

NORTH DAKOTA ADMINISTRATIVE CODE

Supplements 78 through 80

September 1985
November 1985
December 1985

Prepared by the Legislative Council staff
for the
Administrative Rules Committee

TABLE OF CONTENTS

Office of Management and Budget	1
Department of Banking and Financial Institutions	5
Job Service North Dakota	11
Highway Department	15
State Laboratories Department	19
State Personnel Board	41
Public Service Commission	65
Department of Human Services	79



TITLE 4

Office of Management and Budget

DECEMBER 1985

STAFF COMMENT: Title 59.5 is effective December 1, 1985, in lieu of Article 4-02.

ARTICLE 4-02

CENTRAL PERSONNEL DIVISION

[Repealed effective December 1, 1985]

TITLE 13

Department of Banking and Financial Institutions

NOVEMBER 1985

13-03-02-01. Aggregate limited to percent of paid-in shares and deposits - Type of lien. No credit union organized and operating under the laws of North Dakota, except the North Dakota central credit union, Bismarck, North Dakota, which is specifically exempted from the provisions of this section, shall make, purchase, own, or carry within its assets at any one time loans secured by mortgage liens on real property in an aggregate sum in excess of an amount equal to thirty percent of the ~~paid-in shares and deposits~~ assets of such credit union. Upon application in writing by a credit union, the state credit union board may authorize that credit union to exceed the thirty percent limitation. ~~No credit union shall, under any circumstances, make, purchase, own, or carry within its assets at any time any loan to a member on real property security which is not secured by a first mortgage lien, except as otherwise provided.~~

History: Amended effective May 1, 1981; November 1, 1985.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-02-02. Requirements for advancement of money on security of real property. No credit union organized and operating under the laws of North Dakota, except the North Dakota central credit union, Bismarck, North Dakota, which is specifically exempted from the provisions of this section, shall advance money on security of real property until all of the following requirements have been fulfilled:

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

2. An abstract of title of the real property involved, ~~continued to include the first mortgage deed as mentioned in subsection 1,~~ has been furnished to the credit union, at the expense of the borrower. Subsequent to, and within ninety days of the advancement of funds, the abstract of title must be updated to include the mortgage deed as specified in subsection 1.
3. A written opinion by a ~~competent~~ an attorney is obtained, certifying that the mortgagor is the owner of the real property in fee simple, and ~~that the first mortgage as mentioned in subsection 1 is a first lien thereon~~ indicating the order of priority of the lien established by the mortgage.
4. In lieu of abstract of title and written opinion required in subsections 2 and 3, a title insurance policy equal to at least the original amount of the mortgage will be satisfactory. The policy shall show the credit union as the insured.
5. A written appraisal has been obtained and filed with the loan papers, which shall appraise the land and structures separately, and which appraisal shall be made by the credit committee or a designated appraiser who shall appraise the real property and structures at their actual cash value in their opinion; provided, that no relative of a borrower or applicant may act in making the appraisal. In such case, it shall be the duty of the credit committee of the credit union considering the loan to appoint another member of the credit union to serve on the appraisal committee.
6. Proper fire and tornado insurance has been secured with a mortgage clause for the benefit of the credit union in case of loss, which insurance shall be in an amount equal to at least seventy-five percent of the appraised value of the structures or the amount of the loan, whichever is the lesser.
7. A proper note for the amount of the loan has been signed by the mortgagor or mortgagors coinciding in all particulars with the note described in the mortgage required under subsection 1.

History: Amended effective May 1, 1982; November 1, 1985.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-02-05. Second mortgages - Approval of credit union board.
 A credit union organized and operating under the laws of North Dakota may engage in the making of loans on the security of second mortgages on real property if it has

first applied for and received the approval of the North Dakota state credit union board.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Repealed effective November 1, 1985.

13-03-02-06. Exemption from restrictive provisions. The limitations set out in sections 13-03-02-01, 13-03-02-02, and 13-03-02-03, and ~~13-03-02-05~~ shall not apply to any federally guaranteed loan, however, such loans must conform to all federal requirements for the making of the guaranteed loan.

History: Effective June 1, 1979; amended effective June 1, 1983; November 1, 1985.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

TITLE 27
Job Service North Dakota

SEPTEMBER 1985

27-03-07-02. Representation of claimant in court - Attorney fee. In any proceeding for judicial review a claimant may be represented by an attorney and the fee for such services shall be subject to approval by the bureau. Such attorney fee shall be paid by the bureau and deemed part of the expense of administering the unemployment compensation law, provided:-

- 1- The decision being appealed by claimant reverses a decision favorable to the claimant, or
- 2- The claimant is appealing from a decision which reduced or denied benefits awarded under a prior administrative or judicial decision, or
- 3- Benefits are awarded as a result of the appeal.

In these cases where appeal to the court by the claimant is unwarranted and no reasonable basis for appeal exists, the bureau will not approve payment of attorney fees from administration funds.

General Authority: NDEC 52-06-20
Law Implemented: NDEC 52-06-32

Repealed effective September 1, 1985.

27-03-07-03. Representation of claimant in district court - Attorney fee. The claimant's attorney fees paid by the bureau for representation in district court, only if the claimant finally prevails, are those fees charged to the claