sixtieth day of achieving the maximum production rate at which the affected facility will be operated, but no later than one hundred eighty days after initial startup, no owner or operator subject to the provisions of this

subsection shall cause to be discharged into the atmosphere any fugitive emission from:

(a) Any individual truck unloading station, railcar unloading station, or railcar loading station, which exhibits greater than five percent opacity.

(b) Any grain handling operation which exhibits greater than zero percent opacity.

(c) Any truck loading station which exhibits greater than ten percent opacity.

(d) Any barge or ship loading station which exhibits greater than twenty percent opacity.

(4) The owner or operator of any barge or ship unloading station shall operate as follows:

(a) The unloading leg shall be enclosed from the top (including the receiving hopper) to the centerline of the bottom pulley and ventilation to a control device shall be maintained on both sides of the leg and the grain receiving hopper.

(b) The total rate of air ventilated shall be at least thirty-two and one-tenth actual cubic meters per cubic meter of grain handling capacity [circa 40 cubic feet per bushel].

(c) Rather than meet the requirements of subparagraphs a and b, the owner or operator may use other methods of emission control if it is demonstrated to the department's satisfaction that they would reduce emissions of particulate matter to the same level or less.

d. Test methods and procedures.

(1) Reference methods in Appendix A to this chapter, except as provided under subdivision b of subsection 7 of section 33-15-12-01 shall be used to determine compliance with the standard prescribed under subdivision c as follows:

(a) Method 5 or 17 for concentration of particulate matter and associated moisture content.

(b) Method 1 for sample and velocity traverses.

(c) Method 2 for velocity and volumetric flow rate.

- (d) Method 3 for gas analysis.
- (e) Method 9 for visible emissions.
- (2) For Method 5, the sampling probe and filter holder shall be operated without heaters. The sampling time for each run, using Method 5 or 17, shall be at least sixty minutes. The minimum sample volume shall be 1.7 dscm [circa 60 dscf].

e. Modifications.

- (1) The factor 6.5 shall be used in place of "annual asset guidelines repair allowance percentage", to determine whether a capital expenditure as defined by subdivision c of subsection 2 of section 33-15-12-01 has been made to an existing facility.
- (2) The following physical changes or changes in the method of operation shall not by themselves be considered a modification of any existing facility:
 - (a) The addition of gravity loadout spouts to existing grain storage or grain transfer bins.
 - (b) The installation of automatic grain weighing scales.
 - (c) Replacement of motor and drive units driving existing grain handling equipment.
 - (d) The installation of permanent storage capacity with no increase in hourly grain handling capacity.

History: Amended effective February 1, 1982.

General Authority
NDCC 23-25-03,
28-32-02

Law Implemented
NDCC 23-25-03

APPENDIX A - REFERENCE METHODS

The reference methods specified within chapter 33-15-12 are identical to those specified in Appendix A, as amended, of Title 40 Code of Federal Regulations, Part 60 (40 CFR 60). The methods are as follows:

- Method 1 - Sample and Velocity Traverses for Stationary Sources
- Method 2 - Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube)
- Method 3 - Gas Analysis for Carbon Dioxide, Excess Air, and Dry Molecular Weight
- Method 4 - Determination of Moisture in Stack Gases
- Method 5 - Determination of Particulate Emissions from Stationary Sources
- Method 6 - Determination of Sulfur Dioxide Emissions from Stationary Sources
- Method 7 - Determination of Nitrogen Oxide Emissions from Stationary Sources
- Method 8 - Determination of Sulfuric Acid Mist and Sulfur Dioxide Emissions from Stationary Sources
- Method 9 - Visual Determination of the Opacity of Emissions from Stationary Sources
- Method 10 - Determination of Carbon Monoxide Emissions from Stationary Sources
- Method 11 - Determination of Hydrogen Sulfide Emissions from Stationary Sources
- Method 12 - Reserved
- Method 13A - Determination of Total Fluoride Emissions from Stationary Sources - SPADNS Zirconium Lake Method
- Method 13B - Determination of Total Fluoride Emissions from Stationary Sources - Specific Ion Electrode Method

- Method 14 - Determination of Fluoride Emissions from Potroom Roof Monitors of Primary Aluminum Plants
- Method 15 - Determination of Hydrogen Sulfide, Carbonyl Sulfide, and Carbon Disulfide Emissions from Stationary Sources
- Method 16 - Semicontinuous Determination of Sulfur Emissions from Stationary Sources
- Method 17 - Determination of Particulate Emissions from Stationary Sources (In-stack Filtration Method)
- Method 19 - Determination of Sulfur Dioxide Removal Efficiency and Particulate, Sulfur Dioxide and Nitrogen Oxides Emission Rates from Electric Utility Steam Generators
- Method 20 - Determination of Nitrogen Oxides, Sulfur Dioxide and Oxygen Emissions from Stationary Gas Turbines

APPENDIX B - PERFORMANCE SPECIFICATIONS

The performance specifications specified within chapter 33-15-12 are identical to those specified in Appendix-B Appendix A part 60 and Appendix E Part 52, as amended, of Title 40 of the Code of Federal Regulations; -Part-60-(40-CFR-60). The specifications are as follows:

Performance Specification 1 - Performance specifications and specification test procedures for transmissometer systems for continuous measurement of the opacity of stack emission.

Performance Specification 2 - Performance specifications and specification test procedures for monitors of sulfur dioxide and nitrogen oxides from stationary sources.

Performance Specification 3 - Performance specifications and specification test procedures for monitors of carbon dioxide and oxygen from stationary sources.

Performance Specification 4 - Performance specifications and specification test procedures for monitoring systems for effluent stream gas volumetric flow rate.

X 33-15-13-01. GENERAL PROVISIONS.

1. Applicability. The provisions of this chapter apply to the owner or operator of any stationary source for which a standard is prescribed under this chapter.
2. Definitions. As used in this chapter, all terms not defined herein shall have the meaning given them in North Dakota Century Code chapter 23-25 or in section 33-15-01-04. Terms defined, both in this subsection and in section 33-15-01-04, shall have the meaning given them in this subsection:
 - a. "Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference method or an equivalent method but which has been demonstrated to the department's satisfaction to produce, in specific cases, results adequate for determination of compliance.
 - b. ~~"Commenced" means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification~~ as applied to construction of a stationary source means that the owner or operator has obtained all necessary construction permits required by state air pollution regulations and either has:
 - (1) Begun, or cause to begin a continuous program of physical onsite construction of the source; or
 - (2) Entered into binding agreement, or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed within a reasonable time.
 - c. "Compliance schedule" means the date or dates by which a source or category of sources is required to comply with the standards of this chapter and with any steps toward such compliance which are set forth under subsection 9.
 - d. "Construction" means fabrication, erection, or installation of a stationary source.
 - e. "Effective date" is the date of promulgation in this article of an applicable standard or other limitation under this chapter.
 - f. "Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the department's satisfaction to have a consistent and

quantitatively known relationship to the reference method, under specified conditions.

- g. "Existing source" means any stationary source which is not a new source.
 - h. "Modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any hazardous air pollutant emitted by such source or which results in the emission of any hazardous air pollutant not previously emitted, except that:
 - (1) Routine maintenance, repair, and replacement shall not be considered physical changes.
 - (2) The following shall not be considered a change in the method of operation:
 - (a) An increase in the production rate, if such increase does not exceed the operating design capacity of the stationary source.
 - (b) An increase in hours of operation.
 - i. "New source" means any stationary source, the construction or modification of which is commenced after February 9, 1976.
 - j. "Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.
 - k. "Reference method" means any method of sampling and analyzing for an air pollutant, as described in Appendix B to this chapter.
 - l. "Standard" means an emission standard for a hazardous air pollutant promulgated under this chapter.
 - m. "Startup" means the setting in operation of a stationary source for any purpose.
 - n. "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant which has been designated as hazardous by the department.
3. Abbreviations. The abbreviations used in this chapter have the following meanings:
- avg. - average
 - Be - beryllium
 - °C - degree Celsius (centigrade)

cfm - cubic feet per minute
ft² - square feet
ft³ - cubic feet
°F - degree Fahrenheit
g - gram
Hg - mercury
in - inch
inHg - inches of mercury
inH₂O - inches of water
I.D. - inside diameter
l - liter
mg - milligram (10⁻³ gram)
ml - milliliter (10⁻³ liter)
min - minute
M - molar
m³ - cubic meter
nm - nanometer (10⁻⁹ meter)
N - normal
oz - ounce
O.D. - outside diameter
°R - degree Rankine
% - percent
sec. - second
v/v - volume per volume
w.g. - water gauge
yd² - square yard
ug - microgram (10⁻⁶ gram)

4. Prohibited activities.

- a. After the effective date of any standard prescribed under this chapter, no owner or operator shall construct or modify any stationary source subject to such standard without first obtaining a permit to construct from the department, except under an exemption granted by the President under section 112(c) (2) of the Federal Clean Air Act.
- b. After the effective date of any standard prescribed under this chapter, no owner or operator shall operate any new source in violation of such standard except under an exemption granted by the President under section 112(c) (2) of the Federal Clean Air Act.
- c. Ninety days after the effective date of any standard prescribed under this chapter, no owner or operator shall operate any existing stationary source in violation of such standard, except under a permit to operate with an attached compliance schedule granted by the department pursuant to subdivision b of subsection 8 or under an exemption granted by the President under section 112(c) (2) of the Federal Clean Air Act.

- d. No owner or operator subject to the provisions of this chapter shall fail to report, revise reports, or report source test results as required under this chapter.
5. Determination of construction or modification. Upon written application by an owner or operator, the department shall make a determination of whether actions taken or intended to be taken by such owner or operator constitute construction or modification or the commencement thereof within the meaning of this section. The department will, within thirty days of receipt of sufficient information to evaluate an application, notify the owner or operator of its determination. Nothing in this subsection, nor any action taken pursuant to this subsection, shall prevent the department from making such a determination upon its own initiative, nor prevent the department from making any subsequent redetermination or taking any other action allowed by law.
6. Application for permit to construct. The owner or operator of any new source to which a standard prescribed under this chapter is applicable shall, prior to the date on which construction or modification is planned to commence, apply for and receive a permit to construct as provided in section 33-15-14-02.
7. Notification of startup. Any owner or operator of a source which has an initial startup date after the effective date of a standard prescribed under this chapter shall furnish the department written notification as follows:
 - a. A notification of the anticipated date of initial startup of the source not more than sixty days nor less than thirty days prior to such date.
 - b. A notification of the actual date of initial startup of the source within fifteen days after such date.
8. Source reporting and application for permit to operate.
 - a. The owner or operator of any existing source, or any new source to which a standard prescribed under this chapter is applicable which had an initial startup date which preceded the effective date of a standard prescribed under this chapter, shall, within ninety days after the effective date, provide the following information in writing to the department:
 - (1) Name and address of the owner or operator.
 - (2) The location of the source.
 - (3) The type of hazardous pollutants emitted by the stationary source.

- (4) A brief description of the nature, size, design, and method of operation of the stationary source including the operating design capacity of such source and identifying each point of emission for each hazardous pollutant.
 - (5) The average weight per month of the hazardous materials being processed by the source, over the last twelve months preceding the date of the report.
 - (6) A description of the existing control equipment for each emission point, including:
 - (a) Primary control device or devices for each hazardous pollutant.
 - (b) Secondary control device or devices for each hazardous pollutant.
 - (c) Estimated control efficiency (percent) for each control device.
 - (7) A statement by the owner or operator of the source as to whether the owner or operator can comply with the standards prescribed in this chapter within ninety days of the effective date.
- b. The owner or operator of an existing source unable to operate in compliance with any standard prescribed under this chapter may request the department to grant a permit to operate with an attached compliance schedule requiring compliance with the standard within two years of the effective date of such standard. Any request shall be in writing and shall include the following information:
- (1) A description of the controls to be installed to comply with the standard.
 - (2) A compliance schedule, listing the date each step toward compliance will be reached. The list shall include as a minimum the following dates:
 - (a) Date by which contracts for emission control systems or process modifications will be awarded, or date by which orders will be issued for the purchase of component parts to accomplish emission control or process modification.
 - (b) Date of initiation of onsite construction or installation of emission control equipment or process change.

- (c) Date by which onsite construction or installation of emission control equipment or process modification is to be completed.
 - (d) Date by which final compliance is to be achieved.
 - (3) A description of interim emission control steps which will be taken during the compliance schedule period.
 - c. Changes in the information provided under subdivision a shall be provided to the department within thirty days after such change, except that if changes will result in modification of the source, the provisions of subsection 6 are applicable.
 - d. The format for reporting under this subsection is included as Appendix A to this chapter. Advice on reporting the status of compliance may be obtained from the department.
9. Permit and compliance schedule.
- a. Based on the information provided in any request under subsection 8, or other information, the department may grant a permit to operate with an attached compliance schedule not exceeding two years from the effective date of such standard.
 - b. Such permit will be in writing and will, as a minimum:
 - (1) Identify the stationary source covered.
 - (2) Specify the date upon which the standard is to be met. The permit may be revoked or suspended if the standard is not met by the date specified or if the conditions specified under paragraph 3 are not met.
 - (3) Specify dates by which steps toward compliance are to be taken; and impose such additional conditions as the department determines to be necessary to assure installation of the necessary controls within the compliance schedule period, and to assure protection of the health of persons during such period.
 - c. Prior to denying any request for a permit pursuant to this subsection, the department will notify the owner or operator making such request of the department's intention to issue such denial, together with:
 - (1) Notice of the information and findings on which such intended denial is based.

- (2) Notice of opportunity for such owner or operator to present, within such time limit as the department specifies, additional information or arguments to the department prior to final action on such request.
 - d. A final determination to deny any request for a permit under this subsection will be in writing and will set forth the specific grounds on which such denial is based. Such final determination will be made within sixty days after presentation of additional information or arguments, or sixty days after the final date specified for such presentation, if no presentation is made.
 - e. The granting of a permit under this subsection shall not abrogate the department's authority under section 33-15-01-05, subsection 9 of section 33-15-14-02, and subsection 6 of section 33-15-14-03.
10. Emission tests and monitoring.
- a. Emission tests and monitoring shall be conducted and reported as set forth in this chapter and Appendix B to this chapter.
 - b. The owner or operator of a new source subject to this chapter, and otherwise at the request of the department, the owner or operator of an existing source subject to this chapter, shall provide or cause to be provided, emission testing facilities as follows:
 - (1) Sampling ports adequate for test methods applicable to such source.
 - (2) Safe sampling platform or platforms.
 - (3) Safe access to sampling platform or platforms.
 - (4) Utilities for sampling and testing equipment.
11. Waiver of emission tests.
- a. Emission tests may be waived upon written application to the department if, in its judgment, the source is meeting the standard, or if the source is operating under a permit granted under subsection 9 or has requested such permit.
 - b. If application for waiver of the emission test is made, such application shall accompany the information required by subsection 8. The appropriate form is contained in Appendix A to this chapter.
 - c. Approval of any waiver granted pursuant to this subsection shall not abrogate the department's authority under North

Dakota Century Code chapter 23-25 or in any way prohibit the department from later canceling such waiver. Such cancellation will be made only after notice is given to the owner or operator of the source.

12. Source test and analytical methods.
 - a. Methods 101, 102, and 104 in Appendix B to this chapter shall be used for all source tests required under this chapter, unless an equivalent method or an alternative method has been approved by the department.
 - b. Method 103 in Appendix B to this chapter is hereby approved by the department as an alternative method for sources subject to subdivision a of subsection 3 of section 33-15-13-03 and subdivision b of subsection 3 of section 33-15-13-04.
 - c. The department may, after notice to the owner or operator, withdraw approval of an alternative method granted under subdivision a, b, or d. Where the test results using an alternative method do not adequately indicate whether a source is in compliance with a standard, the department may require the use of the reference method or its equivalent.
 - d. Method 105 in Appendix B to this chapter is hereby approved by the department as an alternative method for sources subject to subdivision b of subsection 3 of section 33-15-13-05.
13. Availability of information.
 - a. Emission data provided to, or otherwise obtained by, the department in accordance with the provisions of this chapter shall be available to the public.
 - b. Any records, reports, or information, other than emission data, provided to, or otherwise obtained by, the department in accordance with the provisions of this chapter shall be available to the public, except that upon a showing satisfactory to the department by any person that such records, reports, or information, or particular part thereof (other than emission data), if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the department will consider such records, reports, or information, or particular part thereof, confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such records, reports, or information, or particular part thereof, may be disclosed to other officers, employees, or authorized representatives of the state and federal government

concerned with carrying out the provisions of North Dakota Century Code chapter 23-25 or when relevant in any proceeding under North Dakota Century Code chapter 23-25.

14. Circumvention. No owner or operator subject to the provisions of this chapter shall build, erect, install, or use any article, machine, equipment, process, or method, the use of which conceals an emission which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous diluents to achieve compliance with a visible emissions standard, and the piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specified size.

History: Amended effective February 1, 1982.

General Authority
NDCC 23-25-03,
28-32-02

Law Implemented
NDCC 23-25-03

λ 33-15-14-02. PERMIT TO CONSTRUCT.

1. Permit to construct required. No construction, installation, or establishment of a new stationary source within a source category designated in section 33-15-14-01 shall be commenced unless the owner or operator thereof shall file an application for, and receive, a permit to construct in accordance with this chapter. This requirement shall also apply to any source for which a federal standard of performance has been promulgated prior to such filing of an application for a permit to construct. A list of sources for which a federal standard has been promulgated, and the standards which apply to such sources, shall be available at the department's offices.
2. Application for permit to construct.
 - a. Application for a permit to construct a new installation or source shall be made by the owner or operator thereof on forms furnished by the department.
 - b. A separate application is required for each new installation or source subject to this chapter.
 - c. Each application shall be signed by the applicant, which signature shall constitute an agreement that the applicant will assume responsibility for the construction or operation of the new installation or source in accordance

with this article and will notify the department, in writing, of the startup of operation of such source.

3. Alterations to source.
 - a. The addition to or enlargement of or replacement of or major alteration in any stationary source, already existing, which is undertaken pursuant to an approved compliance schedule for the reduction of emissions therefrom, shall be exempt from the requirements of this section.
 - b. Any physical change in, or change in the method of operation of, a stationary source already existing which increases or may increase the emission rate of any pollutant for which an ambient air quality standard has been promulgated under this article or which results in the emission of any such pollutant not previously emitted shall be considered to be construction, installation, or establishment of a new source, except that:
 - (1) Routine maintenance, repair, and replacement shall not be considered a physical change.
 - (2) The following shall not be considered a change in the method of operation:
 - (a) An increase in the production rate, if such increase does not exceed the operating design capacity of the source.
 - (b) An increase in the hours of operation.
4. Submission of plans - deficiencies in application. As part of an application for a permit to construct, the department may require the submission of plans, specifications, siting information, emission information, descriptions and drawings showing the design of the installation or source, the manner in which it will be operated and controlled, the emissions expected from it, and the effects on ambient air quality. Any additional information, plans, specifications, evidence, or documentation that the department may require shall be furnished upon request. Within twenty days of the receipt of the application, the department shall advise the owner or operator of the proposed source of any deficiencies in the application. In the event of a deficiency, the date of receipt of the application shall be the date upon which all requested information is received.
5. Review of application - standard for granting permits to construct. The department shall review any plans, specifications, and other information submitted in application for a permit to construct and from such review shall, within

thirty days of the receipt of the completed application, make the following preliminary determinations:

- a. Whether the proposed project will be in accord with this article, including whether the operation of any new stationary source at the proposed location will result in any applicable ambient air quality standards being exceeded.
 - b. Whether the proposed project will provide all known available and reasonable methods of emission control. Whenever a standard of performance is applicable to the source, compliance with this criterion will require provision for emission control which will, at least, satisfy such standards.
6. Public participation - final action on application. This subsection shall apply only to those affected facilities designated under chapters 33-15-12, 33-15-13, and 33-15-15 or for construction of other sources for which the actual emissions of any contaminant would be greater than fifty tons [45.36 metric tons] per year, one thousand pounds [453.59 kilograms] per day, or one hundred pounds [45.36 kilograms] per hour, whichever is most restrictive or for which the department has determined to have a major impact on air quality or for which a request for a public comment period has been received from the public. The department shall:
- a. Within thirty days of the receipt of the completed application, make available in at least one location in the county or counties in which the proposed project is to be located, a copy of its preliminary determinations and copies of or a summary of the information considered in making such preliminary determinations.
 - b. Publish notice to the public by prominent advertisement, within thirty days of the receipt of the completed application, in the region affected, of the opportunity for written comment on the preliminary determinations. The public notice shall include the proposed location of the source.
 - c. Within thirty days of the receipt of the completed application, deliver a copy of the notice to the applicant and to officials and agencies having cognizance over the locations where the source will be situated as follows: State and local air pollution control agencies, the chief executive of the city and county; any comprehensive regional land use planning agency; the regional administrator of the United States environmental protection agency; and any state, federal land manager, or Indian governing body whose lands will be significantly affected by the source's emissions.

- d. Allow thirty days for public comment.
 - e. Consider all public comments properly received, in making the final decision on the application.
 - f. Allow the applicant to submit written responses to public comments received by the department, within ten days of the receipt of such comments.
 - g. Take final action on the application within thirty days of the close of the public comment period.
7. Denial of permit to construct. If, after review of all information received, including public comment with respect to any proposed project, the department makes the determination of any one of subdivision a or b of subsection 5 in the negative, it shall deny the permit and notify the applicant, in writing, of the denial to issue a permit to construct.

If a permit to construct is denied, the construction, installation, or establishment of the new stationary source shall be unlawful. No permit to construct or modify shall be granted if such construction, or modification, or installation, will result in a violation of these regulations or in a violation of the ambient air quality standards.

8. Issuance of permit to construct. If, after review of all information received, including public comment with respect to any proposed project, the department makes the determination of subdivision a or b of subsection 5 in the affirmative, the department shall issue a permit to construct. The permit may provide for conditions of operation as provided in subsection 9.
9. Permit to construct - conditions. The department may impose any reasonable conditions upon a permit to construct, including conditions concerning:
- a. Sampling, testing, and monitoring of the facilities or the ambient air or both.
 - b. Trial operation and performance testing.
 - c. Prevention and abatement of nuisance conditions caused by operation of the facility.
 - d. Recordkeeping and reporting.
 - e. Compliance with applicable rules and regulations in accordance with a compliance schedule.

The violation of any conditions so imposed may result in revocation or suspension of the permit or other appropriate enforcement action.

10. Scope.

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

11. Permit to construct application processing fee. Any construction, installation, or establishment of a new stationary source requiring a permit to construct under subsections 1 and 3 is required to pay a permit to construct application processing fee to the North Dakota state department of health as follows:

- a. A filing fee of one hundred dollars plus an application processing fee based on actual processing costs, including computer data processing costs, incurred by the department for all sources subject to chapters 33-15-12, 33-15-13, and 33-15-15 and other sources which involve a major analysis the cost of which would exceed one hundred dollars, as determined by the department. The fee shall be paid on the following basis:
 - (1) The filing fee of one hundred dollars shall be submitted with the permit application.
 - (2) A record of all permit to construct application processing costs incurred shall be maintained by the department.
 - (3) Upon receipt of an application, the department will inform the applicant of the probable total processing

fee and the billing schedule that will be utilized in processing the application. If the applicant chooses, the applicant may withdraw the application at this point without paying any processing fees.

(4) Following the end of the public comment period or the public hearing, or both, and after final determinations on the application have been made, a final statement will be sent to the applicant containing the remaining actual processing costs incurred by the department.

b. A filing fee of twenty-five seventy-five dollars for all sources other than those sources designated in subdivision a shall be submitted with the permit application.

History: Amended effective March 1, 1980; amended effective February 1, 1982.

General Authority
NDCC 23-25-03,
28-32-02

Law Implemented
NDCC 23-25-04.1,
23-25-04.2

33-15-14-03. PERMIT TO OPERATE.

1. Permit to operate required.

a. No person shall operate or cause the routine operation of a new installation or source designated in section 33-15-14-01 without applying for and obtaining, in accordance with this chapter, a permit to operate. Application for a permit to operate a new installation or source shall be made at least thirty days prior to startup of routine operation.

b. No person shall operate or cause the operation of an installation or source in violation of any permit to operate, any condition imposed upon a permit to operate or in violation of this article.

2. Application for permit to operate.

a. Application for a permit to operate shall be made by the owner or operator thereof on forms furnished by the department.

b. Each application for a permit to operate shall be accompanied by such performance tests results, information, and records as may be required by the department to determine whether the requirements of this

article will be met. Such information may also be required by the department at any time when the source is being operated to determine compliance with this article.

- c. Each application shall be signed by the applicant, which signature shall constitute an agreement that the applicant will assume responsibility for the operation of the installation or source in accordance with this article.
3. Standards for granting permits to operate. No permit to operate shall be granted unless the applicant shows to the satisfaction of the department that the source is in compliance with this article.
4. Performance testing. Before a permit to operate is granted, the applicant, if required by the department, shall conduct performance tests in accordance with methods and procedures required by this article or methods and procedures approved by the department. Such tests shall be made at the expense of the applicant. The department may monitor such tests and may also conduct performance tests.
5. Action on applications.
 - a. The department shall act within thirty days after receipt of an application for a permit to operate a new installation or source, and within thirty days after receipt of an application to operate an existing installation or source, and shall notify the applicant, in writing, of the approval, conditional approval, or denial of the application.
 - b. The department shall set forth in any notice of denial the reasons for denial. A denial shall be without prejudice to the applicant's right to a hearing before the department or for filing a further application after revisions are made to meet objections specified as reasons for the denial.
6. Permit to operate - conditions. The department may impose any reasonable conditions upon a permit to operate, including conditions concerning:
 - a. Sampling, testing, and monitoring of the facilities or ambient air or both.
 - b. Trial operation and performance testing.
 - c. Prevention and abatement of nuisance conditions caused by operation of the facility.
 - d. Recordkeeping and reporting.

- e. Compliance with applicable rules and regulations in accordance with a compliance schedule.
7. Suspension or revocation of permit to operate.
 - a. The department may suspend or revoke a permit to operate for violation of this article and any permit conditions.
 - b. Suspension or revocation of a permit to operate shall become final ten days after service of notice on the holder of the permit.
 - c. A permit to operate which has been revoked pursuant to this article shall be surrendered forthwith to the department.
 - d. No person shall operate or cause the operation of an installation or source if the department denies or revokes a permit to operate.
 8. Transfer of permit to operate. The holder of a permit to operate may not transfer it without the prior approval of the department.
 9. Renewal of permit to operate.
 - a. Every permit to operate issued by the department after February 9, 1976, shall become void upon the third anniversary of its issuance. Applications for renewal of such permits shall be submitted sixty days prior to such anniversary date. The department shall approve or disapprove such application within sixty days.
 - b. The department may amend permits issued prior to February 9, 1976, so as to provide for voidance upon the third anniversary of its issuance.

10. Annual fee.

- a. The owner or operator of each installation operating under a permit, except state-owned installations, shall pay an annual permit fee based on the following table:

<u>Category</u>	<u>Annual Actual Emissions tons/yr</u>	<u>Annual Cost</u>
I	>15000	\$1,500
II	10000 - 15000	1,000
III	2000 - 9999	750
IV	400 - 1999	500
V	100 - 399	200
VI	<100	100

VII Minor sources as
designated by the
department No charge

b. The following activities conducted by the department are not included in the annual costs and will be charged to affected sources based on the actual costs incurred by the department:

(1) Observation of source or performance specification testing, or both.

(2) Audits of source operated ambient air monitoring networks.

An accounting of the actual costs incurred under this subdivision shall accompany the notice of the annual permit fee.

c. All sources shall be categorized by the aggregate emissions from each installation for the emissions of hydrocarbons, particulate matter, sulfur dioxide, carbon monoxide, and nitrogen oxides, except in the case of boilers with heat inputs greater than or equal to 250 x 10⁶ Btu/hr where the fee shall be assessed per boiler. The department shall determine the emission factors applicable to each permit or group of permits based on representative source tests, "AP-42, Compilation of Air Pollution Emission Factors" or other more reliable data. "Emission factor" as used in this section means the amount of an air contaminant emitted per unit of time. The annual actual emissions shall be based on the emission factor and the hours of operation per year from the annual emission inventory report.

d. A notice of the annual permit fee due shall be sent to the permittee by the department. The fee shall be due sixty days following receipt of such notice.

e. The minor sources for Category VII shall be designated by the department on a case-by-case basis.

f. Any portable emission sources not operating in North Dakota during the calendar year shall be exempt from paying the annual permit fee.

History: Amended effective February 1, 1982.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 23-25-04.1

TITLE 45
Insurance, Commissioner of

JANUARY 1982

STAFF COMMENT: Chapter 45-03-05 contains all new material but is not underscored so as to improve readability.

CHAPTER 45-03-05
INSURANCE HOLDING COMPANY SYSTEM MODEL REGULATION
WITH REPORTING FORMS AND INSTRUCTIONS

Section	
45-03-05-01	Authority
45-03-05-02	Purpose
45-03-05-03	Severability Clause
45-03-05-04	Forms - General Requirements
45-03-05-05	Forms - Incorporation by Reference, Summaries, and Omissions
45-03-05-06	Forms - Information Unknown or Unavailable and Extension of Time to Furnish
45-03-05-07	Forms - Additional Information and Exhibits
45-03-05-08	Forms - Amendments
45-03-05-09	Definitions
45-03-05-10	Subsidiaries of Domestic Insurers
45-03-05-11	Acquisition of Control - Statement Filing
45-03-05-12	Amendments
45-03-05-13	Registration of Insurers - Statement Filing
45-03-05-14	Amendments
45-03-05-15	Alternative and Consolidated Registration
45-03-05-16	Exemptions
45-03-05-17	Disclaimers and Termination of Registration
45-03-05-18	Extraordinary Dividends and Other Distributions
45-03-05-19	Adequacy of Surplus

45-03-05-01. AUTHORITY. This chapter is promulgated pursuant to the authority granted by North Dakota Century Code chapter 26-21.2.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2

45-03-05-02. PURPOSE. The purpose of this chapter is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of the North Dakota Insurance Holding Company System Regulatory Act (North Dakota Century Code chapter 26-21.2). The information called for by this chapter is declared to be

necessary and appropriate in the public interest and for the protection of policyholders and shareholders in this state.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2

45-03-05-03. SEVERABILITY CLAUSE. If any provision of this chapter, or the application of this chapter to any person or circumstance, is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2

45-03-05-04. FORMS - GENERAL REQUIREMENTS.

1. Form A and Form B are intended to be guides in the preparation of the statements required by North Dakota Century Code sections 26-21.2-03 and 26-21.2-04. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted; provided, the answers are prepared so as to indicate to the reader the coverage of the items without the necessity of the reader referring to the

text of the items or the instructions thereto. All instructions, whether appearing under the items of the form or elsewhere in the form, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

2. Two complete copies of each statement including exhibits and all other papers and documents filed as a part of the statement shall be filed with the commissioner by personal delivery or mail addressed to: Commissioner of Insurance, 5th Floor, State Capitol, Bismarck, North Dakota 58505, Attention: Legal Department. At least one of the copies shall be manually signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.
3. Statements should be prepared on paper eight and one-half inches by eleven inches or eight and one-half inches by thirteen inches [21.59 centimeters by 27.94 centimeters or 21.59 centimeters by 33.02 centimeters] in size and preferably bound at the top or the top left-hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements, or exhibits shall be clear, easily readable, and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2-03,
26-21.2-04

45-03-05-05. FORMS - INCORPORATION BY REFERENCE, SUMMARIES, AND OMISSIONS.

1. Information required by any item of Form A or Form B may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement,

annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A or Form B provided such document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents already on file with the commissioner need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear, or confusing.

2. Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the most important provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document on file with the commissioner and may be qualified in its entirety by the reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of the documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the documents a copy of which is filed.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2-03,
26-21.2-04

45-03-05-06. FORMS - INFORMATION UNKNOWN OR UNAVAILABLE AND EXTENSION OF TIME TO FURNISH.

1. Information required need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to all of the following conditions:
 - a. The person filing shall give such information on the subject as it possesses or can acquire without

unreasonable effort or expense, together with the sources thereof.

- b. The person filing shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.
2. If it is impractical to furnish any required information, document, or report at the time it is required to be filed, there may be filed with the commissioner as a separate document an application (a) identifying the information, document, or report in question; (b) stating why the filing thereof at the time required is impractical; and (c) requesting an extension of time for filing the information, document, or report to a specified date. The application shall be deemed granted unless the commissioner, within forty-five days after receipt thereof, enters an order denying the application.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2-03,
26-21.2-04

45-03-05-07. FORMS - ADDITIONAL INFORMATION AND EXHIBITS. In addition to the information expressly required to be included in Form A and Form B, there shall be added such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2-03,
26-21.2-04

45-03-05-08. FORMS - AMENDMENTS. Any amendment for Form A or Form B shall include on the top of the cover page the phrase: "Amendment No. (insert number) to" and shall indicate the date of the amendment and not the date of the original filing.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2-03,
26-21.2-04

45-03-05-09. DEFINITIONS.

1. "Executive officer" means any individual charged with active management and control in an executive capacity (including a president, vice president, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers) of a person, whether incorporated or unincorporated.
2. "Foreign insurer" includes an alien insurer except where clearly noted otherwise.
3. "Ultimate controlling person" means that person which is not controlled by any other person.
4. Unless the context otherwise requires, other terms found in this chapter and in North Dakota Century Code section 26-21.2-01 are used as defined in that section. Other nomenclature or terminology is according to the Insurance Code, or industry usage if not defined in the code.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2-01

45-03-05-10. SUBSIDIARIES OF DOMESTIC INSURERS.

1. The authority to invest in subsidiaries under subsection 2 of North Dakota Century Code section 26-21.2-02 is in addition to any authority to invest in subsidiaries which may be contained in any other provision of the Insurance Code.
2. An investment by a subsidiary under subdivision c of subsection 2 of North Dakota Century Code section 26-21.2-02 may cause the total investment of the insurer to exceed any of the limitations contained in any of the individual sections referred to in that subdivision; provided, that it does not exceed the aggregate amount which could be invested under all of those sections with respect to the type of asset involved.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2-02,
26-21.2-03

45-03-05-11. ACQUISITION OF CONTROL - STATEMENT FILING. A person required to file a statement pursuant to North Dakota Century Code section 26-21.2-03 shall furnish the required information on Form A, hereby made a part of this chapter.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2-03

45-03-05-12. AMENDMENTS. The applicant shall promptly advise the commissioner of any changes in the information so furnished arising subsequent to the date upon which such information was furnished but prior to the commissioner's disposition of the application.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2-03,
26-21.2-04

45-03-05-13. REGISTRATION OF INSURERS - STATEMENT FILING. An insurer required to file a statement pursuant to North Dakota Century Code section 26-21.2-04 shall furnish the required information on Form B, hereby made a part of this chapter.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2-04

45-03-05-14. AMENDMENTS.

1. An amendment to Form B shall be filed within fifteen days after the end of any month in which any of the following occurs:
 - a. There is a change in the control of the registrant, in which case the entire Form B shall be made current.
 - b. There is a material change in the information given in Item 5 or Item 6.
2. An amendment to Form B shall be filed within one hundred twenty days after the end of each fiscal year of the ultimate controlling person of the insurance holding company system. The amendment shall make current all information in Form B.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2-04

45-03-05-15. ALTERNATIVE AND CONSOLIDATED REGISTRATIONS.

1. Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under North Dakota Century Code section 26-21.2-04. A registration statement may include information regarding any insurer in the insurance holding company system even if such insurer is not authorized to do business in this state. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile, provided:
 - a. The statement or report contains substantially similar information required to be furnished on Form B; and
 - b. The filing insurer is the principal insurance company in the insurance holding company system.
2. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a simple statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

3. With the prior approval of the commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under subsection 1.
4. Any insurer may take advantage of the provisions of subsection 6 or 7 of North Dakota Century Code section 26-21.2-04 without obtaining the prior approval of the commissioner. The commissioner, however, reserves the right to require individual filings if the commissioner deems such filings necessary in the interest of clarity, ease of administration, or the public good.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2-04

45-03-05-16. EXEMPTIONS.

1. A foreign or alien insurer otherwise subject to North Dakota Century Code section 26-21.2-04 shall not be required to register pursuant to that section:
 - a. If it is admitted in the domiciliary state of the principal insurer and in that state is subject to disclosure requirements and standards adopted by statute or regulation which are substantially similar to those contained in North Dakota Century Code section 26-21.2-04; provided, the commissioner may require a copy of the registration statement or other information filed with the domiciliary state; or
 - b. Until July 1, 1981.
2. The state of entry of an alien insurer shall be deemed to be its domiciliary state for the purposes of North Dakota Century Code section 26-21.2-04.
3. Any insurer not otherwise exempt or excepted from North Dakota Century Code section 26-21.2-04 may apply for an exemption from the requirements of that section by submitting a statement to the commissioner setting forth its reasons for being exempt.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2-04

45-03-05-17. DISCLAIMERS AND TERMINATION OF REGISTRATION.

1. A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (hereinafter referred to as the subject) shall contain the following information:
 - a. The number of authorized, issued and outstanding voting securities of the subject.
 - b. With respect to the person whose control is denied and all affiliates of that person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of such shares concerning which there is a right to acquire, directly or indirectly.
 - c. All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of that person.
 - d. A statement explaining why that person should not be considered to control the subject.
2. A request for termination of registration shall be deemed to have been granted unless the commissioner, within ten days after the commissioner receives the request, notifies the registrant otherwise.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2-04

45-03-05-18. EXTRAORDINARY DIVIDENDS AND OTHER DISTRIBUTIONS.

1. Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:
 - a. The date established for payment of the dividend.
 - b. A statement as to whether the dividend is to be in cash or other property and, if in property, a description of the property, its cost, and its fair market value together with an explanation of the basis for valuation.

- c. The amounts and dates of all dividends (including regular dividends) paid within the period of twelve consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year.
 - d. A balance sheet and statement of income for the period intervening from the last annual statement filed with the commissioner and the end of the month preceding the month in which the request for dividend approval is submitted.
 - e. A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.
2. The payment of an extraordinary dividend by an insurer, whose total liabilities, as calculated for national association of insurance commissioners annual statement purposes, are less than ten percent of its assets both before and after payment thereof is deemed automatically approved. The insurer, however, shall give written notice to the commissioner of the declaration pursuant to subsection 4 of North Dakota Century Code section 26-21.2-04.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2-04

45-03-05-19. ADEQUACY OF SURPLUS. The factors set forth in subsection 2 of North Dakota Century Code section 26-21.2-05 are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus, no single factor shall be controlling. The commissioner, instead, will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

History: Effective January 1, 1982.

General Authority
NDCC 26-21.2-08

Law Implemented
NDCC 26-21.2-05

FORM A

STATEMENT REGARDING THE
ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER

Name of Domestic Insurer

BY

Name of Acquiring Person (Applicant)

Filed with the Insurance Department of

(State of domicile of insurer
being acquired)

Dated: _____, 19 ____

Name, title, address and telephone number of individual to whom notices
and correspondence concerning this statement should be addressed:

ITEM 1. INSURER AND METHOD OF ACQUISITION.

State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT.

1. State the name and address of the applicant seeking to acquire control over the insurer.
2. If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.
3. Furnish a chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant. No affiliate need be identified if its total assets are equal to less than one-half of one percent of the total assets of the ultimate controlling person

affiliated with the applicant. Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization, e.g., corporation, trust, partnership, and the state or other jurisdiction of domicile. If court proceedings looking toward a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings, and the date when commenced.

ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT.

State the following with respect to (1) the applicant if the applicant is an individual or (2) all persons who are directors, executive officers, or owners of ten percent or more of the voting securities of the applicant if the applicant is not an individual.

1. Name and business address.
2. Present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such employment is carried on.
3. Material occupations, positions, offices, or employment during the last five years, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each such occupation, position, office, or employment was carried on; if any such occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency, indicate such fact, the current status of such licensing or registration and an explanation of any surrender, revocation, suspension, or disciplinary proceedings in connection therewith.
4. Whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last ten years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

ITEM 4. NATURE, SOURCE, AND AMOUNT OF CONSIDERATION.

1. Describe the nature, source, and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other

consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes, and security arrangements relating thereto.

2. Explain the criteria used in determining the nature and amount of such consideration.
3. If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity to remain confidential, the applicant must specifically request that the identity be kept confidential.

ITEM 5. FUTURE PLANS FOR INSURER.

Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate such insurer, to sell its assets to or merge it with any person or persons, or to make any other material change in its business operations or corporate structure or management.

ITEM 6. VOTING SECURITIES TO BE ACQUIRED.

State the number of shares of the insurer's voting securities which the applicant, its affiliates, and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement, or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.

ITEM 7. OWNERSHIP OF VOTING SECURITIES.

State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates, or any person listed in Item 3.

ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER.

Give a full description of any contracts, arrangements, or understandings with respect to any voting security of the insurer in which the applicant, its affiliates, or any person listed in Item 3 is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.

ITEM 9. RECENT PURCHASES OF VOTING SECURITIES.

Describe any purchases of any voting securities of the insurer by the applicant, its affiliates, or any person listed in Item 3 during the twelve calendar months preceding the filing of this statement. Include in such description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefor. State whether any such shares so purchased are hypothecated.

ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE.

Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates, or any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates, or any person listed in Item 3 during the twelve calendar months preceding the filing of this statement.

ITEM 11. AGREEMENTS WITH BROKER-DEALERS.

Describe the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto.

ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS.

1. Financial statements and exhibits shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
2. The financial statements shall include the annual financial statements of the persons identified in Item 2 (3) for the preceding five fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if such information is available. Such statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business.

The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified; provided they are based on the annual statement of such person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other

accounting principles prescribed or permitted under the law and regulations of such state.

- 3. File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto; any proposed employment, consultation, advisory, or management contracts concerning the insurer; annual reports to the stockholders of the insurer and the applicant for the last two fiscal years; and any additional documents or papers required by Form A or sections 45-03-05-04 and 45-03-05-06.

ITEM 13. SIGNATURE AND CERTIFICATION.

Signature and certification of the following form:

SIGNATURE

Pursuant to the requirements of North Dakota Century Code section 26-21.1-03, _____ has caused this application to be duly signed on its behalf in the City of _____ and State of _____, on the _____ day of _____, 19__.

Name of Applicant

(SEAL)

BY: _____ (Name) _____ (Title)

Name of Applicant

Attest:

(Signature of officer)

(Title)

CERTIFICATION

The undersigned deposes and says that the applicant has duly executed the attached application dated _____, 19 __, for and on behalf of _____; that the applicant is the _____

(Name of applicant)

_____ of such company and that the applicant is authorized to execute and file such instrument. The deponent further says that deponent is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of deponent's knowledge, information, and belief.

(Title of officer)

(Signature) _____

(Type or print name beneath) _____

FORM B

INSURANCE HOLDING COMPANY SYSTEM REGISTRATION STATEMENT

Filed with the Insurance Department of the State of _____

By

Name of Registrant

On Behalf of the Following Insurance Companies

Name

Address

Name	Address

Date: _____, 19 ____

Name, title, address and telephone number of individual
to whom notices and correspondence concerning this
statement should be addressed:

ITEM 1. IDENTITY AND CONTROL OF REGISTRANT.

Furnish the exact name of each insurer registering or being registered (hereinafter called the registrant), the home office address and principal executive offices of each; the date on which each registrant became part of the insurance holding company system; and the methods by which control of each registrant was acquired and is maintained.

ITEM 2. ORGANIZATIONAL CHART.

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. No affiliate need be shown if its total assets are equal to less than one-half of one percent of the total assets of

the ultimate controlling person within the insurance holding company system. The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization, e.g., corporation, trust, partnership, and the state or other jurisdiction of domicile.

ITEM 3. THE ULTIMATE CONTROLLING PERSON.

As to the ultimate controlling person in the insurance holding company system furnish the following information:

1. Name.
2. Home office address.
3. Principal executive office address.
4. The organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.
5. The principal business of the person.
6. The name and address of any person who holds or owns ten percent or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned.
7. If court proceedings looking toward a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings, and the date when commenced.

ITEM 4. BIOGRAPHICAL INFORMATION.

Furnish the following information for the directors and executive officers of the ultimate controlling person; the individual's name and address, the individual's principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years.

ITEM 5. TRANSACTIONS, RELATIONSHIPS, AND AGREEMENTS.

1. Briefly describe the following agreements in force, relationships subsisting, and transactions currently outstanding between the registrant and its affiliates:

- a. Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the registrant or of the registrant by its affiliates.
 - b. Purchases, sales, or exchanges of assets.
 - c. Transactions not in the ordinary course of business.
 - d. Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the registrant's business.
 - e. All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles.
 - f. Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company.
2. No information need be disclosed if such information is not material. Sales, purchaess, exchanges, loans, or extensions of credit or investments involving one-half of one percent or less of the registrant's admitted assets as of the thirty-first day of December next preceding shall not be deemed material.
 3. The description shall be in a manner as to permit the proper evaluation thereof by the commissioner, and shall include at least the following: the nature and purpose of the transaction; the nature and amounts of any payments or transfers of assets between the parties; the identity of all parties to such transaction; and relationship of the affiliated parties to the registrant.

ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS.

A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which such litigation or proceeding is or was pending:

1. Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto.
2. Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company

including, but not necessarily limited to, bankruptcy, receivership, or other corporation reorganizations.

ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS.

1. Financial statements and exhibits should be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
2. The financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis, or unless the commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business.

Unless the commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the annual statement of such insurer filed with the insurance department of the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such state.

3. Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Form B or sections 45-03-05-04 and 45-03-05-06.

SIGNATURES.

Signatures and certification of the form as follows:

SIGNATURE

Pursuant to the requirements of North Dakota Century Code section 26-21.2-04, the registrant has caused this registration statement to be duly signed on its behalf in the City of _____, and State of _____ on the _____ day of _____, 19 ____.

(SEAL)

(Name of registrant)

By:

(Name) (Title)

Attest:

(Signature of officer)

(Title)

CERTIFICATION

The undersigned deposes and says that the undersigned has duly executed the attached registration statement dated _____, 19 ____, for and on behalf of _____; that the

(Name of company)

undersigned is the _____ of such company, and that

(Title of officer)

the undersigned has authority to execute and file such instrument. The deponent further says that deponent is familiar with such instrument and that the facts therein set forth are true to the best of deponent's knowledge, information, and belief.

(Signature) _____

(Type or print name beneath) _____

STAFF COMMENT: Chapter 45-04-03 contains all new material but is not underscored so as to improve readability.

CHAPTER 45-04-03
INTEREST RATES ON LIFE INSURANCE POLICY LOANS

Section	
45-04-03-01	Purpose
45-04-03-02	Definitions
45-04-03-03	Maximum Rate of Interest on Policy Loans
45-04-03-04	Applicability to Existing Policies

45-04-03-01. PURPOSE. The purpose of this chapter is to permit and set guidelines for life insurers to include in life insurance policies issued after January 1, 1982, a provision for periodic adjustment of policy loan interest rates.

History: Effective January 1, 1982.

General Authority	Law Implemented
NDCC 26-01	NDCC 26-03-26, 26-03-27, 26-03-28, 26-03-29, 26-03-35

45-04-03-02. DEFINITIONS. For purposes of this chapter, the "published monthly average" means:

1. Moody's corporate bond yield average - monthly average corporates as published by Moody's investors service, incorporated or any successor thereto; or
2. In the event that Moody's corporate bond yield average - monthly average corporates is no longer published, a substantially similar average, established by regulation issued by the commissioner.

History: Effective January 1, 1982.

General Authority	Law Implemented
NDCC 26-01	NDCC 26-03-26, 26-03-27, 26-03-28, 26-03-35

45-04-03-03. MAXIMUM RATE OF INTEREST ON POLICY LOANS.

1. Policies issued on or after January 1, 1982, shall provide for policy loan interest rates as follows:
 - a. A provision permitting a maximum interest rate of not more than eight percent per annum; or
 - b. A provision permitting an adjustable maximum interest rate established from time to time by the life insurer as permitted by law.
2. The rate of interest charged on a policy loan made under subdivision b of subsection 1 shall not exceed the higher of the following:
 - a. The published monthly average for the calendar month ending two months before the date on which the rate is determined; or
 - b. The rate used to compute the cash surrender values under the policy during the applicable period plus one percent per annum.
3. If the maximum rate of interest is determined pursuant to subdivision b of subsection 1, the policy shall contain a provision setting forth the frequency at which the rate is to be determined for that policy.
4. The maximum rate for each policy must be determined at regular intervals at least once every twelve months, but not more frequently than once in any three-month period. At the intervals specified in the policy:
 - a. The rate being charged may be increased whenever such increase as determined under subsection 2 would increase that rate by one-half percent or more per annum.
 - b. The rate being charged must be reduced whenever such reduction as determined under subsection 2 would decrease that rate by one-half percent or more per annum.
5. The life insurer shall:
 - a. Notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;
 - b. Notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan. Notice need not be given to the policyholder when a

further premium loan is added, except as provided in subdivision c;

- c. Send to policyholders with loans reasonable advance notice of any increase in the rate; and
 - d. Include in the notices required above the substance of the pertinent provisions of subsections 1 and 3.
6. No policy shall terminate in a policy year as the sole result of change in the interest rate during that policy year, and the life insurer shall maintain coverage during that policy year until the time at which it would otherwise have terminated if there had been no change during that policy year.
7. The substance of the pertinent provisions of subsections 1 and 3 shall be set forth in the policies to which they apply.
8. For purposes of this section:
- a. The rate of interest on policy loans permitted under this section includes the interest rate charged on reinstatement of policy loans for the period during and after any lapse of a policy.
 - b. The term "policy" includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans.
 - c. The term "policy loan" includes any premium loan made under a policy to pay one or more premiums that were not paid to the life insurer as they fell due.
 - d. The term "policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer.

History: Effective January 1, 1982.

General Authority
NDCC 26-01

Law Implemented
NDCC 26-03-26,
26-03-27,
26-03-28,
26-03-29,
26-03-35

45-04-03-04. APPLICABILITY TO EXISTING POLICIES. The provisions of this chapter shall not apply to any insurance contract issued before January 1, 1982, unless the policyholder agrees in writing to the applicability of such provisions.

History: Effective January 1, 1982.

General Authority
NDCC 26-01

Law Implemented
NDCC 26-03-26,
26-03-27,
26-03-28,
26-03-29,
26-03-35

STAFF COMMENT: Chapter 45-06-01 contains all new material but is not underscored so as to improve readability.

ARTICLE 45-06

ACCIDENT AND HEALTH INSURANCE

Chapter
45-06-01 Medicare Supplement Insurance Minimum Standards

CHAPTER 45-06-01
MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS

Section	
45-06-01-01	Applicability and Scope
45-06-01-02	Definitions
45-06-01-03	Policy Definitions and Terms
45-06-01-04	Prohibited Policy Provisions
45-06-01-05	Minimum Benefit Standards
45-06-01-06	Loss Ratio Standards
45-06-01-07	Required Disclosure Provisions
45-06-01-08	Requirements for Replacement
45-06-01-09	Separability

45-06-01-01. APPLICABILITY AND SCOPE.

1. Except as otherwise specifically provided, this chapter shall apply to:
 - a. All medicare supplement policies and subscriber contracts delivered or issued for delivery in this state on or after January 1, 1982.
 - b. All certificates issued under group medicare supplement policies or subscriber contracts, which have been delivered or issued for delivery in this state on or after January 1, 1982.
2. This chapter shall not apply to:
 - a. Policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of this chapter.

- b. Medicare supplement policies issued to employees or members as additions to franchise plans in existence on January 1, 1982.

History: Effective January 1, 1982.

General Authority	Law Implemented
NDCC 26-03.4-02,	NDCC 26-03.4
26-03.4-03,	
26-03.4-04,	
26-03.4-05	

45-06-01-02. DEFINITIONS. Unless otherwise defined, or made inappropriate by context, all words used in this chapter have meaning as given them under North Dakota Century Code chapter 26-03.4.

History: Effective January 1, 1982.

General Authority	Law Implemented
NDCC 26-03.4-02,	NDCC 26-03.4-01
26-03.4-03,	
26-03.4-04,	
26-03.4-05	

45-06-01-03. POLICY DEFINITIONS AND TERMS. No insurance policy or subscriber contract may be advertised, solicited, or issued for delivery in this state as a medicare supplement policy unless such policy or subscriber contract contains definitions or terms which conform to the requirements of this section.

1. "Accident", "accidental injury", or "accidental means" must employ "result" language and may not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.
 - a. The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."
 - b. The definition may provide that injuries may not include injuries for which benefits are provided under any workers' compensation, employer's liability or similar

law, or motor vehicle no-fault plan, unless prohibited by law.

2. "Benefit period" or "medicare benefit period" may not be defined as more restrictive than as that defined in the medicare program.
3. "Convalescent nursing home", "extended care facility", or "skilled nursing facility" must be defined in relation to its status, facilities, and available services.
 - a. The definition of such home or facility may not be more restrictive than one requiring that it:
 - (1) Be operated pursuant to law;
 - (2) Be approved for payment of medicare benefits or be qualified to receive such approval, if so requested;
 - (3) Be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;
 - (4) Provide continuous twenty-four hours a day nursing service by or under the supervision of a registered graduate professional nurse; and
 - (5) Maintains a daily medical record of each patient.
 - b. The definition of such home or facility may provide that such term may not be inclusive of:
 - (1) Any home, facility, or part thereof used primarily for rest.
 - (2) A home or facility for the aged or for the care of drug addicts or alcoholics (subject to North Dakota Century Code chapter 26-39).
 - (3) A home or facility primarily used for the care and treatment of mental diseases, or disorders, or custodial or educational care (subject to North Dakota Century Code chapter 26-39).
4. "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the joint commission on accreditation of hospitals.
 - a. The definition of hospital may not be more restrictive than one requiring that the hospital:
 - (1) Be an institution operated pursuant to law;

- (2) Be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic, and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which a charge is made; and
 - (3) Provide twenty-four hour nursing service by or under the supervision of registered graduate professional nurses.
- b. The definition of hospital may state that such term may not be inclusive of:
- (1) Convalescent homes, convalescent, rest, or nursing facilities.
 - (2) Facilities primarily affording custodial, educational or rehabilitary care.
 - (3) Facilities for the aged, drug addicts, or alcoholics.
 - (4) Any military or veterans hospital or soldiers home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.
5. "Medicare" must be defined in the policy. Medicare may be substantially defined as "The Health Insurance for the Aged Act, title XVIII of the Social Security Amendments of 1965 as then constituted or later amended", or "Title I, part I of Public Law No. 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.
6. "Medicare eligible expenses" means health care expenses of the kinds covered by medicare, to the extent recognized as reasonable by medicare. Payment of benefits by insurers for medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to medicare claims.
7. "Mental or nervous disorders" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.

8. "Nurses" may be defined so that the description of nurse is restricted to a type of nurse, such as registered graduate professional nurse (RN), a licensed practical nurse (LPN), or a licensed vocational nurse (LVN). If the words "nurse", "trained nurse", or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualified under such terminology in accordance with the applicable statutes or administrative rules of the licensing or registry board of the state.

9. "Physician" may be defined by including words such as "duly qualified physician" or "duly licensed physician". The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

10. "Sickness" may not be defined to be more restrictive than the following: "Sickness means sickness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force."

The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

History: Effective January 1, 1982.

General Authority
 NDCC 26-03.4-02,
 26-03.4-03,
 26-03.4-04,
 26-03.4-05

Law Implemented
 NDCC 26-03.4

45-06-01-04. PROHIBITED POLICY PROVISIONS.

1. No insurance policy or subscriber contract may be advertised, solicited, or issued for delivery in this state as a medicare supplement policy if such policy or subscriber contract limits or excludes coverage by type of illness, accident, treatment, or medical condition, except as follows:
 - a. Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet.

- b. Mental or emotional disorders, alcoholism, and drug addiction (subject to North Dakota Century Code chapter 26-39).
- c. Illness, treatment, or medical condition arising out of;
 - (1) War or act of war (whether declared or undeclared); participation in a felony, riot, or insurrections; or service in the armed forces or units auxiliary thereto.
 - (2) Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury.
 - (3) Aviation.
- d. Cosmetic surgery, except that "cosmetic surgery" does not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection, or other diseases of the involved part.
- e. Care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment, or subluxation of or in the vertebral column.
- f. Treatment provided in a governmental hospital; benefits provided under medicare or other governmental program (except medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law; services rendered by employees of hospitals, laboratories, or other institutions; or services performed by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.
- g. Dental care or treatment.
- h. Eyeglasses, hearing aids, and examination for the prescription or fitting thereof.
- i. Rest cures, custodial care, transportation, and routine physical examinations.
- j. Territorial limitations.

However, medicare supplement policies may not contain, when issued, limitations or exclusions of the type enumerated in subdivision a, e, i, or j that are more restrictive than those of medicare. Medicare supplement policies may exclude

coverage for any expense to the extent of any benefit available to the insured under medicare.

2. No medicare supplement policy may use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

History: Effective January 1, 1982.

General Authority
NDCC 26-03.4-02

Law Implemented
NDCC 26-03.4-02

45-06-01-05. MINIMUM BENEFIT STANDARDS. No insurance policy or subscriber contract may be advertised, solicited, or issued for delivery in this state as a medicare supplement policy which does not meet the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

1. General standards. The following standards apply to medicare supplement policies and are in addition to all other requirements of this chapter.
 - a. A medicare supplement policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.
 - b. A medicare supplement policy may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.
 - c. A medicare supplement policy shall provide that benefits designed to cover cost sharing amounts under medicare will be changed automatically to coincide with any changes in the applicable medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.
 - d. A medicare supplement policy may not be canceled or nonrenewed by the insurer solely on the grounds of deterioration of health.
 - e. Termination of a medicare supplement policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in

force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

2. Minimum benefit standards.

- a. Coverage of Part A medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first day through ninetieth day in any medicare benefit period.
- b. Coverage of Part A medicare eligible expenses incurred as daily hospital charges during use of medicare's lifetime hospital inpatient reserve days.
- c. Upon exhaustion of all medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent of all medicare Part A eligible expenses for hospitalization not covered by medicare subject to a lifetime maximum benefit of an additional three hundred sixty-five days.
- d. Coverage of twenty percent of the amount of medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of two hundred dollars of such expenses and to a maximum benefit of at least five thousand dollars per calendar year.

History: Effective January 1, 1982.

General Authority
NDCC 26-03.4-03

Law Implemented
NDCC 26-03.4-03

45-06-01-06. LOSS RATIO STANDARDS. Medicare supplement policies shall be expected to return to policyholders in the form of aggregate benefits under the policy, as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such period and in accordance with accepted actuarial principles and practices:

1. At least seventy-five percent of the aggregate amount of premiums collected in the case of group policies; and
2. At least sixty percent of the aggregate amount of premiums collected in the case of individual policies.

For purposes of this section, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media

advertising, including both print and broadcast advertising, shall be treated as individual policies.

History: Effective January 1, 1982.

General Authority
NDCC 26-03.4-04

Law Implemented
NDCC 26-03.4-04

45-06-01-07. REQUIRED DISCLOSURE PROVISIONS.

1. General rules.

- a. Medicare supplement policies shall include a renewal, continuation, or nonrenewal provision. The language or specifications of the provision must be consistent with the type of contract to be issued. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.
- b. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured or exercises a specifically reserved right under a medicare supplement policy, all riders or endorsements added to a medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.
- c. A medicare supplement policy which provides for the payment of benefits based on standards described as "usual and customary", "reasonable and customary", or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.
- d. If a medicare supplement policy contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations".

- e. Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within ten days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare shall have a notice prominently printed on the first page or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.
 - f. Insurers issuing accident and sickness policies, certificates, or subscriber contracts which provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to a person eligible for medicare shall provide to all applicants a medicare supplement "buyer's guide". Delivery of the buyer's guide shall be made whether or not such policies, certificates, or subscriber contracts are advertised, solicited, or issued as medicare supplement policies as defined in this chapter. Except in the case of direct response insurers, delivery of the buyer's guide shall be made to the applicant at the time of application and acknowledgement of receipt of the buyer's guide shall be obtained by the insurer. Direct response insurers shall deliver the buyer's guide to the applicant upon request but not later than at the time the policy is delivered.
 - g. Except as otherwise provided in section 45-06-01-07, the terms "medicare supplement", "medigap", and words of similar import shall not be used unless the policy is issued in compliance with section 45-06-01-05.
2. Outline of coverage requirements for medicare supplement policies.
- a. Insurers issuing medicare supplement policies for delivery in this state shall provide an outline of coverage to all applicants at the time application is made and, except for direct response policies, shall obtain an acknowledgement of receipt of such outline from the applicant.
 - b. If an outline of coverage is provided at the time of application and the medicare supplement policy or

certificate is issued on a basis which would require revision of the outline of coverage delivered at the time of application, a substitute outline of coverage properly describing the policy or certificate actually issued must accompany such policy or certificate when it is delivered and contain the following statement, in no less than twelve point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

- c. The outline of coverage provided to applicants pursuant to this subsection shall be in the form prescribed below:

(COMPANY NAME)
OUTLINE OF MEDICARE
SUPPLEMENT COVERAGE

- (1) Read your Policy Carefully -- This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!
- (2) Medicare Supplement Coverage -- Policies of this category are designed to supplement medicare by covering some hospital, medical, and surgical services which are partially covered by medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by medicare, and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing, and taking medicine (delete if such coverage is provided).
- (3) (a) (for agents):
- Neither (insert company's name) nor its agents are connected with medicare.
- (b) (for direct responses):
- (insert company's name) is not connected with medicare.

- (4) (A brief summary of the major benefit gaps in medicare Parts A and B with a parallel description of supplemental benefits, including dollar amounts, provided by the medicare supplement coverage in the following order):

<u>SERVICE</u>	<u>BENEFIT</u>	<u>MEDICARE PAYS</u>	<u>THIS POLICY PAYS</u>	<u>YOU PAY</u>
HOSPITALIZATION... semiprivate room and board, general nursing, and miscellaneous hospital services and supplies.	First 60 days	All but \$ ()		
	61st to 90th day	All but \$ () a day		
	91st to 150th day	All but \$ () a day		
Includes meal, special care units, drugs, lab tests, diagnostic x-rays, medical supplies, operating and recovery room, anesthesia, and rehabilitation services.	Beyond 150 days	Nothing		
POSTHOSPITAL SKILLED NURSING CARE... In a facility approved by medicare, you must have been in a hospital for at least three days and enter the facility within fourteen days after hospital discharge.	First 20 days	% of costs		
	Additional 80 days	All but \$ () a day		
	Beyond 100 days	Nothing		
MEDICAL EXPENSES	Physician's services inpatient and outpatient medical services and supplies at a hospital, physical and speech therapy, and ambulance.	% of reasonable charge (after \$ () deductible)		

- (5) (Statement that the policy does or does not cover the following:)
- (a) Private duty nursing.
 - (b) Skilled nursing home care costs (beyond what is covered by medicare).
 - (c) Custodial nursing home care costs.
 - (d) Intermediate nursing home care costs.
 - (e) Home health care above number of visits covered by medicare.
 - (f) Physician charges (above medicare's reasonable charge).
 - (g) Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay).
 - (h) Care received outside of United States of America.
 - (i) Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for the cost of eyeglasses or hearing aids.
- (6) (A description of any policy provision which excludes, eliminates, resists, reduces, limits, delays, or in any other manner operates to qualify payments of the benefits described in paragraph 4, including conspicuous statements:)
- (a) (That the chart summarizing medicare benefits only briefly describes such benefits.)
 - (b) (That the health care financing administration or its medicare publications should be consulted for further details and limitations.)
- (7) (A description of policy provisions respecting renewability or continuation of coverage, including any reservation or rights to change premium.)
- (8) The amount of premium for this policy.
- (*Substitute "Certification" for "policy" where appropriate.)

3. Notice regarding policies or subscriber contracts which are not medicare supplement policies.

Any accident and sickness insurance policy, other than a medicare supplement policy; disability income policy; basic, catastrophic, or major medical expense policy; single premium nonrenewable policy; or other policy defined in subsection 2 of section 45-06-01-01, issued for delivery in this state to persons eligible for medicare by reason of age shall notify insureds under the policy or subscriber contract that the policy or subscriber contract is not a medicare supplement policy. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy or subscriber contract, or if no outline of coverage is delivered, to the first page of the policy, certificate, or subscriber contract delivered to insureds. Such notice shall be in no less than twelve point type and shall contain the following language:

THIS (POLICY, CERTIFICATE, OR SUBSCRIBER CONTRACT) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CERTIFICATE). If you are eligible for medicare review the medicare supplement buyer's guide available from the company.

History: Effective January 1, 1982.

General Authority
NDCC 26-03.4-05

Law Implemented
NDCC 26-03.4-05

45-06-01-08. REQUIREMENTS FOR REPLACEMENT.

1. Application forms shall include a question designed to elicit information as to whether a medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.
2. Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its agent, shall furnish the applicant, prior to issuance or delivery of the medicare supplement policy or certificate, a notice regarding replacement of accident and sickness coverage. One copy of the notice shall be provided to the applicant and an additional copy signed by the applicant shall be retained by the insurer. A direct response insurer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of accident and sickness coverage. In no event, however, will such a notice be required in the

solicitation of "accident only" and "single premium nonrenewable" policies.

3. The notice required by subsection 2 for an insurer, other than a direct response insurer, shall be provided in substantially the following form:

NOTICE OF APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND SICKNESS INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with a policy to be issued by (Company name) Insurance Company. Your new policy provides ten days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

- a. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

*This subsection may be modified if preexisting conditions are covered under the new policy.

- b. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.
- c. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

(Date)

(Applicant's signature)

4. The notice required by subsection 2 for a direct response shall be as follows:

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND SICKNESS INSURANCE

According to (your application) (information you have furnished) you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with the policy delivered herewith issued by (Company name) Insurance Company. Your new policy provides thirty days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

- a. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
- b. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.
- c. (To be included only if the application is attached to the policy.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (Company name and address) within ten days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company name)

History: Effective January 1, 1982.

General Authority
NDCC 26-03.4-05

Law Implemented
NDCC 26-03.4-05

45-06-01-09. SEPARABILITY. If any provision of this chapter or the application of this chapter to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

History: Effective January 1, 1982.

General Authority
NDCC 26-03.4-02,
26-03.4-03,
26-03.4-04,
26-03.4-05

Law Implemented
NDCC 26-03.4

STAFF COMMENT: Section 45-08-01-01 has been amended.

λ 45-08-01-01. COORDINATION OF BENEFIT PROVISIONS. Group insurance policies, group-type individual policies (as described in the fourth paragraph of subdivision d of subsection 2), group subscriber policies, and individual or family nongroup subscriber policies issued in North Dakota by nonprofit service corporations or health maintenance organizations, may contain coordination of benefit provisions for the control of over-insurance. No such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which they appear in this section. However, the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing herein or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

1. Benefits subject to these provisions. All of the benefits provided under this policy are subject to these provisions.

(Note: Where the policy provides both integrated major medical expense benefits and the underlying basic benefits, but these provisions apply to major medical only, then use the following alternate wording: Only the major medical expense benefits provided under this policy are subject to these provisions.)

2. Definitions.

- a. "Allowable expense" means any necessary, reasonable, and customary item of expense, at least a portion of which is covered under one or more of the plans covering the person for whom claim is made or service is provided.

If "medicare" or similar governmental benefits are included in the term "plan" such benefits shall be taken into consideration without expanding this definition of allowable expense beyond the hospital, medical, and surgical benefits as may be provided under such governmental benefits.

Where a plan provides benefits in the form of services rather than cash payments, the reasonable cash value of each service rendered shall be deemed to be both an allowable expense and a benefit paid.

- b. "Claim determination period" means _____.

(Note: Insert here an appropriate period of time, such as "calendar year" or "benefit period as defined elsewhere in this policy".)

- c. "Insurer", wherever used herein, means the applicable insurance company or, nonprofit service corporation or health maintenance organization.
- d. "Plan" means any plan providing benefits or services for or by reason of medical or dental care or treatment, which benefits or services are provided by (1) group, blanket, or franchise insurance coverage, (2) group subscriber policies and individual or family nongroup subscriber policies issued in North Dakota by nonprofit service corporations or health maintenance organizations, (3) a nonprofit hospital, medical, or dental service corporation, group practice, individual practice, and other prepayment coverage, (4) any coverage under labor-management trustee plans, union welfare plans, employer organization plans, or employee benefit organization plans, and (5) any coverage under governmental programs, and any coverage required or provided by a statute.

"Plan" does not include individual or family policies, or individual or family subscriber policies, except as provided in item (2) above and except as provided in the next succeeding paragraph.

"Plan" includes all group or group subscriber policies as well as such group-type policies as are not available to the general public and can be obtained and maintained only because of the covered person's membership in or connection with a particular organization or group. Group-type policies answering this description shall be included in the term "plan" whether or not individual policy forms are used and whether the group-type coverage is designated as "franchise" or "blanket" or in some other fashion.

"Plan" shall be construed separately with respect to each policy, contract, or other arrangement for benefits or services and separately with respect to that portion of any such policy, contract, or other arrangement which reserves the right to take the benefits or services of other plans into consideration in determining its benefits, and that portion which does not.

The term "plan" does not include group or group-type hospital indemnity benefits, written on a non-expense-incurred basis, up to the first thirty dollars per day of such benefits. The amount of such hospital

indemnity benefits, in excess of thirty dollars per day, shall be included in the term "plan".

School accident coverages, whether written on a blanket, group, or franchise basis, shall not be included in the term "plan". In this context, school accident coverages shall mean coverages covering grammar school or high school students for accidents only, including athletic injuries, either on a twenty-four-hour basis or on a "to and from school" basis, for which the parent pays the entire premium.

- e. "Policy", wherever used herein, means policy or contract.
- f. "This plan" means that portion of this policy which provides the benefits that are subject to these provisions.

(Note: Any benefits provided under this policy that are not subject to these provisions shall constitute another plan.)

3. Effect on benefits.

- a. These provisions shall apply in determining the benefits as to a person covered under this plan for any claim determination period if, for the allowable expenses incurred as to such person during such period, the sum of the following would exceed such allowable expenses:
 - (1) The benefits that would be payable under this plan in the absence of these provisions; and
 - (2) The benefits that would be payable under all other plans in the absence therein of provisions of similar purpose to these provisions.
- b. As to any claim determination period with respect to which this provision is applicable, the benefits that would be payable under this plan in the absence of this provision for the allowable expenses incurred as to such person during such claim determination period shall be reduced to the extent necessary so that the sum of such reduced benefits and all the benefits payable for such allowable expenses under all other plans, except as provided in subdivision c, shall not exceed the total of such allowable expenses. Benefits payable under another plan include the benefits that would have been payable had claim been duly made therefor.
- c. If (1) another plan which is involved in subdivision b and which contains a provision coordinating its benefits with those of this plan would, according to its rules,

determine its benefits after the benefits of this plan have been determined, and (2) the rules set forth in subdivision d would require this plan to determine its benefits before such other plan, then the benefits of such other plan will be ignored for the purposes of determining the benefits under this plan.

- d. For the purposes of subdivision c, the rules establishing the order of benefit determination are:
- (1) The benefits of a plan which covers the person on whose expenses claim is based other than as a dependent shall be determined before the benefits of a plan which covers such person as a dependent.
 - (2) The benefits of a plan which covers the person on whose expenses claim is based as a dependent of a male person shall be determined before the benefits of a plan which covers such person as a dependent of a female person.
 - (3) When paragraphs 1 and 2 do not establish an order of benefit determination, the benefits of a plan which has covered the person on whose expenses claim is based for the longer period of time shall be determined before the benefits of a plan which has covered such person the shorter period of time.
- e. (Note: This paragraph may be omitted if the plan provides only one benefit.)

Where these provisions operate to reduce the total amount of benefits otherwise payable as to a person covered under this plan during any claim determination period, each benefit that would be payable in the absence of this provision shall be reduced proportionately, and such reduced amount shall be charged against any applicable benefit limit of this plan.

4. Right to receive and release necessary information. For the purposes of determining the applicability of and implementing the terms of these provisions of this plan or any provisions of similar purpose of any other plan, the insurer may, without the consent of or notice to any person, release to or obtain from any other insurance company or other organization or person any information, with respect to any person, which the insurer deems to be necessary for such purposes. Any person claiming benefits under this plan shall furnish to the insurer such information as may be necessary to implement these provisions.
5. Facility of payment. Whenever payments which should have been made under this plan in accordance with these provisions have

been made under any other plans, the insurer shall have the right, exercisable alone and in its sole discretion, to pay over to any organizations making such other payments any amounts it shall determine to be warranted in order to satisfy the intent of these provisions, and amounts so paid shall be deemed to be benefits paid under this plan and, to the extent of such payments, the insurer shall be fully discharged from liability under this plan.

6. Right of recovery. Whenever payments have been made by the insurer with respect to allowable expenses in a total amount, at any time, in excess of the maximum amount of payment necessary at that time to satisfy the intent of these provisions, the insurer shall have the right to recover such payments, to the extent of such excess, from among one or more of the following, as the insurer shall determine: any persons to or for or with respect to whom such payments were made, any other insurance companies, or any other organizations.

History: Amended effective January 1, 1982.

General Authority
NDCC 26-03-48

Law Implemented
NDCC 26-03-48

STAFF COMMENT: Chapter 45-09-01 contains all new material but is not underscored so as to improve readability.

ARTICLE 45-09

REGULATION OF UNAUTHORIZED INSURERS AND INSURANCE

Chapter
45-09-01 Surplus Lines Insurance

CHAPTER 45-09-01
SURPLUS LINES INSURANCE

Section	
45-09-01-01	Definitions
45-09-01-02	Surplus Lines Insurance Broker Application and Bond
45-09-01-03	Broker May Conduct Search
45-09-01-04	Presumption - Diligent Search
45-09-01-05	Other Acceptable Lines of Coverage
45-09-01-06	Surplus Lines Affidavit - Time For Filing
45-09-01-07	Surplus Lines Affidavit - Limits on Availability
45-09-01-08	Additional Policy Endorsement Requirement
45-09-01-09	Statement of Taxable Premiums

45-09-01-01. DEFINITIONS. Unless otherwise defined, or made inappropriate by context, all words used in this chapter have meanings given to them under North Dakota Century Code chapters 26-09.2, 26-17.1, and 26-37.

History: Effective January 1, 1982.

General Authority
NDCC 26-09.2-13

Law Implemented
NDCC 26-09.2

45-09-01-02. SURPLUS LINES INSURANCE BROKER APPLICATION AND BOND. The commissioner of insurance will not issue a surplus lines insurance broker's license until the applicant has met the requirements of North Dakota Century Code sections 26-17.1-17 and 26-17.1-19 and has completed and filed with the commissioner the following:

1. A completed application for a surplus lines insurance broker license. (Appendix I)
2. A bond in the penal sum as required by North Dakota Century Code section 26-17.1-17. (Appendix IIa and IIb)

History: Effective January 1, 1982.

General Authority
 NDCC 26-09.2-13,
 26-17.1-55

Law Implemented
 NDCC 26-17.1-17,
 26-17.1-19

45-09-01-03. BROKER MAY CONDUCT SEARCH. An insured is permitted to designate the surplus lines broker as the insured's agent for purposes of conducting a diligent search to ascertain whether the insured is unable to procure the insurance, indemnity contract, or surety bond desired from a company authorized to do business in this state.

History: Effective January 1, 1982.

General Authority
 NDCC 26-09.2-13

Law Implemented
 NDCC 26-09.2-04

45-09-01-04. PRESUMPTION - DILIGENT SEARCH. A presumption that a diligent search has been made by the insured and that the insured was unable to procure the insurance, indemnity contract, or surety bond desired from a company authorized to do business in this state is created when the insurance, contract, or bond is written in one of the categories set out in Appendix III.

History: Effective January 1, 1982.

General Authority
 NDCC 26-09.2-13

Law Implemented
 NDCC 26-09.2-04

45-09-01-05. OTHER ACCEPTABLE LINES OF COVERAGE. The categories designated in Appendix III are not to be considered as the only lines of coverage in which unauthorized insurers may be used. Other categories of coverage not listed may be acceptable because of special underwriting considerations, i.e., losses, high exposure, etc. Any exceptions must be fully explained on the surplus lines affidavit and approved by the commissioner of insurance.

The securing of advantage as to lower premium rates or as to the terms of the insurance contract do not constitute justification nor are they special underwriting considerations sufficient to allow the surplus lines broker to use an unauthorized company nor lines of coverage other than those designated in Appendix III.

History: Effective January 1, 1982.

General Authority
NDCC 26-09.2-13

Law Implemented
NDCC 26-09.2-04

45-09-01-06. SURPLUS LINES AFFIDAVIT - TIME FOR FILING. Before a surplus lines broker procures, affects, or issues any insurance policy, indemnity contract, or surety bond, the broker shall execute, personally sign, and file an affidavit in acceptable form with the office of the commissioner (Appendix IV). An affidavit will be deemed filed with the commissioner if it is mailed to the commissioner's office on or before the effective date of the coverage (policy).

History: Effective January 1, 1982.

General Authority
NDCC 26-09.2-13

Law Implemented
NDCC 26-09.2-04

45-09-01-07. SURPLUS LINES AFFIDAVIT - LIMITS ON AVAILABILITY. The surplus lines affidavits filed with the commissioner of insurance will be made available only: to the insured named in the affidavit upon a written request by that insured; to the surplus lines broker who executed the affidavit upon written request of that broker; to duly authorized department personnel; and to any other individual who obtains and files with the commissioner a written waiver and consent form signed by the insured.

History: Effective January 1, 1982.

General Authority
NDCC 26-09.2-13

Law Implemented
NDCC 26-09.2-04

45-09-01-08. ADDITIONAL POLICY ENDORSEMENT REQUIREMENT. In addition to the endorsement required by North Dakota Century Code section 26-09.2-05, every policy issued under North Dakota Century Code chapter 26-09.2 shall be endorsed as follows: THIS POLICY IS ISSUED PURSUANT TO THE NORTH DAKOTA SURPLUS LINES INSURANCE STATUTE. THE INSURER IS A QUALIFIED SURPLUS LINES INSURER, BUT IS NOT OTHERWISE

LICENSED BY THE STATE OF NORTH DAKOTA AND DOES NOT PARTICIPATE IN THE NORTH DAKOTA INSURANCE GUARANTY ASSOCIATION.

History: Effective January 1, 1982.

General Authority
NDCC 26-09.2-13

Law Implemented
NDCC 26-09.2-05

45-09-01-09. STATEMENT OF TAXABLE PREMIUMS. Surplus lines brokers are required by North Dakota Century Code section 26-09.2-07 to file annually a statement of taxable premiums received by that broker (Appendix V).

History: Effective January 1, 1982.

General Authority
NDCC 26-09.2-13

Law Implemented
NDCC 26-09.2-07

APPENDIX I
STATE OF NORTH DAKOTA

Department of Insurance

Bismarck, ND 58505

APPLICATION FOR SURPLUS LINES BROKER'S LICENSE

Under the provisions of North Dakota Century Code chapters 26-09.2 and 26-17.1, application is hereby made for a surplus lines broker's license.

The applicant hereby affirms that applicant has read, and is familiar with, the provisions of North Dakota Century Code chapters 26-09.2 and 26-17.1, which govern the placement of insurance with nonadmitted companies, in particular the following requirements:

1. Before license may be issued there must be deposited with the commissioner of insurance a bond in the penal sum of an amount of not less than an amount equal to the taxes paid to the commissioner the previous year as required by North Dakota Century Code section 29-09.2-07, with a minimum bond of five hundred dollars and a maximum of twenty thousand dollars. The bond shall be in such form and with such sureties as may be acceptable to the commissioner, and annually a certificate of continuation of said bond shall be submitted to this department.
2. Licenses expire annually on April thirtieth, and must be renewed on or before May first if they are to continue uninterruptedly.
3. On each risk placed under a surplus lines license, the broker must make affidavit, in a form acceptable to the commissioner of insurance that after reasonable diligent search, the risk cannot be placed with a licensed company. Only after the commissioner of insurance concurs in the allegations contained in the affidavit can the broker proceed to place the risk with the nonadmitted company.
4. Each policy issued under a surplus lines license must be endorsed, "Issued with a nonadmitted company under Broker's License No. ____" which endorsement must be filed in and signed by the broker.
5. The broker is required to keep a separate record of business transacted under the broker's surplus lines license, and on or before April first of each year, must file with the

commissioner of insurance a statement for the preceding calendar year ending on December thirty-first, giving the name of the insured to whom each policy has been issued, the name and home office of each company issuing any such policy, the amount of such insurance, the rates charged therefore, the gross premiums charged, and the date and term of the policy and the amount of premium returned on each policy canceled or not taken, together with such other information and upon such form as required by the commissioner of insurance.

6. At the time of filing the above statement, the broker is required to pay the tax (current rate two and one-half percent) on the premium so written on risks or exposures located in this state.
7. The broker is personally responsible for investigating the financial condition of the nonadmitted insurer before placing the insurance therewith. The company must have capital and surplus amounting to at least the amount required of a licensed carrier transacting the same class of business.
8. Before a company can be qualified as a nonadmitted surplus lines outlet, it must appoint the commissioner of insurance in writing to be its true and lawful attorney, upon whom legal process in any action or proceeding against it may be served.
9. The commissioner of insurance may inspect and examine at any time a broker's records of business transacted under the surplus lines license.
10. The penalties for making a false affidavit include revocation of license, and failure to make and file the required annual statement or to pay the taxes required prior to May first, can result in a fine of twenty-five dollars per day for each day of the delinquency.

The applicant is presently licensed to represent the following licensed companies:

- | | |
|----------|-----------|
| 1. _____ | 6. _____ |
| 2. _____ | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

Remittance of ten dollars covering the statutory fee for issuance of the surplus lines license is attached hereto.

Date of Application

SIGNED: _____
Name

Address

APPENDIX IIa

BOND NUMBER _____

_____ BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as Principal, and _____, licensed to do a surety business in the State of North Dakota, as Surety, are held and firmly bound unto the State of North Dakota for the benefit of any aggrieved party in the sum of _____ (\$_____) for the payment of which we hereby bind ourselves, our heirs, administrators, executors, assigns and successors jointly and severally by these presents this _____ day of _____, 19__.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT, if the above bonded _____, presently applying for _____ license under North Dakota Century Code chapter 26-17.1, shall faithfully conform to and abide by each and every provision of that chapter and any other applicable laws, and shall pay to the State of North Dakota for the benefit of any aggrieved party any and all moneys that may become due or owing to said aggrieved party under and by virtue of the provisions of said laws, then this obligation shall be null and void; otherwise to remain in full force and effect.

Provided, however, that this Suretyship may be terminated by the Surety upon thirty days written notice to the obligee and the Principal, or by the obligee upon notice in writing within ten working days to the Surety specifying the date of termination.

SIGNED THIS _____ DAY OF _____, 19 __.

Principal

Surety

COUNTERSIGNED:

Attorney-in-fact

North Dakota Resident Agent or Broker

1. INSURANCE BROKER'S BOND shall be in the amount of two thousand dollars.
2. SURPLUS LINES INSURANCE BROKER'S BOND shall be in the amount of not less than an amount equal to the taxes paid to the commissioner the previous year as required by North Dakota Century Code section 26-09.2-07, with a minimum bond of five

APPENDIX IIb
CONTINUATION CERTIFICATE
Surety Bond

Name of Insurance Company

Address

In Consideration of the continuation premium, the _____,
Surety upon Bond No. _____, dated the _____ day of
_____, 19 __, covering _____ and in
favor of the State of North Dakota, the _____

(Kind of bond)

does hereby continue the bond in force for the further period beginning
with the _____ day of _____, 19 __, and ending with
the _____ day of _____, 19 __.

The liability of the _____
under the bond and this and all continuations thereof
shall not be cumulative.

Signed, sealed, and dated this _____ day of _____, 19 __.

Countersigned by:

Name of Insurance Company

North Dakota Resident Agent

Attorney-in-fact

APPENDIX III

Categories of Acceptable Surplus Lines Coverage

The following categories of surplus lines coverage are not the only lines which may be written in North Dakota. Other lines of coverage not on this list may be acceptable because of special underwriting considerations. Any exceptions must be fully explained on the surplus lines affidavit and approved by the commissioner of insurance.

There is a presumption that the insured is unable, after diligent search, to procure the insurance, indemnity contract, or surety bond desired from a company authorized to do business in this state if the coverage written is in an approved category.

These categories may be changed from time to time at the discretion of the commissioner of insurance subject to provisions of North Dakota Century Code chapter 28-32, the Administrative Agencies Practice Act.

1. Fiduciary liability.
2. Professional liability (E & O).
3. Directors and officers.
4. Ocean marine cargo, liability and hull.
5. Spectator liability.
6. Aircraft liability and hull (following classes):

Airmeet Liability	Crop Dusting
Flight Training	Experimental
Gliders	Helicopters
Parachute Clubs and Skydiving	Racing
Skyjack Insurance	Hot Air Balloons
Slung Cargo	
7. Hazardous cargo and short-term trip transit.
8. Amusement parks and devices.
9. Drag strip liability.
10. Bridges (large).
11. Heavy woodworking property (unprotected, high valve sawmills).
12. Carnivals and community events.
13. Outfitters and guides liability.

14. Product liability (hazardous).
15. Rock concerts.
16. Ski lifts and tows liability.
17. Standing timber.
18. Fireworks, ammunition, fuse, cartridges, power, nitroglycerine, explosive gases.
19. Atomic power and radioactive material.
20. Underwater construction.
21. Diving and caisson work.
22. Mining.
23. Celluloid and pyroxylin risks.
24. Tunneling.
25. Environmental impairment - pollution.
26. Kidnap ransom.
27. Loggers broad form property damage.
28. Oil and gas and marine liability (hazardous).
29. Livestock mortality (high values and unusual).
30. Short tail (hole-in-one, 300 bowling score, etc.).
31. Large utilities (generation, transmission).
32. Building demolition and moving.
33. Mono line liquor legal liability.
34. Surcharged fire and allied lines excluding marine.
35. High value substandard private passenger auto.
36. Commercial auto physical damage coverage in excess of insurance service organization filed rates.
37. Any excess liability coverages.

Subscribed and Sworn to before me this
_____ day of _____, 19 ____.

(Seal)

Notary Public

APPENDIX V

SURPLUS LINES

STATE OF NORTH DAKOTA
DEPARTMENT OF INSURANCE
BISMARCK

STATEMENT OF TAXABLE PREMIUMS RECEIVED
ON NORTH DAKOTA BUSINESS

Gross direct premiums received during 19 ____, less return premiums, refunds, and abatements	\$ _____
Less dividends paid to policyholders or used in reduction of premiums _____	\$ _____
Total taxable premiums balance _____	\$ _____
Tax liability (two and one-half percent of taxable premiums) _____	\$ _____

STATE OF _____ ss.
COUNTY OF _____

Surplus lines license number _____

being duly sworn, depose and say, that he or she is the above
surplus lines broker and that the foregoing is a true and correct
statement.

Surplus Lines Broker

Subscribed and sworn to before me
this day of _____ 19 __.

Notary Public

TITLE 60
Pesticide Control Board

FEBRUARY 1982

X 60-03-01-03. RESTRICTED USE PESTICIDES. Pesticide--products containing the following active ingredients and their certain--uses--are classified restricted-use pesticides:

Active-ingredient-----	Formulation-----	Use-pattern
Acrolein-----	As sole active ingredient:-----	All uses No mixtures registered.
Acrylonitrile-----	In combination with carbon-----	All uses tetrachloride--No registrations as the sole active ingredient.
Aldicarb-----	As sole active ingredient:-----	Ornamental uses--(indoor and outdoor)
Allyl alcohol-----	All formulations:-----	All uses
Aluminum phosphide-----	As sole active ingredient:-----	All uses
Azinphos methyl-----	All liquids with a concen-----	All uses tration greater than thirteen and one-half percent.
Calcium cyanide-----	As sole active ingredient:-----	All uses No mixture registered.

Demeton-----One-percent-fertilizer-----All-uses
formulation;-one-and-nine
hundred-eighty-five
thousandths-percent-granular
formulation:-

All-granular-formulations;-----All-uses
emulsifiable-concentrates
and-concentrated-solutions:-

Endrin-----All-emulsions;-dusts-wettable--All-uses
powders;-pastes;-and-granular
formulations-two-percent-and
above:-
All-concentrations-less;-----All-uses

Ethyl-parathion-----All-granular-and-dust-----All-uses
formulations-greater-than
two-percent;-fertilizer
formulations;-wetable-powders;
emulsifiable-concentrates;
concentrated-suspensions;
concentrated-solutions:-
Smoke-fumigants;-----All-uses
Dust-and-granular-----All-uses
formulations-two-percent-and
below:-

Fluoroacetamide/1081----As-sole-active-ingredient-----All-uses
in-baits;---No-mixtures
registered:-

Hydrocyanic-acid-----As-sole-active-ingredient;-----All-uses
No-mixtures-registered:-

Methomyl-----As-sole-active-ingredient-----Nondomestic
in-one-percent-to-two-and-----outdoors-
one-half-baits-(except-one-----agricul-
percent-fly-bait);-----tural
crops;
ornamen-
tal-and
turf:-
All-other
registered
uses:-
All-concentrated-solution-----All-uses
formulations:-
Ninety-percent-wettable-----All-uses
powder-formulations-(not-in
water-soluble-bags):-

Methyl-bromide-----All-formulations-in-----All-uses

containers-greater-than-one
and-one-half-pound-
Container-with-not-more-than---All-uses
one-and-one-half-pound-having
no-indicator-

Methyl-parathion-----All-dust-and-granular-----All-uses
formulations-less-than-five
percent-
Microencapsulated:-----All-uses
All-dust-and-granular-----All-uses
formulations-five-percent-and
greater-and-all-wettable
powders-and-liquids-

Mevinphos-----All-emulsifiable-concentrates--All-uses
and-liquid-concentrates-
Psychodid-filter-fly-liquid----All-uses
formulations-
Two-percent-dusts:-----All-uses

Paraquat-(dichloride)---All-formulations-and-concen----All-uses
and-paraquat-----trations-except-those-listed
bis(methyl-sulfate)-----below-

Pressurized-spray-formulations
containing-forty-four
hundredths-percent-
Paraquat-bis(methyl-sulfate)
and-fifteen-percent-petroleum
distillates-as-active-
ingredients-
Liquid-fertilizers-containing--All-uses
concentrations-of-twenty-five
thousandths-percent-paraquat
dichloride-and-three-hundredths
percent-atrazine;-three
hundredths-percent-paraquat
dichloride-and-thirty-seven
hundredths-percent-atrazine;
four-hundredths-percent-paraquat
dichloride-and-forty-nine
hundredths-percent-atrazine-

Picloram-----All-formulations-and-concen----All-uses
trations-except-torden-101-R-

Sodium-cyanide-----All-capsules-and-ball-----All-uses
formulations-

Sodium-fluoroacetate----All-solutions-and-dry-baits:----All-uses

Strychnine-----All-dry-baits,-pellets,-and----All-uses
powder-formulations-greater

than-five-tenths-percent:
All-dry-baits,-pellets,-and----All-uses
powder-formulations:-----calling
for
burrow
builders

All-dry-baits,-pellets-and----All-uses
powder-formulations-five-tenths--except
percent-and-below:-----subsoil

Sulfotepp-----Sprays-and-smoke-generators:---All-uses

Tepp-----Emulsifiable-concentrate-----All-uses
formulations:

The North Dakota restricted use pesticides shall be those pesticide uses that the United States environmental protection agency has declared to be restricted use pesticides.

History: Effective August 1, 1978; amended effective February 1, 1982.

General Authority
NDCC 4-35-06,
28-32-02

Law Implemented
NDCC 4-35-06

60-03-01-05. LICENSING - DEALERS, COMMERCIAL APPLICATORS, PRIVATE APPLICATORS.

1. Dealers.

- a. A pesticide dealer license shall be issued in accordance with North Dakota Century Code section 4-35-12 only to those persons who successfully complete the licensing examination established by the board, and who pay the license fee of ten dollars.
- b. The board shall establish a licensing examination which shall be administered by the appropriate county extension agent in accordance with North Dakota Century Code section 4-35-12. The examination shall be given by the agent only to those persons who meet all of the following:
 - (1) Are 18 years of age or older.
 - (2) Complete a license application in such form as the board shall require.
 - (3) Pay an examination fee of five dollars.

Any person who fails an examination may retake such examination no sooner than three days later. Each examination requires payment of the examination fee.

- c. Dealer's licenses shall expire on December thirty-first of each year and may be renewed upon payment of the annual fee, and in accordance with North Dakota Century Code section 4-35-10. Every pesticide dealer shall be recertified by an approved seminar or an examination at least every third year.

General Authority
NDCC 4-35-06,
4-35-12,
28-32-01

Law Implemented
NDCC 4-35-08,
4-35-09,
4-35-12,
4-35-14

60-03-01-09. REPORTS OF PESTICIDE ACCIDENTS. Any person who causes a pesticide accident that results in unreasonable adverse effects on the environment shall report to the commissioner within twenty-four hours by letter or telephone (224-2232) the following information:

1. The name of the pesticide.
2. The amount of pesticide or tank mix, or both.
3. The location of the pesticide accident.
4. The time of accident (month, day, year, hour of the day).
5. The direction and estimated velocity of the wind and estimated temperature at the time of the accident, if outdoors.
6. Actions taken to remedy the adverse effects on humans, animals, and the environment.

History: Effective February 1, 1982.

General Authority
NDCC 4-35-21

Law Implemented
NDCC 4-35-21

TITLE 62
Plumbing, Board of

AUGUST 1981

X 62-03-02-24. TOILET FACILITIES FOR WORKMEN.

1. ~~Minimum---facillities----The--minimum--facillities--provided--at construction-job-sites-shall-be--one--toilet--(seat)--and--one urinal--for-five-or-less-workmen-and-one-toilet-(seat)-and-one urinal-for-each-additional-twenty-workmen-or-fraction-thereof-~~ Suitable toilet facilities shall be provided and maintained in a sanitary condition for the use of workmen during construction. (See Table 62-03-07).
2. Type of facilities. Job sites, not provided with a sanitary sewer, shall be provided with one of the following type toilet facilities:
 - a. Chemical.
 - b. Recirculating.
 - c. Combustion.
 - d. Privies (where their use will not contaminate ground or surface water).
3. Toilet facilities construction. Toilet facilities construction shall comply with sections 62-03-16-13 and 62-03-16-14.

History: Amended effective August 1, 1981.

General Authority
NDCC 43-18-09

Law Implemented
NDCC 43-18-09

x 62-03-07-10. FIXTURES TO HAVE STRAINERS. All plumbing fixtures other than water closets, clinic sinks, trap standard slop sinks with flush rims, and siphon-action washdown or blowout urinals, shall be provided with metal strainers having a waterway area complying with good principles of hydraulics.

History: Amended effective August 1, 1981.

General Authority
NDCC 43-18-09

Law Implemented
NDCC 43-18-09

x 62-03-07-13. SHOWERS.

1. Shower waste outlet. Waste outlets serving showers, except shower over bathtub, shall be at least two inches [5.08 centimeters] in diameter and shall have removable strainers not less than three inches [7.62 centimeters] in diameter having strainer openings not less than one-quarter inch [6.35 millimeters] in minimum dimension. Where each shower space is not provided with an individual waste outlet, the waste outlet must be so located and the floor so pitched that waste water from one shower does not flow over the floor area serving another shower. Waste outlets shall be securely fastened to the waste pipe making a watertight connection thereto.
2. Shower compartments. Shower compartments shall have at least one thousand twenty-four square inches [6,604.43 square centimeters] of floor area and be not less than thirty inches [76.2 centimeters] in minimum dimension measured from its finished interior dimension as the side of a rectangle, altitude of a triangle, or diameter of a circle or other angular shape. The wall area above built-in tubs having installed shower heads and in shower compartments shall be constructed of smooth, noncorrosive, and nonabsorbent, waterproof materials to a height not less than six feet [1.83 meters] above the floor level. Such walls shall form a watertight joint with each other and with either the tub, receptor, or shower floor.
3. Shower floors or receptors. Floors or receptors under shower compartments shall be laid on or be supported by a smooth and structurally sound base. Floors under shower compartments, other than those laid directly on the ground surface or where prefabricated receptors have been provided, shall be lined and made watertight by the provision of suitable shower pans of durable material. Such pans shall turn up on all sides at least two inches [5.08 centimeters] above the finished threshold level. Pans shall be securely fastened to the waste outlet at the seepage entrance making a watertight joint

between the pan and the outlet. Floor surfaces shall be constructed of smooth, noncorrosive, nonabsorbent, and waterproof materials.

4. Water supply riser. Every water supply riser from the shower valve to a permanently positioned shower head outlet, whether exposed or not, shall be securely attached to the structure. In hotels and motels the shower head outlet shall be located at a minimum height of seventy-two inches [182.88 centimeters] above the receptor's floor.

History: Amended effective August 1, 1981.

General Authority
NDCC 43-18-09

Law Implemented
NDCC 43-18-09

TABLE 62-03-07

MINIMUM PLUMBING FACILITIES

Type of building * or occupancy	Water Closets		Urinals **
	Male	Female	Fixtures/Persons
Schools			
Elementary	1-30	1-25	1-25
Secondary	1-40	1-30	1-25
.....			
Theaters, +			
Auditoriums,	2- 1-200	2- 1-100	2- 1-200
Convention Halls	3-201-400	3-101-200	3-201-400
	4-401-600	4-201-400	4-401-600
	Over 400, add 1 fixture for each additional 500 males, 1 for each 300 females		Over 600, add 1 for each additional 300 males
.....			
Dormitories +++			
	1 per 10	1 per 8	1 per 25
	Additional Persons		Over 150, 1 per
	1 per 25	1 per 20	50
.....			
Office or public buildings +			
	Fixtures	Persons	**
	1	1- 15	
	2	16- 35	
	3	36- 55	
	4	56- 80	

	5	81-110	
	6	111-150	
	1 additional for each		
	40		
.....			
Manufacturing,	1	1- 9	**
warehouses,	2	10- 24	
workshops, loft	3	25- 49	
buildings,	4	50- 74	
foundries, and	5	75-100	
similar	1 additional for each		
establishments	30		
.....			
Restaurants,	2	1- 50	1
bars, and lounges	3	51-100	1
++ +++ ++++	4	101-200	2
	5	201-500	3
.....			
Dwelling or	1 for each dwelling or		
apartment houses	apartment unit		

.....			
Working men	1/5 working men	1/5 working men	
temporary	1 for each additional	1 for each	
facilities	20 men or fraction	additional	
	thereof	20 men	
.....			
Hospitals	The minimum number of plumbing fixtures for		
Individual Room	hospitals and related institutions will be		
Ward	governed by the rules, regulations, and		
	standards for hospitals and related		
	institutions in North Dakota, a copy of		
	which is available from the Division of		
	Health Facilities, North Dakota State		
	Department of Health, State Capitol,		
	Bismarck, North Dakota 58505.		

TABLE 62-03-07 (continued)

MINIMUM PLUMBING FACILITIES

Type of building * or occupancy	Lavatories	Bathtubs or Showers	Drinking Fountains ***
	Fixtures/Persons	Fixtures/Persons	Persons
Schools			
Elementary	1-35		1-40

Secondary	1-40		1-50
Theaters, + Auditoriums, Convention Halls	1- 1-200 2-201-400 3-401-750 Over 750, 1 for each addnl 500 persons		1 per 100 1 addnl for each 200 thereafter
Dormitories +++	1 per 12 Over 12 1 per 15 females 1 per 20 males	1 per 8 For female, add one bathtub per 30, over 150, 1 per 20	1 per 100 1 addnl for each 200 thereafter
Office or public buildings +	1- 1- 15 2- 16- 35 3- 36- 60 4- 61- 90 5- 91-125 1 addnl for each 45		1 per 100 1 addnl for each 200 thereafter
Manufacturing, warehouses, workshops, loft buildings, foundries, and similar establishments	Up to 100 1 per 10 Over 100 1 per 15	1 shower for each 15 persons exposed to excessive heat or to skin contamination with poisonous, infectious, or irritating materials	
Restaurants, bars, and lounges ++ +++ ++++	2 3 4 4		
Dwelling or apartment houses ****	1 for each dwelling or apartment unit	1 for each dwelling or apartment unit	
Working men fixture temporary facilities	1/5 <u>1/30</u> working men See Section 62-03-07-24		1 or equivalent for each 100 working men

.....

Hospitals	The minimum number of plumbing fixtures for
Individual Room	hospitals and related institutions will be
Ward	governed by the rules, regulations, and
	standards for hospitals and related
	institutions in North Dakota, a copy of
	which is available from the Division of
	Health Facilities, North Dakota State
	Department of Health, State Capitol,
	Bismarck, North Dakota 58505.

-
- * Building category not shown on this Table shall be considered separately by the Administrative Authority.
 - ** Urinals may be provided in men's toilet rooms in lieu of water closets but for not more than 2/3 of the required number of water closets.
 - *** Drinking fountains shall not be installed in toilet rooms.
 - **** Laundry trays - 1 laundry tray or 1 automatic washer standpipe for each dwelling unit or 2 laundry trays or 2 automatic washer standpipes (or combinations thereof) for each 10 apartments. Kitchen sinks - 1 for each dwelling or apartment unit.
 - + 1 service sink per floor.
 - ++ To find the number of each sex for Restaurants, bars, and lounges divide the number of square feet in the seating area by 15 and divide this number in half for each sex.
 - +++ Laundry trays - 1 for each 50 persons. Service sinks - 1 for each 100 persons.
 - ++++ A restaurant is defined as a business which sells food to be consumed on the premises.
 - (a) The number of occupants for a drive-in restaurant shall be considered as equal to the number of parking stalls.
 - (b) Handwashing facilities must be available in the kitchen for employees.

\History: Amended effective February 1, 1980; amended effective August 1, 1981.

\ 62-03-10-16. SAFETY DEVICES.

1. Pressure relief valves and temperature relief valves required. Equipment used for heating water or storing hot water shall be protected by approved safety devices in accordance with one of the following methods:
 - a. A separate pressure relief valve and a separate temperature relief valve.
 - b. A combination pressure and temperature relief valve.

- c. A combination of either subdivision a or b and an energy cut-off device.

Safety devices shall meet the requirements of the American national standards institute, American society of mechanical engineers, or the underwriters' laboratories. Listing by underwriters' laboratories, American gas association or national board of boiler and pressure vessel inspectors shall constitute evidence of conformance with these standards.

Where a device is not listed by any of these, it must have certification by an approved laboratory as having met these requirements.

- 2. Pressure relief valves. Pressure relief valves shall meet the American national standards institute standards and the American society of mechanical engineers standards when required by the administrative authority. The valves shall have a relief rating adequate to meet the pressure conditions in the equipments served. They shall be installed either directly in a top tank tapping or in the hot or cold outlet line close to the tank. There shall be no shutoff valve between the pressure relief valve and tank. The pressure relief valve must be set to open at not less than twenty-five pounds per square inch [11.34 kilograms per 6.45 square centimeters] above the street main pressure or not less than twenty-five pounds per square inch [11.34 kilograms per 6.45 square centimeters] above the setting of any house water pressure regulating valve. The setting shall not exceed the tank rated working pressure.
- 3. Temperature relief valves. Temperature relief valves shall be of adequate relief rating, expressed in Btu per hour, for the equipment served. They shall be installed so that the temperature sensing element is immersed in the hottest water within the top six inches [15.24 centimeters] of the tank. The valve shall be set to open when the stored water temperature is two hundred ten degrees Fahrenheit [98.89 degrees Celsius] (or less).

These valves must be approved by an appropriate standard or by the administrative authority for the intended use, and shall be sized so that when the valve opens, the water temperature cannot exceed two hundred and ten degrees Fahrenheit [98.89 degrees Celsius] with the water heating equipment operating at maximum input.

- 4. Combination pressure-temperature relief valves. Combination pressure-temperature relief valves shall comply with all the requirements of the separate pressure and temperature relief valves.

5. Energy cut-off devices. Energy cut-off devices shall be of adequate performance rating for the equipment served. Immersion type energy cut-off devices shall be located so that the temperature sensing element is immersed in the water within the tank and controls the temperature of the water within the top six inches [15.24 centimeters] of the tank. When approved by the administrative authority, contact types shall be installed so that the sensing element is responsive to the highest water temperature within the equipment served and is securely fastened in place. Such devices shall meet the requirements of applicable American national standards institute standards. When an energy cut-off device is used, it shall be factory applied by the heater manufacturer, and comply fully with the appropriate standards of the American national standards institute and underwriters' laboratories. They shall be installed in a manner that will isolate them from ambient, flue gas temperatures and other conditions not indicative of the temperature of the water within the heater.
6. Installation of relief valves. No check valve or shutoff valve shall be installed between any safety device and the hot water equipment used, nor shall there be any shutoff valve or traps or dips in the discharge pipe from the relief valve. The discharge pipe shall not be smaller than the relief valve outlet and it shall be an indirect connection into a plumbing fixture, floor drain, sump pit, or other approved point of discharge. Relief outlets when connected to the building drainage system shall be indirectly connected.

The terminal end of a discharge pipe must not be threaded.

In addition to all other requirements, if the relief outlet discharge piping is installed so that it leaves the room or enclosure in which the water heater and relief valve are located, there must be an air gap installed before or at this point of leaving the room or enclosure.

This air gap may be the same one used to comply with other provisions at this section. All piping after the air gap, or indirect connection must be sized as a gravity drain using subsection 2 of section 62-03-11-04 to determine equivalent fixture unit load and the tables contained in section 62-03-11-05 to determine drain sizes, and such other tables and regulations as may be applicable. These provisions as to air gap and drain sizing apply to single and multiple relief valve piping installations.

7. Vacuum relief valves. Where a hot water storage tank or an indirect water heater is located at an elevation above the fixture outlets in the hot water system, a vacuum relief valve shall be installed on the storage tank or heater.

8. Pressure marking of hot water storage tank. Hot water storage tanks shall be permanently marked in an accessible place with the maximum allowable working pressure, in accordance with the applicable standard.
9. Water heaters which are located in areas that have floors of wood construction shall be provided with a watertight pan. Such pans shall turn upon all sides at least two inches [5.08 centimeters]. The pan drain shall be indirectly connected with an air break to the buildings drainage system and shall be a minimum of one inch [2.54 centimeters] in diameter.

History: Amended effective August 1, 1981.

General Authority
NDCC 43-18-09

Law Implemented
NDCC 43-18-09

x 62-03-12-16. SIZE AND LENGTH OF VENTS.

1. Length of vent stacks. The length of the vent stack or main vent shall be its developed length from the lowest connection of the vent system with the soil stack, waste stack, or building drain to the vent stack terminal, if it terminates separately in the open air, or to the connection of the vent stack with the stack vent, plus the developed length of the stack vent from the connection to the terminal in the open air, if the two vents are connected together with a single extension to the open air.
2. Size of individual vents. The diameter of an individual vent shall be not less than one and one-fourth inches [31.75 millimeters]. The minimum diameter and maximum length of vents shall be governed by the tables in subsections 5 and 6.
3. Size of relief vent. The diameter of a relief vent shall be not less than the diameter of the circuit, loop, or branch vent serving the horizontal soil or waste branch. Relief vents for horizontal offsets on drainage piping shall be not less than one-half the diameter of the piping to which it is connected.
4. Stacks of more than ten branch intervals. Soil and waste stacks in buildings having more than ten branch intervals shall be provided with a relief vent at each tenth interval installed, beginning with the top floor. The size of the relief vent shall be equal to the size of the vent stack to which it connects. The lower end of each relief vent shall connect to the soil or waste stack through a wye below the horizontal branch serving the floor and the upper end shall

connect to the vent stack through a wye not less than three feet [91.44 centimeters] above the floor level.

5. Size and length of circuit, loop, branch, or individual vents. The diameter of a circuit, loop, branch, or individual vent shall be determined from the following table.

MINIMUM DIAMETERS AND MAXIMUM LENGTHS
OF VENTS FOR HORIZONTAL SOIL AND
WASTE BRANCHES

Diameter of Horizontal Branch	Number of Fixture Units Connected	Diameter of Vent										
		1-1/4	1-1/2	2	2-1/2	3	4	5	6	8	10	12
		(Maximum developed length of vent in feet)										
1-1/2	2	NL	NL									
2	4	290	NL	NL								
2	12	150	380	NL								
2-1/2	8	96	240	NL	NL							
2-1/2	24	70	130	NL	NL							
3	28	60	97	420	NL	NL						
3	42	30	50	220	NL	NL						
4	120		38	190	NL	NL	NL					
4	180			98	310	NL	NL					
5	185				190	490	NL	NL				
5	390				97	250	NL	NL				
6	315					190	NL	NL	NL			
6	700					96	440	NL	NL			
8	710						190	NL	NL	NL		
8	1600						91	310	NL	NL		
10	1220							190	500	NL	NL	
10	2900							85	240	NL	NL	
12	1920								180	NL	NL	NL
12	4600								79	420	NL	NL

* NL - No Limit

6. Size of vent stacks and stack vents. The diameter of a vent stack and stack vent shall be determined from its length and the total of fixture units connected thereto, as provided in the following table.

SIZE AND LENGTH OF VENTS

Size of Soil or Waste Stack	Fixture Units Con- nected	Diameter of Vent Required (Inches)								
		1-1/4	1-1/2	2	2-1/2	3	4	5	6	8
		Maximum Length of Vent (Feet)								
Inches										
1-1/2	8	50	150							
1-1/2	10	30	100							
2	12	30	75	200						
2	24	26	50	150						
2-1/2	42		30	100	300					
3	10		30	100	100	600				
					200					
3	30			60	200	500				
3	60			50	80	400				
4	100			35	100	260	1000			
4	200			30	90	250	900			
4	500			20	70	180	700			
5	200				35	80	350	1000		
5	500				30	70	300	900		
5	1100				20	50	200	700		
6	350				25	50	200	400	1300	
6	620				15	30	125	300	1100	
6	960					24	100	250	1000	
6	1900					20	70	200	700	
8	600						50	150	500	1300
8	1400						40	100	400	1200
8	2200						30	80	350	1100
8	3600						25	60	250	800
10	1000							75	125	1000
10	2500							50	100	500
10	3800							30	80	350
10	5600							25	60	250

History: Amended effective August 1, 1981.

General Authority
NDCC 43-18-09

Law Implemented
NDCC 43-18-09

62-03-16-04. LOCATION OF INDIVIDUAL SEWAGE SYSTEM.

1. The minimum lot size in which a private disposal system may be installed is twenty thousand square feet [1850.06 square meters].

2. Required lot size with private water system in which a private disposal system may be installed is twenty thousand square feet [1850.06 square meters].
3. The following table provides for the minimum distances that shall be observed in locating the various components of the disposal system.

	Shallow Well	Deep Well	Septic Tank	Distribution Box	Disposal Field	Seepage Pit	Dry Well	Property Line	Building
Bldg. Sewer	(50)	(50)	-	-	-	-	-	-	-
Septic Tank	(100)	(50)	-	5	10	10	10	(10) ¹	(10)
Distribution Box	(100)	(50)	5	-	5	5	5	(10)	(20)
Disposal Field	(100)	(50)	10	5	-	-	-	(10)	(20)
Seepage Pit	(100)	(50)	10	5	-	-	-	(10)	(20)
Dry Well	(100)	(50)	10	5	-	-	-	(10)	(20)
Shallow Well	-	-	(100)	(100)	(100)	(100)	(100)		
Deep Well	-	-	(50)	(50)	(50)	(50)	(50)		
Suction Line	-	-	(50)	(50)	(50)	(50)	(50)		

¹May be closer to building when permission is given by the Administrative Authority.

4. All sewage disposal systems shall conform with the following general principles regarding site:

Sewage disposal system shall be located at the lowest point on the premises consistent with the general layout topography and surroundings, including abutting lots. Locations at a higher elevation through employment of a forced system may be used with the specific permission of the approving authority.

5. No sewage disposal facilities shall be located on any watersheds of the public water supply system. Privies, septic tanks, and underground disposal means shall not be within two hundred feet [60.96 meters] measured horizontally from the high water level in the reservoir on the banks of tributary streams when situated less than three thousand feet [914.4 meters] upstream from intake structures. Sewage disposal facilities situated beyond three thousand feet [914.4 meters] upstream from intake structures shall be located no less than one hundred feet [30.48 meters] measured horizontally from the

high water level in the reservoir or the banks of the tributary streams. Prior to approval, the soil must prove satisfactory by the standard percolation test when underground disposal is used.

History: Amended effective August 1, 1981.

General Authority
NDCC 43-18-09

Law Implemented
NDCC 43-18-09

TITLE 67

Public Instruction, Superintendent of

AUGUST 1981

X 67-02-03-04. INDIAN STUDIES. All teachers certified or renewed for certification after April 1, 1982, shall have two semester or three quarter hours of college credit in North Dakota Native American studies, or the equivalent in ~~multicultural concepts with emphasis upon the Native American culture~~ inservice pursuant to approval by the department of public instruction. The two-year certificate will be used for compliance for reentry and out-of-state applicants. Reciprocity will be used. Substitute teachers are exempt from the Indian studies requirement until a contracted position is accepted.

History: Effective December 1, 1979; amended effective August 1, 1981.

General Authority
NDCC 15-36-01,
28-32-02

Law Implemented
NDCC 15-36-01

X 67-02-05-02. KINDERGARTEN ENDORSEMENT. Reeducation of elementary teachers for preschool or kindergarten schoolteaching may be accomplished in one of the following two ways:

1. By completing a college major or minor in early childhood education; or
2. By presenting a minimum of ~~sixteen~~ eight semester hours or ~~twenty-four~~ twelve quarter hours of early childhood education from a college or university with appropriate accreditation. The hours and work shall include curriculum and skills related to kindergarten-primary instruction, early childhood education and activities for the young child. The applicant must have a minimum of one year successful teaching experience applicable

to-the-endorsed-area in grades kindergarten, one, two, or three or student teaching (practicum) of four semester hours or six quarter hours minimum applicable to the endorsed area.

An applicant will have two years to fulfill the endorsement requirements.

History: Amended effective December 1, 1979; amended effective August 1, 1981.

General Authority
NDCC 15-36-01,
28-32-02

Law Implemented
NDCC 15-36-01

X 67-02-07-04. ENDORSEMENTS AND RESTRICTIONS. The North Dakota educator's professional certificate is issued to those who hold a bachelor's degree from an accredited college or university approved as a teacher training institution. This degree must include twenty semester hours or thirty quarter hours in education. The coursework in education must include successful student teaching. This certificate qualifies the holder for regular classroom teaching or for functioning in specialized areas with the proper endorsements and restrictions as assigned. The endorsements are elementary, preschool or kindergarten, and secondary. The restrictions are psychology (master's degree with major in school psychology), speech therapy, mental retardation, deaf education, visually impaired, and reserve officers' training corps. All other special education categories require regular elementary or secondary qualifications.

History: Amended effective November 1, 1980; amended effective August 1, 1981.

General Authority
NDCC 15-36-01,
28-32-02

Law Implemented
NDCC 15-36-01

TITLE 69
Public Service Commission

AUGUST 1981

X 69-02-01-03. COMMUNICATIONS. All correspondence and filings forwarded to the commission shall be submitted on eight and one-half by eleven inch [21.59 by 27.94 centimeter] paper and shall be addressed to:

Secretary to the Commission
Public Service Commission
State Capitol
Bismarck, North Dakota 58505

History: Amended effective August 1, 1981.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 49-01-07

SEPTEMBER 1981

X 69-03-01-01. CONTRACT CARRIER - DEFINITION. Repealed effective September 1, 1981.

X 69-03-01-02. APPLICATION FOR CERTIFICATES OR PERMITS. All motor transportation companies desiring to operate as ~~common,--contract--or agricultural~~ or contract carriers under a certificate of public convenience and necessity, or permit, shall file with the commission, on blank forms to be furnished by the commission, a verified application for authority to operate, such application to be accompanied by:

1. Remittance in the form of a money order, bank draft, or certified check, in proper amount and form, payable to the public service commission.
2. If an original application is made by partnership, a copy of the partnership agreement ~~must-accompany-the-application~~.
3. If an original application is made by a corporation, a copy of the articles of incorporation and a list of the directors, officers, and major stockholders.

History: Amended effective September 1, 1981.

General Authority
NDCC 49-18-08,
49-18-19;
~~49-18-34-i~~

Law Implemented
NDCC 49-18-12,
49-18-20;
~~49-18-38~~

X 69-03-01-02.1. APPLICATION FOR TEMPORARY AUTHORITY. All motor transportation companies desiring temporary authority to operate as common or contract carriers shall file with the commission on blank forms to be furnished by the commission, a verified application for temporary authority to operate. Such application must be accompanied by:

1. An application for a certificate of public convenience and necessity or contract permit pursuant to section 69-03-01-02.
2. Supporting statements designed to establish an immediate and urgent need for service which cannot be met by existing carriers.

History: Effective September 1, 1981.

General Authority
NDCC 49-18-08,
49-18-19

Law Implemented
NDCC 49-18-12,
49-18-20

§ 69-03-01-02.2. STATEMENT IN SUPPORT OF TEMPORARY AUTHORITY. Each statement in support of an application for temporary authority to operate as a common or contract carrier must be signed by the person (or an authorized representative thereof) having such immediate and urgent need for motor carrier service. Any such supporting statement must contain at least the following information:

1. When the transportation of property is involved, a description of the specific commodity or commodities to be transported.
2. Points or areas to, from, or between which such commodities or passengers are to be transported. (If service is needed to or from a territory or area rather than a specific point or points, clearly describe such territory or area and furnish evidence of a broad need to justify the territorial grant of authority requested.)
3. Volume of traffic involved, frequency of movement, and how transported now and in the past.
4. How soon the service must be provided and the reasons for such time limit.
5. How long the need for such service likely will continue, and whether or not the persons supporting the temporary application will support a permanent service application.
6. Recital of the consequences if service is not made available.
7. The circumstances which created an immediate and urgent need for the requested services.
8. Whether or not efforts have been made to obtain the service from existing motor carriers, and the dates and results of such efforts.
9. Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for any such failure or refusal.
10. If the person supporting the application has supported any prior application for permanent or temporary authority covering all or any part of the desired service, give the carrier's name, address and motor carrier docket number, if

known, and state whether such application was granted or denied and the date of such action, if known.

History: Effective September 1, 1981.

General Authority
NDCC 49-18-08,
49-18-19

Law Implemented
NDCC 49-18-12,
49-18-20

X 69-03-01-04. NONRESIDENT APPLICANT. If the applicant is a nonresident operator, the applicant must file an appointment of a North Dakota resident attorney-in-fact agent.

History: Amended effective September 1, 1981.

General Authority
NDCC 49-18-08,
49-18-19

Law Implemented
NDCC 49-18-12,
49-18-20;
49-18-38

X 69-03-01-11. PROTESTS. Repealed effective September 1, 1981.

X 69-03-01-12. DISCONTINUANCE OR ABANDONMENT OF SERVICE. Repealed effective September 1, 1981.

X 69-03-01-13. SALE OR TRANSFER OF CERTIFICATES. No certificate or permit shall be transferred through acquisition of stock or otherwise without approval of the commission. An application for sale, assignment, or mortgage of a certificate or permit, in good standing, may be made to the commission by any party interested, and must be accompanied by the original certificate or permit, with all current receipts attached thereto, to be held by the commission, pending decision. ~~The fee for sale and transfer of a certificate or permit is ten dollars. The fee for an application to mortgage a certificate is five dollars.~~

History: Amended effective September 1, 1981.

General Authority
NDCC 49-18-08,
49-18-19;

Law Implemented
NDCC 49-18-26;
49-18-32

49-18-34-1

λ 69-03-01-16. COMMERCIAL ZONES. The transportation of persons and property by motor carrier within the commercial zone of each city in the state is exempt when not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone. A commercial zone shall be deemed to consist of:

1. The city itself, hereinafter called the base city.
2. All cities which are contiguous to the base city.
3. All other cities and all unincorporated area within the state which are adjacent to the base city as follows:
 - a. When the base city has a population less than two thousand five hundred, all unincorporated areas within three miles [4.8 kilometers] of its corporate limits and all of any other city any part of which is within three miles [4.8 kilometers] of the corporate limits of the base city.
 - b. When the base city has a population of two thousand five hundred but less than twenty-five thousand, all unincorporated areas within four miles [6.4 kilometers] of its corporate limits and all of any other city any part of which is within four miles [6.4 kilometers] of the corporate limits of the base city.
 - c. When the base city has a population of twenty-five thousand or more, all unincorporated areas within six miles [9.6 kilometers] of its corporate limits and all of any other city any part of which is within six miles [9.6 kilometers] of the corporate limits of the base city.

History: Effective September 1, 1981.

General Authority
NDCC 49-18-08,
49-18-19

Law Implemented
NDCC 49-18-02

λ 69-03-02-04. MINIMUM INSURANCE - CARRIER OF PROPERTY. On each motor-vehicle--used--for--the--transportation--of--property,--a--minimum insurance--shall--be--filed--a--follows:--public-liability-in-the-amount-of one--hundred--thousand--dollars;--property--damage--in--the--amount--of twenty-five--thousand--dollars;--and--cargo--in--the--amount--of--five--thousand dollars-

1. Each common or contract carrier of property authorized to transport hazardous materials (as defined by the United States secretary of transportation), oil or hazardous substances (as defined by the administrator of the environmental protection agency), or hazardous wastes (as defined by the administrator of the environmental protection agency) shall file and maintain evidence of insurance, guarantee, surety bond, or qualification as a self-insurer on each vehicle used for such transportation covering public liability, property damage, and environmental restoration in an amount not less than such amount as the United States secretary of transportation prescribes pursuant to, or is required by, the provisions of section 30 of the Act of Congress entitled the Motor Carrier Act of 1980 [Pub. L. 96-296; 94 Stat. 793; 49 U.S.C. 10927].

2. Each common or contract carrier of property (except property referred to in subsection 1) or passengers shall file and maintain evidence of insurance, guarantee, surety bond, or qualification as a self-insurer on each vehicle used for such transportation covering public liability, property damage, and environmental restoration in an amount not less than five hundred thousand dollars. The security shall be conditioned to pay all final judgments arising out of one accident recovered against such motor carrier for bodily injuries to, or the death of, any person resulting from the negligent operation, maintenance, or use of motor vehicles under the certificate or permit, or for loss or damage to property (except property referred to in subsection 3), or both.

3. Each common or contract carrier of property shall file and maintain insurance or a surety bond on each vehicle used for such transportation covering direct physical loss of or physical damage to property of a shipper or consignee placed in the possession of the carrier as the result of transportation provided pursuant to the carrier's certificate or permit in an amount not less than fifteen thousand dollars. A carrier required by law to pay a shipper or consignee for loss, damage, or default for which a connecting motor carrier is responsible is subrogated, to the extent of the amount paid, to the rights of the shipper or consignee under any such security.

History: Amended effective January 1, 1982.

General Authority
NDCC 49-18-08,
49-18-19;
49-18-34:1

Law Implemented
NDCC 49-18-33

X 69-03-02-05. C.O.D. INSURANCE OR BOND. ~~All motor transportation companies,--carrying--commodities,--will--be--required--to--furnish--an insurance--policy--or--bond--to--guarantee--the--payment--by--the--carrier--to--the shipper--or--its--agents,--of--all--cash--(or--collect)--on--delivery--charges collected--by--the--carrier--in--connection--with--the--operation--or--conduct--of its--business--as--such--common--motor--carrier--or--contract--carrier,--in--the amount--required--by--the--commission.~~ All motor carriers of property offering collect on delivery service shall furnish an insurance policy or bond in the amount of five thousand dollars to guarantee the payment by the carrier to the shipper or its agents, of all cash (or collect) on delivery charges collected by the carrier in connection with the operation or conduct of its business as such carrier.

History: Amended effective January 1, 1982.

General Authority
NDCC 49-18-08,
49-18-19

Law Implemented
NDCC 49-18-33

x 69-03-02-06. MINIMUM INSURANCE - CARRIER OF PASSENGERS. Repealed effective January 1, 1982.

x 69-03-02-08. GENERAL ENDORSEMENT. Every The insured under every public liability and property damage insurance policy or bond required by North Dakota Century Code section 49-18-33 shall have attached thereto,--properly--signed--by--an--authorized--resident--agent--or--official--of the--insurance--or--bonding--company,--an--endorsement--in--the--following--form obtain and have attached to the policy or bond, properly signed by an authorized resident agent or official of the insurance or bonding company, an endorsement whereby the insurance or bonding company agrees:

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer hereby agrees:

1. To waive the description of the motor vehicle to be insured thereunder, and agrees to pay, within the limits of the policy, any final judgment for personal injury, including death, resulting therefrom, and loss or damage to property, including property of passengers while carried on the motor vehicle for shipment or in transit, caused by any and all motor vehicles operated by the insured pursuant to a certificate of public convenience and necessity or permit issued to the insured by the public service commission in accordance with the laws of North Dakota.
2. That nothing contained in this the policy shall relieve the insurer from liability for accidents caused by motor vehicles operated by the insured of which the description has been waived pursuant to the certificate of public convenience and necessity or permit.

3. That no cancellation of ~~this~~ the policy shall take effect unless fifteen days' notice, in writing, shall have first been given to the public service commission at its office in Bismarck, North Dakota; the fifteen days' written notice shall commence from the date the notice is actually received by the commission.
4. The insured ~~agrees to~~ may be required to reimburse the insurer for any payment the insurer would not have been obligated to make under the terms of the policy except for the provisions of ~~this~~ the endorsement.

~~This endorsement is attached to, and shall be deemed a part of Policy No. _____, issued by _____ insurer to _____ of _____~~

~~{Name} {Address}~~

~~This endorsement shall become effective on the _____ day of _____, 19_____, at the hour of _____ o'clock, _____ m., central standard time, and shall be continuous until canceled.~~

~~Signed _____
(Proper officer of the insurance company)~~

Countersigned:

(North Dakota agent)

~~{Address}~~

General Authority
NDCC 49-18-08,
49-18-19,
49-18-34-1

Law Implemented
NDCC 49-18-33

x 69-03-02-09. CARGO ENDORSEMENT. Each The insured under each cargo insurance policy required by this article shall bear the following endorsement obtain and have attached to the policy, properly signed by an authorized resident agent or official of the insurance company, an endorsement whereby the insurance or bonding company agrees:

~~In consideration of the premium stated in the policy to which this endorsement is attached, the company hereby agrees:~~

1. To waive the description of the motor vehicle to be insured thereunder and agrees to pay, within the limits of the policy, to any shipper or consignee for all direct physical loss of or physical damage to all property belonging to such shipper or consignee and coming into the possession of the insured in connection with its transportation services pursuant to a certificate of public convenience and necessity or permit

issued by the public service commission in accordance with the laws of North Dakota, for which loss or damage the insured may be held legally liable, regardless of whether the motor vehicles, terminals, warehouses, and other facilities used in connection with the transportation of the property hereby insured are specifically described in the policy or not. The liability of the company extends to such losses or damages whether occurring on the route or in the territory authorized to be served by the assured or elsewhere.

2. That no cancellation of the policy hereto-attached shall take effect unless fifteen days' written notice shall have first been given to the public service commission at its office in Bismarck, North Dakota; the fifteen days' written notice shall commence from the date such notice is actually received by the commission.

3. ~~That this endorsement is attached to and shall be deemed to be a part of Policy No., issued by Company to~~

{Name} {Address}

The insured may be required to reimburse the insurer for any payment the insurer would not have been obligated to make under the terms of the policy except for the provisions of the endorsement.

4. ~~That this endorsement shall become effective on the day of, 19....., at the hour of o'clock m., central standard time and shall be continuous until canceled.~~

{Signed}
{Proper officer of the insurance company}

Countersigned:

.....
{North Dakota agent}

.....
{Address}

History: Amended effective September 1, 1981.

General Authority
NDCC 49-18-08,
49-18-19;
49-18-34:1

Law Implemented
NDCC 49-18-33

χ 69-03-03-01. CLASS A CERTIFICATES. A fee of one hundred fifty dollars will be required for application for a class A certificate of public convenience and necessity. ~~In addition thereto a fee of fifteen dollars is required for the listing of each vehicle under a class A certificate. In no instance shall the total fee for a class A certificate of convenience and necessity be greater than one hundred fifty dollars.~~ For an extension or relocation of a class A certificate a fee of fifteen seventy-five dollars will be charged.

For the renewal of a class A certificate, a fee of thirty one hundred dollars will be required. ~~In addition thereto a fee of fifteen dollars will be required for the listing of each vehicle operated under a class A certificate. In no instance shall the total fee for the renewal of a class A certificate be greater than one hundred fifty dollars.~~

History: Amended effective September 1, 1981.

General Authority
NDCC 49-18-08

Law Implemented
NDCC 49-18-32

χ 69-03-03-02. SPECIAL CERTIFICATES. ~~Fees relating to special certificates of public convenience and necessity shall be the same as are prescribed by section 69-03-03-01 except that the fee for a special certificate shall be forty dollars; and twenty-five dollars for renewal thereof.~~ A fee of one hundred dollars will be required for application for a special certificate of public convenience and necessity. For an extension or relocation of a special certificate, a fee of fifty dollars will be charged.

For the renewal of a special certificate, a fee of seventy-five dollars will be required.

History: Amended effective September 1, 1981.

General Authority
NDCC 49-18-08

Law Implemented
NDCC 49-18-32

χ 69-03-03-03. CONTRACT PERMITS. ~~A fee of fifteen dollars will be required for a contract permit. In addition thereto a fee of fifteen dollars is required for the listing of each vehicle operated under a contract permit. In no instance shall the total fee for a contract permit be greater than one hundred fifty dollars.~~

~~For the renewal of a contract permit a fee of fifteen dollars will be required. In addition thereto a fee of fifteen dollars is required for the listing of each vehicle operated under a contract permit. In no~~

~~instance shall the total fee for the renewal of a contract permit be greater than one hundred fifty dollars.~~

A fee of seventy-five dollars will be required for application for a contract permit. For an extension of a contract permit, a fee of forty dollars will be charged.

For the renewal of a contract permit, a fee of fifty dollars will be required.

History: Amended effective September 1, 1981.

General Authority
NDCC 49-18-19

Law Implemented
NDCC 49-18-32

X 69-03-03-04. DUPLICATE CERTIFICATE OR PERMIT. Application for issuance of a duplicate certificate of public convenience and necessity, permit, or official receipt must be accompanied by ~~a fee of three dollars~~ and an affidavit of the owner thereof setting forth that the original has been lost or destroyed.

History: Amended effective September 1, 1981.

General Authority
NDCC 49-18-08,
49-18-19

Law Implemented
NDCC 49-18-32

X 69-03-04-01. CLASS A CARRIERS - TIME SCHEDULE. ~~Class A motor freight and passenger carriers operate over a fixed route on scheduled time.~~ At least one copy of the a class A carrier's time schedule shall be posted in a conspicuous place, easily accessible for public inspection, at each station or regular stopping place on the line of route, and a copy shall be in the possession of each operator or driver. Class A motor freight and passenger carriers must adhere to time schedules as filed with the commission and posted for the information of the public.

History: Amended effective September 1, 1981.

General Authority
NDCC 49-18-08

Law Implemented
NDCC 49-18-01,
49-18-08

X 69-03-04-04. CLASS A PASSENGER VEHICLE - ROUTE SIGN DISPLAYED.
Repealed effective September 1, 1981.

X 69-03-06-00.1. DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires:

1. "Authorized carrier" means a person or persons authorized to engage in the transportation of property or passengers as a common or contract carrier under the provisions of North Dakota Century Code chapter 49-18.
2. "Lease" means a contract or arrangement in which the owner grants the use of a vehicle, with or without driver, for a specified period for use in the transportation of property, in exchange for compensation.
3. "Lessee" means in a lease, the party acquiring the use of a vehicle with or without driver, from another.
4. "Lessor" means in a lease, the party granting the use of a vehicle, with or without driver, to another.
5. "Owner" means a person:
 - a. To whom title to a vehicle has been issued;
 - b. Who, without title, has the right to exclusive use of a vehicle for a period longer than thirty days; or
 - c. Who has lawful possession of a vehicle, registered and licensed in any state in the name of that person.
6. "Vehicle" means a self-propelled or motor driven vehicle, operated by a common or contract motor carrier and used in the transportation of property or passengers for hire.

History: Effective September 1, 1981.

General Authority
NDCC 49-18-08,
49-18-19

Law Implemented
NDCC 49-18-08,
49-18-19

X 69-03-06-01. LEASE REQUIREMENTS. Repealed effective September 1, 1981.

X 69-03-06-01.1. GENERAL LEASE REQUIREMENTS. Other than under the exceptions as set forth in section 69-03-06-03, the authorized carrier

may perform transportation with a vehicle it does not own only under the following conditions:

1. LEASE. There shall be a written lease granting the use of the vehicle and meeting the requirements contained in section 69-03-06-01.1.
2. COMMISSION APPROVAL. Three copies of the lease must be filed with the commission. No lease will be valid unless expressly approved by the motor carrier division of the public service commission.
3. INSURANCE. Every vehicle subject to a lease shall be covered by insurance in amounts not less than those prescribed in chapter 69-03-02, evidence of which must be filed with the commission.
4. LEASE CARRIED IN VEHICLE. A copy of the lease evidencing commission approval must be carried in the leased vehicle at all times.
5. IDENTIFICATION. During the period of the lease there shall be displayed on both sides of each vehicle, identification signs showing the name, or trade name, of the motor carrier under whose authority the vehicle is being operated, and the carrier's address. The identification signs shall be readably legible, during daylight hours, from a distance of fifty feet [15.24 meters] while the vehicle is not in motion, and such signs maintained as to remain so legible.
6. OPERATION RECORDS. An authorized carrier leasing a vehicle pursuant to this chapter shall be prepared at any time it seeks to change its rates and charges, to submit evidence of the cost of operating the vehicle while leased to the carrier over the most recent twelve-month period.

History: Effective September 1, 1981.

General Authority
NDCC 49-18-08,
49-18-19

Law Implemented
NDCC 49-18-08,
49-18-19

x 69-03-06-01.2. WRITTEN LEASE REQUIREMENTS. The written lease required under section 69-03-06-01.1 shall contain the following provisions:

1. PARTIES. The lease shall be made between the authorized carrier and the owner of the vehicle. The lease shall be signed by these parties or by their authorized representatives.

2. DURATION TO BE SPECIFIC. The lease shall specify the time and date or the circumstances on which the lease begins and ends.
3. MINIMUM DURATION. The period for which the lease applies shall be for thirty days or more.
4. EXCLUSIVE POSSESSION AND RESPONSIBILITIES. The lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the vehicle for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the vehicle for the duration of the lease.
5. COMPENSATION TO BE SPECIFIC. The amount to be paid by the authorized carrier for the vehicle and drivers' services shall be clearly stated on the face of the lease or in an addendum which is attached to the lease. The amount to be paid may be expressed as a percentage of gross revenue, a flat rate per mile [1.61 kilometers], a variable rate depending on the direction traveled or the type of commodity transported, or by any other method of compensation mutually agreed upon by the parties to the lease. The compensation stated on the lease or in the attached addendum may apply to the vehicle and drivers' services either separately or as a combined amount.
6. ITEMS SPECIFIC IN LEASE. The lease shall clearly specify the responsibility of each party with respect to the cost of fuel, fuel taxes, empty mileage, permits of all types, detention and accessorial services, base plates and licenses, and any unused portions of such items.
7. LESSEE RESPONSIBLE. The lessee, under the terms of the lease, must be responsible for all claims for damages or otherwise arising out of the use of the vehicle and for the lawful operation thereof.
8. INSURANCE. The lease shall clearly specify the obligation of the authorized carrier to maintain insurance coverage for the protection of the public and shippers pursuant to chapter 69-03-02. The lease shall further specify who is responsible for providing any other insurance coverage for the operation of the lease vehicle.

History: Effective September 1, 1981.

General Authority
NDCC 49-18-08,
49-18-19

Law Implemented
NDCC 49-18-08,
49-18-19

X 69-03-06-02. LEASED EQUIPMENT RECORDS. Repealed effective September 1, 1981.

X 69-03-06-03. LEASE REQUIREMENTS - APPLICABILITY EXEMPTIONS. Section 69-03-06-01 shall not apply to The provisions of this chapter shall not apply to:

1. ~~Equipment leased by one class A common carrier to another class A carrier.~~
2. Equipment leased by an authorized carrier from an individual or corporation whose business is the leasing of equipment without drivers for compensation.
- 3- 2. Equipment used in transportation performed wholly within a city in this state or such distance beyond the corporate limits of a city as the commission may determine commercial zone in the state as determined by the commission.
- 4- ~~Equipment leased by one special carrier to another special carrier and operated between points which both the lessee and the lesser are authorized to serve.~~
- 5- 3. Equipment leased for use in an emergency, with or without drivers, but only for the period of the emergency. A full description of the circumstances considered as meeting the definition of an emergency, the reason equipment was leased or rented not in accordance with this chapter, and a complete description of the equipment and name or names of drivers must be filed with the commission.
- 6- 4. Equipment used in transportation performed pursuant to any plan of operation specifically approved by the commission.

History: Amended effective September 1, 1981.

General Authority
NDCC 49-18-08,
49-18-19

Law Implemented
NDCC 49-18-08,
49-18-19

X 69-03-10-06. DRIVER'S DAILY LOG.

1. LOG ENTRIES. Except as provided in subsection 20, every motor carrier shall require that a driver's daily log shall be made in duplicate by every driver used by the motor carrier and every driver who operated a motor vehicle shall make such a

log. Failure to make logs, failure to make required entries therein, falsification of entries, or failure to preserve logs shall make both the driver and the carrier liable to prosecution. Driver's logs shall be prepared and retained in accordance with the provisions of subsections 2 through 19.

2. ENTRIES TO BE CURRENT. Drivers shall keep the log current to the time of the last change of duty status.
3. ENTRIES MADE BY DRIVER ONLY. Except that the name and principal place of business address of the carrier may be printed, all entries shall be made by the driver in the driver's own handwriting.
4. DATE. The month, day and year for each calendar day on or off duty shall be entered.
5. TOTAL MILEAGE. Total mileage entered shall be that mileage traveled while driving on duty but not driving, and resting in a sleeper berth during the day covered by the log. Mileage while driving shall be shown separately.
6. VEHICLE IDENTIFICATION. The carrier's vehicle number or numbers or the state and license number or numbers of each vehicle or unit of a combination operated during the calendar day shall be entered.
7. NAME OF CARRIER. The name or names of the carrier or carriers shall be that or those for which duty is performed. When work is performed for more than one carrier on the same calendar day, the beginning and finishing time, showing a.m. or p.m., worked for each carrier shall be shown after each carrier name. Drivers of leased vehicles shall show the name of the carrier performing the transportation.
8. DRIVER'S SIGNATURE. The driver shall certify to the correctness of the log by signing the driver's first name and last name in full and the driver's middle name or middle initial, if any. Below the driver's signature the driver shall list the initials and last name of each codriver.
9. HOME TERMINAL. The driver's home terminal address shown shall be that at which the driver normally reports for duty.
10. TIME BASE TO BE USED. The log shall be prepared, maintained, and submitted, using the time standard in effect at the driver's home terminal, for a twenty-four-hour calendar day beginning at midnight. However, if written notification is given by a carrier to the director of the motor carrier division for the district in which the carrier's principal office is located, drivers of any named terminal or terminals of the carrier may prepare logs for a twenty-four-hour period beginning at noon of one day and ending at noon of the next

succeeding day. For drivers preparing logs on a noon-to-noon basis, the term seven or eight consecutive days means the period of seven or eight consecutive days beginning at 12:01 p.m. on any day.

11. LINE 1. OFF DUTY. Except for time spent resting in a sleeper berth, a continuous line shall be drawn between the appropriate time markers to record the period or periods of time when the driver is not on duty, not required to be in readiness to work, or is not under any responsibility for performing work.
12. LINE 2. SLEEPER BERTH. A continuous line shall be drawn between the appropriate time markers to record the period or periods of time off duty resting in a sleeper berth.
13. LINE 3. DRIVING. A continuous line shall be drawn between the appropriate time markers to record the period or periods of time on duty driving a motor vehicle.
14. LINE 4. ON DUTY NOT DRIVING. A continuous line shall be drawn between the appropriate time markers to record the period or periods of time on duty not driving specified in subdivisions a, b, d, e, f, g, and h of subsection 3 of section 69-03-10-02 or any other time on duty but not driving as defined in subsection 3 of section 69-03-10-02 and section 69-03-10-05.
15. REMARKS. The appropriate time marker and the name of the city, with state abbreviation, or place at or near which each change of duty occurs, shall be recorded, such as the place of reporting for work, starting to drive, on duty not driving, and where released from work. Explain the reason resulting in hours exceeding those permitted by section 69-03-10-03. Show the transportation performed each day by entering a shipping document number or numbers, or name of a shipper and commodity.
16. TOTAL HOURS. The total hours in each duty status: off duty other than in a sleeper berth; off duty in a sleeper berth; driving; and on duty not driving shall be entered, the total of which entries shall equal twenty-four hours.
17. ORIGIN AND DESTINATION. The name of the place where a trip begins and the final destination or farthest turn around point shall be shown at the bottom of the log. If the trip requires more than one calendar day, the log for each day shall show the origin and final destination. If a driver departs from and returns to the same place any day, the destination shall be indicated by entering the farthest point reached followed by the words "and return".

18. FILING DRIVER'S LOG. The driver shall forward each day the original log to the driver's home terminal or to the motor carrier's principal place of business. When the services of a driver are used by more than one carrier during any calendar day, the driver shall furnish each such carrier a copy of the log containing full and complete entries including: the entry of all duty time for the entire day; the name of each such carrier served by the driver that day and the beginning and finishing time, showing a.m. or p.m., worked for each carrier. Motor carriers when using a driver for the first time or intermittently shall obtain from the driver a signed statement giving the total time on duty during the immediately preceding seven days and time at which such driver was last relieved from duty prior to beginning work for such carrier.
19. PRESERVATION OF DRIVER'S LOG. Daily logs for each calendar month may be retained at the driver's home terminal until the twentieth day of the succeeding calendar month and shall then be forwarded to the carrier's principal place of business where they shall be retained for twelve months from date of receipt. However, a motor carrier may upon written request to and upon receiving consent from the director of the motor carrier division, forward and retain such logs at such regional or terminal offices as are proposed by the carrier and approved by the director. The driver shall retain a copy of each daily log for thirty days and all logs for the preceding thirty days which shall be in the driver's possession while on duty.
20. DRIVER'S LOG - WHEN NOT REQUIRED. The requirements of this section shall not apply to any of the following:
 - a. Any regularly employed driver who drives wholly within a radius of ~~fifty~~ one hundred miles [~~80.47~~ 160.94 kilometers] of the garage or terminal at which the driver reports for work provided, that the motor carrier employing such driver maintains and retains for a period of one year accurate and true records showing the total number of hours the driver is on duty per day and the time at which the driver reports for and is released from duty each day.
 - b. Drivers of motor vehicles having not more than two axles and whose gross weight does not exceed ten thousand pounds [4,535.92 kilograms], unless such vehicle is used to transport passengers or explosives or other dangerous articles of such type and in quantity as to require the vehicle to be specifically marked or placarded, or when operated without cargo under conditions which require the vehicle to be so marked or placarded under the cited regulations.

~~e.--Agricultural-carriers-~~

History: Amended effective September 1, 1981.

General Authority
NDCC 49-18-46

Law Implemented
NDCC 49-18-46

X 69-03-11-10. FORM AND EXECUTION OF APPLICATION FOR IDENTIFICATION STAMPS. The application for the issuance of such identification stamps shall be in the form prescribed by the commission. The application shall be completed and executed by an official of the motor carrier, and shall be accompanied by a nonrefundable fee of ~~two~~ five dollars and ~~fifty--cents~~ for the issuance of each such identification stamp. However, the fee for a motor carrier domiciled in North Dakota shall be a nonrefundable fee of ~~one-dollar~~ two dollars.

History: Amended effective September 1, 1981.

General Authority
NDCC 49-18-08,
49-18-19

Law Implemented
NDCC 49-18-05,
49-18-08,
49-18-19,
49 USC 302(b),
49 CFR 1023

JANUARY 1982

X 69-06-01-02. PROCEDURE FOR PUBLIC HEARINGS.

1. GENERAL HEARINGS. A general hearing shall be held prior to the adoption of, or a substantial or material modification to, the criteria, a substantial or material modification or addition to these rules, and the revocation or suspension of a certificate or permit. Notice of a general hearing shall be given by the commission at least twenty days prior to the hearing by publication in the official newspaper of the county where the hearing will be held, in the official newspaper of all counties in which any part of an affected facility is located, and if it is a hearing on the adoption of, or a substantial or material modification or addition to, the criteria or these rules, in all of the state daily newspapers.
2. APPLICATION HEARINGS. One or more public hearings shall be held on an application for a certificate or a permit in each county in which any part of the site, corridor, or route is proposed to be located; provided, that the commission by order may consolidate the county hearings. The notice of a hearing on an application for a certificate of corridor compatibility for a transmission facility shall include a map of the appropriate county depicting the proposed corridor and study area. The notice of a hearing on an application for a route permit shall include a map of the appropriate county depicting the designated corridor and the location of the proposed route and any alternative routes. The maps shall be of a size, style, and legend as specified by the commission. Notice of each hearing shall be given by the commission at least twenty days prior to the hearing, as follows:
 - a. By publication in the official newspaper of each county in which any part of the site, corridor, or route is proposed to be located, whether the hearings are consolidated or not, and in such other newspapers that the commission may determine to be appropriate.
 - b. By mail to the following persons in each county in which any part of the site, corridor, or route is proposed to be located:
 - (1) The chairman of the board of county commissioners.
 - (2) The county auditor.
 - (3) The chief executive officer of each city in the county on an application for a certificate for an energy conversion facility.

(4) The chief executive officer of each city within a corridor on an application for a certificate or permit for a transmission facility.

c. By mail to any state or federal agency authorized to issue a permit required for the construction or operation of the facility.

d. By mail to all parties.

e. By mail to the state senators and representatives of each legislative district in which any part of the site, corridor, or route is proposed to be located.

f. By publication as provided in subdivision a on each city in the county outside of the proposed corridor.

3. TRANSFER AND WAIVER HEARINGS. The commission, upon determination that an application for the transfer of a certificate or permit or an application for a waiver of procedures and time schedules is complete, shall publish a notice of opportunity for a public hearing, or upon its own motion shall publish a notice of hearing, in the official newspaper of each county in which any part of the site, corridor, or route is located or proposed to be located. A public hearing shall be held on an application if, either within twenty days following the publication of a notice of opportunity any interested person requests and demonstrates good cause for a public hearing, or the commission determines upon its own motion that there is good cause for a public hearing. Notice of a public hearing shall be given by the commission at least twenty days prior to the hearing by publication in the official newspaper of each county in which the site, corridor, or route is located or proposed to be located.

History: Amended effective August 1, 1979; amended effective January 1, 1982.

General Authority
NDCC 49-22-18

Law Implemented
NDCC 49-22-13

λ 69-06-08-02. TRANSMISSION FACILITY CORRIDOR AND ROUTE CRITERIA. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point shall such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

1. EXCLUSION AREAS. The following geographical areas shall be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area shall be included. Natural screening may be considered in determining the width of the buffer zone.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.
 - b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.
 - c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.
 - d. Areas critical to the lifestages of threatened or endangered animal or plant species.
 - e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.

2. AVOIDANCE AREAS. The following geographical areas shall not be considered in the routing of a transmission facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. Economic considerations alone shall not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area shall be included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.
 - a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.
 - ~~c. Woodlands and wooded areas.~~
 - d- c. Historical resources which are not specifically designated as exclusion or avoidance areas.

- e- d. Areas which are geologically unstable.
 - f- e. Within five hundred feet [152.4 meters] of a farmhouse, rural residence, or place of business. This criterion shall not apply to a water pipeline transmission facility.
 - g- f. Reservoirs and municipal water supplies.
 - h- g. Water sources for organized rural water districts.
 - i- h. Irrigated land. This criterion shall not apply to an underground transmission facility.
 - j- i. Areas of recreational significance which are not designated as exclusion areas.
3. SELECTION CRITERIA. A corridor or route shall be designated only when it is demonstrated to the commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum.
- a. The impact upon agriculture:
 - (1) Agricultural production.
 - (2) Family farms and ranches.
 - (3) Land which the owner can demonstrate has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
 - (4) Surface drainage patterns and ground water flow patterns.
 - b. The impact upon:
 - (1) Noise sensitive land uses.
 - (2) The visual effect on the adjacent area.
 - (3) Extractive and storage resources.
 - (4) Wetlands, woodlands, and wooded areas.
 - (5) Radio and television reception, and other communication or electronic control facilities.
 - (6) Human health and safety.

(7) Animal health and safety.

(8) Plant life.

4. POLICY CRITERIA. The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices.

a. Location and design.

b. Training and utilization of available labor in this state for the general and specialized skills required.

c. Economies of construction and operation.

d. Use of citizen coordinating committees.

e. A commitment of a portion of the transmitted product for use in this state.

f. Labor relations.

g. The coordination of facilities.

h. Monitoring of impacts.

i. Utilization of existing and proposed rights of way and corridors.

j. Other existing or proposed transmission facilities.

History: Amended effective August 1, 1979; amended effective January 1, 1982.

General Authority
NDCC 49-22-18

Law Implemented
NDCC 49-22-05.1

TITLE 70
Real Estate Commission

AUGUST 1981

X 70-02-01-02. APPLICATION FOR LICENSE.

1. No application for either a broker or salesman's license will be accepted from a person under the age of eighteen years.
2. All applications must be filed with the commission at least twenty days before an examination date complete in every detail and every question answered and correct fees sent with the application before the deadline date.
3. It shall be incumbent upon the applicant for a real estate broker's license to submit the applicant's proofs of qualification pursuant to subsection 2 of North Dakota Century Code section 43-23-08. Broker applicants wishing to qualify under the one-year experience requirement shall be required to submit to the commission a letter from said applicant's broker or brokers that the applicant has been actively engaged in the real estate business as a salesman for at least one year.

"Actively engaged" means that the applicant must have devoted the applicant's full time as a licensed real estate salesman. The foregoing shall be certified by a licensed real estate broker.
4. Each application for license shall be made on application forms provided by the real estate commission and are to be filled in personally by, or under the supervision of, the applicant.
5. After an application is filed and examination scheduled, no refund of application fee will be made to any applicant in the event of withdrawal.

6. The commission may deny any application for license when one or more of the following conditions are present:
 - a. The application contains any false statement.
 - b. An investigation fails to show affirmatively that the applicant possesses in every instance the necessary qualifications.
 - c. The applicant has acted or attempted to act in violation of North Dakota Century Code chapter 43-23 or this title.
 - d. The applicant has had a license suspended or revoked in another state.
 - e. The check used in paying an examination or license fee shall not, for any reason, be honored by the financial institution upon which it is written.
 - f. The applicant has a history of issuing bad checks or otherwise has a poor reputation for financial integrity.
7. If the application and supporting documents on their face show that the applicant is qualified, but from complaints and information received or from investigation it shall appear to the commission at any time before the initial license is delivered, that there may be cause to deny a license, the commission may order a hearing to be held to consider such complaints or information.
8. The commission may require such other proof as may be deemed advisable of the honesty, truthfulness, and good reputation of any applicant, including the officers and directors of any corporation, or the members of any copartnership or association making such application, before accepting an application for license.
9. Inquiry and investigation may be made by the commission as to the financial responsibility of each applicant.
10. When a corporation submits its application for a broker's license, the application must be accompanied by a copy of the articles of incorporation and a certificate of authority issued by the secretary of state.
11. When a partnership submits its application for a broker's license, the application must be accompanied by a copy of the partnership agreement.

~~12--A--partnership,--association,--or--corporation--shall--be--granted--a--license--providing--that--all--of--the--members--of--any--such--partnership--or--association--or--all--of--the--officers--of--any--such--corporation--who--intend--to--engage--in--or--actually--engage--in--the--real--estate--business--themselves--are--duly--licensed--as--real--estate--brokers--~~

History: Amended effective August 1, 1981.

General Authority
NDCC 43-23-11.1(3)

Law Implemented
NDCC 43-23-05,
43-23-08,
43-23-09,
43-23-11

X 70-02-01-15. TRUST ACCOUNT REQUIREMENTS - HANDLING OF FUNDS - RECORDS.

1. All moneys belonging to others and accepted by the broker while acting in the capacity as a broker shall be deposited in a federally insured ~~bank--or--other--recognized--depository~~ financial institution in this state in an account separate from money belonging to the broker. Clients' funds shall be retained in ~~this--bank--account~~ the depository until the transaction involved is consummated or terminated, at which time the broker shall account for the full amounts received.
 - a. Name of account. The name of such separate account shall be identified by the words "trust account" or "escrow account".
 - b. Notification. Each broker shall notify the commission of the name of the ~~bank--or--banks~~ institution in which the trust account or accounts are maintained and also the name of the accounts on forms provided therefore. A trust account card shall be filed with the commission by each new applicant for a real estate broker's license. A new form shall be filed with the commission each time a broker changes the real estate trust account in any manner whatsoever including, but not limited to, change of banks depository, change of account number, change of business name, and or change of method of doing business. The form shall be filed with the commission within ten days after the aforementioned change takes place.
 - c. Authorization. Each broker shall authorize the commission to examine and audit the trust account and shall complete an authorization form attesting to the trust account and consenting to the examination and audit of the account by a duly authorized representative of the commission.

- d. Commingling prohibited. Each broker shall only deposit trust funds received on real estate transactions in the broker's trust account and shall not commingle the broker's personal funds or other funds in the trust account with the exception that a broker may deposit and keep a sum not to exceed one hundred dollars in the account from the broker's personal funds which sum shall be specifically identified and deposited to cover bank service charges relating to the trust account.
- e. Number of accounts. A broker may maintain more than one trust account provided the commission is advised of the account.
- f. Time of deposit. Each broker shall deposit all real estate trust money received by the broker or the broker's salesmen in the ~~broker's~~ trust account ~~registered with the commission~~ within twenty-four hours of receipt of the money by the broker or the salesman unless otherwise provided in the purchase contract. In the event the trust money is received on a day prior to a holiday or other day the bank depository is closed, the money shall then be deposited on the next business day of the bank depository.
- g. Responsibility. When a broker is registered in the office of the real estate commission as in the employ of another broker, the responsibility for the maintenance of a separate account shall be the responsibility of the employing broker.
- h. Interest-bearing accounts. Trust deposits may also be made in an interest-bearing account in a federally insured bank, trust company, savings and loan association, or credit union, if all persons having an interest in the funds have so agreed to the deposit in writing and a copy of the agreement is maintained by the broker for inspection by the commission. All requirements of this section with respect to trust accounts, including but not limited to identification of the account, authorization to audit, prohibition of commingling, time within which funds must be deposited and responsibility of the broker for the deposit shall apply to interest-bearing accounts; provided, that it shall not be necessary that trust account cards be filed with the commission for each interest-bearing deposit or when such account is terminated or redeposited. All records relating to the interest-bearing deposit shall be maintained on file by the broker and open to inspection by the commission for examination and audit.

- 2. Brokers are responsible at all times for deposits and earnest money accepted by them or their salesmen.

- a. Personal payments. No payments of personal indebtedness of the broker shall be made from the separate account other than a withdrawal of earned commissions payable to the broker or withdrawals made on behalf of the beneficiaries of the separate account.
 - b. Withdrawals. Money held in the separate account which is due and payable to the broker should be withdrawn promptly.
 - c. Earnest money. A broker shall not be entitled to any part of the earnest money or other moneys paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated. The earnest money contract shall include a provision for division of moneys taken in earnest, when the transaction is not consummated and such moneys retained as forfeiture payment.
3. A broker shall maintain in the broker's office a complete record of all moneys received or escrowed on real estate transactions, in the following manner:
- a. Bank deposit slips. A bank deposit slip showing the date of deposit, amount, source of the money, and where deposited.
 - b. Bank statements. Monthly bank statements are to be retained and kept on file.
 - c. Trust account checks. Trust account checks should be numbered and all voided checks retained. The checks should denote the broker's business name, address, and should be designated as "real estate trust account".
 - d. Journal. A permanently bound record book called a journal which shows the chronological sequence in which funds are received and disbursed:
 - (1) For funds received, the journal must include the date, the name of the party who is giving the money, the name of the principal, and the amount.
 - (2) For disbursements, the journal must include the date, the payee, and the amount.
 - (3) A running balance must be shown after each entry (receipt or disbursement).
 - e. Ledger. This record book will show the receipt and the disbursements as they affect a single, particular transaction as between buyer and seller, etc. The ledger must include the names of both parties to a transaction,

the dates and the amounts received. When disbursing funds, the date, payee, and amount must be shown.

- f. Reconciliation. The trust account must be reconciled monthly except in the case where there had been no activity during that month.
- g. Maintain records. Every broker shall keep permanent records of all funds and property of others received by the broker for not less than six years from date of receipt of any such funds or property.

History: Amended effective August 1, 1981.

General Authority
NDCC 43-23-11.1(3)

Law Implemented
NDCC 43-23-11.1(1)

X70-02-03-09. DOUBLE---CONTRACTS USE OF FALSE OR MISLEADING DOCUMENTS. Any broker or salesman licensed by the commission who uses, proposes the use of, agrees to the use of, or knowingly permits the use of two-or-more-contracts any contract of sale or, earnest money agreements---or agreement, loan applications;---one-of application, mortgage, note, or other document, which is not made known to the prospective lender or the loan guarantor, to enable the purchaser to obtain a larger loan than the true sales price would allow, or to enable the purchaser to qualify for a loan which the purchaser otherwise could not obtain, shall be deemed to have engaged in a flagrant course of misconduct and---this---conduct---will---be---considered---as---constituting dishonorable-or-dishonest-dealing;---Any-licensee-found-by-the-commission to---have---engaged-in-conduct-defined-in-this-section-shall-be-subject-to disciplinary-action-by-the-commission;---which---action---may---include permitting suspension or revocation of the licensee's broker's or salesman's license as a broker or salesman.

History: Amended effective August 1, 1981.

General Authority
NDCC 43-23-11.1(1)

Law Implemented
NDCC 43-23-11.1(1)

STAFF COMMENT: Chapter 70-02-04 is all new material but is not underscored to improve readability.

CHAPTER 70-02-04
CONTINUING EDUCATION

Section	
70-02-04-01	"Continuing Education" Defined
70-02-04-02	Hours Required
70-02-04-03	"Hour" Defined
70-02-04-04	Exceptions and Extensions
70-02-04-05	Nonqualifying Courses
70-02-04-06	Criteria for Course Approval
70-02-04-07	Application for Approval of Course Offerings
70-02-04-08	Filing Deadline for Course Approvals
70-02-04-09	Application for Post Course Approval
70-02-04-10	Material Change
70-02-04-11	Suspension, Revocation, or Denial of Course Approval
70-02-04-12	Correspondence Programs
70-02-04-13	Substantively Identical Offerings
70-02-04-14	Maximum Hour of Accreditation Per Day
70-02-04-15	Exemptions From Continuing Education Requirement
70-02-04-16	Service as a Lecturer, Discussion Leader, or Speaker
70-02-04-17	Responsibilities of Program Sponsors
70-02-04-18	Facilities
70-02-04-19	Certificate of Accreditation
70-02-04-20	Inspections
70-02-04-21	Continuing Education Certificate of Attendance

70-02-04-01. "CONTINUING EDUCATION" DEFINED. As used in this chapter, "continuing education", unless the context otherwise requires, means accredited educational experience derived from participation in approved lectures, seminars, and correspondence courses in areas related to real estate, which has been approved by the commission, to maintain and improve the professional skills and upgrade the standard of all real estate licensees.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-02. HOURS REQUIRED. To qualify for the renewal of a real estate license, each broker or salesman must complete twenty-four hours of continuing education before January 1, 1984, and every three years thereafter.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-03. "HOUR" DEFINED. An "hour" of continuing education means a clock hour. A clock hour may be a fifty-minute hour.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-04. EXCEPTIONS AND EXTENSIONS. The commission may make exceptions and grant extensions for continuing education as follows:

1. For reasons of health, military service, or other good cause if adequate proof is provided to the commission; and
2. A nonresident licensee may be exempted from the continuing education requirements if the licensee meets the real estate licensing requirements in the state of the licensee's residence.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-05. NONQUALIFYING COURSES. The following course offerings will not be considered as qualifying for continuing education purposes:

1. "Cram courses" for examinations.
2. Offerings in mechanical office and business skills such as typing, speed reading, memory improvement, language, and report writing.

3. Sales promotion or other meetings held in conjunction with the general business of the attendee or the attendee's employer.
4. Time devoted to breakfast, luncheons, or dinners.
5. Any course certified by the use of a challenge examination. All students must complete the required number of classroom hours in order to receive certification.

The listing of the above offerings does not limit the commission's authority to disapprove any application which fails to meet the standards for course approval.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-06. CRITERIA FOR COURSE APPROVAL. The commission may approve any course, seminar, conference, correspondence course, or equivalent that is provided by the commission, a public or private school, organization, association, person, corporation, society, or similar organization. The commission, when acting on an application for approval of a course offering, will consider, but not be limited to, the following criteria:

1. Course offerings will be eligible for approval only if the total instruction time of the offering is three hours or more.
2. A school shall certify to the best of its knowledge the attendance of each student at the offering. The school's criteria for measuring attendance shall be submitted in the application for course approval on a form prescribed by the commission.
3. The school shall maintain, for a minimum of three years, records of students successfully completing any course offering.
4. Credit will be earned on the basis of attendance, or in the case of correspondence courses, completion of the course.
5. Each course of study shall have a coordinator or administrator supervising the program. The coordinator shall be qualified, either through previous education or experience, to administer a real estate course of study, to evaluate course content and instructors, and to analyze examinations.
6. All instructors in a real estate course of study shall file with the commission credentials showing the necessary

specialized preparation, training, and experience to ensure competent instruction. Approval of each instructor will be on an individual basis, and approval must be obtained from the commission prior to the instructor's lecture in an approved course of study. Instructors, lecturers, seminar leaders, and others who present a continuing education requirement course offering must meet at least one of the following qualifications:

- a. A bachelor's degree in the field in which the person is to teach.
- b. A valid teaching credential or certificate from North Dakota or another state authorizing the holder to teach in the field of instruction being offered.
- c. Five years' full-time experience in a profession, trade, or technical occupation in the applicable field.
- d. Any combination of at least five years of full-time applicable field and college level education.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-07. APPLICATION FOR APPROVAL OF COURSE OFFERINGS. A school shall apply for approval of course offerings on a form prescribed by the commission. The application form shall include, but not be limited to, the following information and enclosures:

1. The name, address, and telephone number of the school.
2. The title of the course offering.
3. A complete description or copies of all materials to be distributed to the participants.
4. The date and exact location of each presentation of the course offering.
5. The duration and time of course offering.
6. A comprehensive, detailed outline of the subject matter together with the time sequence of each segment, faculty for each segment, and teaching technique used in each segment.
7. A sample of any proposed advertising used for promotional purposes.

8. The method of evaluation of the program.
9. The procedure for measuring attendance.
10. A description of the faculty, including name, professional background, and practical or teaching experience. A complete resume may be furnished.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-08. FILING DEADLINE FOR COURSE APPROVALS. Application for course approvals must be filed thirty days preceding the proposed public offering.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-09. APPLICATION FOR POST COURSE APPROVAL. A school may seek approval of a course subsequent to a course offering by submitting all information requested on the commission's application forms.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-10. MATERIAL CHANGE. The school's coordinator or instructor of each approved real estate offering shall promptly notify the commission of any material changes contained in the application for approval or attached exhibits. Changes shall be deemed acceptable to the commission if no action has been taken after fourteen days from the date received by the commission.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-11. SUSPENSION, REVOCATION, OR DENIAL OF COURSE APPROVAL. The commission may deny, suspend, or revoke approval of a real estate course offering, coordinator, or instructor if it is determined that it is not in compliance with the statute or rules and regulations. If disciplinary action is taken a written order of suspension, revocation, or denial of approval will be issued.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-12. CORRESPONDENCE PROGRAMS. The amount of credit to be allowed for correspondence programs shall be recommended by the program sponsor based upon the average completion time calculated by the sponsor after it has conducted "field tests". Although the program sponsor must make recommendations concerning the number of credit hours that should be granted, the number of credit hours that will be granted shall be determined by the commission.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-13. SUBSTANTIVELY IDENTICAL OFFERINGS. Courses may not be taken for continuing education more than once during any three-year period, unless material has been significantly changed, or updated, or both.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-14. MAXIMUM HOURS OF ACCREDITATION PER DAY. The commission will allow a maximum of eight hours of accreditation per day.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-15. EXEMPTIONS FROM CONTINUING EDUCATION REQUIREMENT. Any salesman applicant, upon successful completion of the real estate licensing examination, shall be exempt from the twenty-four hour continuing education requirement for only the three-year period during which the applicant successfully completed such examination. Any broker applicant, upon successful completion of the real estate licensing examination, and the successful completion of a minimum of thirty classroom hours of prelicensing education earned within the same three-year period in which the applicant has written the licensing examination, shall be exempt from the twenty-four hour continuing education requirement only for such three-year period.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-16. SERVICE AS A LECTURER, DISCUSSION LEADER, OR SPEAKER. For those persons who serve as a lecturer, discussion leader, or speaker regarding a real estate continuing education program the commission will grant one hour credit for every hour of service as an instructor or speaker. Requests for credit must be accompanied by an outline of the instruction, discussion, or speech.

No credit shall be given for the teaching of a course which is the same or substantially the same as one taught for credit within the same three-year period.

The maximum credit given for service as a lecturer, discussion leader, or speaker will not exceed fifty percent of the continuing education requirement for any three-year period.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-17. RESPONSIBILITIES OF PROGRAM SPONSORS. In addition to other responsibilities imposed on program sponsors, they must comply with the following:

1. Disclose to prospective participants the prerequisites, course content, and number of continuing education hours in the program.

2. Selection and review of instructors. The program sponsor or coordinator has the obligation for selecting and assigning qualified instructors for the continuing education program. Sponsors are required to evaluate the performance of the instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors in the future.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-18. FACILITIES. Each course offering shall have classrooms, facilities, and personnel necessary to implement the offerings adequately.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-19. CERTIFICATE OF ACCREDITATION. A certificate of accreditation shall be granted for each course of study approved by the commission. This certificate shall remain valid for a three-year period at which time the course will be reviewed and, if approved, will continue valid for the next three-year period unless suspended or revoked.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-20. INSPECTIONS. By applying for the commission's approval of any course in real estate, the sponsor or coordinator agrees to permit periodic inspections and monitoring by the commission or its authorized representative for the purpose of evaluating facilities, course content, instructor performance, or any other relevant aspect

of the administration and conduct of such course.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

70-02-04-21. CONTINUING EDUCATION CERTIFICATE OF ATTENDANCE. All schools, seminars, and workshops shall provide an individual certificate of attendance to each licensee upon completion of the educational program or training session under the following conditions:

1. No certificate of attendance shall be issued to a licensee who is absent for more than ten percent of the classroom hours.
2. The certificate shall contain information as to the licensee's name, course title, date, location of course, number of approved credit hours, and signature of course sponsor or instructor.
3. The licensee shall retain the attendance certificate and attach it to the application for renewal of the licensee's license at the time of renewal. The licensee shall not submit the attendance certificates to the commission before the renewal application for 1984 and thereafter at the end of each three-year period. The responsibility for recordkeeping will remain with the licensee.
4. The North Dakota real estate commission shall not be required to maintain a list of licensees and their completed courses of education.

History: Effective August 1, 1981.

General Authority
NDCC 43-23-08.2

Law Implemented
NDCC 43-23-08.2

TITLE 73
Securities Commissioner

NOVEMBER 1981

λ 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. Except as otherwise provided under subdivision subdivisions c and d, if the number of offerees in connection with all offers of securities, whether of the same or of a different issue, in this state during a consecutive twelve-month period is three or fewer and if the conditions in 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. In addition to the waiver of the filing fee provided under subdivision a, the commissioner may also waive the filing fee in any other case where the commissioner determines that the time and effort involved in processing the application do not justify the imposition of the fee.
 - c. The waiver provided under subdivision a shall not apply where any person involved in the offering, either directly or indirectly, as promoter, issuer, underwriter, broker-dealer, salesman, investment adviser, partner, officer, director, manager, controlling shareholder, or in any similar capacity or position:
 - (1) Has been suspended, expelled, fined, barred, censured, or otherwise disciplined by any securities, insurance, banking, real estate, or commodities agency, jurisdiction, or organization; or been refused membership therein or withdrawn an application for such membership; or been refused or denied a license or registration or had one suspended or revoked by any such agency, jurisdiction, or organization or by any other business or profession; or has knowledge of being the subject of any investigation or proceeding by any such agency, jurisdiction, or organization or by any other business or profession.
 - (2) Has been the subject of or has been associated in any capacity with another person against whom a temporary restraining order, temporary or permanent injunction, cease and desist order, or similar order has been issued either by a court or by an administrative agency.

- (3) Has been arrested for, complained against, informed against, or indicted for, convicted of, or pleaded nolo contendere to any felony or misdemeanor, except minor traffic offenses.
- (4) Is now or has been a defendant or respondent in any litigation or proceeding alleging the violation of any securities, insurance, banking, real estate, or commodities law or regulation.
- (5) Has been associated with any firm, corporation, or association which has failed in business, made a compromise with creditors, filed or been declared bankrupt under any bankruptcy acts, or for which a trustee has been appointed under the Securities Investor Protection Act of 1970 [Pub. L. 91-598; 84 Stat. 1636; 15 U.S.C. 78aaa et seq.], as amended, or which has been liquidated under any other circumstances.
- (6) Has been suspended, expelled, fined, barred, censured, or otherwise disciplined by an employer in the securities, insurance, banking, real estate, or commodities industry; or in previous business connections or employment has been a subject of a major complaint or legal proceeding or has been discharged or requested to resign by an employer because of dishonest or unethical acts.

d. If the security is issued by a corporation engaged in the business of farming or ranching which is organized under and operated in compliance with North Dakota Century Code chapter 10-06, the permissible number of offerees in this state during a consecutive twelve-month period shall not exceed fifteen, and the conditions in subdivisions a, b, and c of subsection 9 of North Dakota Century Code section 10-04-06 and the application, approval, filing fee, and reporting requirements prescribed under this section are waived.

History: Amended effective August 1, 1980; amended effective July 1, 1981; amended effective November 1, 1981.

General Authority
NDCC 10-04-06(9)

Law Implemented
NDCC 10-04-06(9)

TITLE 74
Seed Commission

SEPTEMBER 1981

χ 74-02-01-01. SEED TESTING FEES - SAMPLE SIZE - FREE SEED TESTS.
 The definition of terms used in this section shall be the same as those defined in North Dakota Century Code section 4-09-01.

The free seed tests provided for in North Dakota Century Code section 4-09-08 shall apply only to seed samples received by the seed department laboratory before the first day of November of each fiscal year.

The following schedule of fees shall apply to tests on all samples of seed which are not eligible for free tests. All fees must accompany samples unless previous credit arrangements have been made.

	Germination Test	Seed Purity Test
Alfalfa	\$3-50 <u>4.50</u>	\$3-50 <u>5.00</u>
Bluegrass	3-50 <u>5.00</u>	4-00 <u>5.00</u>
<u>Bluestem</u>	<u>6.00</u>	<u>6.00</u>
Bromegrass	3-50 <u>5.00</u>	4-00 <u>5.00</u>
Buckwheat	3-00 <u>4.00</u>	3-00 <u>4.00</u>
Cereals	3-00 <u>4.00</u>	3-00 <u>4.00</u>
Clovers	3-50 <u>4.50</u>	3-50 <u>5.00</u>
Corn	3-00 <u>4.00</u>	3-00 <u>3.50</u>
<u>Edible beans</u>	<u>5.00</u>	<u>4.00</u>
Fescues	3-50 <u>5.00</u>	4-50 <u>5.50</u>
Flax	3-00 <u>4.00</u>	3-00 <u>4.00</u>
<u>Green needlegrass</u>	<u>6.00</u>	<u>4.00</u>
<u>Indiangrass</u>	<u>6.00</u>	<u>6.00</u>
Meadow foxtail	4-50 <u>7.00</u>	10-00 <u>12.00</u>
Millet	3-00 <u>4.00</u>	3-00 <u>4.00</u>
Mustard and rape	3-00 <u>4.00</u>	3-00 <u>4.00</u>
Orchardgrass	3-50 <u>5.00</u>	4-50 <u>5.00</u>

Peas (field)	3-00	<u>4.50</u>	3-00	<u>4.00</u>
Red top	3-50	<u>5.00</u>	4-50	<u>5.00</u>
Reed canarygrass	3-50	<u>4.50</u>	4-00	<u>5.00</u>
Ryegrass		<u>4.50</u>		<u>5.00</u>
Sideoats grama		<u>6.00</u>		<u>6.00</u>
Sorghum	3-00	<u>4.00</u>	3-00	<u>4.00</u>
Soybeans	3-50	<u>5.00</u>	3-00	<u>4.00</u>
Sudangrass	3-00	<u>4.00</u>	3-00	<u>4.00</u>
Sunflowers	3-50	<u>5.00</u>	3-00	<u>4.00</u>
Switchgrass		<u>6.00</u>		<u>5.00</u>
Timothy	3-60	<u>5.00</u>	3-60	<u>5.00</u>
Trefoil	3-50	<u>4.50</u>	3-50	<u>5.00</u>
Wheatgrass	4-50	<u>6.00</u>	4-50	<u>6.00</u>
Trees and shrubs	6-50	<u>7.00</u>	3-00	<u>3.50</u>
Vegetable seeds	3-50	<u>4.50</u>	3-00	<u>3.50</u>
Ryegrass	3-50		4-00	

Charge For Tests on Kinds of Seed Not Listed:

The fees for testing kinds of seeds not listed will be comparable to those listed for a similar kind of seed.

"Rush" service: \$2-00 \$2.50 per sample. Tests are made immediately upon receipt of sample.

Samples which require excessive time - screenings, lowgrade, dirty, or unusually difficult sample - \$5-00 \$8.00 per hour.

Mixtures:

Mixtures of two or more kinds of seeds shall carry a fee equal to the fees for testing each component in the mixture.

Examinations:

For noxious weeds - \$2.50

For mottled seed (sweet clover) - \$2.00

Size of sample:

The minimum weights of samples submitted for tests shall be as follows:

1. Seed purity tests:

- a. Two ounces [56.70 grams] of grass seed, white or alsike clover, or seeds of similar size.
- b. Five ounces [141.75 grams] of sweet clover, red clover, alfalfa, grasses, millet, rape, flax seed, or seeds of similar size.

c. One pound [553.59 grams] of cereals, soybeans, or seeds of similar size.

2. Germination tests:

The minimum size of samples for a germination test shall be at least eight hundred seeds for testing (send one cup of seed to ensure best results).

Samples of uncleaned seed:

A seed purity analysis will not be made on samples of uncleaned seed received for free testing.

Special tests:

Embryo test: To determine loose smut in barley - \$6-50 \$8.00

Tetrazolium test: To give a quick estimate of potential seed viability -

Cereals	\$7-50	<u>\$8.00</u>
<u>Other Seeds</u>		<u>\$10.00</u>

History: Amended effective September 1, 1981.

General Authority
NDCC 4-09-03,
4-09-08

Law Implemented
NDCC 4-09-08

DECEMBER 1981

x 74-04-01-01. APPLICATION-REQUIREMENTS-

1.--Seed-eligibility-

a.--North-Dakota-seed-stocks-

- {1}--The--lot--of--seed--potatoes--must--have--been--in--the certification--program--and--found--to--be--free--of diseases-
- {2}--The--lot--of--seed--has--to--have--been--winter--tested--and passed--the--department's--recertification--requirements-

b.--Seed-stocks-from-other-sources-

- {1}--The--lot--of--seed--must--be--of--the--foundation--or--approved classification-
- {2}--The--lot--of--seed--has--to--have--been--winter--tested--and passed--recertification--requirements-
- {3}--The--lot--of--seed--has--to--have--been--certified--by--the state--of--origin--to--be--free--of--bacterial--ring--rot; powdery--scab;--eumartii--wilt;--black--wart;--corky--ring spot;--tuber--moth;--parasitic--nematodes;--and--other injurious--pests-

2.--General-requirements-

- a.--All--potato--fields--on--the--farm--or--in--the--farming--operation must--be--eligible--and--entered--for--certification.--A--farming operation--means--all--potato--fields--in--the--operation--whether actually--grown--by--the--applicant--or--under--growing agreements--with--common--equipment--and--storages-
- b.--All--equipment--and--storages--in--the--potato--operation--must--be used--only--on--the--acreage--entered--for--certification-
- c.--Parts--of--fields--will--not--be--accepted--or--certified-
- d.--Tags--or--purchase--proof--must--accompany--the--application--to provide--sufficient--evidence--as--to--origin--and--quantity--of seed-
- e.--Seed--potatoes--entered--for--certification--will--be--grown--one hundred--feet--{30.48--meters}--from--uncertified--potatoes--with recommendation--of--strips--or--markers--between--seed--lots--and varieties-

3. ~~Seed--potato-classifications.--All seed potato lots will carry the classification so designated by the seed department.~~
 - a. ~~North-Dakota seed eligible for recertification.--seed that has been winter tested and eligible for recertification.~~
 - b. ~~Certified:----seed---potatoes---passing--field--and--grade inspections.~~
 - c. ~~Other classifications may be used when the seed department finds it necessary or advantageous.~~
4. ~~Seed--plots:---Seed--plots--are required in the development of tuber lines separate from regular fields.~~
5. ~~Equipment--and--storage:---Equipment and storage must be cleaned and disinfected at least once annually.~~
6. ~~Bacterial ring rot control:~~
 - a. ~~Any grower having ring rot in the grower's farming operation may not sell seed in the state for recertification during the current season.~~
 - b. ~~If the farming operation is found to be infected, all equipment and storages must be cleaned and disinfected.~~
 - c. ~~It is strongly recommended that an infected farming operation purchase all new seed.~~
 - d. ~~A farming operation found to be infected on three consecutive years shall be required to purchase all new seed, and clean and disinfect their operation under the supervision of the department before entering any seed for certification.~~

DEFINITIONS. As used in this chapter:

1. "Basic seed" means seed potatoes produced by means of meristem, stem cutting, or other techniques for increase by certified growers.
2. "Certification" is strictly limited to the act of endorsing that the potatoes have met the standards or requirements specified in this chapter for seed potatoes. Certification does not mean or constitute any warranty that the potatoes are merchantable, disease free, fit for a particular purpose or anything other than that the potato crop was inspected and that at the time of inspection did meet the standards set forth in this chapter.
3. "Damaged by dirt" means that the individual potato has more than fifty percent of its surface affected by light caked

dirt, or more than fifteen percent of its surface badly caked with dirt.

4. "Dry land type", as allowed for long varieties only, means not seriously misshapen.
5. "Except for shape", as allowed for long varieties only, means the potatoes may be seriously misshapen.
6. "Grade" refers to the tuber quality, condition, and size factors as specified in this chapter.
7. "Inspection" means visual examination or observation of sample plants or tubers.
8. "Latent diseases" means diseases not detectable by visual inspection.
9. "Lightly caked with dirt" means approximately one-eighth of an inch [3.18 millimeters] in depth.
10. "Seed potatoes" means Irish potato tubers to be used for planting.
11. "Seriously damaged by dirt" means a potato having caked dirt on more than one-half of the surface or an equivalent amount of dirt in excessively thick chunks on a lesser area.
12. "Tag" refers to the state seed department's official certification tag used to identify certified seed.
13. "Tolerance" means a permissible allowance for such factors as disease, grade defects, and varietal mixture.
14. "Virus tested" means tested for latent viruses by methods established by the state seed department.
15. "Zero tolerance" means that no amount is permissible. It does not mean that the seed is absolutely free of a disease or disease causing agent, grade defect, or varietal mixture, but that none was found during inspection.

History: Amended effective December 1, 1981.

General Authority
NDCC 4-10-03

Law Implemented
NDCC 4-10-04

X 74-04-01-02. APPLICATION-FEES-AND-RESTRICTIONS-

1.--Application-for-field-inspection-must-be-received-in-the-state seed-department,-university-station,-Fargo,-North-Dakota,-not later--than--June-twentieth.--There-is-a-twenty-five-cents-per acre-cash-penalty-for-later-applications:-

2.--Fees-and-all-due-accounts-must-accompany-the-applications:-

3.--Applications--are--subject-to-cancellation-in-the-case-of-crop failure-or-other-valid-reason-and-the-application--fee;--minus ten--dollars;--will-be-returned-if-the-request-reaches-the-seed department--before--the--inspector--arrives--in--the--general locality--of-the-field.--However;--in-such-a-case-the-crop-must be-plowed-under-or-destroyed-so-as-not-to--create--a--possible disease-hazard:-

4.--Separate--identification--forms--will--be--required-for-latent virus-testing:-

5.--Loss--by-drown-outs;--if-over-ten-percent-of-the-field;--will-be adjusted-during-the-first--inspection--only.---No--adjustments will-be-made-otherwise:-

6.--The-following-fees-are-applicable;-subject-to-change:-

a.--Field-inspections:--four-dollars-per-acre-{-40-hectare}:-

b.--Latent-virus-testing:-

{1}--Combination--of--XSM:--fifty--cents--per--acre--{-40 hectare}:-

{2}--Individual:--thirty-cents-per-acre-{-40-hectare}:-

c.--Late-penalty:--twenty-five-cents-per-acre-{-40-hectare}

d.--Grade-inspection:--four-and-one-half-cents-per-one-hundred pounds-{-45-36-kilograms}-and-one-dollar-per-certificate

e.--Final-certification

{1}--Tags:--two-and-one-half-cents:-

{2}--Bulk--shipment:--one--and--one-half--cents--per--one hundred-pounds-{-45-36-kilograms}:-

f.--Prompt--payment-of-all-fees-will-be-required-at-all-times:-

GENERAL REQUIREMENTS AND RESPONSIBILITIES.

1. Participation and responsibility.

a. Participation in this seed potato program is voluntary and may be withdrawn prior to the first inspection.

b. Responsibilities.

- (1) The inspections, approvals, certification, and production of these rules and regulations will be done by the state seed department.
- (2) The farming, sanitation practices, storing, and packing will be the grower's responsibility.

2. General requirements.

- a. Potatoes to be eligible for the program shall have been in a certification program and winter tested for eligibility.
- b. Fields will pass two or more inspections given by visual examination of a representative sample of the plants which method and size of sample will be determined by the state seed department.
- c. Fields passing inspection will be stored in a seed warehouse and sorted to grade at shipping time.
- d. Responsibility for the quality of work done in sorting the potatoes falls upon the grower or a thoroughly qualified agent authorized by the grower.
- e. Requirements for certification are not complete on any lot of eligible potatoes until properly tagged as described in this chapter and an official seed grade inspection certificate has been issued. Official seed grade inspections are compulsory.
- f. The official tags will be issued only on order or authorization from the grower. These tags are to be attached to the container at the time the potatoes are being graded or loaded for shipment so as to constitute an effective seal. Tags must not be applied to stock other than that indicated on the tags. Bulk shipments, truck or railcar, when thoroughly disinfected, may be considered the container.
- g. Resorting or regrading. If a lot of potatoes fails to meet certified seed grade requirement upon inspection, they are to be reconditioned to meet the requirement or the official tags must be removed.
- h. Reconditioning while in transit. In the case of any circumstance making it essential to recondition seed in transit, permission must be obtained from the state seed department.
- i. Latent virus testing. Serological testing for latent viruses shall be voluntary and a requirement for only

virus tested seed. Virus tested seed meeting established tolerances may be indicated on the tag.

j. Failure to comply with any of the requirements of this chapter may be cause for rejection or cancellation of the lot or the certification of any seed as seed potatoes.

3. Violations. The state law specifically states the use of the term "certified" or the term "registered" or any term or terms conveying a meaning substantially equivalent to the meaning of any said terms, either orally or in writing, printing, marking, or otherwise in reference to or in connection with or in advertising or characterizing or labeling seed potatoes or the containers thereof is prohibited, unless such potatoes shall have been duly inspected and certified pursuant to the provisions of the law. Any violation of this law and any person on conviction thereof, shall be fined not more than one hundred dollars and cost for first offense and not more than five hundred dollars and costs of prosecution for subsequent offenses.

History: Amended effective December 1, 1981.

General Authority
NDCC 4-10-03

Law Implemented
NDCC 4-10-04

X74-04-01-03. FIELD-INSPECTIONS-

- 1--At--least--three--field--inspections--will--be--performed--by--the--authorized--inspectors-
- 2--Only--inspections--will--be--done--to--ensure--freedom--from--disease--;--varietal--purity--;--soundness--;--and--identity--of--the--seed-
- 3--Appeal--inspection--of--rejected--fields--will--be--considered--provided--application--accompanied--with--the--ten--dollar--fee--is--made--within--three--days--after--rejection--;--and--provided--the--field--is--in--good--condition--for--inspection--and--no--additional--reguing--is--done--previous--to--reinspection--;--If--the--rejection--is--upheld--;--none--of--the--ten--dollar--fee--will--be--returned--;--If--it--is--reversed--;--all--of--the--ten--dollar--fee--will--be--refunded-
- 4--Varietal--mixture--tolerance--is--three--tenths--percent-

5--Disease-tolerances-

	Certified	
	First-Inspection-----	Second-and Subsequent Inspections
Spindle-tuber-----	0.1-percent-----	0.1-percent
Rugose,-crinkle-and severe-leaf-rolling mosaic-----	0.5-percent-----	0.3-percent
Leaf-roll-----	0.5-percent-----	0.3-percent
Total-serious-visible virus-----	0.8-percent-----	0.5-percent
Latent-virus-XSM-----	-----	2.0-percent
Mild-leaf-rolling-mosaic and-mild-mosaic-----	2.0-percent-----	1.0-percent
Rhizoetonia---judgment-of-inspector-prevails-in-each-case		
Black-leg-and-wilt-----	3.0-percent-----	1.0-percent
Bacterial-ring-rot-----	0.0-percent-----	0.0-percent

- 6--There will be no tolerance for such diseases or pests as black or potato wart, powdery scab, parasitic nematodes, tuber moths, eumartii wilt, corky ring spot, gangrene, pink rot, or other injurious pests.
- 7--Insect control must be maintained early and until the potato vines are killed or matured. Fields suffering undue insect injury may be disqualified for certification.
- 8--A grower will notify the inspector of spray material applied and date of application.
- 9--A grower must obtain approval from the inspector to roto beat or kill vines before final inspection.
- 10--Any condition such as excess weeds, hail injury, foreign plants, chemical damage, soil conditions, or insect damage that interfered with proper inspection may disqualify for certification.
- 11--Roguing is permitted and recommended in many cases but must be done before the inspector arrives in the field.
- 12--Presence of disease or conditions not mentioned in this section which may impair seed quality shall constitute cause for rejection or additional testing before final certification. Stocks which show an excessive percentage of total serious virus in official southern sample tests shall be considered ineligible for certification tags.

EXCLUSION OF WARRANTY AND LIMITATION OF REMEDY. Seed potatoes certified in accordance with this chapter have been field and grade inspected as specified in this chapter. The state seed department and the inspection service function and serve only in an official regulatory manner and do not relieve the grower or owner of the grower's or owner's responsibility. Neither the producer, the seller, the North Dakota seed commission, the seed commissioner, or the commissioner's employees make any warranty of any kind, express or implied, as to the quantity or quality of the crop produced from certified seed, including merchantability, fitness for a particular purpose, or absence of disease. The only representation is that the seed potatoes were produced, graded, packed, and inspected under the seed certification rules and regulations of the North Dakota state seed department.

History: Amended effective December 1, 1981.

General Authority
NDCC 4-10-03

Law Implemented
NDCC 4-10-04

X 74-04-01-04. STORAGE-REQUIREMENTS:

- 1---A---storage---to---be---eligible---must---have---been---cleaned---and
disinfected---prior---to---harvest---Storages---not---previously---used
for---certified---seed---must---be---inspected---by---the---seed---department:
- 2---Seed---potatoes---to---be---eligible---for---final---certification---tags---must
be---stored---in---a---warehouse---containing---only---potatoes---which---have
been---field---inspected---by---the---North---Dakota---seed---department:
Such---warehouses---may---contain---field---inspected---stocks---rejected
for---certification---for---causes---other---than---such---diseases---as---ring
rot:
- 3---Equipment---for---handling;---sorting;---or---grading---can---be---used---only
on---certified---stock---but---also---must---be---cleaned---and---disinfected:
- 4---Container---requirements---are---as---follows:
 - a---Graded---stocks---shall---be---placed---in---new---sacks---or---in---clean;
disinfected---crates---or---bulk---containers---which---are---tagged---or
marked---in---an---approved---manner---to---indicate---the---lot---contains
certified---seed---potatoes:
 - b---Brands---or---markings---must---feature---"North---Dakota"---as---the
production---area:
 - c---No---used---bags---may---be---brought---into---the---farming---operation:
- 5---Growers---upon---special---application---may---be---permitted---final
certification---on---eligible---stocks---in---approved---nearby---storages
outside---the---state:

6. Certified storages may be checked by an authorized inspector during the storage season.
7. Before tags will be issued for a lot of potatoes, a report will be given to the seed department stating the yield of each field entered for certification and the location of the storage.
8. A lot of seed potatoes eligible for final certification may be transferred to another party along with tags provided authorization is given by the seed department.
9. Each bin containing certified seed potatoes must be plainly labeled for certification with the growers name and address, hundredweight or bushels, variety, and field identification.

APPLICATION FEES AND RESTRICTIONS.

1. Application for field inspection must be received in the state seed department, university station, Fargo, North Dakota, not later than June twentieth. There is a twenty-five cent per acre [.40 hectare] cash penalty for later applications.
2. At least one-half the fees and all due accounts must accompany the applications.
3. Applications are subject to cancellation in the case of crop failure or other valid reason and the application fee, minus twenty-five dollars will be returned if the request reaches the state seed department before the inspector arrives in the general locality of the field. However, in such a case, the crop must be plowed under or destroyed so as not to create a possible disease hazard.
4. Separate application forms are required for latent virus testing.
5. Loss by drowm outs, if over twenty-five percent of the field, will be allowed after the first inspection only. No adjustments will be made thereafter.
6. Fees, which are subject to change, are:
 - a. Field inspection, ten dollars per acre [.40 hectare] including tags and bulk fees; minimum fee per farm, fifty dollars; and minimum fee per field, ten dollars.
 - b. Late penalty, twenty-five cents per acre [.40 hectare].
 - c. Latent virus testing - single virus test, thirty cents per acre [.40 hectare].

d. Grade inspection, five and one-half cents per hundredweight [45.36 kilograms].

7. Prompt payment of all fees will be required at all times.

History: Amended effective December 1, 1981.

General Authority
NDCC 4-10-03

Law Implemented
NDCC 4-10-04

X 74-04-01-05. ~~CERTIFICATION-REQUIREMENTS-AND-RESPONSIBILITIES-~~

1. ~~Requirements for certification are not complete on any lot of eligible potatoes until it is properly tagged as described in this chapter and an official certified seed grade inspection certificate has been issued.~~
2. ~~Responsibility for the quality of the work done in sorting falls upon the grower or a thoroughly qualified agent authorized by the grower.~~
3. ~~The grower or shipper and the official certification agency give no warranty, expressed or implied, as to the quantity or quality of the crop produced from certified seed or as to certified seed quality beyond the express representation that the seed potatoes were produced, graded, sacked, and inspected under seed certification rules and regulations of the North Dakota seed department. The official inspection service does not relieve the grower or owner from the grower's or owner's responsibility. The seed department and inspection service function and serve only in an official, regulatory manner.~~
4. ~~The official tags will be issued only on order or authorization of the growers. These tags are to be attached to containers at the time the potatoes are being graded or loaded for shipment, so as to constitute an effective seal. Tags must not be applied to stock other than that indicated on the tag. With bulk shipments the truck or car, when thoroughly disinfected, may be considered the container.~~
5. ~~State law specifically states the use of the term "certified" or the term "registered" or any term or terms conveying a meaning substantially equivalent to the meaning of any of these terms, either orally or in writing, printing, marking, or otherwise in reference to or in connection with or in advertising or characterizing or labeling seed potatoes or the containers thereof, unless such potatoes shall have been duly inspected and certified pursuant to the provisions of the law is a violation of law and any person on conviction thereof, shall be fined not more than one hundred dollars and costs for~~

first--offense,--and--not--more--than--five--hundred--dollars--and
costs--of--prosecution--for--subsequent--offenses-

- 6--Official--certified--seed--grade--inspections--are--compulsory--and
will--be--completed--only--after--the--potatoes--have--been--sorted-
This--will--be--done--at--loading--point--unless--it--is--impractical-
- 7--If--the--lot--of--potatoes--fails--to--meet--the--certified--seed--grade
requirements--upon--inspection,--the--potatoes--are--to--be
reconditioned--to--meet--the--requirements--or--the--official--tags
must--be--removed-
- 8--In--the--case--of--any--circumstances--making--it--essential--to
recondition--certified--seed--in--transit,--request--for--such--a
process--should--be--made--to--the--seed--department-
- 9--Precut--seed--may--be--shipped--providing--the--lot--is--eligible--for
final--certification,--however,--the--tag--will--indicate
identification--only--and--not--grade-

SEED POTATO FARM REQUIREMENTS.

1. All potato fields on the farm or in the farming operation must be eligible and entered for certification. A farming operation means all potato fields in the farming operation whether actually grown by the applicant or under growing agreements with common equipment and storages.
2. All equipment and storages in the potato operation must be used only on the acreage [hectarage] entered for certification.
3. Parts of fields will not be accepted or certified.
4. Seed potatoes entered for certification will be grown a minimum of one hundred feet [30.48 meters] from uncertified potatoes.
5. Seed potatoes will not be planted on ground that was cropped to potatoes the previous year, unless the ground is fumigated.
6. Strips or markers are recommended between seed lots and varieties.
7. Equipment and storages must be cleaned and disinfected at least once annually.

History: Amended effective December 1, 1981.

General Authority
NDCC 4-10-03

Law Implemented
NDCC 4-10-04

λ 74-04-01-06. OFFICIAL-NORTH-DAKOTA-SEED-POTATO-GRADES-

1--Blue--tag:---Blue--tag-North-Dakota-certified-seed-grade-shall consist-of-potatoes-of-one-variety;--in--new--sacks--or--clean containers;--which-are-tagged;--sealed;--or-marked-in-an-approved manner-to-indicate-that--they--are--an--officially--registered strain--and--have--passed-required-field-inspections;--and-have been-grown;--stored;--and-sorted-in-accordance-with-other--rules and--standards---established---by---the---North--Dakota--seed commissioner:--At-time-of-final-grade-inspection-the--potatoes are--fairly-well-shaped-(for-long-varieties-the-term-"dry-land type"-or-"except-for-shape"-may-be-permitted-when-so--marked); not--more--than--moderately--shriveled;--free--from--freezing; blackheart;--soft--rot--or--wet--breakdown;--late--blight;--or bacterial--ring--rot;--free-from-damage-caused-by-dirt-or-other foreign-matter;--sprouting;--or-mechanical-or-other--means;--and free--from--serious-damage-caused-by-hollow-heart;--sunburn;--or internal-discoloration:

Unless--otherwise--specified;--size--requirements--shall-be-as follows:--For-round-or-intermediate-shaped-varieties;--one--and seven-eighths--inches--{47.63--millimeters}-in-diameter-to-not more-than-twelve-ounces--{340.19-grams}-in-weight:---For--long varieties;--one-and-three-fourths-inches--{44.45-millimeters}-in diameter-to-not-more-than-fourteen-ounces--{396.89--grams}-in weight:

For-all-varieties-size-B-shall-be-from-one-and-one-half-inches {38.1-millimeters}-to-not-more-than-two-and-one-fourth--inches {57.15-millimeters}-in-diameter:--Tolerances-are-as-follows:

a:--For-defects:

- {1}--Ten--percent-for-potatoes-seriously-damaged-by-hollow heart:
- {2}--Ten-percent-for-serious-damage-by-sunburn:
- {3}--Ten-percent-for-damage-by-dirt:
- {4}--Five---percent---for---serious---damage--by--internal discoloration:
- {5}--Five-percent-for-injury-by-seab:
- {6}--Six--percent--for--potatoes--which--fail--to-meet-the remaining-requirements-of--the--grade:---Included--in this---tolerance---not---more---than---the--following percentages-shall-be-allowed-for-the-defects--listed:

	Percent
Bacterial-ring-rot-----	0.00

Late-blight-tuber-rot-----1.00
 Damage-by-scab-----2.00
 Damage-by-dry-rot-----2.00
 Frozen,-soft-rot,-or-wet
 breakdown-----0.50

{7}--Ten---percent---for---sprouts--over--one--inch--{2.54
 centimeters}-in-length:

b.--For-off-size:

{1}--For--undersize:--Five-percent-for-potatoes-in-any-lot
 which-fail-to-meet-the-required-or-specified--minimum
 size:

{2}--For--oversize:---Ten--percent-for-potatoes-in-any-lot
 which-fail-to-meet-the-required-or-specified--maximum
 size:

2.--Red--tag:---Red--tag--North--Dakota-certified-seed-grade-shall
 consist-of-potatoes-that-meet-the-requirements--for--blue--tag
 grade--except-for-defects-caused-by-internal-discoloration-and
 for-increase-in-maximum-size;-and-for-increased-tolerance--for
 defects-listed-below:

a.--Not-seriously-damaged-by-dirt:

b.--Not-more-than-ten-percent-seriously-damaged-by-wireworm:

c.--Twenty---percent---for---sprouts---over---one--inch--{2.54
 centimeters}-in-length:

d.--Twenty--percent--for--potatoes--which--fail--to--meet--the
 remaining-requirements-of-the--grade:---Included--in--this
 tolerance--not--more--than--six-percent-shall-be-seriously
 damaged-and-included-therein-not-more-than-one-half-of-one
 percent--shall-be-allowed-for-potatoes-which-are-frozen-or
 affected-by-soft-rot-or-wet-breakdown:

For--round-varieties-the-maximum-size-shall-be-fourteen-ounces
 {396.89-grams}-and-for-long-varieties-sixteen--ounces--{453.60
 grams}:

3.--Yellow-tag:---Official--yellow--identification--tags--will-be
 furnished--on--request--for--potatoes---which---passed---field
 inspection--requirements--and--are--being-transferred-for-seed
 purposes;-within-the-state-of-North-Dakota-only:

Such---stock---shall---meet---United--States--number--2--grade
 requirements;-except-for-defects-caused-by-sunburn-and-hollow
 heart--and--wireworm:---Not--more--than--two--percent-shall-be
 damaged-by-dry-rot:---Unless-otherwise--specified--the--maximum
 size-shall-be-fourteen-ounces-{396.89-grams}:

State seed department grade inspection on yellow tag lots is not compulsory, but may be obtained upon request.

4. Virus tested seed stocks. Seed stock tested serologically for potato virus X, potato virus S or potato virus M may be so indicated on any of the tags if within the specified tolerances during the current growing season.

Blue and red tag shipments must be inspected and meet respective grade requirements.

Foundation seed classification may be used in connection with any of the certified seed grades providing the lot meets foundation standards.

Definitions of terms used in the North Dakota certified seed grades shall be the same as used for similar terms in the United States standards for seed potatoes except that application of tolerances shall be as follows: For tolerances of ten percent or more individual samples shall have not more than one and one-half times the tolerance permitted in any sample, and for tolerances of less than ten percent not more than double the tolerance shall be permitted in any sample provided the average for the lot is within the tolerance specified. The term "dry land type", (allowed for long varieties only) if used means "not seriously misshapen". Soft rot or wet breakdown or other deterioration developing in transit on potatoes otherwise up to grade shall be considered as affecting condition and not grade.

SEED ELIGIBILITY.

1. North Dakota seed stocks.

a. Seed lots of North Dakota origin to be eligible will have been grown under the seed certification program in the previous season passing field inspection and the winter test.

b. Seed stocks not having a winter test may be accepted on an observational basis but only with prior approval from the department. The same fee structure will apply to this application.

2. Seed stocks from other sources. Seed lots from sources other than North Dakota will be of the foundation or approved classification and have passed a winter test.

3. Tags or purchase proof must accompany the application to provide sufficient evidence as to origin and quantity of seed.

History: Amended effective December 1, 1981.

General Authority
NDCC 4-10-03

Law Implemented
NDCC 4-10-04

X 74-04-01-07. SEED CLASSIFICATION.

1. Basic seed shall be seed developed in seed plots for North Dakota certified growers and have specific standards established by the state seed department.
2. Foundation I seed shall be one year removed from basic seed and need not be planted in tuber units.
3. Foundation II seed may be more than one year removed from basic seed.
4. Eligible certified seed shall consist of seed passing the winter test and eligible for certification.
5. Certified shall be seed potatoes passing field and grade inspection but not necessarily winter tested.

History: Effective December 1, 1981.

General Authority
NDCC 4-10-03

Law Implemented
NDCC 4-10-04

X 74-04-01-08. FIELD INSPECTION STANDARDS.

1. Each seed potato field will be visibly inspected based on sample inspection. The method of inspection and sample size will be at the discretion of the state seed department but a minimum of one hundred plants per acre [.40 hectare] will be inspected.
2. The field tolerance established will be based on visible symptoms in the samples inspected. Diseases which cannot be observed visibly may be present.

	<u>First</u>	<u>Second</u>	<u>Third</u>
	<u>Inspection</u>	<u>Inspection</u>	<u>Inspection</u>
<u>Varietal mixture</u>			<u>0.3 percent</u>
<u>tolerances</u>			
<u>Disease tolerance</u>	<u>0.1 percent</u>	<u>0.1 percent</u>	<u>0.1 percent</u>
<u>Spindle tuber</u>			
<u>viroid</u>			
<u>Rugose, crinkle and</u>	<u>0.5 percent</u>	<u>0.3 percent</u>	<u>0.3 percent</u>

<u>severe leaf</u>			
<u>rolling mosaics</u>			
Leaf roll	0.5 percent	0.3 percent	0.3 percent
Total serious	0.8 percent	0.5 percent	0.5 percent
<u>well-defined virus</u>			
Mild mosaic	2.0 percent	1.0 percent	1.0 percent
*Bacterial ring rot	0.0 percent	0.0 percent	0.0 percent

* The zero tolerance means that no amount is permissible when inspected. It does not mean that the seed is absolutely free of disease or disease causing agents, but that none was found during inspection.

Blackleg. Since the blackleg disease may be latent, the inspector will record only the percentage observed and no tolerance will be established. However, any excessive amount can be cause for rejection. Blackleg observations shall be based upon sample plants exhibiting the characteristic black, inky, soft, slimy, decomposed tissue of the stem.

Wilt. Only the percentage noted will be recorded and may include other factors such as maturity, drought, or alkali problems but any excessive amount may be cause for rejection.

There will be zero tolerance for potato wart, powdery scab, corky ring spot, gangrene, golden nematode, root knot nematode, tuber moths or other such injurious pests that have never been found in North Dakota seed potato fields.

Tolerances for virus tested seed. All of the above tolerances will apply, including a requirement that bacterial ring rot must not have been found on the farm during the season, and no more than one-tenth of one percent serious visible virus in the field.

Latent virus - potato virus x, s, and m each virus two percent.

3. Field conditions.

a. Insect control must be maintained early and until the vines are killed or matured. Fields suffering undue insect injury may be disqualified for certification. A grower will notify the inspector of the date of spraying and spray material applied.

b. Vine killing. If a field has not received final inspection, the grower must obtain approval from the inspector before killing the vines.

c. Any condition such as excess weeds, hail injury, foreign plants, chemical damage, soil conditions, or insect damage

that interferes with proper inspection may disqualify the seed for certification.

- d. Roguing is permitted and recommended in many cases but must be done before the inspector arrives in the field.
 - e. Presence of disease or conditions not mentioned heretofore which may impair seed quality shall constitute cause for rejection or additional testing before final certification. Stocks which show an excessive percentage of total serious virus in official southern sample tests shall be considered ineligible for certification tags.
4. Appeal inspection of rejected fields will be considered, provided application is made within three days after rejection, the field is in good condition for inspection, and no additional roguing is done previous to reinspection.
5. Bacterial ring rot control.
- a. Any grower having ring rot in the farming operation may not sell seed in the state for recertification during the next growing season.
 - b. If the farming operation is found to be infected, all equipment and storages must be cleaned and disinfected.
 - c. It is strongly recommended that an infected farming operation purchase all new seed.
 - d. A farming operation found to be infected on three consecutive years shall be required to purchase all new seed, clean, and disinfect the operation under the supervision of the state seed department before entering any seed for certification.

History: Effective December 1, 1981.

General Authority
NDCC 4-10-03

Law Implemented
NDCC 4-10-04

X 74-04-01-09. WINTER TESTING PROGRAM.

- 1. All seed potato fields must be randomly sampled and tested if the grower intends to plant the same seed lot or sell to growers who intend to enter the lot for certification the following year.

2. The results will be based on visible inspection of the plants for virus or viruslike symptoms from the sample the grower submitted.
3. Other factors such as vigor, other diseases, and any factor that might impair seed quality will be considered in the winter testing program.
4. Information concerning sample size and time to submit samples will be available from the state seed department.
5. Lots failing the winter test will be ineligible for planting in the certification program.
6. In the event of frost or other serious malfunctions of the winter test, eligibility of a seed lot will be based on the current field readings.

History: Effective December 1, 1981.

General Authority
NDCC 4-10-03

Law Implemented
NDCC 4-10-04

x 74-04-01-10. STORAGE REQUIREMENTS.

1. A storage to be eligible must have been cleaned and disinfected prior to harvest. Storages not previously used for certified seed must be inspected by the state seed department.
2. Seed potatoes to be eligible for final certification tags must be stored in a warehouse containing only seed potatoes which have been field inspected. Such warehouses may contain field inspected stocks rejected for seed certification for causes other than such diseases as ring rot.
3. Equipment for handling, sorting, or grading can be used only on certified stock, but also must be cleaned and disinfected.
4. Containers.
 - a. Graded stocks shall be placed in new sacks or in clean, disinfected crates or bulk containers which are tagged or marked in an approved manner to indicate the lot contains certified seed potatoes.
 - b. Brands or markings must feature "North Dakota" as the production area.
 - c. No used bags may be brought into the farming operation.

5. Out-of-state storage. Growers, upon special application, may be permitted final certification on eligible stocks in approved nearby storages outside the state.
6. Bin inspection. Certified storages may be checked by an authorized inspector during the storage season.
7. Yield and storage reports. Before tags will be issued for a lot of potatoes, a report will be given to the state seed department stating yield of each field entered for certification and the location of the storages.
8. Transfers of seed potatoes to other parties. A lot of seed potatoes eligible for final certification may be transferred to another party along with tags provided authorization is given by the state seed department.
9. Each bin containing certified seed potatoes must be plainly labeled for certification with the grower's name and address, hundredweight [45.36 kilograms] or bushels [35.24 liters], variety, and field identification.

History: Effective December 1, 1981.

General Authority
NDCC 4-10-03

Law Implemented
NDCC 4-10-04

X 74-04-01-11. OFFICIAL NORTH DAKOTA SEED POTATO GRADES. Final grade determination shall be made based on physical defects, size, shape, and cleanliness. Two grades, first or blue tag, and second or yellow tag, are available for shipment outside the state. A white tag is available but restricted to shipments within the state. United States department of agriculture standards for seed potatoes shall be the official guide for applying and interpreting all definitions and terms used in North Dakota seed potato grades. Grade inspection will be made on a sample basis.

1. First grade blue tag. Potatoes of one variety meeting the requirements of this chapter which are fairly well shaped (for long varieties, the term "dry land type" or "except for shape" may be permitted when so marked), not more than seriously shriveled, free from freezing, blackheart, soft rot or wet breakdown, late blight, or bacterial ring rot, free from damage caused by dirt or other foreign matter, sprouting, mechanical or other means, and free from serious damage caused by hollow heart or internal discoloration.

Unless otherwise specified, size requirements shall be as follows: for round or intermediate shaped varieties, one and seven-eighths inches [48 millimeters] in diameter, but not to

exceed more than twelve ounces [366 grams] in weight. For long varieties, one and three-quarters inches [45 millimeters] in diameter, but not to exceed more than fourteen ounces [392 grams] in weight. For all varieties, size b shall be from one and one-half inches [38 millimeters] to not more than two and one-quarter inches [57 millimeters] in diameter.

Tolerances are as follows:

a. For defects:

- (1) Ten percent for potatoes seriously damaged by hollow heart.
- (2) Ten percent for potatoes damaged by dirt.
- (3) Five percent for potatoes seriously damaged by internal discoloration other than hollow heart.
- (4) Ten percent for potatoes with sprouts over one inch [2.54 centimeters] in length.
- (5) Five percent for potatoes damaged by ingrown sprouts.
- (6) Six percent for potatoes which fail to meet the remaining requirements of the grade; provided, that included in this amount not more than the following percentages shall be allowed for the defects listed:

	<u>Percent</u>
<u>Bacterial ring rot</u>	<u>0.00</u>
<u>Late blight tuber rot</u>	<u>1.00</u>
<u>Damaged by pitted or surface scab, or both</u>	<u>2.00</u>
<u>Damage by dry rot</u>	<u>2.00</u>
<u>Frozen, soft rot, or wet breakdown</u>	<u>0.50</u>
<u>Varietal mixture</u>	<u>0.50</u>

b. For off-size:

- (1) Undersize. Five percent for potatoes in any lot which fail to meet the required or specified minimum size.
- (2) Oversize. Ten percent for potatoes in any lot which fail to meet the required or specified maximum size.

2. Second grade yellow tag (or such other color as determined by the state seed department). Potatoes that meet the requirements for blue tag grade except for defects caused by hollow heart and internal discoloration and are not seriously

damaged by dirt and for increase in maximum size, and for increased tolerance for defects listed below:

- a. Twenty percent for potatoes seriously damaged by hollow heart.
 - b. Not more than ten percent of the potatoes seriously damaged by wireworm.
 - c. Twenty percent for potatoes with sprouts over one inch [2.54 centimeters] in length.
 - d. Twenty percent for potatoes which fail to meet the remaining requirements of the grade; provided, that included in this amount not more than six percent shall be seriously damaged and included therein not more than one-half of one percent shall be allowed for potatoes which are frozen or affected by soft rot or wet breakdown.
 - e. Size. For round varieties the maximum size shall be fourteen ounces [392 grams]. For long varieties, the maximum size shall be sixteen ounces [448 grams].
3. White tag. Official white identification tags will be furnished on request for potatoes which passed field inspection requirements and are being transferred for seed purposes, within the state of North Dakota only. Such stock shall meet United States number two grade requirements, except for defects caused by sunburn, hollow heart, and wireworm. Not more than two percent shall be damaged by dry rot. Unless otherwise specified, the maximum size shall be fourteen ounces [392 grams] and one and one-half inches [38 millimeters] minimum (United States number two requirements). State seed department grade inspection on white tag lots is not compulsory, but may be obtained upon request.
4. Virus tested seed stocks. Seed stock tested serologically for potato virus x, potato virus s, or potato virus m, may be so indicated on any of the tags if within the specified tolerances during the current growing season.

Blue and yellow tag shipments must be inspected and meet respective grade requirements.

Foundation seed classification may be used in connection with any of the certified seed grades providing the lot meets foundation standards. For tolerances of ten percent or more, individual samples shall have not more than one and one-half times the tolerance permitted in any sample, and for tolerances of less than ten percent, not more than double the tolerance shall be permitted in any sample provided the average for the lot is within the tolerance specified. Soft rot or wet breakdown or other

deterioration developing in transit on potatoes otherwise up to grade shall be considered as affecting condition and not grade.

History: Effective December 1, 1981.

General Authority
NDCC 4-10-03

Law Implemented
NDCC 4-10-04

STAFF COMMENT: Section 74-02-02-04 is treated as repealed because the statutory authority for the rule was repealed by the 1979 legislative assembly.

X 74-02-02-04. STATE GRAIN GRADE STANDARDS. ~~The North Dakota grade standards established for these grains which are not included in the official grain standards of the United States shall be those published in state seed department bulletin number 52 of October 1965, and subsequent amendments thereto.~~ Repealed as the result of S.L. 1979, ch. 95, § 6.

General Authority
NDCC-4-25-05

Law Implemented -
NDCC-4-25-05

TITLE 75
Social Service Board

OCTOBER 1981

AGENCY SYNOPSIS: Adds a new subparagraph to comply with the provisions of HB1571, which forbids the consideration of certain pre-need funeral account prepayments or deposits in determining medical assistance eligibility.

χ 75-02-02-07. CONDITIONS OF ELIGIBILITY.

1. No age, residence, citizenship, or other requirements will be imposed that is prohibited by title XIX of the Social Security Act.
2. Financial eligibility.
 - a. Persons receiving aid to families with dependent children or technically eligible to receive aid to families with dependent children on the basis of categorical relatedness shall be subject to the income levels set out in paragraph 1 of subdivision c and to the resource eligibility standards set out under North Dakota Century Code chapter 50-09 and the resource rules and policies of the social service board pertaining to aid to families with dependent children eligibility except that those resource rules set out in subdivision d which are more liberal in any particular case than the aid to families with dependent children rules and policies shall be applicable in the case of aid to families with dependent children recipients and those categorically related to the aid to families with dependent children program.
 - b. Persons receiving supplemental security income or technically eligible therefor on the basis of age, disability, or blindness shall be subject to the income

levels set out below as well as the resource standards set out below.

c. The following levels of income and resources for maintenance, in total dollar amounts, will be used as a basis for establishing financial eligibility for medical assistance:

- (1) The income levels applicable to families of various sizes in determining eligibility for medical assistance will be according to income levels established by the social service board of North Dakota.
- (2) Only twenty-five percent of that income of the ineligible medical assistance unit in the home which exceeds the appropriate medical assistance income level will be deemed to be available to an eligible individual residing in a specialized facility. Income is not otherwise deemed to be available to persons who live outside of the home of the medical assistance unit on other than a temporary basis.
- (3) It is presumed that all spousal resources or parental resources are actually available to those aged, blind, or disabled individuals identified in subdivisions b and c. In order to rebut this presumption, the applicant or recipient must demonstrate that the spousal or parental resources are unavailable despite reasonable and diligent efforts to access such resources. The rebuttal of this presumption shall not preclude the board from exercising the powers granted to it by North Dakota Century Code section 50-24.1-02.1. Except as provided in subparagraphs a, b, c, and d, no applicant or recipient who has a statutory or common-law cause of action for support out of the resources of a spouse or parent, but who has failed to diligently pursue that cause of action, may rebut the presumption. Any applicant or recipient who documents any of the following circumstances will have rebutted the presumption without further proof:
 - (a) A court order, entered following a contested case, determines the amounts of support that a parent or spouse must pay to the applicant or recipient.
 - (b) The parent or spouse from whom support could ordinarily be sought, and the property of such parent or spouse, is outside the jurisdiction of the courts of the United States.

(c) The applicant or recipient has been subject to marital separation, with or without court order, for at least two years prior to making application for medical assistance benefits, and there has been no contact whatever between the applicant or recipient and his or her spouse for the same two-year period.

(d) The applicant or recipient has lived separately and apart from a noninstitutionalized spouse for at least six months, and the value of all resources, not otherwise disregarded, and separately owned by that spouse do not exceed resource limitations in subdivision d by more than twenty-five thousand dollars.

d. Resources. The following property provisions will be applied in determining eligibility for medical assistance. In all instances, including determinations of equity, property must be realistically evaluated in accord with current market value. Any reasonable costs which may be associated with liquidation of excess property must be taken into account:

(1) The home. The home occupied by the individual or family will be exempt in determining eligibility for medical assistance. The home is defined as including the land on which it is located, providing the acreage does not exceed one hundred sixty contiguous acres [64.75 hectares] if rural or two acres [.81 hectares] if located in town. Acreage in excess of these amounts would be declared "real property other than home". The home will be considered occupied and exempt if the individual or family is temporarily absent but actually intends and is able to return within a reasonable length of time.

(2) Real property other than the home. Nonexempt real property other than the home may not exceed an equity of two thousand five hundred dollars. The following exemptions apply to real property other than the home:

(a) Property which is essential to earning a livelihood shall be exempt, provided that the property owners are actively engaged in utilizing the property to earn income and derive the total benefit of such income for their own needs. An individual who is merely receiving rental or lease income from property is not eligible for this exemption. An individual is actively engaged in utilizing property if the individual contributes significant current

personal labor in utilizing the property for income-producing purposes. The payment of social security taxes on the income from such current personal labor is an indicator of the active utilization of the property.

(b) Property which is not salable without working an undue hardship.

(c) However, an individual would be actively engaged in utilizing such property if the individual contributed significant current personal labor in utilizing such property for income-producing purposes. The payment of social security taxes on the income from such current personal labor is an indicator of the active utilization of such property.

(3) Personal property resources.

(a) Personal property is defined as including cash surrender value of life insurance policies, vehicles, machinery, livestock, and other types of movable property.

(b) The following types, kinds, and amounts of personal property are exempt from consideration under the medical assistance program. All nonexempt property owned by the medical assistance unit is an available resource.

[1] Personal effects, wearing apparel, household goods, furniture, and trailer homes being used as living quarters.

[2] Term insurance and burial insurance, the terms of which specifically provide that the proceeds can be used only to pay the burial expenses of the insured, is also exempt. ~~Other-----"prepaid"-----burial arrangements-are-liquid-assets-~~

[3] Prepaid burial arrangements or deposits of up to a three thousand dollar value for each applicant or recipient in the medical assistance unit.

[4] One motor vehicle owned by the medical assistance unit is exempt regardless of its value. Any other motor vehicle must be considered as personal property and is subject to the limitations on personal property set out below.

- (c) Nonexempt, nonliquid personal property may not exceed an equity of two thousand five hundred dollars except when such property is essential to the earning of a livelihood or when the liquidation of such excess assets would cause undue hardship. The descriptive definition of the phrase "essential to the earning of a livelihood" as set out in paragraph 2 is fully applicable also in instances involving personal property.
- (4) Cash reserve exemption. With respect to cash, savings, redeemable stocks and bonds, and other liquid assets, the following levels will be applicable to families of various sizes; one person, three thousand dollars; two persons, four thousand five hundred dollars; and for each additional person, an amount of twenty-five dollars shall be added. These amounts will not be considered as being available for medical expenses.
- (5) There is a presumption that the holder's interest in contractual rights to receive payment, including, but not limited to, the seller's interest in a long-term contract for the sale of real property, promissory notes, mortgages, and accounts receivable, is salable without working an undue hardship. This presumption may be rebutted by evidence demonstrating all of the following:
 - (a) The holder's interest was publicly advertised for sale in a newspaper of general circulation, the circulation area of which includes any real property underlying the holder's interest, which advertisement was published successively for two weeks if the newspaper is a weekly publication, and for one week if the newspaper is a daily publication.
 - (b) The advertisement included, at a minimum, a legal description of any real property underlying the holder's interest; a statement of a minimum price at which the holder's interest will be sold, which price shall not exceed seventy-five percent of the determined discounted value of that interest or thirty thousand dollars, whichever is less; and the name, address, and telephone number of a person who will answer inquiries and receive offers.
 - (c) The sworn statement of the applicant, recipient, or the applicant's or recipient's representative, that no offers were received

which equaled or exceeded the minimum amount identified in subparagraph b.

e. Disqualifying transfers.

- (1) Every person who before or after making application for medical assistance gives an assignment or makes a transfer of the person's property (whether real or personal property or liquid assets, or a combination thereof) for the purpose of rendering oneself eligible for medical assistance is thereby rendered ineligible.
- (2) The intent of the person making such a transfer is the basis for determining eligibility for medical assistance.
- (3) There are legitimate instances when property transfers may be valid when related to a particular set of circumstances. The applicant or recipient should be given full opportunity to state the reasons for having made the transfer of property and this evidence should in turn be considered in relation to the following questions:
 - (a) Was adequate consideration received?
 - (b) How recent was the transfer? Caution on this point is advised since very recent transfers may in some instances be entirely acceptable insofar as eligibility for medical assistance is concerned.
 - (c) Is the applicant's or recipient's stated purpose reasonable in view of the circumstances prevailing at the time of transfer?
 - (d) Would it have been reasonable to anticipate that the transfer of property at the time it occurred would result in an earlier need for assistance?
 - (e) Were benefits available to the applicant or recipient from the transferee that were contingent upon the transfer of the property?
 - (f) Did the transferee have a legal or otherwise equitable interest in the property transferred to the transferee?
- (4) A transfer of property for less than adequate consideration, made either within two years prior to the application for medical assistance or after a previous application has been made and denied because

of excess property resources, shall be presumed to have been made for the purpose of rendering the applicant eligible for medical assistance. This presumption may be rebutted by substantial evidence of an intent which is inconsistent with the presumed intent.

f. There shall be a flexible measurement of available income which will be applied in the following order or priority:

- (1) First, for maintenance, so that any income in an amount at or below the established level will be protected for maintenance.
- (2) Payments made for noncovered necessary current medical and remedial care will be deducted.
- (3) Reasonable work-related expenses for producing any earned income will be deducted.
- (4) Finally, payments made for necessary health insurance coverage will be deducted.
- (5) All of the remaining excess income will be applied to costs of medical assistance included in the state plan.

g. All income and resources will be considered in establishing eligibility and in the flexible application of income to medical costs not in the state plan, and payment toward the medical assistance costs.

- (1) The state agency or local agency under supervision of the state agency will take reasonable measures to ascertain any legal liability of third parties arising after March 31, 1968, for the medical care and services included under the plan, the need for which arises out of injury, disease, or disability of applicants for or recipients of medical assistance.
- (2) The state or local agency, in determining whether medical assistance is payable, will treat any third party liability as a current resource when such liability is found to exist and payment by the third party has been made or will be made within a reasonable time.
- (3) The state or local agency will not withhold reimbursement from a third party for assistance provided when the party's liability is established after assistance is granted and in any other case in which the liability of a third party existed but was not treated as a current resource. In such cases,

the state and local agency shall require the applicant or recipient to execute all necessary documents to protect rights to subsequent reimbursements. Failure of any applicant or recipient to execute any such documents shall be considered adequate grounds for ineligibility for medical assistance.

- (4) The state or local agency will seek reimbursement from a third party for assistance provided when the party's liability is established after assistance is granted and in any other case in which the liability of a third party existed, but was not treated as a current resource.
 - (5) Each applicant or recipient shall execute all necessary documents to protect his, or the state agency's, rights to subsequent reimbursement as a condition of eligibility.
- h. Only such income and resources as are actually available will be considered; income and resources will be reasonably evaluated.
 - i. The financial responsibility of any individual for any applicant or recipient of medical assistance will be limited to the responsibility of spouse for spouse, and parents for a child under age twenty-one, or blind, or permanently and totally disabled. Such responsibility is imposed on applicants and recipients of medical assistance as a condition of eligibility under the state plan.
 - j. An applicant or recipient must take all necessary steps to obtain any annuities, pensions, unemployment compensation, veteran's benefits, and retirement and disability benefits to which the applicant or recipient may be entitled, unless the applicant or recipient can show good cause for not doing so.

3. Blindness and disability.

- a. The federal definition of the terms "blind" and "disabled" as used by the social security administration in the supplemental security income program shall be used in all applicable eligibility determinations.
- b. The following is the state's definition of blindness in terms of ophthalmic measurement:

An individual is considered blind if the individual has central vision acuity of 20/200 or less in the better eye with correcting glasses or a field defect in which the peripheral field has contracted to such

an extent that the widest diameter of visual field subtends an angular distance of no greater than twenty degrees.

- c. In any instance in which a determination is to be made whether an individual is blind according to the state's definition, there will be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select.
- d. Each eye examination report form will be reviewed by a state supervising ophthalmologist who is responsible for the agency's decision that the applicant does or does not meet the state's definition of blindness.
- e. The following is the state's definition of permanent and total disability, showing that: (1) "permanently" is related to the duration of the impairment or combination of impairments; (2) "totally" is related to the degree of disability; and (3) "permanently and totally disabled" means that the individual has some permanent physical or mental impairment, disease, or loss, or combination thereof, that substantially precludes the individual from engaging in useful occupations within the individual's competence, such as holding a job.

Under this definition: "Permanently" refers to a condition which is not likely to improve or which will continue throughout the lifetime of the individual; it may be a condition which is not likely to respond to any known therapeutic procedures, or a condition which is likely to remain static or to become worse unless certain therapeutic measures are carried out, where treatment is unavailable, inadvisable, or is refused by the individual on a reasonable basis; "permanently" does not rule out the possibility of vocational rehabilitation or even possible recovery in light of future medical advances or changed prognosis; in this sense the term refers to a condition which continues indefinitely, as distinct from one which is temporary or transient. "Totally" involves considerations in addition to those verified through the medical findings, such as age, training, skills, and work experience, and the probable functioning of the individual in the individual's particular situation in light of the individual's impairment; an individual's disability would usually be tested in relation to ability to engage in remunerative employment; the ability to keep house or to care for others would be the appropriate test for (and only for) individuals, such as housewives, who were engaged in this occupation prior to the disability and do not have a history of gainful employment; eligibility may continue, even after a period of rehabilitation and readjustment, if the individual's work capacity is still

very considerably limited (in comparison with that of a normal person) in terms of such factors as the speed with which the individual can work, the amount the individual can produce in a given period of time, and the number of hours the individual is able to work.

- f. Each medical report form and social history will be reviewed by technically competent persons, not less than a physician and a social worker qualified by professional training and pertinent experience, acting cooperatively, who are responsible for the agency's decision that the applicant does or does not meet the appropriate definition of blindness or disability. The agency shall decline to determine blindness or disability when such determination can be made pursuant to the processing of a supplemental security income benefit's application by the social security administration or its contractee for that purpose.

History: Amended effective January 1, 1980; amended effective February 1, 1980; amended effective February 1, 1981; amended effective June 1, 1981; amended effective October 1, 1981.

General Authority
NDCC 50-24.1-04

Law Implemented
NDCC 50-24.1-02,
42 CFR, Part 435

AGENCY SYNOPSIS: Increases the amount reserved for individual clothing and personal needs allowance from \$25 to \$45 per month.

X 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 social service board shall annually, by audit, determine the allowable costs in the case of nonprofit homes for the aged and infirm and allowable costs, 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 shall include a ~~twenty-five~~ forty-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; amended effective October 1, 1981.

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

Law Implemented
NDCC 50-18-06.1

DECEMBER 1981

STAFF COMMENT: The changes to chapter 75-02-01 were declared to be of an emergency nature and took effect upon approval by the attorney general.

AGENCY SYNOPSIS: The Omnibus Budget Reconciliation Act of 1981, a federal act, not only related to the AFDC budget, but included many substantive amendments to Title IV-A of the Social Security Act, which title governs the availability of federal funds to states which provide AFDC programs. This enactment produced many conflicts with the existing AFDC program. The effective date of the enactment was October 1, 1981. This meant that final federal regulations, upon which the state regulations are based, would not be available until well after the program changes must be implemented. Faced with this predicament, the Social Service Board of North Dakota has simply promulgated a repeal of all sections of the North Dakota Administrative Code which conflict with the Budget Reconciliation Act of 1981. Upon receipt of final federal regulations, the Social Service Board will propose rules to replace those herein repealed.

X 75-02-01-03. PROPERTY PROVISIONS AND DETERMINATION OF NEED. This section contains the rules and regulations relative to ownership of cash reserves, personal and real property, and life insurance by applicants for and recipients of aid to families with dependent children.

1.--Cash-reserve-

- a.--The--cash--reserve--for--each--aid--to--families--with--dependent children--household--may--not--exceed--one--thousand--dollars plus--accrued--interest--and--is--defined--as--liquid--assets--such as--cash--;--stocks--and--bonds--;--individual--Indian--moneys--;--and other--negotiable--instruments--but--excluding--the--cash surrender--value--of--life--insurance-
- b.--The--cash--reserve--may--be--claimed--only--once--during--a continuous--stretch--of--eligibility-
- c.--In--those--instances--where--there--is--insufficient--cash reserve--assets--on--hand--at--the--time--of--application--;--the cash--reserve--shall--be--allowed--in--the--event--the--family should--subsequently--receive--a--lump--sum--payment--such--as--an inheritance--;--old--age--;--survivors--;--and--disability--insurance--; railroad--benefit--;--sale--of--property--;--etc-
- d.--Income--from--any--source--whatsoever--other--than--lump--sum benefits--above--mentioned--must--be--used--to--meet--current--need and--may--not--become--a--part--of--the--cash--reserve--exemption-

e.--The--cash-reserve-exemption,-when-claimed,-must-be-entered in-the-case-narrative-as-a-permanent-part-of-the-record-to preclude--the--possibility--of-its-being-allowed-more-than once-during-a-continuous-stretch-of-eligibility-

2.--Life-insurance-

a.--The--county--social--service--board--shall--disregard--any reasonable-amount-of-cash-surrender-or-loan-value-of--life insurance--since-this-represents-needed-protection-for-the family-

b.--The--cash-surrender-or-loan-value-are-not-to-be-considered a-part-of-the-cash-reserve-

3.--Personal-property-

a.--The--county--social--service--board--shall--disregard--in-its consideration--of--the--resources--of--the--applicant---or recipient--of--aid-to-families-with-dependent-children-the cash-reserve-exemption,-cash-surrender-and-loan--value--of life--insurance,-household--goods,-furniture,-clothing, personal-effects,-and-a-mobile--home--if--used--as--living quarters-

b.--One-motor-vehicle-owned-by-an-applicant-or-recipient-of-an aid-to-families-with-dependent-children--grant--is--exempt regardless--of--its--value---The-value-of-any-other-motor vehicle-or-vehicles-beyond-the--exempt--vehicle--shall--be considered--pursuant--to--the--limitations--set--forth--in subdivision-e-

c.--The--applicant--or--recipient--of--an-aid-to-families-with dependent-children-grant-is-limited-to--the--ownership--of personal--property--other--than-the-above-exclusions-to-an equity--of--one--thousand--dollars---The---applicant---or recipient--is--ineligible--for--an--aid--to--families-with dependent--children--grant---when---the---applicant's---or recipient's--ownership--of--property-other-than-the-above-named--exclusions--exceeds--an--equity--of--one---thousand dollars-

d.--The--county--social--service--board--may--waive--this--one thousand-dollars-limitation-on-the-amount-of-ownership--of personal-property-if-the-property-in-question-is-essential to-the-family's-self-support-or-rehabilitation-

4.--Real-property-

a.--There--is--no--monetary--limit--on--the--value-of-the-home occupied-by--an--applicant--or--recipient--of--an--aid--to families--with-dependent-children-grant-which-can-be-owned except-that-a-home-may-not--exceed--two--contiguous--acres

{-81---hectares};---if--in--town;--or--one--hundred--sixty
contiguous--acres--{64-75-hectares};-if-rural:---All--excess
acreage--will--be--considered--real-property--other--than--the
home:--Real-property--other--than--the--home--must--produce
income--commensurate--with--prevailing--rental--or--leasing
rates--in--the--community--to--warrant--continued--ownership.
Real-property--for--which--there--is--demand--but--which--produces
little--or--no--income--should--normally--be--offered--for--rental
or--sale--before--eligibility--is--established:

b:--Applicants--for--or--recipients--of--an--aid--to--families--with
dependent--children--grant--may--dispose--of--their--home--or
other--property--and--commit--the--proceeds--to--the--purchase--of
improved--living--quarters--or--to--the--repair--or--replacement
of--existing--quarters:---Such--conversion--of--property
resources--is--permissible--if--approved--by--the--county--social
service--board:---Additional--approval--by--the--bureau--of
Indian--affairs--is--required--when--the--plan--for--improved
housing--is--to--involve--moneys--derived--from--the--sale--of
Indian--trust--land--holdings:

5:--Property--assignments--and--liens:---There--shall--be--no--trust
mortgage--or--homestead--statement--or--any--assignments--or--liens
required--of--the--applicant--or--recipient--of--an--aid--to--families
with--dependent--children--grant--to--the--county--social--service
board--or--to--the--social--service--board--of--North--Dakota--except
for--the--assignment--of--child--support--referred--to--in--section
75-02-01-09:

6:--Disqualifying--transfer: The transfer of real or personal
property, without adequate remuneration, for the clear purpose
of making a family eligible for assistance, is to be regarded
as disqualifying. The family's intent and the lapse of time
between the transfer and the application for assistance are
among the factors which must be carefully evaluated. A
transfer of property which by policy is exempt does not
represent a disqualification in aid to families with dependent
children.

History: Amended effective November 1, 1979; amended effective October
28, 1981.

General Authority
NDCC 50-09-02

Law Implemented
NDCC 50-09-02,
50-09-10,
45 CFR 233.20

λ 75-02-01-04. DEFINITION OF ASSISTANCE UNIT - SOCIAL SECURITY
NUMBERS REQUIRED. The term "assistance unit" refers to the number of
persons in a family whose entitlement to aid to families with dependent

~~children-is-computed-on-the-basis-of-combined--need--because--they--live together--and--share--common--housing.---See--section--75-02-01-14.---All persons-to-be-included-in-the-assistance-unit-must-provide-their--social security--numbers-at-time-of-application-for-assistance.---The-processing-of-applications-for-assistance-will-not-be-delayed--pending--receipt--of social--security--numbers.---Failure-by-an-applicant-to-reasonably-obtain social-security-numbers-will--result--in--ineligibility--for--assistance until-such-numbers-are-provided.~~

General Authority
NBCC-50-09-02

Law Implemented
NBCC-50-09-02;
45-CFR-232-10;
45-CFR-233-20

Repealed effective October 28, 1981.

λ 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:~~

~~e- 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- 7. 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.~~
- e- 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- c. 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- d. 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;--may--be--paid--through--either--the--vendor
method--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---federally---mandated---work---incentive---program
participation--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-rate-established-by
the-board:--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:

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-~~ 8. 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-~~ 9. 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; amended effective October 28, 1981.

General Authority
NDCC 50-09-02

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

X 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
NBCE-50-09-02

Law Implemented -
NBCE-50-09-02;
50-09-10;
45-CFR-233.90

Repealed effective October 28, 1981.

χ 75-02-01-10. REDETERMINATION OF NEED. A redetermination of eligibility for aid to families with dependent children will be made whenever the situation warrants but at least every six months:

General Authority
NBCE-50-09-02

Law Implemented
NBCE-50-09-02;
50-09-07;
50-09-11

Repealed effective October 28, 1981.

χ 75-02-01-17. CHILD EIGHTEEN TO TWENTY-ONE YEARS ATTENDING SCHOOL.

1. Persons eighteen to twenty-one years of age attending school or training must be regularly attending a high school in pursuance of a course of study leading to a high school diploma; its equivalent or a college in pursuance of a college degree or a course of vocational or technical training

designed-to-fit-the-person-for-gainful-employment;-and--making
satisfactory--progress--as--determined--by--the-school-and-the
county-social-service-board-

a.--A-course-of-vocational-or-technical-training-is-defined-as
one-having-an-organized-curriculum-in-a-school-or-training
unit--or--an--organized--training-program-under-recognized
sponsorship--with--a--specified--vocational--or--technical
training-objective-

b.--Aid--to--families--with-dependent-children-payments-may-be
made-for-months-in--which--the--child--is--not--in--school
because---of---official---school---vacation,---illness,
convalescence,-or-family-emergency-and-for--the--month--in
which--the--child-becomes-twenty-one-or-in-which-the-child
completes-or-discontinues-the-child's-school--or--training
attendance-

2.--Need-for-children-in-training-programs-

a.--Necessary-costs-for-maintenance-and-work/training-expenses
shall-be-allowed-on-an-as-needed-basis.---Because--of--the
variation--in--training-needs-and-costs,-the-county-social
service-board-is-encouraged--to--exercise--flexibility--in
budgeting--to--ensure--that--the-individual-has-reasonable
resources-to-meet-training-obligations-

b.--The---child's---school--attendance--and--progress--must--be
reviewed-periodically-by-the-county-social--service--board
to--determine--whether--the-further-use-of-aid-to-families
with-dependent-children-funds-for-training-is-warranted-

General Authority
NDCC-50-09-02

Law Implemented
NDCC-50-09-01;
50-09-02;
45-CFR-233.90

Repealed effective October 28, 1981.

75-02-01-18. INCAPACITY OF CHILD AGED EIGHTEEN TO TWENTY-ONE
YEARS. Physically--or--mentally--incapacitated--children--eighteen--to
twenty-one--years--of--age-who-are-not-in-school-continue-to-be-eligible
for-aid-to-families-with-dependent-children--through--the--month--during
which--their--twenty-first--birthday--occurs;-provided-all-other-program
requirements-are-met-

1.--Continuing-eligibility-during-these-ages-is-dependent-upon-the
continuance-of-the-incapacity-

~~2. Eligibility as to incapacity must be determined by the state review team through the use of the medical and social reports on the forms furnished by the social service board to the county social service board.~~

General Authority
NBCE-50-09-02

Law Implemented
NBCE-50-09-01;
50-09-02;
45-CFR-233:90

Repealed effective October 28, 1981.

X 75-02-01-19. TRAINING AID TO FAMILIES WITH DEPENDENT CHILDREN PARENTS. ~~Aid to families with dependent children may be used to provide for maintenance needs for aid to families with dependent children parents who undertake training through a manpower training program but not to finance tuition costs.~~

General Authority
NBCE-50-09-02

Law Implemented
NBCE-50-09-02;
45-CFR-224

Repealed effective October 28, 1981.

X 75-02-01-20. UNMARRIED MINOR PARENTS - UNBORN CHILDREN - ELIGIBILITY CONSIDERATIONS.

~~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 has been determined including medical verification of the~~

~~mother's--pregnancy;--the-needs-of-the-mother-may-be-met;--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

Repealed effective October 28, 1981.

AGENCY SYNOPSIS: States the purpose of the chapter.

λ 75-02-04-01.1. PURPOSE. This chapter is necessary to comply with federal regulations promulgated under title IV-D of the Social Security Act, as amended [42 U.S.C. 651 et seq.], which require that there be an organizational structure and staff to provide for the administration and supervision of child support functions on a statewide basis in accordance with equitable standards for administration that are mandatory throughout the state, and to accomplish the purpose, goals, and objectives as specified therein.

History: Effective December 1, 1981.

General Authority
NDCC 50-09-02

Law Implemented
NDCC 50-09-02,
45 CFR Part 302

AGENCY SYNOPSIS: Broadens the categories of providers from whom child support enforcement services may be purchased.

λ 75-02-04-03. AUTHORITY.

1. For all children who are eligible for the services under the state plan, the agency shall, when necessary, establish paternity, locate the absent parent or parents legally liable for the support of the child or children, and secure support for the child or children.
2. The agency is authorized to:
 - a. Enter into cooperative agreements with any state or local agency or official to perform the functions under the state plan.

- b. Purchase services from any attorney, person, or public or private agency to perform the functions under the state plan.
- c. Enter into written agreements or cooperative arrangements with appropriate courts, law enforcement agencies, or tribal councils, including a single official who has the legal authority to enter into such cooperative agreements on behalf of such courts, agencies, or tribal councils.
- d. Cooperate with any other state in establishing paternity, locating an absent parent who may be present in this state, or in securing compliance by an absent parent who is present in this state with an order issued by a court of such other state.
- e. Establish and operate a parent locator service and accept requests to utilize the federal parent locator service.

History: Effective September 1, 1979; amended effective December 1, 1981.

General Authority
NDCC 50-09-02

Law Implemented -
NDCC 50-09-02,
50-09-03,
45 CFR 302.31,
302.34,
302.35,
302.36

AGENCY SYNOPSIS: Repealed as duplicative of North Dakota Century Code section 50-09-06, and containing internal management directions.

X 75-02-04-04. ASSIGNMENT OF RIGHTS OF SUPPORT.

~~1. Pursuant to North Dakota Century Code section 50-09-06, all applicants for or recipients of aid to families with dependent children are deemed to have assigned to the board and the county social service board at the time of application, all rights to child support from any other person such applicant or recipient may have in his own behalf or in behalf of any other family member for whom the application is made. The assignment shall be effective as to both current and accrued child support obligations. All applicants for or recipients of aid to families with dependent children are required to cooperate with the agency or regional unit in obtaining support for the child or children unless they have good cause for refusing to cooperate; pursuant to section 75-02-01-09.~~

~~2. The county social service board shall promptly notify the agency or regional unit of any child, including a child born out of wedlock, whose eligibility for aid to families with dependent children is based on the parent's absence from the home. Unless the applicant or recipient for aid to families with dependent children has established good cause pursuant to section 75-02-01-09 for refusing to cooperate in obtaining support for the child, the child support agency shall proceed in attempting to obtain support for the child in accordance with the state plan.~~

History: Effective September 1, 1979.

General Authority
NDCC 50-09-02

Law Implemented
NDCC 50-09-06;
45-CFR 232-11;
232-12;
232-41;
235-70

Repealed effective December 1, 1981.

AGENCY SYNOPSIS: Deletes nonoperative provisions relating to amount of fees to be charged.

λ 75-02-04-05. ELIGIBILITY FOR SERVICES.

1. Any person receiving benefits under the aid to families with dependent children program or who, upon request for child support enforcement services, would be eligible to receive benefits under such program if application were made, shall not be assessed a charge for the services provided by the agency or regional unit.
2. Upon application, the agency or regional unit shall provide child support collection, location, and paternity determination services to any individual who is not a recipient of or otherwise eligible for benefits under the aid to families with dependent children program.
- a- 3. The agency or regional unit shall advise these individuals at the time of application that the administrative costs incurred pursuant to the services rendered may be deducted from the amount recovered in the event the legislative appropriation for such services is insufficient to defray such costs.
- ~~b. Any determination on the part of the agency to deduct administrative costs incurred from amounts recovered shall be prospective and not operate to recoup costs incurred prior to and thirty days following the mailing of such~~

determination---to---affected--individuals:---Upon--agency determination--to--recover---costs---incurred;---all---new applicants--for-child-support-enforcement-services-who-are not-recipients-of-or-otherwise-eligible-for-benefits-under the--aid-to-families-with-dependent-children-program-shall be-advised-that-administrative-costs-will--be--immediately deducted--from--amounts--recovered--in-accordance-with-the schedule-set-out-in-subdivision-d-

c.--The--amount--of--costs--to--be--deducted--from--the-amount recovered-shall-be-calculated-pursuant-to-a-schedule-which shall--establish--a-percentage-of-the-administrative-costs which-will-be-deducted-from--the--amount--recovered:---The percentage--of-administrative-costs-which-will-be-deducted will-be-calculated-by-dividing--the--individual's--monthly gross--income-by-the-state's-monthly-median-income-for-the individual's-family-size;--as--determined--by--the--United States--census--bureau:---For--purposes--of--this-section, "monthly-gross-income" includes-the-following:

- (1)--Money,-wages-or-salaries-
- (2)--Net-income-from-nonfarm-self-employment-
- (3)--Net-income-from-farm-self-employment-
- (4)--Social-security-
- (5)--Dividends,-interest-on-savings-or-bonds,-income-from estates-or-trusts,-net-rental-income-or-royalties-
- (6)--Pensions-and-annuities-
- (7)--Unemployment-compensation-
- (8)--Workers'-compensation-
- (9)--Alimony-
- (10)--Child-support-
- (11)--Veterans'-pensions-

d.--The--following--is--the-schedule-to-be-used-in-determining the-amount-of-administrative-costs-which-may--be--deducted from-the-amount-of-support-received:

Percentage-of Median-Income	Percent-of-Costs to-be-Deducted
0-49	0
50-59	10
60-69	20

70-79	40
80-89	60
90-99	80
100-and-above	100

e.--In-determining-the-amount-of-administrative-costs-incurred in-collecting-support,-the-following-will-be--disregarded:

{1}--Fees--and--costs--incurred--in-any-proceeding-brought under-North-Dakota-Century-Code-chapter-14-12-1-

{2}--Costs--which--are--incurred--when-an-attorney-for-the agency-or-regional-unit,-functioning-as-an--assistant state's---attorney,---assists---in---enforcement---of compliance--with--a--decree--or--order--of--a---court requiring--child--support--or--alimony--combined-with child-support-payments-

History: Effective September 1, 1979; amended effective December 1, 1981.

General Authority
NDCC 50-09-02

Law Implemented
NDCC 50-09-06,
45 CFR 302.33

AGENCY SYNOPSIS: Allows duplicate copies of certain documents to be filed with the clerk of court.

χ 75-02-04-05.1. FILING OF COPIES OF DOCUMENTS. The filing of the original acknowledgment of assignment of support rights, or non-aid to families with dependent children for IV-D services, or a duplicate copy thereof, with the office of the clerk of court shall constitute authorization for that office to direct and forward child support collections to the assignee named in the instrument.

History: Effective December 1, 1981.

General Authority
NDCC 50-09-02

Law Implemented
NDCC 50-09-06,
45 CFR 232.11,
302.33

AGENCY SYNOPSIS: Repealed as duplicative of North Dakota Century Code sections 14-17-04 and 50-09-06.

χ 75-02-04-06. ESTABLISHMENT OF PATERNITY. For-all-cases-in-which there-is-an-assignment-pursuant-to-North--Dakota--Century--Code--section

~~50-09-06--(except--where--good--cause--for--refusing--to--cooperate--exists--in--accordance--with--section--75-02-01-09)--or--where--there--is--an--application--for--services,--and--the--paternity--of--the--child--or--children--has--not--been--established,--the--agency--or--regional--unit--shall--attempt--to--establish--the--paternity--of--the--child--or--children:--Paternity--may--be--established--by:~~

~~1:--Court--order--or--other--legal--process--established--under--state--law:~~

~~2:--An--acknowledgment--of--paternity--made--by--the--alleged--father--in--accordance--with--North--Dakota--Century--Code--section--14-17-04:~~

History: Effective September 1, 1979:

General Authority
NBCC-50-09-02

Law Implemented
NBCC-50-09-08;
45-CFR-303.5

Repealed effective December 1, 1981.

AGENCY SYNOPSIS: Repealed as concerning only internal management.

x 75-02-04-07. ESTABLISHMENT OF SUPPORT OBLIGATION.

~~1:--In--the--absence--of--a--court--order--establishing--the--amount--of--the--support--obligation--of--the--person--legally--responsible--for--providing--support,--the--agency--or--regional--unit--may--assist--the--court--in--determining--the--required--monthly--support--obligation,--the--amount--of--support--obligation--arrearage,--if--any,--and--the--amount--to--be--paid--periodically--against--the--arrearage:~~

~~2:--In--establishing--the--person's--support--obligation,--the--agency--shall--consider--the--financial--ability--of--the--person--to--make--payments--to--the--agency:--The--determination--of--the--person's--financial--ability--to--make--such--payments--may--be--based--in--part--on--the--following--criteria:~~

~~a:--All--earnings,--income--and--resources--of--the--absent--parent,--including--real--and--personal--property:~~

~~b:--The--earnings--potential--of--the--absent--parent:~~

~~c:--The--reasonable--necessities--of--the--absent--parent:~~

~~d:--The--ability--of--the--absent--parent--to--borrow:~~

~~e:--The--needs--of--the--child--for--whom--the--support--is--sought:~~

- f. The amount of assistance which would be paid to the child under the full standard of financial need of the state's aid to families with dependent children program.
 - g. The existence of other dependents for whom the absent parent is responsible.
 - h. Other reasonable criteria which the state may choose to incorporate.
3. For all cases in which the support obligation and the amount of the obligation have been established, the agency or regional unit shall maintain an effective system for identifying cases in which there is a failure to comply with the support obligation, contacting delinquent individuals as soon as possible in order to enforce the obligation, and obtaining the current support obligation and any arrearages. Attempts to collect support shall include, when necessary, the institution of the following procedures:
- a. Contempt proceedings to enforce an outstanding court order.
 - b. Garnishments.
 - c. Wage assignments.
 - d. Attachments.
 - e. Execution and liens.
 - f. Use of the United States district court.
 - g. Collection by the internal revenue service.

History: Effective September 1, 1979.

General Authority
NDCC 50-09-02

Law Implemented
NBCC-50-09-08;
45-CFR-302:50;
302:53;
303:4;
303:6

Repealed effective December 1, 1981.

AGENCY SYNOPSIS: Repealed as concerning only internal management.

X 75-02-04-08. LOCATION OF ABSENT PARENT.

1--For--all--cases--in--which--there--is--an--assignment--pursuant--to--North--Dakota--Century--Code--section--50-09-06--(except--where--good--cause--for--refusing--to--cooperate--exists--pursuant--to--section--75-02-01-09)--or--where--there--is--an--application--for--services;--the--agency--or--regional--unit--shall--attempt--to--locate--all--absent--parents--when--their--location--is--unknown---In--meeting--this--requirement;--the--agency--or--regional--unit--shall:

a--Use--local--locate--sources--such--as--officials--and--employees--administering--public--assistance;--general--assistance;--medical--assistance;--food--stamps--and--social--services;--relatives--and--friends--of--the--absent--parent;--current--or--past--employers;--the--local--telephone--company;--the--United--States--postal--service;--financial--references;--unions;--fraternal--organizations;--and--police;--parole;--and--probation--records:

b--Establish--working--relationships--with--all--local--agencies--in--order--to--utilize--local--locate--resources--effectively:

c--Use--state--agencies--and--departments;--which--as--a--minimum;--must--include--those--departments--which--maintain--records--of--public--assistance;--unemployment--insurance;--income--taxation;--driver's--licenses;--motor--vehicle--registration;--and--criminal--records:

d--Transmit--cases--to--the--federal--parental--locator--service--if--a--reasonable--and--diligent--state--and--local--locate--effort--has--failed--to--locate--the--absent--parent:

e--Refer--cases--to--the--child--support--agency--of--any--other--state--if--there--is--a--reasonable--belief--that--the--absent--parent--may--be--present--in--such--state:

2--The--agency--shall--establish--and--maintain--a--state--parent--locator--service--which;--as--a--minimum;--shall--utilize--all--sources--of--information--and--records--available--in--the--state--and;--where--appropriate;--in--other--states;--as--well--as--the--federal--parent--locator--service--of--the--department--of--health;--education--and--welfare:

History: Effective-September-1,-1979:

General Authority
NDCC-50-09-02

Law Implemented
NDCC-50-09-08;
45-CFR-302:35;
303:3

Repealed effective December 1, 1981.

AGENCY SYNOPSIS: Repealed as concerning only internal management.

X 75-02-04-09. COOPERATION WITH OTHER STATES.

1--For--all--cases--referred--to--the--agency--by--the--child--support--agency--of--another--state--the--agency--shall--assist--the--other--state--in--locating--an--absent--parent--establishing--paternity--or--securing--support--for--a--child--in--such--other--state---To--this--end--the--agency--where--possible--shall--

a--Locate--the--putative--father--or--absent--parent--utilizing--the--standards--prescribed--in--section--75--02--04--08--

b--Establish--paternity--or--assist--the--other--state--in--establishing--paternity--

c--Process--and--enforce--all--court--orders--referred--by--another--state--whether--pursuant--to--the--Uniform--Reciprocal--Enforcement--of--Support--Act--or--other--legal--processes--utilizing--the--same--remedies--normally--applied--in--its--own--cases--

d--Collect--any--support--payments--from--the--absent--parent--and--forward--them--to--the--state--to--whom--they--are--owed--

e--Inform--the--state--which--initiated--the--action--of--the--status--of--the--case--periodically--and--on--request--

2--When--the--agency--refers--a--case--to--the--child--support--agency--of--another--state--for--the--purpose--of--locating--an--absent--parent--establishing--paternity--or--securing--support--for--a--child--the--agency--shall--provide--sufficient--information--to--assist--the--child--support--agency--of--the--other--state--Such--information--shall--include--the--following--

a--Whether--the--case--involves--a--recipient--of--assistance--under--the--aid--to--families--with--dependent--children--program--in--this--state--

b--The--amount--of--current--assistance--payment--if--any--

c--Notice--of--any--termination--of--eligibility--for--assistance--

d--Identifying--information--regarding--the--absent--parent--

History: Effective-September-1,-1979-

General Authority
NBCC-50-09-02

Law Implemented
45-CFR-302-36;
303-7

Repealed effective December 1, 1981.

AGENCY SYNOPSIS: Amends the section to state the purpose for the arrangements between the child support enforcement agency and the courts and law enforcement officials involved in the child support program. Also, directs that certain additional items be included in agreements between the child support agency and courts and law enforcement officials.

X 75-02-04-10. COOPERATIVE ARRANGEMENTS. The agency shall enter into written agreements for cooperative arrangements with appropriate courts; ~~and law enforcement and county officials---~~~~Such agreements will include provision for:~~ for the purpose of assuring the performance of their duties in carrying out the provisions and intent of the child support program. The agreements shall provide for:

1. The exchange of pertinent information with courts; ~~and law enforcement and county officials~~ needed in locating absent parents, establishing paternity and securing support, including the immediate transfer of information obtained from the agency which administers the aid to families with dependent children program, to court or law enforcement officials, to the extent that such information is relevant to the duties to be performed ~~pursuant to the agreement.~~
2. Assistance to the agency in carrying out the program.
3. The investigation and prosecution of fraud directly related to paternity and child support.
4. The discharge of each of the statutory obligations of each court or law enforcement official relative to the establishment of paternity; enforcement and collection of child support obligations, specifically with respect to properly referred IV-D cases involving children whose eligibility for aid to families with dependent children is based upon the continued absence of one or both parents from the home, and non-aid to families with dependent children IV-D cases; and the use of reciprocal arrangements adopted with other states in appropriate cases.
5. Reimbursement The reimbursement of allowable costs and fees to courts and law enforcement officials, for their assistance in carrying out the program, to the extent permitted by 45 CFR 304.21 and 304.22, and approved by the agency.
6. Permitting authorized state and federal personnel to monitor all IV-D cases and records in any offices performing functions under the agreement.

History: Effective September 1, 1979; amended effective December 1, 1981.

General Authority

Law Implemented

NDCC 50-09-02

NDCC 50-09-08,
45-CFR-302-34
45 CFR Part 302

AGENCY SYNOPSIS: Repealed as concerning only internal management.

X 75-02-04-11. DISTRIBUTION OF CHILD SUPPORT COLLECTIONS. ~~The agency shall distribute all support payments collected under the program in accordance with the procedures established in 45-C-F-R-302-51.~~

History: ~~Effective September 1, 1979.~~

General Authority
NDCC-50-09-02

Law Implemented
45-CFR-302-51

Repealed effective December 1, 1981.

AGENCY SYNOPSIS: Amends language stating the amount of incentive payments to political subdivisions by percentage and substitutes therefor a statement that the percentage will be established by federal legislation.

X75-02-04-12. INCENTIVE PAYMENTS.

1. The agency shall make an incentive payment to any political subdivision of this state as well as any other state that makes collection of child support which has been assigned pursuant to North Dakota Century Code section 50-09-06.
2. The incentive payment shall be fifteen-percent the percentage established by federal legislation, of any amount collected and ~~required--to--be~~ retained by the state to reduce or repay assistance payments.
3. The incentive payment shall be made from the amounts which would otherwise represent the federal share of the assistance payments repaid to the state as a result of the collection.
4. When more than one jurisdiction within this state is involved in the enforcement or collection of support, or this state is involved with one or more other states in the enforcement or collection of support, the amount of the incentive payment shall be allocated among such jurisdictions in a manner prescribed by the agency.

History: Effective September 1, 1979; amended effective December 1, 1981.

AGENCY SYNOPSIS: Amends list of specific types of records to be retained, and substitutes therefor a reference to federal regulations which contain such a list.

x 75-02-04-13. MAINTENANCE OF RECORDS.

1- The agency or regional unit shall maintain all those records, necessary for the proper and efficient operation of the plan ~~including these records which pertain to the following,~~ required by 45 CFR 302.15.

~~a--Applications for services available under the state plan-~~

~~b--Location of absent parents; actions to establish paternity and obtain and enforce child support; and the cost incurred in such actions-~~

~~c--Amounts and sources of child support collections and the distribution of these collections-~~

~~d--Any fees charged or paid for child support services-~~

~~e--Any other information required to be maintained by the department of health, education and welfare-~~

2- For all cases in which there is an assignment pursuant to North Dakota Century Code section 50-09-06 (except where good cause for refusing to cooperate exists pursuant to section 75-02-01-09) or where there is an application for services, the agency or regional unit shall establish a case record which shall contain all information collected pertaining to the case. The case record shall include; those items required to be maintained by 45 CFR 303.2.

~~a--The referral document or documents received from the agency which administers the aid to families with dependent children program or the application for child support enforcement services of any other individual-~~

~~b--A record of any contacts with an applicant or recipient of assistance under the aid to families with dependent children program who is required to cooperate with the child support agency-~~

~~c--A record of any contacts with an individual who has applied for child support services-~~

- d. ~~A record of any contacts with the absent parent, the date and results of such contact.~~
- e. ~~A record of efforts to utilize state or local locate resources and the dates and results of these efforts.~~
- f. ~~A record identifying the court order and amount of support.~~
- g. ~~A record of communications to and from the board or the county social service board.~~
- h. ~~A record of communications to and from any other child support agencies.~~
- i. ~~A record of communications to and from the regional office of the department of health, education and welfare and the federal parent locator service.~~
- j. ~~A notation indicating the closing of the case, the date thereof, and the reason for such action.~~

History: Effective September 1, 1979; amended effective
December 1, 1981.

General Authority
 NDCC 50-09-02

Law Implemented
 NDCC 50-09-08,
 45 CFR 302.15,
 303.2

AGENCY SYNOPSIS: Repealed as duplicative of North Dakota Century Code
 section 50-06-15.

X75-02-04-14. SAFEGUARDING OF INFORMATION.

- 1. ~~The use or disclosure of information concerning applicants or recipients of child support enforcement services shall be governed by section 75-01-02-01 and by North Dakota Century Code section 50-06-15.~~
- 2. ~~The agency or regional unit or its agents or employees, shall not divulge any information obtained from any federal, state, or local agency, except to the extent necessary for the administration of the child support enforcement program or when otherwise directed by judicial order or when otherwise provided by law.~~

History: Effective-September-1,-1979-

General Authority

Law Implemented

NDCC-50-09-02

NDCC-50-06-15;
50-09-08;
45-CFR-205-50;
302-18

Repealed effective December 1, 1981.

AGENCY SYNOPSIS: Requires any attorney, person, public or private agency performing child support enforcement services to assure that it will not discriminate against various minority groups in providing services or seeking employees.

§ 75-02-04-15. ASSURANCE OF COMPLIANCE. Any individual, official, or local jurisdiction providing services to or in the administration of the child support enforcement program shall in writing assure compliance with federal and state laws and regulations prohibiting discrimination on the basis of the race, color, religion, national origin, sex, political beliefs, handicap, pregnancy, or age of an applicant for a recipient of services; or prohibiting discrimination on the basis of the race, color, religion, national origin, sex, political beliefs, or solely on the basis of handicap, pregnancy, or age of an employee or applicant for employment.

History: Effective December 1, 1981.

General Authority
NDCC 50-09-02

Law Implemented
NDCC 34-01-17,
34-01-19,
20 USC 1681,
et seq.,
29 USC 201,
et seq.,
621,
et seq.,
793,
794,
42 USC 2000 (d),
2000 (e),
45 USC 6101,
et seq.,
5 CFR 900.607,
24 CFR 1,
29 CFR 800,
850,
1600,
et seq.,
41 CFR 60-1,
60-60,
60-741,
45 CFR 80,

84,
86,
90

AGENCY SYNOPSIS: In three subsections, requires the child support enforcement agency to monitor all phases of the program and take appropriate remedial action if those providing services to the program are not complying with program requirements. Also, provides for an appeal by the service provider.

X 75-02-04-16. NONCOMPLIANCE.

1. The agency shall monitor all phases of the program to ensure compliance with all program requirements. Any finding of noncompliance by any party to the agreement shall be supported by a written report stating the factual basis for the finding of noncompliance. A copy of the report shall be provided to the party found not to be in compliance. If the party found not to be in compliance makes a written response or requests a meeting with the agency, within ten days of receipt of the report, the response or the results of the meeting shall be considered in determining the appropriate remedial action.
2. Appropriate remedial action may include the withholding or termination of all funds generated by the program from the party involved. The party affected shall receive written notice of the remedial action which the agency will take.
3. Within ten days after notice of the remedial action, the party affected may appeal the decision to take remedial action. Appeals taken shall be governed by chapter 75-01-03, and the appellant shall be treated as a claimant thereunder.

History: Effective December 1, 1981.

General Authority
NDCC 50-09-02

Law Implemented
NDCC 50-09-03

AGENCY SYNOPSIS: Removes language relating to the estimated number to be served by the initial pilot program.

X75-03-06-01. AUTHORITY. Under the authority vested in the social service board of North Dakota pursuant to section 4, chapter 10, 1979 Session Laws, the social service board of North Dakota is empowered to prescribe, promulgate, and adopt rules and regulations as are necessary for the purpose of establishing a pilot program for home care and deinstitutionalization aid for the care, custody, and control of developmentally disabled persons who are retained in the home or are deinstitutionalized, by providing financial assistance to parents,

guardians, or legal custodians who apply for aid under the law and qualify under the rules and regulations established by the board.

~~With--funding--made--available--by--the--1979--legislative--assembly;--it--is--estimated--that--only--twenty--five--children--can--be--served--by--this--program:~~

History: Effective January 1, 1980; amended effective December 1, 1981.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

AGENCY SYNOPSIS: Eliminates three definitions no longer used in the chapter, redefines the term "developmental disability", and renumbers the subsections.

χ 75-03-06-03. DEFINITIONS. As used in this chapter unless the context requires otherwise:

1. "Agency" means the social service board of North Dakota.
2. ~~"Cerebral--palsy"--means--a--disorder--dating--from--birth--or--early--infancy;--nonprogressive--in--nature;--which--is--characterized--by--aberrations----of---motor---function---(paralysis;---weakness;--incoordination)--and--often--other--manifestations--of--organic--brain--damage--such--as--sensory--disorders;--seizures;--mental--retardation;--learning--difficulty;--and--behavioral--disorders-~~
- 3- "Deinstitutionalization" means the provision of appropriate alternative living arrangements to developmentally disabled individuals currently served in institutions, or who may qualify for admission to institutions.
- 4- 3. "Developmental disability" means a severe, chronic disability ~~attributable to mental retardation; cerebral palsy; epilepsy; or other neurological condition of an individual which is so closely related to mental retardation as to require similar treatment and which:~~
 - a. ~~Originates---in---childhood--and--is--likely--to--continue--throughout--life~~ Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - b. ~~Results in an intelligence quotient of fifty-nine or less; or an intelligence quotient of sixty-nine or less--if--the--individual--has--other--physical--or--mental--impairments--which--impose--additional---and---significant---restrictions---in~~

functioning--or--developmental--progression Is manifested before an affected individual attains age twenty-two;

- c. Constitutes---a---substantial--handicap--as--evidenced--by demonstrated-defects-in-adaptive-behavior;-and Is likely to continue indefinitely;
- d. Can---be--predicted--to--require--a--program--of--lifelong services- Results in substantial functional limitations in three or more of the following areas of major life activity:
 - (1) Self-care;
 - (2) Receptive and expressive language;
 - (3) Learning;
 - (4) Mobility;
 - (5) Self-direction;
 - (6) Capacity for independent living; and
 - (7) Economic self-sufficiency; and
- e. Reflects an affected individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are individually planned and coordinated.

5- "Epilepsy"--means--a--chronic-symptom-of-cerebral-dysfunction; characterized-by-recurrent-seizures-involving-changes--in--the state-of-consciousness;-sudden-in-onset-and-brief-in-duration-

6- 4. "Habilitation-plan" "Individual habilitation plan (IHP)" means a written document describing the skills and abilities of a developmentally disabled child and specifying the program of services or treatment required to effect positive change, or to prevent or reduce negative change, in specific areas of disability.

7- 5. "Institution" means any public or private residential facility housing twenty or more residents, that provides treatment and care to the developmentally disabled on a twenty-four hour-a-day basis.

8- "Mental--retardation"--means--significantly-subaverage-general functioning-which-originates-during-the--developmental--period and-is-associated-with-impairment-in-adaptive-behavior-

9- 6. "Parent" means the natural or adoptive parent, guardian, person who stands in loco parentis to the child, or a person

to whom legal custody of the child has been given by order of a court.

History: Effective January 1, 1980; amended effective December 1, 1981.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

AGENCY SYNOPSIS: Removes language relating to the initial pilot program, and clarifies language relating to the application process.

x 75-03-06-04. APPLICATION PROCESS AND PRIORITY FOR ASSISTANCE.

1. Any parent who desires to apply for a subsidy to maintain a developmentally disabled child in the home, or return a developmentally disabled child home from an institution, shall make application to do so. Applications shall be available at the regional mental health and retardation centers or human service centers and at county social service board offices no earlier than December 1, 1979, and shall be submitted to the administrator of the area social service center or human service center in the region of the state in which the applicant lives no earlier than January 2, 1980, for consideration.
2. During January 1980; All families participating in the family subsidy program on June 30, 1981, must reapply. First priority will be given to those reapplications. Second priority will be given to eligible applicants who are on a current waiting list maintained by the agency. Third priority will be given to new applicants with children who are currently institutionalized. Applications will be date stamped and processed on a first received basis, with the establishment of a waiting list should more children be certified eligible for the program than the agency has funds to serve. Fourth priority will be given to applicants with children who are determined, by the individual habilitation plan team, to have multiple handicaps.
3. A waiting list of children certified eligible, but for whom funding is not immediately available, shall be established. The waiting list shall be maintained on a priority basis.

History: Effective January 1, 1980; amended effective December 1, 1981.

General Authority
S.L. 1979,
Ch. 10, § 4,

Law Implemented
S.L. 1979,
Ch. 10, § 4

NDCC 50-06-05.1

AGENCY SYNOPSIS: Redefines eligibility to target lower and middle income families who are not eligible for other grants and aid.

X 75-03-06-05. ELIGIBILITY FOR FAMILY SUBSIDY PROGRAM.

1. Parents applying for financial assistance under this program must:
 - a. Reside within the state of North Dakota;
 - b. Desire to maintain within their home, or return to their home from an institutional setting, their developmentally disabled child; and
 - c. Provide the agency with the necessary medical, psychological, or educational evaluations relating to their child for agency determination of eligibility.
2. Individuals on whose behalf a subsidy will be provided must:
 - a. Be developmentally disabled; and
 - b. Be twenty-one years of age or under; and
 - c. Not be receiving supplemental security income benefits.
3. The maximum levels of income and resources which may be earned and owned by the family unit will be established by the agency. Family resources will be evaluated in the manner provided in subdivisions c, d, e, f, g, h, i, and j of subsection 2 of section 75-02-02-07.

History: Effective January 1, 1980; amended effective December 1, 1981.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

AGENCY SYNOPSIS: Clarifies the responsibilities of the several participants in certifying a family is eligible for the family subsidy program.

X 75-03-06-06. CERTIFICATION PROCESS. ~~Following a determination that the child and family are eligible under section 75-03-06-05, the~~

~~social-service-board-shall-forward-the-application-and-related-materials to-the-superintendent-of-the-Grafton-state-school-or--superintendent--of the-Jamestown-state-hospital;--as-appropriate;--for-certification-that-the child---is---appropriate---for---deinstitutionalization---or---continued noninstitutionalization:~~ Certification of eligibility for the family subsidy program will use the following procedure:

1. An application will be completed by the family and sent to the regional mental health and retardation center or human service center where it will be assigned to a developmental disabilities case manager.
2. The regional developmental disabilities case manager will:
 - a. Assess functional level of client;
 - b. Gather all available, pertinent evaluation data; and
 - c. Organize an interagency individual habilitation plan team consisting of the referral source, potential service providers, the client, parent/guardian, and whomever else is necessary to develop an individual habilitation plan.
3. The interagency individual habilitation plan team will:
 - a. Determine if evaluation data available is adequate to make program decisions;
 - b. Recommend appropriate services, service settings, and treatment;
 - c. Certify program eligibility by signing the individual habilitation plan;
 - d. Serve as the service evaluation team for client; and
 - e. Recommend changes in program, level of service, service setting, or eligibility status.
4. The agency will offer a contract to eligible parents, with the level of funding commensurate with the recommendations of the individual habilitation plan team and the developmental disabilities case manager.
5. Recertification must be accomplished for each state fiscal year (July first through June thirtieth).

History: Effective January 1, 1980; amended effective December 1, 1981.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

AGENCY SYNOPSIS: Makes minor changes in the rules concerning the handling and disposition of family subsidy payments.

X75-03-06-08. SUBSIDY PAYMENTS TO ELIGIBLE PARENTS. Two types of financial assistance are available through the family subsidy program:

1. Fifteen dollars per week will be paid to the parents for the basic care of their developmentally disabled child.
 - a. Payments will be issued on a monthly basis.
 - b. Payments will begin the week in which the director of the appropriate institution certifies the child into the program.
 - c. The basic care subsidy will be available even if the family chooses not to participate in the services subsidy.
2. An amount not to exceed thirty-five dollars per week will be paid to the family for services or treatment which the child receives in accordance with the individual habilitation plan.
 - a. Service costs reimbursed monthly through the services subsidy include, but are not limited to, the following:
 - (1) Purchase of special equipment.
 - (2) Specialized therapy, e.g., speech, occupational or physical therapy.
 - (3) Special diets.
 - (4) Medical or dental care not covered under the family's health insurance or a federally funded program such as medical assistance or crippled children's services.
 - (5) Home health care.
 - (6) Counseling for the child or family, including behavior management.
 - (7) Respite care/babysitting care (if used in conjunction with parental employment, only extraordinary costs may be reimbursed).
 - (8) Special clothing.

- (9) Educational programs not provided without charge by the public schools.
- (10) Day Child care facility.
- (11) Recreational services.
- (12) Related transportation.
- (13) Housing rehabilitation.
- (14) Excess cost of health insurance.

b. Payment will begin following the signing of a habilitation contract between the parents and the agency ~~and--upon--the agency's.~~ Payment up to an average of thirty-five dollars per week will be based upon the case manager's receipt of a written statement from the parent itemizing the expenditures or obligations in carrying out the individual habilitation plan incurred following execution of the contract.

History: Effective January 1, 1980; amended effective December 1, 1981.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

AGENCY SYNOPSIS: This section is repealed in its entirety and its former provisions incorporated into sections 75-03-06-05 and 75-03-06-06.

~~χ 75-03-06-09. PROGRAM IMPLEMENTATION. Each child certified into the family subsidy program will be assigned a case manager by the agency who shall:~~

~~1--Ascertain--whether--the--parent--wishes--to-participate-in-the basic-care-subsidy-program;-the-services-subsidy--program;-or both:~~

~~2--If--the--services-subsidy-program-is-requested;-coordinate-the establishment-of-a-habilitation-team-for-the-development-of--a habilitation--plan--on-the-child's-behalf;-the-team-to-consist of:~~

~~a--The-case-manager;~~

~~b--The-parents;-and~~

~~e--Other--community--progressionals;--such--as--those--from--the--field--of--medicine;--education;--rehabilitation;--or--mental--health;--who--the--parents--and--case--manager--believe--may--contribute--to--planning--a--program--of--community-based--services--for--the--benefit--of--the--disabled--child-~~

~~3--Following--the--development--of--a--habilitation--plan;--identify--the--amount--of--services--subsidy--needed--by--the--family;--not--to--exceed--thirty--five--dollars--per--week;--to--obtain--the--services--or--treatment--identified--in--the--plan-~~

~~4--Enter--into--a--renegotiable--contract--with--the--parents--for--the--services--subsidy-~~

~~5--Assist--the--family--with--the--required--recordkeeping--for--purposes--of--project--evaluation-~~

History: Effective-January-1,-1980-

General Authority
S-L-1979;
Ch-10,-§-4;
NBCE-50-06-05-1

Law Implemented
S-L-1979;
Ch-10,-§-4

Repealed effective December 1, 1981.

AGENCY SYNOPSIS: This section is repealed in its entirety and its former provisions incorporated into section 75-03-06-06.

x 75-03-06-10. RESPONSIBILITIES OF THE HABILITATION TEAM. ~~The duties-of-the-habilitation-team-include-~~

~~1--Identifying--medical;--educational;--or--behaviorial--needs--of--the--child-~~

~~2--Developing--a--written--plan--of--services--or--treatment--for--the--child--directed--at--ameliorating--the--child's--disabilities-~~

~~3--Identifying--community--resources--that--can--be--made--available--to--the--child--and--the--child's--family--in--order--to--implement--the--written--habilitation--plan-~~

~~4--Review--the--implementation--of--the--habilitation--plan--on--a--quarterly--basis--and--make--modifications--as--necessary-~~

~~5--Participate--in--the--evaluation--component--of--the--program-~~

History: Effective-January-1,-1980-

General Authority
S-L-1979;

Law Implemented
S-L-1979;

Repealed effective December 1, 1981.

AGENCY SYNOPSIS: Removes obsolete language relating to the pilot program.

χ 75-03-06-11. RESPONSIBILITIES OF PARENTS PARTICIPATING IN SERVICES SUBSIDY. The responsibilities of a parent who desires to participate in the services subsidy program include:

1. Participation with the agency in the development of a an individual habilitation plan for the child.
2. Signing the habilitation contract agreeing to the plan of services.
3. Obtaining the agreed-upon services for the child.
4. Maintaining an accounting of the funds expended for the agreed-upon services.
5. Participating in a behavioral assessment of the child at the beginning of the program and on a semiannual basis thereafter.
6. ~~Participating in an evaluation of the family subsidy program in December 1980 and July 1981.~~

History: Effective January 1, 1980; amended effective December 1, 1981.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

AGENCY SYNOPSIS: This section is repealed in its entirety as it related only to the initial pilot program.

χ 75-03-06-12. EVALUATION. ~~An evaluation of the family subsidy program shall occur during the months of December 1980 and June 1981, based in part on the following:~~

1. ~~An assessment of the developmental growth of the children served by the family subsidy program.~~

2. ~~An accounting of the services made available to the children and their families as a result of the family subsidy program.~~
3. ~~An accounting of the children certified eligible for the program, but placed on waiting lists due to the inavailability of funding.~~
4. ~~Written evaluations of the program's implementation and effectiveness provided by parents and community professionals.~~

~~Information provided by the parents or relating to children served under the program shall be held in confidence by the agency and used only in an aggregate form for statistical reporting purposes.~~

History: Effective January 1, 1980:

General Authority
S-L-1979;
Ch-10, §-4;
NDEC-50-06-05-1

Law Implemented
S-L-1979;
Ch-10, §-4

Repealed effective December 1, 1981.

AGENCY SYNOPSIS: Adds two bases for discontinuing program participation, refines one basis, and renumbers the subsections.

X75-03-06-13. DISCONTINUANCE OF SUBSIDY.

1. Participation in the basic care subsidy program will be terminated under any of the following conditions:
 - a. 1. The family requests termination.
 - b. 2. Death of the child.
 - c. 3. Voluntary or court-ordered out-of-home placement of the child.
 - d. 4. The child reaches age twenty-two.
 - e. 5. The family moves out of state.
 - f. 6. The child no longer is developmentally disabled.
 - g. 7. Termination of the program: The individual habilitation plan team recommends certification be discontinued.
 8. Unavailability of funds.

~~2--In--addition--to--the--conditions--for--termination--enumerated above,--participation--in--the--services--subsidy--program--will--be terminated--under--any--of--the--following--conditions:~~

- a: 9. The family does not cooperate in the semiannual annual assessment of the child's functioning.
- b: 10. The family does not implement the care and treatment program agreed upon in the individual habilitation contract plan.
- 11. The family does not maintain adequate accounting of the funds for the agreed-upon services.

History: Effective January 1, 1980; amended effective December 1, 1981.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

AGENCY SYNOPSIS: This section is repealed in its entirety as it related only to the pilot program.

X 75-03-06-14. PROGRAM DURATION. ~~The family subsidy program will begin on January 2, 1980, and will terminate on June 30, 1981, unless sooner discontinued due to exhaustion of appropriated funds therefor.~~

~~History: Effective January 1, 1980.~~

~~General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1~~

~~Law Implemented
S.L. 1979,
Ch. 10, § 4~~

Repealed effective December 1, 1981.

STAFF COMMENT: Chapters 75-03-07 through 11 contain all new material but are not underscored so as to improve readability.

AGENCY SYNOPSIS: IN-HOME CHILD CARE, SUPPLEMENTAL PARENTAL CARE. This chapter establishes the provisions and standards for registration of in-home child care providers. This chapter establishes rules for the voluntary registration of those individuals who provide supplemental parental care in the home of the child's parents. This chapter establishes the standards which the provider must follow, if the provider desires to be registered by the Social Service Board of North Dakota as an in-home child care provider.

CHAPTER 75-03-07
IN-HOME CHILD CARE
SUPPLEMENTAL PARENTAL CARE

Section	Purpose
75-03-07-01	Purpose
75-03-07-02	Objective of Rules
75-03-07-03	Definitions
75-03-07-04	In-Home Supplemental Parental Care Registration and Standards

75-03-07-01. PURPOSE. The purpose of this chapter is to establish minimum standards of in-home care and to assure that those standards are maintained.

History: Effective December 1, 1981.

General Authority	Law Implemented
NDCC 50-11.1-08	NDCC 50-11.1-01

75-03-07-02. OBJECTIVE OF RULES. Under the authority vested in the social service board of North Dakota pursuant to North Dakota Century Code section 50-11.1-08, the social service board of North Dakota is empowered to prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1.

History: Effective December 1, 1981.

General Authority	Law Implemented
NDCC 50-11.1-08	NDCC 50-11.1-08

75-03-07-03. DEFINITIONS. Definitions used in this chapter are as defined in North Dakota Century Code chapter 50-11.1.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-02,
50-11.1-08

75-03-07-04. IN-HOME SUPPLEMENTAL PARENTAL CARE REGISTRATION AND STANDARDS.

1. An application for a registration certificate shall be submitted to the county social service board in the county wherein the applicant proposes to provide in-home supplemental parental care services. Application shall be made in the form and manner prescribed by the board.
2. Applicants for an in-home supplemental parental care registration certificate shall be directly responsible for the care, supervision, and guidance of the child or children in the child or children's home and shall comply with the following standards, certifying in the application that the applicants shall:
 - a. Be at least fourteen years of age.
 - b. Be mentally, physically, and emotionally able to provide adequate care for the children in the applicant's charge.
 - c. Be able to devote adequate time and attention to the children in the applicant's charge.
 - d. Participate in specialized training related to child care as provided by or approved by the social service board.
 - e. Provide food of sufficient quantity and nutritious quality which satisfies the dietary needs of the children while in the applicant's charge.
 - f. Provide proper health care and protection for children in the applicant's charge.
 - g. Not use any drugs or alcoholic beverages except for medical purposes while children are in care.
 - h. Never leave children without supervision.

- i. Discuss methods of discipline and child management with the parent or parents and shall not engage in any method of punishment which humiliates or frightens a child or causes more than minor transient physical or emotional discomfort, or both.
 - j. Provide care on a continuing basis for less than a twenty-four-hour period.
3. If the physical or mental health capabilities of an in-home provider appear to be questionable, the board may request that the provider present evidence of capability based on a formal evaluation.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-02,
50-11.1-06,
50-11.1-07,
50-11.1-08

AGENCY SYNOPSIS: FAMILY CHILD CARE HOMES, SUPPLEMENTAL PARENTAL CARE. This chapter provides the regulations and standards for those individuals who voluntarily wish to be licensed by the Social Service Board of North Dakota as a family child care home. If the provider wishes to be licensed as a family child care home, the provider may then care for no more than four children, ages twenty-four months or younger or for no more than a total of seven children. This chapter establishes the minimum qualifications and standards which the provider must meet in order to obtain a license from the Social Service Board of North Dakota. The standards include such factors as health of the provider and children, minimum physical facilities, admission procedures, minimum child care programs, records and standards concerning punishment.

CHAPTER 75-03-08
FAMILY CHILD CARE HOMES
SUPPLEMENTAL PARENTAL CARE

Section	
75-03-08-01	Purpose
75-03-08-02	Authority and Objective
75-03-08-03	Definitions
75-03-08-04	Effect of Licensing and Availability of License
75-03-08-05	Denial or Revocation of License
75-03-08-06	Application for and Nontransferability of Family Child Care Home License
75-03-08-07	Family Child Care Home License
75-03-08-08	Family Child Care Homes Registered Prior to Effective Date

75-03-08-01. PURPOSE. The purpose of this chapter is to establish minimum standards of family child care and to assure that those standards are maintained.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01

75-03-08-02. AUTHORITY AND OBJECTIVE. Under the authority vested in the social service board of North Dakota pursuant to North Dakota Century Code section 50-11.1-08, the social service board of North Dakota may prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-08

75-03-08-03. DEFINITIONS. As used in this chapter:

1. "Attendance" means the total number of children present at any one time at the home.
2. "Board" means the social service board of North Dakota.
3. "Caregiver" means any person whose prime responsibility is the provision of direct care, supervision, and guidance to children in a child care home under the guidance and supervision of the family child care provider.
4. "Family child care provider" means the person in whom inheres the legal responsibility and the administrative authority for a family child care home operation. The family child care provider is the applicant for license or the licensee pursuant to this chapter.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-02

75-03-08-04. EFFECT OF LICENSING AND AVAILABILITY OF LICENSE.

1. The issuance of a license to operate a family child care home shall be evidence of compliance with the standards contained in this chapter.
2. The current license shall be available in the premises to which it applies.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-03,
50-11.1-04,
50-11.1-04.1,
50-11.1-06

75-03-08-05. DENIAL OR REVOCATION OF LICENSE.

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-09, and 50-11.1-10.
2. If an action to revoke a license is appealed, the license holder may continue the operation of the facility pending the final administrative determination or until the license expires, whichever first occurs, provided, however, that this subsection shall not limit the actions the board may take pursuant to North Dakota Century Code section 50-11.1-12.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-10

75-03-08-06. APPLICATION FOR AND NONTRANSFERABILITY OF FAMILY CHILD CARE HOME LICENSE.

1. An application for license may be made to the county social service board office in the county wherein the applicant proposes to provide family child care.
 - a. Application shall be made in the form and manner prescribed by the board.
 - b. Any license issued by the board shall serve as public documentation that the provider of family child care has complied with the provisions of North Dakota Century Code chapter 50-11.1 and the requirements contained in subsection 2.
 - c. The license shall be nontransferable and shall be valid only on the premises that are indicated on the license. A new application for a license must be filed by a licensed home upon change of provider or location.
2. Standards for provision of supplemental parental care in a family child care home.
 - a. Staffing. The staffing requirements are determined on the basis of the number of children physically in care at a given time, rather than total enrollment.
 - (1) A family child care provider may provide care to no more than four children ages twenty-four months or younger, or for no more than a total of seven children. Where one or more children is a child with a handicapping condition which requires more than usual care, the child's evaluated developmental age

level, rather than chronological age level, will be used in determining the number of children for which care can be provided.

- b. Minimum qualifications of family child care providers. Providers shall:
 - (1) Be at least eighteen years of age.
 - (2) Certify attendance at a minimum of four hours of board-approved training related to child care annually when made available in the provider's community.
 - (3) Be physically present in the home no less than sixty percent of the time when children are in care.
 - (4) Be mentally, physically, and emotionally able to provide adequate care for the children in the provider's charge.
- c. Minimum qualifications of all caregivers who provide direct care, supervision, and guidance to children. Caregivers shall:
 - (1) Be at least fourteen year of age or, if a member of the immediate family of the family child care provider, be at least twelve years of age.
 - (2) Be mentally, physically, and emotionally able to provide adequate care for the children under their supervision.
- d. Caregivers under the age of eighteen and all children in care must have adult supervision in the home at all times.
- e. All volunteers, including family members providing direct care for children, shall meet the minimum requirements of caregivers.
- f. Health factors.
 - (1) Family child care home providers and caregivers shall complete a health statement to certify that they do not have health problems that would interfere with their functioning as caregivers or that would be detrimental to the health of the children or other staff.
 - (2) If the physical or mental health of a provider or caregiver appears questionable, the board may require the provider or caregiver to be evaluated by

appropriate professionals, with the results provided to the board.

(3) Providers or caregivers shall not use any drugs or alcoholic beverages except for medical purposes while children are in care.

(4) The provider or caregiver shall at no time place children in an environment that would be harmful or dangerous to their physical or emotional health. Children under care shall never be left without supervision by a person meeting the minimum qualifications of a caregiver.

g. Liability insurance. The family child care provider shall carry liability insurance coverage for their family child care operation.

h. Physical facilities.

(1) The family child care home shall provide adequate space, indoors and out, for the daily activities of the children. This shall include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered shall exclude bathrooms, pantries, and passageways leading to outdoor exits.

(2) The home shall be clean, free of clutter, and maintained in a sanitary condition. Rubbish shall be regularly removed.

(3) The home shall have adequate heating, ventilation, and lighting facilities for the comfort and protection of the health of the children. During the heating season, a temperature of not less than sixty-eight degrees Fahrenheit [20 degrees Celsius] shall be maintained in all rooms occupied by children.

(4) The home shall be equipped with at least one smoke detector per floor used by the children and one fire extinguisher per home.

(5) Elevated areas such as stairs or porches shall have railings and safety gates where necessary to prevent falls.

(6) The home shall have a drinking water supply from an approved community water system. If water is from

another source, a sample shall be tested and approved by the local health department.

- (7) Each child shall have a comfortable and clean place to sleep or rest and an individual blanket. The floor shall be used only when carpeted or padded, warm, and free from drafts. A child who is in care between the hours of eight p.m. and six a.m. shall have an individual sleeping place. Children under twelve months of age and any child unable to walk unassisted shall sleep in a crib, bed with side rails and a firm mattress, or playpen.
- (8) Exterior play areas in close proximity to busy streets and other unsafe areas shall be contained, fenced, or have natural barriers to restrict children from unsafe areas.
- (9) Potential hazards such as guns, household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways must not be accessible to young children.
- (10) Equipment and toys shall be in good repair.
- (11) The home shall have a telephone.
- (12) The home shall have an indoor bathroom with a toilet and plumbing.
- (13) If the fire/safety, health, or sanitation of the home appears questionable, the board may require the provider to obtain an appropriate inspection or inspections from local officials and to submit the results of the inspection to the board. Any problems found shall be corrected.

i. Admission procedures.

- (1) The provider shall request a preadmission visit by the child and the child's parents to acquaint the child and the parent with the home and its surroundings, the other children, and the family day care provider.
- (2) The provider shall inform parents about the day care program, places and times of special activities outside the home, policies, and emergency procedures, and discuss information concerning the child so that the child's needs can be identified and accommodated. An explanation of how accidents and illnesses will be dealt with shall be provided as well as methods of

discipline and child management techniques to be used.

- (3) Parents shall be notified of the payment rates and the time of payment.
- (4) The provider shall regularly offer parents opportunities to observe their children while in care.
- (5) A licensed health practitioner's statement based upon a health assessment or a health assessment statement completed by the parents shall be obtained at the time of initial enrollment of the child. No more than six months shall have elapsed between the date the health assessment was completed and the date of initial enrollment. The statement shall indicate any special precautions for diet, medication, or activity. This statement shall serve as evidence that a child is physically able to take part in the day care program. The statement for each child must be completed annually.

j. Program.

- (1) There shall be a program of daily individual and small group activities appropriate to the ages and needs of the children in the family child care home. The program shall include activities which foster sound social, intellectual, emotional, and physical growth, developed with discussion and consultation with parents as to their children's needs.
- (2) The program shall be designed with intervals of stimulation and relaxation, and a balance between periods of active play and quiet play or rest. The daily routine should foster the development of good health habits and self-discipline, adequate indoor and outdoor play, rest, and sleep with sufficient time and opportunities for various experiences.
- (3) The program shall provide for a variety of educational experiences for all ages of children served with an adequate supply of safe play equipment, toys, and materials for indoor and outdoor activity.
- (4) Areas used for napping shall provide an opportunity for undisturbed rest. Napping schedules should be set for children according to their ages, needs, and parent's wishes.

k. Nutrition.

- (1) All children present at mealtime shall be served a nutritious meal, including a food from each of the four basic food groups. Adequate amounts of food shall be available. A nourishing midmorning and midafternoon snack shall be provided.
- (2) If sack lunches are provided by parents, the day care provider shall supplement these lunches as necessary.

1. Health protection.

- (1) Children shall receive all immunizations appropriate for their age, as prescribed by the North Dakota state department of health.
- (2) Family child care provider shall be familiar with emergency first aid techniques.
- (3) A copy of a statement signed by the child's parents authorizing emergency medical care for each child shall be in the possession of the provider.
- (4) Sufficient first aid supplies shall be available for minor emergencies.
- (5) The family child care provider shall have plans to respond to illness and to emergencies including evacuation in case of fire, serious injury, and ingestion of poison.
- (6) At least one person who may be called upon for child care assistance in emergencies shall be designated.
- (7) Plans shall be made to respond to minor illnesses when children can be cared for in the provider's home.
- (8) If children in care require medication, proper instruction as to the administration of such medication shall be secured and followed by the caregiver.
- (9) The family child care provider shall release a child only to the child's parent, guardian, or person in loco parentis, or to an individual authorized in writing by such person to take the child from the day care home.
- (10) No child shall be allowed to play outdoors without clothing appropriate to the climatic conditions.

- (11) No child shall be bathed, permitted to use wading pool, or to play outdoors without adequate supervision.

m. Records.

- (1) A current license for the family child care home must be available in the premises to which it applies.
- (2) A copy of the current standards for family child care homes shall be kept in the premises.
- (3) The following records shall be kept and maintained for each child:
 - (a) The child's full name, birthdate, current home address, names of the child's parents or legal guardian and business phone and home telephone numbers where those persons can be reached.
 - (b) A health assessment statement completed annually by the child's parent or a licensed health practitioner.
 - (c) A written statement from the parents or legal guardian authorizing emergency medical care.
 - (d) Names and telephone numbers of persons authorized to take the child from the home.
 - (e) Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the North Dakota department of health.
- (4) All records which are maintained with respect to children receiving child care services shall be deemed confidential, and access shall be limited to the provider, the provider's staff, parents, and to the following:
 - (a) Authorized social service board representatives.
 - (b) Persons having a definite interest in the well-being of the child or children concerned and who, in the judgment of the board, are in a position to serve their interests should that be necessary.
 - (c) Persons who possess a written authorization from the child's parent.

n. Punishment.

- (1) No child shall be punished by withholding or force-feeding food, requiring or prohibiting rest, or by placement in isolation. No child shall be punished for wetting or soiling clothes due to a failure of toilet habits.
- (2) Brief, supervised separation from the rest of the children may be used if necessary.
- (3) No method of punishment which humiliates or frightens the child or causes more than minor transient physical or emotional discomfort, or both, shall be used.
- (4) No child of any age may be shaken, spanked, bitten, pinched, or otherwise physically punished.
- (5) Profane, threatening, unduly loud or abusive language shall not be used when addressing children or in the presence of children.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04.1,
50-11.1-07,
50-11.1-08

75-03-08-07. FAMILY CHILD CARE HOME LICENSE. The right to operate a licensed family child care home is dependent upon compliance with the applicable provisions of North Dakota Century Code chapter 50-11.1 and the applicable standards contained in this chapter.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-04.1,
50-11.1-07

75-03-08-08. FAMILY CHILD CARE HOMES REGISTERED PRIOR TO EFFECTIVE DATE. Any family day care home registered prior to July 1, 1981, shall retain a valid registration certificate until such registration shall expire or be revoked by the board.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

50-11.1

Law Implemented
NDCC 50-11.1-04,
50-11.1-08

AGENCY SYNOPSIS: GROUP CHILD CARE, SUPPLEMENTAL PARENTAL CARE. This chapter provides the minimum standards which an individual, or other entity, must meet in order to obtain the required license for the operation of a group child care facility. This facility provides supplemental parental care for a total not to exceed eighteen children. The standards established the minimum qualifications of the operator, the supervisor and caregivers and establish the minimum ratio of staff to children in this program. The regulations also establish the minimum operational procedures including fire inspections, sanitation and safety requirements, space requirements, food and nutrition, program, and establishes the penalties to be paid as fiscal sanctions for violations as well as the allowable time periods for the corrections of any deficiencies noted in a correction order.

CHAPTER 75-03-09
GROUP CHILD CARE
SUPPLEMENTAL PARENTAL CARE

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75-03-09-01. PURPOSE. The purpose of this chapter is to establish minimum standards of group child care and to assure that those standards are maintained.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01

75-03-09-02. AUTHORITY AND OBJECTIVE. Under the authority vested in the social service board of North Dakota pursuant to North Dakota Century Code section 50-11.1-08, the social service board of North Dakota may prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-08

75-03-09-03. DEFINITIONS. As used in this chapter:

1. "Attendance" means the total number of children present at any one time at the home or facility.
2. "Caregiver" means any person whose prime responsibility is the provision of direct care, supervision, and guidance to children in the child care home or facility.
3. "Group child care supervisor" means any person with the responsibility for overseeing the day-to-day operation of a group child care program.

4. "Group child care operator" means any person or group in whom inheres the legal responsibility and the administrative authority for a group child care operation. The group child care operator is the applicant for license or the licensee pursuant to this chapter.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-02

75-03-09-04. EFFECT OF LICENSING AND AVAILABILITY OF LICENSE.

1. The issuance of a license to operate a group child care home or facility shall be evidence of compliance with the standards contained in this chapter.
2. The current license shall be available in the premises to which it applies.
3. The license shall specify the maximum number of children who may be cared for, and the home or facility shall at no time admit a greater number of children.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-03

75-03-09-05. DENIAL OR REVOCATION OF LICENSE.

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-09, and 50-11.1-10.
2. If an action to revoke a license is appealed, the license holder may continue the operation of the facility pending the final administrative determination or until the license expires, whichever first occurs; provided, however, that this subsection shall not limit the actions the board may take pursuant to North Dakota Century Code section 50-11.1-12.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-10

75-03-09-06. APPLICATION FOR GROUP CHILD CARE LICENSE. An application for license and issuance by the social service board shall be submitted to the county social service board in the county wherein the applicant proposes to provide group child care services.

Application shall be made in the form and manner prescribed by the board.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-03,
50-11.1-04

75-03-09-07. NONTRANSFERABILITY OF LICENSE. The license shall be nontransferable and shall be valid only on the premises indicated on the license. A new application for a license must be filed by a licensed home or facility upon change of operator or location.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-03,
50-11.1-04

75-03-09-08. PROVISIONAL LICENSE.

1. A group child care operator who applies for a license for a newly opened home or facility, or for a home or facility previously licensed, where the home or facility fails to comply with all applicable standards and regulations of the board, may, at the discretion of the administrator of the area social service center/human service center, be issued a provisional license.
2. A provisional license shall:
 - a. Prominently state that the home or facility has failed to comply with all applicable standards and regulations of the board.
 - b. State that the items of noncompliance are set forth on a document available upon request made to the home or facility's operator or supervisor.

- c. Expire at a set date, not to exceed six months from the date of issuance.
 - d. Be exchanged for an unrestricted license, which will bear the same date as the provisional license, upon demonstrating compliance, satisfactory to the board, with all applicable standards and regulations.
3. A provisional license shall be issued only to an applicant who has, in writing, waived:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license either at the time of application or during the period of operation under a provisional license.
 4. Any provisional license issued shall be accompanied by a written statement of violations signed by the administrator of the area social service center/human service center and, in writing, acknowledged by the operator.
 5. Subject to the exceptions contained in this section, a provisional license entitles its holder to all the rights and privileges afforded the holder of an unrestricted license.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-07,
50-11.1-07.2,
50-11.1-08

75-03-09-09. MINIMUM QUALIFICATIONS AND DUTIES OF OPERATOR.

1. The operator of a group child care home or facility is responsible to the board for compliance with requirements set forth in the standards.
2. The operator may be any individual, group, agency, association, or organization legally responsible for the operation of the home or facility.
3. The operator shall ensure that all standards are complied with and shall:
 - a. Be responsible for establishing the child care program.

- b. Make application for a license for each home or facility operated.
 - c. Outline a plan of operation for each home or facility.
 - d. Notify the board of any major changes in the operation or in the ownership or governing body of the home or facility.
 - e. Carry liability insurance for the home or facility.
 - f. Maintain required records.
 - g. Be responsible for all persons who provide child care in the home or facility.
 - h. Ensure that no individual shall be employed or retained in the child care home or facility who has been determined to have abused or neglected a child.
 - i. Ensure that the home or facility is sufficiently staffed at all times to meet the child/staff ratios for children in attendance and that no more children than the licensed capacity be served at any one time.
 - j. Request preadmission visits for children and their parents in order that the facility's program, fees, operating policies, and procedures can be viewed and discussed. Information concerning the child shall be shared so that the child's needs can be identified and accommodated. An explanation of how accidents and illnesses will be dealt with shall be provided as well as methods of discipline and child management techniques to be used.
 - k. Ensure that parents of each enrollee are notified of the fees to be paid, methods of payment, and policies regarding delinquency of fees.
 - l. Regularly offer parents opportunities to observe their children while in care.
 - m. Provide parents upon request any progress reports on their individual child or children and the compliance of the home or facility with standards contained in this chapter.
 - n. Provide parents with the name of the home or facility's operator and the group child care supervisor.
4. If the operator of the group child care home or facility is also the group child care supervisor, the operator must also meet the qualifications of the supervisor set forth in section 75-03-09-10.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-09-10. MINIMUM QUALIFICATIONS OF GROUP CHILD CARE SUPERVISOR.

1. A group child care supervisor shall be an adult of good mental and physical health, capable of mature judgment, and possessing knowledge and experience in management and interpersonal relationships.
2. The supervisor shall meet at least one of the following qualifications, in addition to those set out in subsection 1:
 - a. A bachelor's degree in the field of early childhood education.
 - b. A bachelor's degree with at least twelve semester hours or fifteen quarter hours in child development, child psychology, or fields directly related thereto.
 - c. An associate of arts degree in the field of early childhood development.
 - d. Certification as a child development associate or similar status where such a local, state, or federal certification program exists.
 - e. Certification from a Montessori teacher training program.
 - f. A minimum of one year exclusive experience as a registered or licensed day care provider with references from at least two parents whose children were in the provider's care.
 - g. A high school degree or equivalency with certification of completion in a secondary occupational child care program and at least one year experience working with young children, with references from at least two persons who either had their children in the provider's care or instructed the provider in child care programming.
 - h. A minimum of one year exclusive experience providing care to three or more preschool age children, with references from at least two parents whose children were in the provider's care.

- i. Qualification under regulations in force and effect for day care center directors prior to July 1, 1981.
- 3. The group child care supervisor shall certify attendance at a minimum of five hours of board-approved training related to child care annually when made available in the provider's community to remain qualified.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-09-11. DUTIES OF GROUP CHILD CARE SUPERVISOR. The supervisor shall, coextensive with the operator:

- 1. Be responsible for child care planning, supervision, and activity.
- 2. Ensure that caregivers and children under the age of eighteen shall have adult supervision in the home or facility at all times.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-09-12. MINIMUM QUALIFICATIONS FOR ALL CAREGIVERS. Caregivers shall:

- 1. Be at least fourteen years of age, provided that any employee under age sixteen has written parental consent for such employment, and the employment arrangements are in conformance with North Dakota Century Code chapter 34-07.
- 2. Be mentally, physically, and emotionally able to provide adequate care for the children in the caregiver's charge.
- 3. Receive orientation related to child care, emergency procedures, special needs of children in care, and program activities during the first week of caregiving.
- 4. Not use any drugs or alcoholic beverages except for medical purposes while children are in care.

5. At no time place a child or children in an environment that would be harmful or dangerous to their physical or emotional health.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-09-13. MINIMUM HEALTH REQUIREMENTS FOR ALL CAREGIVERS.

1. All caregivers shall certify, within thirty days of licensing, that they do not have health problems that would interfere with their functioning as child caregivers or that would be detrimental to the health of the children or other staff.
2. There shall be provision for adequate substitution for child caregivers who are too ill to function effectively or who present a serious health hazard to others in the child care program.
3. If the physical or mental health of the operator, supervisor, or a caregiver appears questionable, the board may require the individual to present evidence of such capabilities based on a formal evaluation. Where appropriate, the board may provide for an evaluation through the use of professional staff.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-09-14. GROUP CHILD CARE 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 caregivers or program staff to children in group child care programs shall be:
 - a. Children less than twenty-four months of age, one staff per four children.

- b. Children twenty-four months of age to thirty-six months of age, one staff per five children.
 - c. Children thirty-six months of age to four years of age, one staff per seven children.
 - d. Children four years of age to five years of age, one staff per ten children.
 - e. Children five years of age to six years of age, one staff per twelve children.
 - f. Children six to ten years of age, one staff per sixteen children.
 - g. Children ten to fourteen years of age, one staff per eighteen children.
3. When a child is in care with a mentally handicapping condition, and requires more than usual care, the evaluated developmental age level, rather than the chronological age of the child, shall be used in determining appropriate staff ratios.
 4. Children with special conditions requiring more than usual care and supervision must have provided to them adequate care and supervision without adversely affecting care provided to the remaining children in the home or facility.
 5. In each age category, the number of children is divided by the corresponding ratio number and carried to the nearest hundredths. To determine the number of caregivers necessary at any given time, numbers of caregivers for all age categories are added, and any fractional caregiver count then rounded to the next highest whole number whenever the fractional caregiver count amounts to twenty-five hundredths or more. If lower than twenty-five hundredths, the fractional amount is dropped.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-02,
50-11.1-02.1

75-03-09-15. MINIMUM RECORDS FOR EACH ENROLLED CHILD. The following records shall be kept and maintained for each child:

1. The child's full name, birthdate, and current home address.

2. The names and addresses of the parents or other persons legally responsible for the child, as well as their home and business telephone numbers.
3. Names and telephone numbers of persons who can assume responsibility for the child if the person legally responsible for the child cannot be reached immediately in an emergency.
4. The written consent of a parent or legally responsible party for emergency care shall also be obtained.
5. Names and telephone numbers of persons authorized to take the child from the group home or facility.
6. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the North Dakota state department of health.
7. A licensed health practitioner's statement based upon a health assessment or a health assessment statement completed by the parent shall be obtained at the time of initial enrollment of the child. No more than six months shall have elapsed between the date the health assessment was completed and the date of initial enrollment. The statement shall indicate any special precautions for diet, medication, or activity. This statement shall serve as evidence that a child is physically able to take part in the child care program. The statement for each child must be completed annually.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-07

75-03-09-16. CONFIDENTIALITY OF CHILD'S RECORDS. Information pertaining to the admission, progress, health, or discharge of a child shall be confidential and access shall be limited to staff and parents, and to the following:

1. Authorized board representatives.
2. Persons having a definite interest in the well-being of the child or children concerned and who, in the judgment of the board, are in a position to serve their interests should that be necessary.
3. Persons who possess a written authorization from the child's parent. The group child care home or facility shall have a

release of information form available and shall have such forms signed prior to the release of information.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-07

75-03-09-17. MINIMUM PROVISIONS REGARDING EMERGENCY CARE FOR CHILDREN. The supervisor shall have plans to respond to illness and to emergencies including burns, serious injury, and ingestion of poison. Parents of enrollees shall be advised of these plans. The following provisions shall be made:

1. All caregivers shall be familiar with emergency first aid techniques.
2. Emergency response procedures shall be established.
3. At least one working flashlight shall be immediately available.
4. Sufficient first aid supplies shall be available for minor emergencies and kept in a designated location, so as to be inaccessible to children yet readily accessible to caregivers.
5. The home or center shall have a telephone.
6. Plans shall be made to respond to minor illnesses when children can be cared for in the home or facility. Medical consultation shall be available regarding special care and medication.
7. If children in the home or facility require medication, written permission to dispense medication must be obtained from the parent, and proper instructions as to the administration of such medication shall be given by the parent or physician.
 - a. Any medication prescribed by a physician shall be accompanied by the doctor's written instructions as to its dosage and storage, and labeled with the child's name and date.
 - b. All medication shall be kept in secure storage so that it is out of the reach of children.
8. A supervised temporary isolation area shall be provided for a child who is too ill to remain in the group, or who has an

infectious or contagious disease, and the following procedures shall be followed when such signs or symptoms are observed:

- a. Parents shall be notified immediately.
 - b. First aid shall be provided and medical care shall be sought as necessary.
9. Provisions shall be made to provide emergency transportation. When a child is brought to another place for emergency care, the child shall be accompanied by an adult who shall remain with the child until medical personnel assume the responsibility for the child's care and until the parent or responsible party arrives.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-09-18. MINIMUM EMERGENCY EVACUATION AND DISASTER PLAN. Each home or facility shall have an evacuation and disaster plan for the safety of the children in care in case of an emergency.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-09-19. FIRE INSPECTIONS.

1. Annual fire inspections shall be completed by local or state fire authorities. The operator shall have corrected any code violations noted by the fire inspector and shall file reports of such inspections with the board.
2. The home or center shall provide:
 - a. The local fire inspector's written statement of compliance with the local fire code, if there is one;
 - b. The local fire inspector's written statement that the home or facility has been inspected and that the inspector is satisfied that it meets minimum fire and safety standards for the facility; or

- c. A written statement from an appropriate fire official that the home or center meets the minimum fire and safety standards adopted by the state fire marshal.
3. Fire evacuation drills shall be performed in accordance with the local fire department's guidelines.
4. The facility shall be equipped with sufficient smoke detectors and fire extinguishers as recommended by the local fire department.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04,
50-11.1-07,
50-11.1-08

75-03-09-20. MINIMUM SANITATION AND SAFETY REQUIREMENTS.

1. Home or facility bathroom lavatories, toilets, tables, chairs, and floors used by children shall be cleaned daily, and cots and sleeping mats shall be cleaned at least weekly. If cots and sleeping mats are used by the same individual children, they shall be cleaned at least monthly or whenever they are soiled or wet.
2. The home or facility's building, grounds, and equipment shall be located, cleaned, and maintained to protect the health and safety of children. Routine maintenance and cleaning procedures shall be established to protect the health of the children and the caregivers.
3. Caregivers shall wash hands before meals and after using toilet facilities.
4. If the health or sanitation of the home or facility appears questionable, the board may require the operator to obtain a sanitation inspection from local or state public health officials and submit the results of the inspection to the board. Any problems found shall be corrected.
5. Indoor and outdoor equipment and supplies shall be safe, strong, and in good repair for children.
6. The home or facility's ground areas shall be free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards or attractive nuisances.

7. The home or facility shall have adequate light, ventilation, and heating for the comfort and protection of children.
8. Garbage shall be kept away from areas used by children and kept in containers with tight lids, made of noncombustible materials. Open burning shall not be permitted.
9. Exterior play areas in close proximity to busy streets and other unsafe areas which are used by the children shall be contained, fenced, or have natural barriers to restrict children from unsafe areas.
10. Potential hazards such as guns, household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways must not be accessible to young children.
11. Indoor floors and steps shall not be slippery or have splinters. All steps and walkways shall be kept free from accumulations of water, ice, or snow.
12. Elevated areas such as stairs or porches shall have railings and safety gates where necessary to prevent falls.
13. The operator shall take steps to keep the home or facility free of insects and rodents. Chemicals for insect and rodent control shall not be applied in areas accessible to children when children are present in the facility.
14. Doors and pathways shall not be blocked.
15. All group care buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, shall have surfaces repainted or shall submit evidence that such surfaces do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of health.
16. All heating devices shall be approved annually by the local fire authorities.
17. If wading pools are used for group child care, they shall be strictly supervised and shall not be filled with more than six inches [15.24 centimeters] of water. Any swimming pools must be approved by the state department of health's division of

water supply and pollution control and operational practices as established by that department shall be followed.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-09-21. MINIMUM REQUIREMENTS REGARDING SPACE.

1. Each home or facility shall provide adequate space for all children in attendance.
2. The group child care home or facility 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 indoor activity area per child. Unused areas, bathrooms, pantries, and passageways leading to outdoor exits shall not be considered when computing minimum space. Every child shall have daily access to at least seventy-five square feet [6.97 square meters] of outdoor play space. If available outdoor play space cannot accommodate the licensed capacity of the home or facility at one time, the operator must have a plan for outdoor playtimes which limits use of the play area to its capacity, giving every child an opportunity to play outdoors.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-09-22. MINIMUM REQUIREMENTS FOR FACILITY.

1. The home or facility shall be properly lighted. If the lighting of the home or facility appears questionable, the board may require the operator to obtain additional lights so that a minimum of fifty foot-candles of light is used in the areas generally used for children's activities.
2. Safe and comfortable arrangements for naps for enrolled children shall be provided.

- a. The floor shall be used only when carpeted or padded, warm, free from drafts, and when each child has an individual blanket or sleeping mat.
 - b. There should be a minimum space of two feet [58.42 centimeters] between each crib or cot. Aisles between cots and cribs shall be kept free of all obstructions while they are occupied.
 - c. There shall be a room available, separate from the nap room, where an individual child can go if they are unable to nap, for supervised play so as not to disrupt the other children's rest.
 - d. A child who is in care between the hours of eight p.m. and six a.m. shall have an individual sleeping place.
 - e. Children under twelve months of age and any child unable to walk unassisted shall sleep in a crib, bed with side rails and a firm mattress, or a playpen with adequate padding.
3. Water supply:
- a. Drinking water shall be from a source which is approved by the North Dakota state department of health.
 - b. Hot and cold running water and of sufficient pressure from an approved community system must be available in the home or facility.
4. Toilet and lavatory facilities:
- a. Toilet and lavatory facilities shall be provided and shall be convenient to the areas used by the children and caregivers.
 - b. Toilets shall be located in rooms separate from those used for cooking, sleeping, and eating. A minimum of one lavatory and one flush toilet shall be provided for group child care homes or facilities serving up to fifteen children excluding those children who are not toilet trained and able to use larger toilets. In a home or facility serving fifteen to eighteen children, two toilets must be provided.
 - c. Training chairs (potty chairs) shall be provided for use by children who require them. These shall be emptied promptly and thoroughly washed after each use.
 - d. At least one handwashing lavatory shall be provided per toilet room facility or diapering area.

- e. After rinsing, cloth diapers shall be stored in a sanitary airtight container until they are removed or washed. Disposable diapers shall also be disposed in a sanitary airtight container. A flush toilet or flush sink shall be provided for rinsing soiled diapers.
 - f. Sanitary hand-drying equipment, individual cloth, or paper towels shall be provided near handwashing lavatories.
5. Sewage and wastewater disposal. The sewage and wastewater disposal system must be approved by the local health authority.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-09-23. MINIMUM STANDARDS FOR FOOD AND NUTRITION.

- 1. When the operator is responsible for providing food to children, the food supplied shall meet United States department of agriculture standards, and be properly prepared, sufficient in amount, varied according to diets of the children enrolled, and served at appropriate hours.
- 2. When parents bring sack lunches for their children, the operator may supplement lunches to provide nutritious and sufficient amounts of food for children.
- 3. Children shall be served a nutritious morning and afternoon snack, as outlined below and if the parent does not provide a sack lunch, a nourishing lunch as outlined below:
 - a. Children in care for more than three hours shall receive either a snack or lunch, whichever is appropriate for the time of the day.
 - b. Children in care during any normal mealtime hour shall be served food appropriate to that time of the day.
 - c. Children in care after school who have not had any food since lunch shall be provided with a snack.
- 4. Whenever the operator is responsible for providing food to children, menus shall be prepared on a weekly basis and shall be printed or written in such a manner that either the parents, the board, or other appropriate persons may review them.

5. Information provided by the children's parents as to their eating habits, food preferences, or special needs shall be considered in the feeding schedule and menus.
6. Children shall be served in a manner commensurate with their age using appropriate dishes and eating utensils.
7. Children shall be encouraged to eat the food served, but shall not be subjected to coercion or forced feeding.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-09-24. PROGRAM REQUIREMENTS.

1. There shall be a program of daily activities appropriate to the ages and needs of the children in group child care. The general activity schedule 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. The general daily routine shall be written, but subject to change. It should foster the development of good health habits and self-discipline, adequate indoor and outdoor play, rest, and sleep, with sufficient time and opportunities for various experiences.
3. The program shall provide children in care with opportunities for individual and small group activities.
4. The program shall provide for a variety of educational experiences for all ages of children served with an adequate supply of safe play equipment, toys, and materials for indoor and outdoor activity. Each home or facility shall have enough play materials and equipment so, that at any one time, each child in attendance can be individually involved.
5. Areas used for napping shall provide an opportunity for undisturbed rest. Napping schedules should be set for children according to their ages, needs, and parent's wishes.
6. At the time of enrollment, the supervisor shall discuss with the parents the children's habits, activities, and schedules while at home and in school and the parent's special concern about their past and future behavior and development. The

schedule and activities shall be designed to complement and supplement the children's experiences at home or in school.

7. The supervisor shall be responsible for contacting parents to exchange information concerning the child and any concerns about the health, development, or behavior of the child. These concerns shall be communicated to parents promptly and directly.
8. Personal hygiene practices appropriate for a child's age and development shall be stressed.
9. Each child's cultural and ethnic background and primary language or dialect shall be respected by the caregivers.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-09-25. SPECIALIZED TYPES OF CARE AND MINIMUM REQUIREMENTS THEREFOR.

1. Infant care.
 - a. When children from birth to twenty-four months are served, the operator shall provide an environment which protects the children from physical harm and one which is not so restricted as to inhibit physical, intellectual, emotional, and social development.
 - b. Nonwalking children shall have the opportunity during each day for freedom of movement, such as creeping or crawling in a safe, clean, open, uncluttered area.
 - c. Each infant shall have an individual sleeping space. The sheets shall be changed whenever they become soiled or wet. If individual protective coverings are used for each child to protect linens, these shall be laundered at least weekly.
 - d. Children shall be taken out of doors or to other areas within the home or facility for a part of each day to provide some change of physical surroundings and to be with other children. No child shall be confined to a crib or playpen during the entire time at the home or facility, unless the child is preparing to sleep or sleeping for the duration of the care.

- e. Each infant shall have periodic individual personal contact and attention from an adult, such as being held, rocked, talked, or sung to.
 - f. Low chairs and tables or infant seats with trays shall be provided for table play and mealtime for children no longer being held for feeding. Highchairs, if used, shall have a wide base and a safety strap.
 - g. Children shall never be shaken or jostled in a moderate or severe manner.
 - h. All cries of infants shall be investigated.
 - i. Infants shall be fed or supervised individually and their diet and pattern of feeding shall be appropriate to their individual developmental needs.
 - j. At no time shall infants be left unattended while feeding.
 - k. If prepackaged, presterilized formula is used for each child's feeding, any excess shall be discarded in a safe, sanitary manner, if it has been unrefrigerated for a total of four or more hours.
 - l. Diapers shall be changed promptly when needed and in a sanitary manner. When more than one infant is in care, infants shall be changed on a cleanable surface which is thoroughly cleaned with detergent after each diapering.
2. Night care.
- a. Any home or facility offering night care shall provide program modification for the special needs of children and their parents during the night.
 - b. In consultation with parents, special attention shall be given by the caregiver to provide a transition into this type of care appropriate to the child's emotional needs.
 - c. When practical, children shall be left for care and picked up before and after their normal sleeping period so that there is minimal disturbance of the child during sleep, but consideration shall be given to the parent's work schedules.
 - d. Preschool age children shall be supervised when bathing.
 - e. Comfortable beds, cots, or cribs complete with a mattress or pad shall be available.
 - (1) Pillows and mattresses shall have clean coverings.

- (2) Sheets and pillowcases shall be changed as often as necessary for cleanliness and hygiene, but not less than weekly. If beds are used by different children, sheets and pillowcases shall be laundered before use by other children.
- (3) Each bed or cot shall have sufficient blankets available.
- f. The home or facility shall require each child in night care to have:
 - (1) Night clothing.
 - (2) A toothbrush marked for identification.
- 3. Drop-in facilities.
 - a. If the home or facility serves drop-in children, schoolchildren, or before- and after-school children, it shall be sufficiently staffed to effectively handle admission records, and explain the policies and procedures of the group care program. Admission records secured must comply with all enrollment requirements contained in section 75-03-09-15 except the immunization record requirement.
 - b. Admittance procedures shall provide for a period of individual attention for the child in order to acquaint the child with the home or facility.
 - c. No home or facility shall receive drop-in or part-time children who, when added to the children in regular attendance, cause it to exceed the total number of children for which it is licensed.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-09-26. MINIMUM REQUIREMENTS FOR CARE OF CHILDREN WITH SPECIAL NEEDS. When children with special needs are admitted, there shall be appropriate provisions to meet those needs.

- 1. When children with special needs are admitted, the supervisor shall consult with the child's parents, and with the parent's permission, the child's source of professional health care,

or, when appropriate, other health and professional consultants.

2. Caregivers shall receive proper instructions as to the nature of the child's disability, and potential for growth and development.
3. Where the nature of the special needs or the number of children with special needs warrants added care, the home or facility shall add sufficient staff and equipment as deemed necessary by the board to compensate for these needs.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-09-27. PUNISHMENT OF ENROLLEES.

1. No child of any age shall be shaken, hit, spanked, bitten, pinched, or otherwise physically punished.
2. Brief, supervised separation from the rest of the children may be used as necessary.
3. No method of punishment which humiliates or frightens the child, or causes more than minor transient physical or emotional discomfort, or both, shall be used.
4. No child shall be punished by withholding or force-feeding food, requiring or prohibiting rest, or by placement in isolation. No child shall be punished for wetting or soiling clothes due to a failure of toilet habits.
5. Profane, threatening, unduly loud or abusive language shall not be used when addressing children, or in the presence of children.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-09-28. MINIMUM STANDARDS FOR PROVISION OF TRANSPORTATION.

1. The child care operator shall inform parents of enrolled children of how any transportation will be provided, who may provide transportation, insurance coverage, and how parental permission is to be obtained for special field trips and related activities which occur outside the home or facility. Any vehicle used for transporting children shall be in safe operating condition and in compliance with state and local laws.
2. When transportation is provided, children shall be protected by adequate staff supervision, safety precautions, and liability/medical insurance.
 - a. Child/staff ratios shall be maintained to assure the safety of children while being transported.
 - b. No child shall be left unattended in a vehicle.
3. Children shall be instructed in safe transportation conduct as appropriate to their age and stage of development.
4. The driver shall be in compliance with all relevant state and local laws.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-09-29. ALLOWABLE TIME PERIODS FOR CORRECTION OF DEFICIENCIES.

1. Pursuant to section 50-11.1-07.2 of the North Dakota Century Code, the following time periods are established in which the corrections of those deficiencies noted in the correction order issued, must be made:
 - a. For a violation or deficiency requiring the hiring of a group child care supervisor with those qualifications set forth in section 75-03-09-11, a period of sixty days to correct the deficiency shall be allowed.
 - b. For a violation or deficiency that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-09-19, a period of sixty days to correct the deficiency shall be allowed.

- c. For a violation or deficiency that requires substantial building remodeling, construction, or change, a period of sixty days to correct the deficiency shall be allowed.
 - d. For all other violations or deficiencies a period of twenty days shall be allowed to correct the deficiency.
2. All time periods shall commence with the date of receipt, by the provider, of the correction order.
3. The area supervisor of day care services shall have the authority to grant extensions of allowable time to correct deficiencies, for a period of one-half the original allowable time to correct the deficiency. These extensions may be granted upon application by the provider and upon a showing that the need for the extension is created by circumstances beyond the control of the provider and that the provider has diligently pursued the correction of the deficiency.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-07.2

75-03-09-30. PENALTIES.

1. A violation of any of the following sections shall subject the licensee to a fiscal sanction of twenty-five dollars per day: subdivision h of subsection 3 of section 75-03-09-09, subsection 2 of section 75-03-09-14, section 75-03-09-19, subsections 6, 10, and 14 of section 75-03-09-20, section 75-03-09-21, and section 75-03-09-27.
2. A violation of any of the following sections shall subject the licensee to a fiscal sanction of fifteen dollars per day: subsection 2 of section 75-03-09-10, section 75-03-09-12, subsections 2, 4, 8, 9, and 12 of section 75-03-09-20, subsection 2 and subdivisions b and f of subsection 4 of section 75-03-09-22, subsection 1 of section 75-03-09-23, subsections 2 and 4 of section 75-03-09-24, subsections 1 and 3 of section 75-03-09-25, and section 75-03-09-28.

3. A violation of any other sections of this chapter not noted in subsections 1 and 2 shall subject the licensee to a fiscal sanction of five dollars per day.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-07.4,
50-11.1-08

Law Implemented
NDCC 50-11.1-07.4,
50-11.1-07.5,
50-11.1-07.6,
50-11.1-07.7

AGENCY SYNOPSIS: CHILD CARE CENTER, SUPPLEMENTAL PARENTAL CARE. This chapter provides the minimum standards which an individual, or other entity, must meet in order to obtain the required license for the operation of a child care center facility. The facility provides supplemental parental care for nineteen or more children. The standards establish the minimum qualifications for the operator, the director, the supervisor, caregivers, and establish the minimum ratio of staff to children in this program. The regulations also establish the minimum operational procedures including fire inspections, sanitation and safety requirements, space requirements, food and nutrition, program, and establishes the penalties to be paid as fiscal sanctions for violations as well as the allowable time periods for the correction of any deficiencies noted in a correction order.

CHAPTER 75-03-10
CHILD CARE CENTER
SUPPLEMENTAL PARENTAL CARE

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75-03-10-28	Minimum Requirements for Care of Children With Special Needs
75-03-10-29	Punishment of Enrollees
75-03-10-30	Minimum Standards for Provision of Transportation
75-03-10-31	Allowable Time Periods for Correction of Deficiencies
75-03-10-32	Penalties

75-03-10-01. PURPOSE. The purpose of this chapter is to establish minimum standards for licensed child care centers providing supplemental parental care and to assure that those standards are maintained.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01

75-03-10-02. AUTHORITY AND OBJECTIVE. Under the authority vested in the social service board of North Dakota pursuant to North Dakota Century Code section 50-11.1-08, the social service board of North Dakota is empowered to prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-08

75-03-10-03. DEFINITIONS. As used in this chapter:

1. "Attendance" means the total number of children present at any one time at the facility.
2. "Caregiver" means any person whose responsibility is the direct provision of supplemental parental care in facilities subject to this chapter.
3. "Child care center director" means any person with the responsibility for overseeing and planning the day-to-day child care center activities.

4. "Child care center operator" means any person in whom inheres the legal responsibility and the administrative authority for a child care center. The child care center operator is the applicant for license or the licensee pursuant to this chapter.
5. "Child care supervisor" means any person with the responsibility for organizing and supervising daily program activities.
6. "Parent" means any person bearing the legal relationship of father or mother to a child enrolled in a child care center, including those persons who legally stand in place of such parent, such as legal guardians or custodians.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-02

75-03-10-04. EFFECT OF LICENSING AND DISPLAY OF LICENSE.

1. The issuance of a license to operate a child care center shall be evidence of compliance with the standards contained in this chapter.
2. The license shall be on display in the facility in a conspicuous place.
3. The license shall specify the maximum number of children who may be cared for by the center, and the center shall at no time admit a greater number of children.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-03,
50-11.1-04

75-03-10-05. DENIAL OR REVOCATION OF LICENSE.

1. The right to provide supplemental care in a child care center is dependent upon compliance with the applicable provisions of North Dakota Century Code chapter 50-11.1 and the required minimum standards set forth in this chapter.

2. The board may revoke or deny a license to operate a child care center under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-09, and 50-11.1-10.
3. If an action to revoke a license is appealed, the license holder may continue the operation of the facility pending the final administrative determination or until the license expires, whichever first occurs; provided, however, that this subsection shall not limit the actions the board may take pursuant to North Dakota Century Code section 50-11.1-12.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-09

75-03-10-06. APPLICATION FOR CHILD CARE CENTER LICENSE.

1. An application for a child care center license shall be made with the county social service board of the county in which the facility is located.
2. Application shall be made in the form and manner prescribed by the board.
3. A new application for a license must be filed by a licensed center upon change of operator or location.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-03,
50-11.1-04

75-03-10-07. REQUIREMENTS FOR CHILD CARE CENTER LICENSE. The name, address, and telephone number of the operator as well as the name, address, and telephone number of the director shall be provided to the board upon application for license and shall be provided to the parents of enrolled children when the center is in operation.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-03,
50-11.1-04

75-03-10-08. PROVISIONAL LICENSE.

1. Child care center operators who apply for a child care center license for a newly opened facility, or for a facility previously licensed, where the facility fails to comply with all applicable standards and regulations of the board, may, at the discretion of the administrator of the area social service center/human service center, be issued a provisional license.
2. A provisional license shall:
 - a. Prominently state that the center has failed to comply with all applicable standards and regulations of the board.
 - b. State that the items of noncompliance are set forth on a document available upon request made to the child care center's operator or director.
 - c. Expire at a set date, not to exceed six months from the date of issuance.
 - d. Be exchanged for an unrestricted license, which will bear the same date as the provisional license, upon demonstrating compliance, satisfactory to the board, with all applicable standards and regulations.
3. A provisional license shall be issued only to an applicant who has, in writing, waived:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued shall be accompanied by a written statement of violations signed by the administrator of the area social service center/human service center and, in writing, acknowledged by the operator.
5. Subject to the exceptions contained in this section, a provisional license entitles its holder to all the rights and privileges afforded the holder of an unrestricted license.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-07,

75-03-10-09. MINIMUM QUALIFICATIONS AND DUTIES OF OPERATOR.

1. The operator of a child care facility is responsible to the board for compliance with requirements set forth in the standards.
2. The operator may be any individual, group, agency, association, or organization legally responsible for the operation of the facility.
3. The operator shall ensure that all standards are complied with and shall:
 - a. Be responsible for establishing the child care program.
 - b. Make application for a license for each child care center operated.
 - c. Outline a plan of operation for each child care center.
 - d. Notify the board of any major changes in the operation or in the ownership or governing body of the facility.
 - e. Carry liability insurance for the center.
 - f. Ensure the formulation of written policies and procedures relating to the children's activities and care, enrollment, the responsibilities and rights of staff and of parents.
 - g. Maintain required enrollment, attendance, health, financial, and related records.
 - h. Be responsible for all center staff, volunteers, or others who provide services in the facility and for notifying the board of any change of directors.
 - i. Maintain necessary information to verify staff qualifications and that ensures that no individual shall be employed or retained in the child care center who has been determined to have abused or neglected a child.
 - j. Cooperate with the board and other appropriate agencies in all reasonable efforts to improve the quality of care and the competence of caregivers.
 - k. Designate a qualified center director.

- l. Ensure that parents of enrolled children and other interested parties are informed of the goals, policies and procedures, and content of the child care center's program. An explanation of how accidents and illnesses will be dealt with shall be provided as well as methods of discipline and child management techniques to be used.
- m. Ensure that the center is staffed sufficiently to provide physical care to each child, to offer individual attention to children as needed and to provide time to interact with children for the benefit of their social competence, emotional well-being, and intellectual development.
- n. Ensure that the child care center shall have sufficient qualified caregivers provided to substitute for regularly assigned staff who are sick, on leave, or who are otherwise unable to be on duty.
- o. Ensure that parents of enrolled children are advised of the center's program, service fees, operating policies and procedures, location, and of any significant changes in the services offered by the center. Written notice shall be provided to the parents and the board of such changes and their effective date, duration, scope, and impact on the center.
- p. Ensure that written agreements with the parent or parents of each enrollee specify the fees to be paid, methods of payment, and policies regarding delinquency of fees.
- q. Ensure that written policies are established which provide for emergency medical care, the care of children with special physical, emotional, or mental needs (if children with these needs are in care) and the treatment of illness and accident.
- r. Ensure that written policies are established concerning the care and safeguarding of personal belongings brought to the child care center by enrollees or others on their behalf.
- s. Provide parents with opportunities to observe the center and to discuss their children's needs before enrollment; regularly offer parents opportunities to observe their children and to meet with caregivers to advise and comment on their children's needs.
- t. Provide parents upon request any progress reports on their individual child or children and the compliance of the facility with standards contained in this chapter.

4. If the operator of the child care center is also the center director, the operator must also meet the qualifications of the child care center director set forth in section 75-03-10-10.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-10-10. MINIMUM QUALIFICATIONS OF CHILD CARE CENTER DIRECTOR.

1. A child care center director shall be an adult of good mental and physical health, capable of mature judgment, and possessing knowledge and experience in management and interpersonal relationships.
2. The director shall certify that at least one of the following qualifications, in addition to those set out in subsection 1, are met:
 - a. A bachelor's degree in the field of early childhood education with eight or more weeks of supervised student teaching experience in a child care center or similar setting.
 - b. A bachelor's degree with at least twenty-four semester hours or thirty quarter hours in child development, child psychology, or fields directly related thereto, with at least six months experience in a child care center or similar setting.
 - c. An associate of arts degree in the field of early childhood development with at least six months experience in a child care center or similar setting.
 - d. A teaching certificate in elementary education.
 - e. Certification as a child development associate or similar status where such a local, state, or federal certification program exists, with at least one year experience in a child care center or similar setting.
 - f. A bachelor's degree with at least twelve semester hours or fifteen quarter hours in child development, child psychology, or fields directly related thereto, with at least one year experience in a child care center or similar setting.

- g. Certification for a Montessori teacher training program with at least one year experience in a Montessori school, child care center or similar setting.
- h. Qualification under regulations in force and effect prior to November 1, 1980, and continuous employment as a director from that time, and at all times subsequent, at the same center.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-10-11. DUTIES OF CHILD CARE CENTER DIRECTOR. The child care center director shall, coextensive with the child care center operator:

1. Be responsible for program planning, supervision, and activity.
2. Be responsible for maintaining adequate enrollment, health, attendance, financial, and other related records as required by this chapter.
3. Be responsible for screening, scheduling, supervision, and conduct of staff members.
4. Cooperate with the board and other agencies designated by the board in efforts to improve the quality of care and the competence of personnel in the center.
5. At no time shall a child care center be without a director or a designated acting director. The director of a center shall be present at the center at least sixty percent of the time that the center is open.
6. Any person designated as an acting director for an ongoing period of less than thirty days must meet the requirements of a child care supervisor.
7. Any person designated as an acting director for an ongoing period of more than thirty days must meet the requirements of child care director.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-10-12. MINIMUM QUALIFICATIONS OF CHILD CARE SUPERVISOR. A supervisor shall:

1. Have had training and demonstrated ability in working with children.
2. Meet at least one of the following qualifications:
 - a. An associate of arts degree in the field of early childhood development.
 - b. Certification as a child development associate or similar status where such local, state, or federal certification program exists.
 - c. Certification from a Montessori teacher training program.
 - d. A high school diploma with at least one year experience in a child care or similar setting.
 - e. High school equivalency with at least one year experience in a child care or similar setting.
3. Possess the capacity and willingness to increase skills and competence through experience, training, and supervision.
4. Be of sufficiently good health so as to be able to provide adequate care for children in a child care center environment.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-10-13. MINIMUM QUALIFICATIONS FOR ALL CHILD CARE CAREGIVERS.

1. Caregivers shall:
 - a. Be at least fourteen years of age, provided that any employee under age sixteen has written parental consent for such employment, and the employment arrangements are in conformance with North Dakota Century Code chapter 34-07.
 - b. Be mentally, physically, and emotionally able to provide adequate care for the children in the caregiver's charge.

- c. Certify attendance at a minimum of five hours of board-approved training related to child care annually when made available in the community.
 - d. Not use any drugs or alcoholic beverages except for medical purposes while children are in care.
 - e. At no time place a child or children in an environment that would be harmful or dangerous to their physical or emotional health.
2. The child care center shall provide to newly hired caregivers a two-day, onsite orientation to the child care program during the first week of employment. The orientation must address all of the following:
- a. Emergency health, fire and safety procedures at the center.
 - b. Any special health or nutrition problems of the children assigned to the caregiver.
 - c. Any special needs of the children assigned to the caregiver.
 - d. The planned program of activities at the center.
 - e. Rules and policies of the center.
 - f. Child abuse and neglect laws.
3. Caregivers under the age of eighteen and all children in care must have adult supervision in the center at all times.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-10-14. MINIMUM QUALIFICATIONS FOR VOLUNTEERS. Volunteers shall meet qualifications of attendants, if providing child care, and receive orientation as needed for all assigned tasks.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-10-15. MINIMUM HEALTH REQUIREMENTS FOR ALL CAREGIVERS.

1. All caregivers shall certify, within thirty days of employment, that they do not have health problems that would interfere with their functioning as child caregivers or that would be detrimental to the health of the children or other staff.
2. There shall be provision for adequate substitution for child caregivers who are too ill to function effectively or who present a serious health hazard to others in the child care center.
3. If the physical or mental health of the operator, director, supervisor, or any caregiver appears questionable, the board may require the individual to present evidence of such capabilities based on a formal evaluation. Where appropriate, the board may provide for an evaluation through the use of professional staff.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-10-16. CHILD 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. Service personnel that are engaged in housekeeping and food preparation shall not be counted in the child/staff ratio for periods of time when they are so engaged.
2. The minimum ratio of caregivers or program staff to children in child care centers shall be:
 - a. Children less than twenty-four months of age, one staff per four children.
 - b. Children twenty-four months of age to thirty-six months of age, one staff per five children.
 - c. Children three years of age to four years of age, one staff per seven children.

- d. Children four years of age to five years of age, one staff per ten children.
 - e. Children five years of age to six years of age, one staff per twelve children.
 - f. Children six to ten years of age, one staff per sixteen children.
 - g. Children ten to fourteen years of age, one staff per twenty children.
3. Where one or more children is a child with a mentally handicapping condition, and requires more than usual care, the evaluated developmental age level, rather than the chronological age of the child, shall be used in determining appropriate staff ratios.
 4. Children with special conditions requiring more than usual care and supervision must have provided to them adequate care and supervision without adversely affecting care provided to the remaining children in the facility.
 5. In each age category, the number of children is divided by the corresponding ratio number and carried to the nearest hundredths. To determine the number of caregivers necessary at any given time, numbers of caregivers for all age categories are added, and any fractional caregiver count then rounded to the next highest whole number whenever the fractional caregiver count amounts to twenty-five hundredths or more. If lower than twenty-five hundredths, the fractional amount is dropped.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-02,
50-11.1-02.1

75-03-10-17. MINIMUM STANDARDS FOR ENROLLEE'S RECORDS. The following information shall be kept and maintained in the records concerning each individual child enrolled in the child care center and shall be updated as appropriate. Such information shall include:

1. The child's full name, birthdate, and current home address.
2. The names and addresses of the parents or other persons legally responsible for the child, as well as their home and business telephone numbers.

3. Names and telephone numbers of persons who can assume responsibility for the child if the persons legally responsible for the child cannot be reached immediately in an emergency.
4. The written consent of a parent or legally responsible party for emergency care shall also be obtained.
5. Names and telephone numbers of persons authorized to take the child from the child care center.
6. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the North Dakota state department of health.
7. A licensed health practitioner's statement based upon a health assessment or a health assessment statement completed by the parent shall be obtained at the time of initial enrollment of the child. No more than six months shall have elapsed between the date that the health assessment was completed and the date of initial enrollment. The statement shall indicate any special precautions for diet, medication, or activity. This statement shall serve as evidence that a child is physically able to take part in the child care program. The statement for each child must be completed annually.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-07

75-03-10-18. CONFIDENTIALITY OF CHILD'S RECORDS. Information pertaining to the admission, progress, health, or discharge of a child shall be confidential, and access shall be limited to staff and parents, and to the following:

1. Authorized board representatives.
2. Persons having a definite interest in the well-being of the child or children concerned and who, in the judgment of the board, are in a position to serve their interests should that be necessary.
3. Persons who possess a written authorization from the child's parent. The child care center shall have a release of

information form available and shall have such forms signed prior to the release of information.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-07

75-03-10-19. MINIMUM PROVISIONS REGARDING EMERGENCY CARE FOR CHILDREN. A center shall have plans to respond to illness and to emergencies including fire, serious injury, and ingestion of poison. These plans shall be in writing. Plans shall include:

1. The conspicuous posting of emergency response procedures. At least one staff member having received a minimum of five hours of first-aid training related to the health and safety of young children should be available at all times at the center.
2. All staff members shall receive training concerning emergency procedures to ensure they are aware of the hazards of infection and accidents and how such problems can be minimized.
3. At least one department of health approved first-aid kit shall be maintained and kept in a designated location, so as to be inaccessible to children yet readily accessible to staff members.
4. The placement of a telephone line immediately accessible to the center staff with a list of emergency telephone numbers conspicuously posted adjacent to such telephone.
5. When health policies of the facility allow ill children to be admitted or to remain in the child care center, medical consultation shall be available regarding special care and medication.
6. If children in the center require medication, written permission to dispense medication must be obtained from the parent, and proper instructions as to the administration of such medication shall be given by the parent or physician.
 - a. Any medication prescribed by a physician shall be accompanied by the doctor's written instructions as to its dosage and storage, and labeled with the child's name and dated.
 - b. All medication shall be kept in secure storage so that it is out of the reach of children.

7. A supervised temporary isolation area shall be provided for a child who is too ill to remain in the group, or who has an infectious or contagious disease, and the following procedures shall be followed when such signs or symptoms are observed:
 - a. Parents shall be notified immediately.
 - b. First aid shall be provided and medical care shall be sought as necessary.
8. All children who remain at the center who are ill shall be well supervised.
9. A source of emergency health services shall be readily available to the center.
 - a. There shall be a prearranged plan for emergency medical care. Parents of enrollees shall be advised of this arrangement.
 - b. Provisions shall be made to provide emergency transportation. When a child is brought to another place for emergency care, the child shall be accompanied by an adult who shall remain with the child until medical personnel assume the responsibility for the child's care and until the parent or responsible party arrives.
10. A child care center shall provide information to parents as needed concerning child health and social services available in the community, and shall assist parents in obtaining such services.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-10-20. MINIMUM EMERGENCY EVACUATION AND DISASTER PLAN.

1. Each center shall have an approved and posted disaster plan for the safety of the children in care in case of an emergency.
2. Fire inspections shall be completed by local or state fire authorities. Written disaster plans shall be developed in cooperation with such authorities.

3. Fire evacuation drills shall be performed in accordance with the local fire department's guidelines.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-10-21. FIRE INSPECTIONS.

1. Annual fire inspections shall be completed by local or state fire authorities. The operator shall have corrected any code violations noted by the fire inspector and shall file reports of such inspections with the board.
2. The center shall provide:
 - a. The local fire inspector's written statement of compliance with the local fire code, if there is one;
 - b. The local fire inspector's written statement that the facility has been inspected and that the inspector is satisfied that it meets minimum fire and safety standards for the facility; or
 - c. A written statement from an appropriate fire official that the facility meets minimum fire and safety standards adopted by the state fire marshal.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-07

75-03-10-22. MINIMUM SANITATION AND SAFETY REQUIREMENTS.

1. Child care center bathroom lavatories, toilets, tables, chairs, and floors shall be cleaned daily, and cots and sleeping mats shall be cleaned at least weekly. If children use individual cots or mats that are not used by other children and are covered by personal blankets or coverings, the cots shall be cleaned at least monthly.
2. Staff members shall wash hands before meals and after using toilet facilities.

3. The child care center's building, grounds, and equipment shall be located, cleaned, and maintained to protect the health and safety of children. Routine maintenance and cleaning procedures shall be established to protect the health of the children and the caregivers.
4. The facility shall have an annual health and sanitation inspection. Reports of such inspections shall be filed with the board and any problems found shall be corrected.
5. Indoor and outdoor equipment and supplies shall be safe, strong, and in good repair for children.
6. There shall be adequate ventilation, and heating in the center. During the heating season when the facility is occupied by children, the room temperature shall not be less than sixty-eight degrees Fahrenheit [20 degrees Celsius] and not more than seventy-four degrees Fahrenheit [23.33 degrees Celsius] measured three feet [91.44 centimeters] above the floor.
7. The child care center ground areas shall be free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards or attractive nuisances.
8. Garbage shall be kept away from areas used by children and kept in containers with tight lids, made of noncombustible materials. Open burning shall not be permitted.
9. Exterior play areas in close proximity to busy streets and other unsafe areas which are used by the child care center shall be contained, fenced, or have natural barriers to restrict children from unsafe areas.
10. Hazardous or potentially injurious or poisonous substances must be kept in locked storage in a space designed solely for this purpose and shall be inaccessible to children.
11. Indoor floors and steps shall not be slippery or have splinters. All steps and walkways shall be kept free from accumulations of water, ice, or snow.
12. Elevated areas such as stairs or porches shall have railings and safety gates where necessary to prevent falls.
13. All heating devices shall be approved by the local fire authorities.
14. Centers shall take steps to keep the facility free of insects and rodents. Chemicals for insect and rodent control shall not be applied in areas accessible to children when children are present in the facility.

15. The center shall provide doors of sufficient width and construction to accommodate any children in wheelchairs who are receiving care at the center.
16. Combustible materials shall be kept away from light bulbs and other heat sources.
17. Doors and pathways shall not be blocked.
18. All center buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, shall have such surfaces repainted or shall submit evidence that such surfaces do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of health.
19. If wading pools are used by the center, they shall be strictly supervised and shall not be filled with more than six inches [15.24 centimeters] of water. Any swimming pools must be approved by the state department of health's division of water supply and pollution control and operational practices as established by that department shall be followed.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-10-23. MINIMUM REQUIREMENTS REGARDING SPACE.

1. Each center shall provide adequate space for all children in attendance.
2. There shall be a minimum of thirty-five square feet [3.25 square meters] of indoor activity area per child. Work areas, unused space, and areas which are not exclusively used for child care center purposes shall not be considered when computing minimum space. Every child shall have daily access to at least seventy-five square feet [6.97 square meters] of outdoor play space. If available outdoor play space cannot accommodate the licensed capacity of the center at one time,

the center operator must prepare a written schedule of outdoor play times which limits use of the play area to its capacity.

3. The child care center shall have sufficient space and appropriate furniture and equipment to provide for support functions necessary to the program and to provide for the reasonable comfort and convenience of the staff and parents.
4. There shall be no open flames, open fireplaces, or portable space heaters in use on the premises of the center. All heating elements shall be insulated so as never to be hot to the touch, or shall be installed in such a manner that children cannot come in contact with them.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-10-24. MINIMUM REQUIREMENTS FOR CHILD CARE CENTER FACILITIES AND EQUIPMENT.

1. If any of the following activities are conducted on the premises, the center shall provide sufficient storage and work areas, exclusive of indoor activity areas for children:
 - a. Office facilities.
 - (1) Office space separated from areas used by children, other than for isolation purposes, shall be provided for staff used in interviewing, conferences, and other accommodations as needed for administrative responsibilities.
 - (2) There shall be provision for maintenance and storage of records for children and staff, and business records of the facility.
 - b. Kitchen and food preparation areas.
 - (1) A separate area shall be provided for food preparation, equipped with adequate equipment and cleanup facilities appropriate to the size of the child care center.
 - (2) If the children are allowed to assist in any food preparation, their activity shall be limited to use of equipment and appliances that do not present a safety hazard.

- c. Hot and cold running water and of sufficient pressure from an approved community system must be available in the center.
6. Toilet and lavatory facilities.
- a. Toilet and lavatory facilities shall be provided and shall be convenient to the areas used by the children and staff.
 - b. Toilet and lavatory facilities shall meet requirements of the local health department authorities.
 - c. Toilets shall be located in rooms separate from those used for cooking, sleeping, and eating. A minimum of one lavatory and one flush toilet shall be provided for each fifteen children who are toilet trained.
 - d. Separate restrooms shall be provided for boys and girls six years of age and over. Partitions shall be installed to separate toilets in these restrooms.
 - e. Sufficient training chairs (potty chairs) shall be provided for use by children who require them. These shall be emptied promptly and thoroughly washed after each use.
 - f. At least one handwashing lavatory shall be provided per toilet room facility or diapering area.
 - g. A designated diapering area shall be established in centers caring for children requiring diapering.
 - h. Cloth diapers shall not be used in a child care center. Soiled or wet diapers shall be stored in a sanitary, airtight container until they are removed.
 - i. Safe step stools shall be provided to allow standard-sized toilets and lavatories to be used by the children in care or child-size toilets and lavatories shall be provided.
 - j. Sanitary hand-drying equipment or materials shall be provided near handwashing lavatories.
7. Sewage and wastewater disposal.
- a. A child care center must meet the requirements of the state plumbing code (article 62-03).

- b. The sewer and wastewater disposal system must be approved by the local health authority.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-10-25. MINIMUM STANDARDS FOR FOOD AND NUTRITION.

1. When the operator is responsible for providing food to children, the food supplied shall meet United States department of agriculture standards, and be properly prepared, sufficient in amount, varied according to diets of the children enrolled, and served at appropriate hours.
2. When parents bring sack lunches for their children at the center, the operator may supplement lunches to provide nutritious and sufficient amounts of food for children.
3. Where such services are available in the community free of charge to the child care center, a dietitian or other food service professional shall be used as a consultant.
4. Children shall be served a nutritious morning and afternoon snack, as outlined below and if the parent does not provide a sack lunch, a nourishing lunch as outlined below:
 - a. Children in care for more than three hours during the time cited above shall receive either a snack or lunch, whichever is appropriate by the time of the day.
 - b. Children in care during any normal mealtime hour shall be served food appropriate to that time of the day.
 - c. Children in care in after-school child care center programs who have not had any food since lunch shall be provided with a snack.
5. When the operator is responsible for providing food to children, menus shall be prepared on a weekly basis and shall be printed or written in such a manner that either the parents, the board, or other appropriate persons may review them.
6. Information provided by the children's parents as to their eating habits, food preferences, or special needs shall be considered in the child care center's feeding schedules and menus.

7. Children shall be served in a manner commensurate with their age using appropriate dishes and eating utensils.
8. Children shall be encouraged to eat the food served, but shall not be subjected to coercion or forced feeding.
9. When food is prepared, served, or stored in a child care center, such shall be governed by the provisions of the United States public health service food service sanitation ordinance and code (Part IV), food service sanitation manual, public health publication number FDA 78-2081, as adopted and printed by the North Dakota state department of health, environmental health and engineering services, or by a subsequent publication similarly adopted and printed. In child care centers without kitchen facilities, the foods and dishes shall be transported by means acceptable to the department of health from an approved food preparation source, and served within thirty minutes of receipt or shall be provided by the parents of a child.
 - a. The center must be inspected by a department of health representative if it is providing a food service.
 - b. Food service personnel must meet the established requirements established by the department of health.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-10-26. MINIMUM CHILD CARE CENTER PROGRAM REQUIREMENTS.

1. A child care center shall establish a planned program of developmentally appropriate activities which promote intellectual, social, emotional, and physical development, and enhance a child's cognitive, creative, and communication skills.
2. The program of the child care center shall be based upon the developmental needs of the children enrolled. It shall be flexible and subject to modification for individual child differences in the characteristics of the groups in the child care center.
3. The planned program shall be written and shall be varied in order to promote the physical and emotional well-being of the children, to encourage the acquisition of information and knowledge, and to foster the development of language skills,

concepts, self-discipline, and problem-solving activities. The plan shall describe how the activities planned will meet the children's developmental needs, including the special needs of children in the center who are multilingual or handicapped. The written program shall be made available to parents.

4. The program shall include firsthand experiences for children to learn about the world in which they live. Opportunities shall be provided for older children to participate in supervised visits and recreational activities in the community.
5. Learning experiences shall be conducted in consultation with parents in order to ensure harmony with the lifestyle and cultural background of the children.
6. The program shall provide a balance of quiet and active indoor and outdoor group and individual activities. Within the schedule, a time for supervised child-initiated and self-selected activity shall be established.
7. A variety of games, toys, books, crafts, and other activities and materials shall be provided to enhance the child's intellectual and social development and to broaden the child's life experience. Each center shall have enough play materials and equipment so, that at any one time, each child for which the center is licensed can be individually involved.
8. The cultural diversity of the children shall be reflected in the program through incorporation of their language, food, celebration, and lifestyles, where appropriate.
9. Equipment and furniture shall be durable and safe and shall be appropriately adapted for children's use.
10. Sufficient space accessible to children shall be provided for each child to have the child's own clothes and to keep other personal items.
11. The center shall supplement, augment, and reinforce the child's activities at home, and where applicable, at school.
12. At the time of enrollment, the child care center personnel shall discuss with the parents the children's habits, activities, and schedules while at home and in school and their parent's special concern about their past and future behavior and development. The schedule and activities in child care shall be designed to complement and supplement the children's experiences at home and in school.
13. Parents shall be encouraged to visit the facility, observe, and participate in the care of their children.

14. The child care center personnel shall be responsible for contacting parents to exchange information concerning the child and the day care program as well as to offer them meaningful opportunities to participate in general program policymaking.
15. Personal hygiene practices appropriate for a child's age and development shall be stressed.
16. Any concerns about the health, development, or behavior of any child in the child care center on the part of center personnel, the administering or operating agency shall be communicated to the parent promptly and directly.
17. Each child's cultural and ethnic background and primary language or dialect shall be respected by the child care personnel.
18. Each facility shall have a designated area where a child can sit quietly or lie down to rest. There shall be sufficient cots or sleeping mats so that each child in attendance can have an individual napping space. The floor shall be used only when carpeted or padded, warm, free from drafts, and when individual blankets or coverings are used. Napping schedules shall be set for children according to their ages and needs. For children unable to sleep, time and space for quiet play must be available.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-10-27. SPECIALIZED TYPES OF CARE AND MINIMUM REQUIREMENTS THEREFOR.

1. Infant care.
 - a. A child care center serving children from birth to twenty-four months shall provide an environment which protects the children from physical harm and one which is not so restricted so as to inhibit physical, intellectual, emotional, and social development.
 - b. Nonwalking children shall have the opportunity during each day for freedom of movement, such as creeping, or crawling in a safe, clean, open, uncluttered area.

- c. Each infant shall have an individual sleeping space. The sheets shall be changed whenever they become soiled or wet.
- d. Children shall be taken out of doors or to other areas within the facility for a part of each day to provide some change of physical surroundings and to be with other children. No child shall be confined to a crib or playpen during the entire time at the center, unless the child is preparing to sleep or sleeping for the duration of the care.
- e. Each infant shall have periodic individual personal contact and attention from an adult, such as being held, rocked, talked or sung to.
- f. Low chairs and tables or infant seats with trays shall be provided for table play and mealtime for children no longer being held for feeding. Highchairs, if used, shall have a wide base and a safety strap.
- g. Children shall never be shaken or jostled in a moderate or severe manner.
- h. All cries of infants shall be investigated.
- i. Infants shall be fed or supervised individually and their diet and pattern of feeding shall be appropriate to their individual developmental needs.
- j. At no time shall infants be left unattended while feeding.
- k. Prepackaged, presterilized formula shall be used for each child's feeding, and any excess shall be discarded in a safe, sanitary manner, if it has been unrefrigerated for a total of four or more hours.
- l. Diapers shall be changed promptly when needed and in a sanitary manner. Infants shall be changed on a cleanable surface which is thoroughly cleaned with detergent after each diapering.

2. Night care.

- a. Any child care center offering night care shall provide program modifications for the special needs of children and their parents during the night.
- b. In consultation with parents, special attention shall be given by the caregiver to providing for a transition into this type of care appropriate to the child's emotional needs.

- c. When practical, children shall be left for care and picked up before and after their normal sleeping period so that there is minimal disturbance of the child during sleep, but consideration shall be given to the parent's work schedule.
 - d. Preschool age children shall be supervised when bathing.
 - e. Comfortable beds, cots, or cribs complete with a mattress or pad shall be available.
 - (1) Pillows and mattresses shall have clean coverings.
 - (2) Sheets and pillowcases shall be changed as often as necessary for cleanliness and hygiene, but not less than weekly. If beds are used by different children, sheets and pillowcases shall be laundered before use by other children.
 - (3) Each bed or cot shall have sufficient blankets available.
 - f. The center shall require each child in night care to have:
 - (1) Night clothing.
 - (2) A toothbrush marked for identification.
 - g. During sleeping hours, the staff shall be awake and within listening distance in order to provide for the needs of children and respond to an emergency.
3. Drop-in centers.
- a. If a child care center serves drop-in children, schoolchildren, or before- and after-school children, it shall be sufficiently staffed to effectively handle admission records, and explain the policies of the center. Admission records secured must comply with all enrollment requirements contained in section 75-03-10-17 except the immunization record requirement.
 - b. The program of the center shall reflect the special needs of the children who are provided drop-in service.
 - c. Admittance procedures shall provide for a period of individual attention for the child in order to acquaint the child with the facility, its equipment, and the people who can assist the child.
 - d. No child care center shall receive drop-in or part-time children who, when added to the children in regular

attendance, cause the center to exceed the total number of children for which the center is licensed.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-10-28. MINIMUM REQUIREMENTS FOR CARE OF CHILDREN WITH SPECIAL NEEDS. When children with special needs are admitted to a child care center, there shall be appropriate provisions to meet those needs. The center shall document how the child's special needs shall be met.

1. When children with special needs are admitted, the responsible individual in the center shall consult with the child's parents, the child's source of professional health care, or, when appropriate, other health and professional consultants.
2. The appropriate staff of the center shall receive proper instructions as to the nature of the child's disability and potential for growth and development.
3. Where the nature of the special need or the number of children with special needs warrants added care, the center shall add sufficient staff and equipment as deemed necessary by the board to compensate for these needs.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-10-29. PUNISHMENT OF ENROLLEES.

1. No child of any age shall be shaken, bit, pinched, hit, spanked, or otherwise physically punished.
2. Brief, supervised separation from the group for no longer than ten minutes may be used if necessary.
3. No method of punishment which humiliates or frightens the child, or causes more than minor transient physical or emotional discomfort, or both, shall be used.

4. No child shall be punished by withholding or forcefeeding food, requiring or prohibiting rest, or by placement in isolation. No child shall be punished for wetting or soiling clothes due to a failure of toilet habits.
5. Profane, threatening, unduly loud or abusive language shall not be used when addressing children, or in the presence of children.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-10-30. MINIMUM STANDARDS FOR PROVISION OF TRANSPORTATION.

1. The operator shall establish a written policy governing the transportation of children to and from the child care center, if the center provides transportation. Such a policy shall specify who is to provide transportation and how parental permission is to be obtained for special field trips and related activities which occur outside the child care center. When the child care center provides transportation, the operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children shall be in safe operating condition and in compliance with state and local laws.
2. When transportation is provided by a child care center, children shall be protected by adequate staff supervision, safety precautions, and liability/medical insurance.
 - a. Child/staff ratios shall be maintained to assure the safety of children while being transported.
 - b. No child shall be left unattended in a vehicle.
3. Children shall be instructed in safe transportation conduct as appropriate to their age and stage of development.
4. The driver shall be in compliance with all relevant state and local laws.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-10-31. ALLOWABLE TIME PERIODS FOR CORRECTION OF DEFICIENCIES.

1. Pursuant to North Dakota Century Code section 50-11.1-07.2, the following time periods are established in which the corrections of those deficiencies noted in the correction order issued, must be made:
 - a. For a violation or deficiency requiring the hiring of a child care center director with those qualifications as set forth in section 75-03-10-10, a child care supervisor with those qualifications as set forth in section 75-03-10-12, a period of sixty days to correct the deficiency shall be allowed.
 - b. For a violation or deficiency that requires an inspection, by a state fire marshal or local fire department authority pursuant to section 75-03-10-21, a period of sixty days to correct the deficiency shall be allowed.
 - c. For a violation or deficiency that requires substantial building remodeling, construction or change, a period of sixty days to correct the deficiency shall be allowed.
 - d. For all other violations or deficiencies a period of twenty days shall be allowed to correct the deficiency.
2. All time periods shall commence with the date of receipt, by the provider, of the correction order.
3. The area supervisor of day care services shall have the authority to grant extensions of allowable time to correct deficiencies, for a period of one-half the original allowable time to correct the deficiency. These extensions may be granted upon application by the provider and upon a showing that the need for the extension is created by circumstances beyond the control of the provider and that the provider has diligently pursued the correction of the deficiency.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-07.2

75-03-10-32. PENALTIES.

1. A violation of any of the following sections shall subject the licensee to a fiscal sanction of twenty-five dollars per day: subdivision i of subsection 3 of section 75-03-10-09;

subsection 2 of section 75-03-10-16; section 75-03-10-21; subsections 7, 10, and 17 of section 75-03-10-22; subsection 2 of section 75-03-10-23; and section 75-03-10-29.

2. A violation of any of the following sections shall subject the licensee to a fiscal sanction of fifteen dollars per day: section 75-03-10-10; subsection 2 of section 75-03-10-22; subsections 1, 3, 4, 8, 9, and 12 of section 75-03-10-22; subsection 1 of section 75-03-10-23; subdivision j of subsection 6 of section 75-03-10-24; subsections 3, 7, and 18 of section 75-03-10-26; subdivision a of subsection 1 and subsection 3 of section 75-03-10-27; and section 75-03-10-30.
3. Any violation of any other section of this chapter not noted in subsections 1 or 2 shall subject the licensee to a fiscal sanction of five dollars per day.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-07.4,
50-11.1-08

Law Implemented
NDCC 50-11.1-07.4,
50-11.1-07.5,
50-11.1-07.6,
50-11.1-07.7

AGENCY SYNOPSIS: HALF-DAY CHILD CARE PROGRAMS, SUPPLEMENTAL PARENTAL CARE. This chapter provides the minimum standards which an individual, or other entity, must meet in order to obtain the required license for the operation of a half-day child care program which is not exempted by the provisions of Chapter 50-11.1, NDCC, or for those individuals, or other entities, which voluntarily request licensure for the operation of the facility. These facilities provide supplemental parental care for children, which care does not serve any child for more than four hours per day. The standards establish the minimum qualifications of the program facilitator, the supervisor, the operator, aid, and establishes the minimum ratio of staff to children in this program. The regulations also establish the minimum operational procedures including fire inspections, sanitation and safety requirements, space requirements, program, facilities and equipment, and establishes the allowable time periods for the correction of any deficiencies noted in a correction order.

CHAPTER 75-03-11
 HALF-DAY CHILD CARE PROGRAMS
 SUPPLEMENTAL PARENTAL CARE

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75-03-11-01. PURPOSE. The purpose of this chapter is to establish standards for licensed child care centers operating half-day child care programs and providing supplemental care, and to assure that those standards are maintained.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01

75-03-11-02. AUTHORITY AND OBJECTIVE. Under the authority vested in the social service board of North Dakota pursuant to North Dakota Century Code section 50-11.1-08, the social service board of North Dakota may prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-08

75-03-11-03. DEFINITIONS. As used in this chapter:

1. "Aide" means any person other than a program facilitator or one who works in a half-day child care program under the supervision of a program facilitator or a supervisor.
2. "Facility operator" means any person or group in whom inheres the legal responsibility and the administrative authority for a half-day child care program facility. The facility operator is the applicant for license or the licensee pursuant to this chapter.

3. "Half-day child care program" means a program licensed under this chapter and the provisions of North Dakota Century Code chapter 50-11.1, which serves no child less than two years of age and serves no child more than four hours per day.
4. "Parent" means any person bearing the legal relationship of father or mother to a child enrolled in a half-day child care program, including those persons who legally stand in place of such parent, such as legal guardians or custodians.
5. "Program facilitator" means any person with the responsibility of implementing program activities either as the supervisor or under the supervision of the supervisor.
6. "Staff" means any person whose prime responsibility is the provision of direct care, supervision, and guidance to children in the facility.
7. "Supervisor" means any person with the responsibility of supervising and organizing program activities in a half-day child care program.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-02

75-03-11-04. EFFECT OF LICENSING AND DISPLAY OF LICENSE.

1. The issuance of a license to operate a half-day child care program shall be evidence of compliance with the standards contained in this chapter.
2. The license shall be on display in the facility in a conspicuous place.
3. The license shall specify the maximum number of children who may be cared for in the program, and the program shall at no time admit a greater number of children.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-03

75-03-11-05. DENIAL OR REVOCATION OF LICENSE.

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-09, and 50-11.1-10.
2. If an action to revoke a license is appealed, the license holder may continue the operation of the facility pending the final administrative determination or until the license expires, whichever first occurs; provided, however, that this subsection shall not limit the actions the board may take pursuant to North Dakota Century Code section 50-11.1-12.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-10

75-03-11-06. APPLICATION FOR A HALF-DAY CHILD CARE PROGRAM LICENSE. An application for license and issuance by the social service board shall be submitted to the county social service board in the county wherein the applicant proposes to provide a half-day child care program. Application shall be made in the form and manner prescribed.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-11-07. NONTRANSFERABILITY OF LICENSE. The license shall be nontransferable and shall be valid only on such premises as are indicated on the license. A new application for a license must be filed by any licensed facility upon change of operator or location.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-11-08. PROVISIONAL LICENSE.

1. Half-day child care program operators who apply for a license for a newly opened facility, or for a facility previously licensed, where the facility fails to comply with all applicable standards and regulations of the board, may, at the

discretion of the administrator of the area social service center/human service center, be issued a provisional license.

2. A provisional license shall:
 - a. Prominently state that the center has failed to comply with all applicable standards and regulations of the board.
 - b. State that the items of noncompliance are set forth on a document available upon request made to the program operator.
 - c. Expire at a set date, not to exceed six months from the date of issuance.
 - d. Be exchanged for an unrestricted license, which will bear the same date as the provisional license, upon demonstrating compliance, satisfactory to the board, with all applicable standards and regulations.
3. A provisional license shall be issued only to an applicant who has, in writing, waived:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued shall be accompanied by a written statement of violations signed by the administrator of the area social service center/human service center and, in writing, acknowledged by the operator.
5. Subject to the exceptions contained in this section, a provisional license entitles its holder to all the rights and privileges afforded the holder of an unrestricted license.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-07,
50-11.1-07.2,
50-11.1-08

75-03-11-09. RESPONSIBILITIES OF FACILITY OPERATOR.

1. The operator of a half-day child care program is responsible to the board for compliance with requirements set forth in the standards.
2. The operator may be any individual, group, agency, association, or organization legally responsible for the operation of the program.
3. The operator shall ensure that all standards are complied with and shall:
 - a. Be responsible for establishing the half-day child care program.
 - b. Make application for a license for each half-day child care program operated, if more than one program is operated.
 - c. Outline a plan of operation for each program.
 - d. Notify the board of any major changes in the operation or in the ownership or governing body of the program.
 - e. Carry liability insurance for the facility.
 - f. Ensure the formulation of written policies and procedures relating to the children's activities and care, enrollment, the responsibilities and rights of staff and of parents.
 - g. Maintain required records.
 - h. Be responsible for all center staff, volunteers, or others who provide services in the facility and for notifying the board of any change of supervisors.
 - i. Ensure that no individual shall be employed or retained in the half-day child care program who has been determined to have abused or neglected a child.
 - j. Designate a qualified supervisor.
 - k. Ensure that parents of enrolled children and other interested parties are informed of the goals, policies and procedures, methods of discipline and child management to be used, and content of the preschool program.
 - l. Ensure that the center is sufficiently staffed.
 - m. Ensure that written policies are established which provide for emergency medical care, and the treatment of illness and accident.

- n. Provide parents, upon request, any progress reports on their individual child or children and the compliance of the facility with standards contained in this chapter.
 - o. Provide parents with the name of the facility's operator and the supervisor.
4. If the operator of the half-day child care program is also the supervisor, the operator must also meet the qualifications of the supervisor set forth in section 75-03-11-10.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-11-10. MINIMUM QUALIFICATIONS OF A SUPERVISOR.

- 1. A supervisor shall be an adult of good mental and physical health, capable of mature judgment, and possessing knowledge and experience in management and interpersonal relationships.
- 2. The supervisor shall certify that the supervisor has met at least one of the following qualifications:
 - a. A bachelor's degree.
 - b. A teaching certificate.
 - c. An associate of arts degree in the field of early childhood education.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-11-11. MINIMUM QUALIFICATIONS OF A PROGRAM FACILITATOR.

- 1. A program facilitator shall be an adult of good mental and physical health, capable of mature judgment, and possessing knowledge of teaching and working with young children.
- 2. The program facilitator shall have met at least one of the following qualifications:
 - a. A bachelor's degree.

- b. A teaching certificate.
 - c. At least an associate of arts degree in the field of early childhood education.
3. If the program facilitator is also the supervisor, that person must meet the qualifications of the supervisor and perform the function of a supervisor as defined in section 75-03-11-10.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-11-12. MINIMUM QUALIFICATIONS OF AN AIDE. Each aide shall:

- 1. Be mentally, physically, and emotionally able to provide care and attention to the children in the aide's charge.
- 2. Meet one of the following qualifications:
 - a. A high school diploma.
 - b. A high school equivalency.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-11-13. MINIMUM HEALTH REQUIREMENTS FOR STAFF.

- 1. All personnel shall certify, within thirty days of employment, that they do not have health problems that would interfere with their functioning or that would be detrimental to the health of the children or other staff.
- 2. There shall be provision for adequate substitution for staff who are too ill to function effectively or who present a serious health hazard to others in the facility.
- 3. If the physical or mental health of a staff member appears questionable, the board may require the employing operator to present evidence of such capabilities based on a formal evaluation. Where appropriate, the board may provide for an evaluation through the use of professional staff.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-11-14. HALF-DAY CHILD CARE PROGRAM 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 staff to children in half-day child care programs shall be:
 - a. Children two years of age to three years of age, one staff per five children.
 - b. Children three years of age to four years of age, one staff per ten children.
 - c. Children four years of age to six years of age, one staff per twelve children.
 - d. There shall be at least one program facilitator or supervisor per group of twenty-four children, ages four to six.
 - e. There shall be at least one program facilitator or supervisor per group of twenty children, if the group includes three year olds but no younger children.
 - f. There shall be at least one program facilitator or supervisor per group of ten children, if the group includes two year olds and no younger children.
3. Where one or more children is a child with a mentally handicapping condition, and requires more than usual care, the evaluated developmental age level, rather than the chronological age of the child, shall be used in determining appropriate staff ratios.
4. Children with special conditions requiring more than usual care and supervision must have provided to them adequate care and supervision without adversely affecting care provided to the remaining children in the facility.

5. The number of children in each age category is divided by the corresponding ratio number and carried to the nearest hundredths. Numbers of necessary staff for all age categories are added, and any fractional staff count then rounded to the next largest whole number, in order to determine the number of staff necessary to staff the facility at any given time.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-02,
50-11.1-02.1

75-03-11-15. MINIMUM INFORMATION FOR EACH ENROLLED CHILD. The following information shall be kept and maintained in the registration forms for each individual child enrolled in the half-day child care program and shall be updated as appropriate. Such information shall include:

1. The child's full name, birthdate, and current home address.
2. The names and addresses of the parents or other persons legally responsible for the child, as well as their home and business telephone numbers.
3. Names and telephone numbers of persons who can assume responsibility for the child if the persons legally responsible for the child cannot be reached immediately in an emergency.
4. The written consent of parent or legally responsible party for emergency care.
5. Names and telephone numbers of persons authorized to take the child from the facility.
6. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the North Dakota state department of health.
7. Verification from parents, within thirty days of enrollment, that the child does not have health problems that would interfere with the child's functioning or be detrimental to the health of others. This parent-certified health assessment would be updated annually.

History: Effective December 1, 1981.

General Authority

Law Implemented

75-03-11-16. MINIMUM PROVISIONS REGARDING EMERGENCY CARE FOR CHILDREN. The program shall have plans to respond to illness and to emergencies including fire, serious injury, and ingestion of poison. These plans shall be in writing. Plans shall include the conspicuous posting of emergency response procedures.

1. At least one department of health approved first-aid kit shall be maintained and kept in a designated location, so as to be inaccessible to children yet readily accessible to staff members.
2. The placement of a telephone immediately accessible to the staff with a list of emergency telephone numbers conspicuously posted adjacent to such telephone.
3. If children in the program require medication, written permission to dispense medication must be obtained from the parent, and proper instructions as to the administration of such medication shall be given by the parent or physician.
 - a. Any medication prescribed by a physician shall be accompanied by the doctor's written instructions as to its dosage and storage, and labeled with the child's name and dated.
 - b. All medication shall be kept in secure storage so that it is out of the reach of children.
4. A supervised temporary isolation area shall be provided for a child who becomes ill and cannot remain in the group, and the following procedures shall be followed when such signs or symptoms are observed:
 - a. Parents shall be notified immediately and asked to pick up their children.
 - b. First aid shall be provided and medical care shall be sought as necessary.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-11-17. FIRE INSPECTION AND MINIMUM FIRE SAFETY STANDARDS.

1. Annual fire inspections shall be completed by local or state fire authorities. Emergency plans shall be developed in cooperation with such authorities. The operator shall have corrected any code violations noted by the fire inspection and shall file reports of such inspections with the board. The program shall provide:
 - a. The local fire inspector's written statement of compliance with the local fire code, if there is one;
 - b. The local fire inspector's written statement that the facility has been inspected and that the inspector is satisfied that it meets minimum fire and safety standards for the facility; or
 - c. A written statement from an appropriate fire official that the facility meets the minimum fire and safety standards adopted by the state fire marshal.
2. Fire evacuation drills shall be performed in accordance with the local fire department's guidelines.
3. The facility shall be equipped with sufficient smoke detectors and fire extinguishers, as recommended by local fire department.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04,
50-11.1-07

75-03-11-18. MINIMUM SANITATION AND SAFETY REQUIREMENTS.

1. The half-day child care facility's bathroom lavatories, toilets, tables, chairs, and floors shall be cleaned daily.
2. The half-day child care facility's building and equipment shall be located, cleaned, and maintained to protect the health and safety of children.
3. The facility shall have an annual health and sanitation inspection. Reports of such inspections shall be filed with the board and any problems found shall be corrected.

4. Indoor and outdoor equipment and supplies shall be safe, strong, and in good repair for children.
5. There shall be adequate ventilation and heating in the facility.
6. Garbage shall be kept away from areas used by children and kept in containers with tight lids, made of noncombustible materials. Open burning shall not be permitted.
7. Exterior play areas in close proximity to busy streets and other unsafe areas which are used by the facility shall be contained, fenced, or have natural barriers to restrict children from unsafe areas.
8. Hazardous or potentially injurious or poisonous substances should be kept in locked storage in a space designed solely for this purpose and shall be inaccessible to children.
9. Indoor floors and steps shall not be slippery or have splinters. All steps and walkways shall be kept free from accumulations of water, ice, or snow.
10. Elevated areas such as stairs or porches shall have railings and safety gates where necessary to prevent falls.
11. All heating devices shall be approved by the local fire authorities.
12. The operator shall take steps to keep the facility free of insects and rodents. Chemicals for insect and rodent control shall not be applied in areas accessible to children when children are present in the facility.
13. Combustible materials shall be kept away from light bulbs and other heat sources.
14. Doors and pathways shall not be blocked.
15. All buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, shall have such surfaces repainted or shall submit evidence that such surfaces do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of health.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-11-19. MINIMUM REQUIREMENTS REGARDING SPACE.

1. Each facility shall provide adequate space for all children in attendance.
2. There shall be a minimum of thirty-five square feet [3.25 square meters] of indoor activity area per child. Work areas, unused space, and areas which are not exclusively used for the half-day child care program's purposes shall not be considered when computing minimum space.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented -
NDCC 50-11.1-01,
50-11.1-04

75-03-11-20. MINIMUM REQUIREMENTS FOR FACILITIES AND EQUIPMENT.

1. The facility and all rooms therein shall be properly lighted. The following technical requirements shall be met:
 - a. Sixty-five foot-candles of light for all general use and play areas.
 - b. Twenty-five foot-candles of light for all bathrooms.
 - c. Fifteen foot-candles of light for corridors and storage areas.
2. Water supply.
 - a. Drinking water shall be from a source which is approved by the North Dakota state department of health.
 - b. Drinking water shall be easily accessible to the children and shall be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual single-service drinking cups.

- c. Hot and cold running water and of sufficient pressure, from an approved community system, must be available in the facility.
3. Toilet and lavatory facilities.
- a. Toilet and lavatory facilities shall be provided and shall be convenient to the areas used by the children and staff.
 - b. Toilet and lavatory facilities shall meet requirements of the local health department authorities.
 - c. A minimum of one lavatory and one flush toilet shall be provided for each fifteen children.
 - d. At least one handwashing lavatory shall be provided per toilet room facility.
 - e. Sanitary hand-drying equipment or materials shall be provided near handwashing lavatories.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-11-21. MINIMUM STANDARDS FOR THE PROVISION OF SNACKS.
Children in care for more than two and one-half hours shall be served a nutritious snack on a regular basis.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-11-22. MINIMUM HALF-DAY CHILD CARE PROGRAM REQUIREMENTS.

- 1. A half-day child care program shall have a written schedule which describes the program's philosophy, goals, objectives, and a program evaluation process.
- 2. The scheduled program shall promote intellectual, social, emotional, and physical development of children in care.

3. The scheduled program shall be based on the developmental levels and needs of children enrolled.
4. The supervisor shall be responsible for exchanging information with parents concerning the program, its activities, and the adjustment of the child to the program.
5. Each child's cultural and ethnic background and primary language or dialect shall be respected by the half-day child care program's staff.
6. There shall be a written daily plan of program activities for the children enrolled in the program.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

75-03-11-23. MINIMUM REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS. When children with special needs are admitted to a half-day child care program, there shall be appropriate provisions to meet those needs.

1. When children with special needs are admitted, the responsible individual in the center shall consult with the child's parents, the child's source of professional health care, or, when appropriate, other health and professional consultants.
2. The supervisor shall receive proper instructions as to the nature of the child's disability and potential for growth and development.
3. Where the nature of the special need or the number of children with special needs warrants added care, the facility shall add sufficient staff and equipment as deemed necessary by the board to compensate for these needs.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-11-24. PUNISHMENT OF ENROLLEES.

1. No child of any age shall be shaken, hit, spanked, bitten, pinched, or otherwise physically punished.
2. Brief, supervised separation from the group for no longer than ten minutes may be used, if necessary.
3. No method of punishment which humiliates or frightens the child, or causes more than minor transient physical or emotional discomfort, or both, shall be used.
4. No child shall be punished by withholding or force-feeding food, requiring or prohibiting rest, or by placement in isolation. No child shall be punished for wetting or soiling clothes due to a failure of toilet habits.
5. Profane, threatening, unduly loud or abusive language shall not be used when addressing children, or in the presence of children.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-11-25. MINIMUM STANDARDS FOR PROVISION OF TRANSPORTATION.

1. The operator shall establish a written policy governing the transportation of children to and from the half-day child care program, if the facility provides transportation. Such a policy shall specify who is to provide transportation and how parental permission is to be obtained for special field trips and related activities which occur outside the facility. When the facility provides transportation, the operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children shall be in safe operating condition and in compliance with state and local laws.
2. When transportation is provided by the facility, children shall be protected by adequate staff supervision, safety precautions, and liability/medical insurance.
 - a. Child/staff ratios shall be maintained to assure the safety of children while being transported.
 - b. No child shall be left unattended in a vehicle.
3. Children shall be instructed in safe transportation conduct as appropriate to their ages and stages of development.

4. The driver shall be in compliance with all relevant state and local laws.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01,
50-11.1-04

75-03-11-26. ALLOWABLE TIME PERIODS FOR CORRECTION OF DEFICIENCIES.

1. Pursuant to North Dakota Century Code section 50-11.1-07.2, the following time periods are established in which the corrections of those deficiencies noted in the correction order issued, must be made:
 - a. For a violation of deficiency requiring the hiring of a supervisor with those qualifications as set forth in section 75-03-11-10 or a program facilitator with those qualifications as set forth in section 75-03-11-11, a period of sixty days to correct the deficiency shall be allowed.
 - b. For a violation or deficiency that requires an inspection, by a state fire marshal or local fire department authority pursuant to section 75-03-11-17, a period of sixty days to correct the deficiency shall be allowed.
 - c. For a violation or deficiency that requires substantial building remodeling, construction, or change, a period of sixty days to correct the deficiency shall be allowed.
 - d. For all other violations or deficiencies a period of twenty days shall be allowed to correct the deficiency.
2. All time periods shall commence with the date of receipt, by the provider, of the correction order.
3. The area supervisor of day care services shall have the authority to grant extensions of allowable time to correct deficiencies for a period of one-half the original allowable time to correct the deficiency. These extensions may be granted upon application by the provider and upon a showing that the need for the extension is created by circumstances beyond the control of the provider and that the provider has diligently pursued the correction of the deficiency.

History: Effective December 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-07.2

FEBRUARY 1982

AGENCY SYNOPSIS: Creates a new section, the purpose of which is to limit the use of emergency room services by medical assistance recipients, when the medical problem faced by the recipient is not an emergency.

75-02-02-12. LIMITATIONS ON EMERGENCY ROOM SERVICES.

1. For the purposes of this section:

- a. "Medical emergency" means the sudden and unexpected onset of a need for medical care which the recipient secures immediately after the onset of the illness or injury, or as soon thereafter as the medical care can be made available, and which is limited to the following conditions and symptoms: crisis intervention, heart attack, chest pain, abdominal pain, stroke, coma, poisoning, suicidal attempt, convulsions, asthmatic attack, respiratory arrest, cardiac arrest, hemorrhage, earache, pneumonia, vomiting, diarrhea, and other conditions where a concise statement to the division of medical services satisfactorily demonstrates that medical necessity, as defined in subdivision b, required the provision of emergency room services.
- b. "Medical necessity", as applied to emergency room services, means a life threatening situation or a situation requiring such services to prevent further deterioration of health in a patient or recipient suffering from an acute illness.
- c. "Patient or recipient" means any individual approved as eligible for medical assistance by medicaid of North Dakota.
- d. "Provider" means any individual, entity, or facility furnishing emergency medical services pursuant to a provider agreement with the division of medical services.
- e. "Surgical emergency" means the sudden and unexpected onset of a need for surgical care which the recipient secures immediately after the onset of the illness or injury, or as soon thereafter as the surgical care can be made available, and which is limited to the following conditions and symptoms: fracture, head injury, accident, lacerations, burns, severe abrasions and contusions, animal bites, and other conditions where a concise statement to the division of medical services satisfactorily demonstrates that medical necessity, as

defined in subdivision b, required the provision of emergency room services.

2. Except in life threatening situations, the nonphysician provider of emergency services shall assure:

- a. The collection of pertinent data from the patient.
- b. Screening or examination of patients as deemed necessary to determine their medical condition.
- c. Rendering of indicated care, under the direction of a physician, if a medical or surgical emergency exists.
- d. If it is determined that the patient is a social services recipient, an attempt to contact the recipient's personal physician, or one substituting for that physician, to approve services before they are given, unless a medical or surgical emergency exists.
- e. Referral of recipients to their physician's office in cases where emergency room services are not indicated.
- f. That professional staff persons use their individual judgment in determining the need for emergency services.

3. Physician providers shall:

- a. Determine when a medical or surgical emergency exists.
- b. Assure that social service recipients are referred to the appropriate health delivery setting when emergency room services are not judged to be appropriate.

4. Payment for emergency room services.

- a. Claims for payment, and documentation in support of those claims, must be submitted on forms prescribed by the division of medical services. The claim must contain sufficient documentation to indicate that a medical or surgical emergency required emergency room diagnostic services and treatment.
- b. Providers will be paid for any services authorized by a physician, which fact is properly noted on the request for payment.
- c. Providers will be paid for screening/examination services rendered.
- d. Services rendered to patients who reside out of the area and who do not normally utilize the provider's services will be automatically covered.

5. If the emergency room service claim does not demonstrate the existence of a medical or surgical emergency, payment will be denied (except for payment for screening services as outlined in subsection 4), unless other medical necessity can be demonstrated by special report. The provider, upon receipt of notice of denial, may, in writing, make a special report. A special report must include a statement refuting the stated basis for the payment denial and affirmatively demonstrating the existence of a medical or surgical emergency. The division of medical services shall, within ten days after receipt of a special report, make written response to the report, stating that the denial of payment has been affirmed or reversed.

History: Effective February 1, 1982.

General Authority
NDCC 50-24.1-02

Law Implemented
42 CFR Part 455

TITLE 87

Veterinary Medical Examiners, Board of

OCTOBER 1981

STAFF COMMENT: Chapter 87-03-01 is all new material but is not underscored to improve readability.

ARTICLE 87-03

ANIMAL HEALTH TECHNICIAN CERTIFICATION

Chapter
87-03-01 Procedures for Certification of Animal
Health Technicians

CHAPTER 87-03-01
PROCEDURES FOR CERTIFICATION OF ANIMAL HEALTH TECHNICIANS

Section	
87-03-01-01	Definition of an Animal Health Technician
87-03-01-02	Requirements For Certification as an Animal Health Technician
87-03-01-03	Prerequisites For Taking The Certification Examination
87-03-01-04	Application For Certification - Fees - Certificate Renewal

87-03-01-01. DEFINITION OF AN ANIMAL HEALTH TECHNICIAN. As used in this chapter, "animal health technician" has the same meaning as

"animal technician" as defined in North Dakota Century Code section 43-29-09.

History: Effective October 1, 1981.

General Authority
NDCC 43-29-09

Law Implemented
NDCC 43-29-09

87-03-01-02. REQUIREMENTS FOR CERTIFICATION AS AN ANIMAL HEALTH TECHNICIAN. Certification as an animal health technician requires a recommendation from a licensed veterinarian and passage of a certification examination consisting of written and practical portions.

History: Effective October 1, 1981.

General Authority
NDCC 43-29-09

Law Implemented
NDCC 43-29-09

87-03-01-03. PREREQUISITES FOR TAKING THE CERTIFICATION EXAMINATION. The prerequisites for taking the certification examination is one of the following:

1. Graduation from a two-year animal health technician training program.
2. Graduation from a one-year animal health technician training program, plus one year of on-the-job training.
3. At least two years on-the-job training for any person with no formal training.

History: Effective October 1, 1981.

General Authority
NDCC 43-29-09

Law Implemented
NDCC 43-29-09

87-03-01-04. APPLICATION FOR CERTIFICATION - FEES - CERTIFICATE RENEWAL. Any person desiring certification as an animal health technician shall make written application for certification to the executive secretary on forms provided for that purpose and shall pay in advance to the North Dakota board of veterinary medical examiners a fee of twenty-five dollars. Fees are not returned, except by action of the board. If the certificate is granted, the technician shall pay an annual renewal registration fee as determined by the board, based on the

financial needs of the board. The renewal registration fee shall be paid by all certified technicians.

History: Effective October 1, 1981.

General Authority
NDCC 43-29-09

Law Implemented
NDCC 43-29-09

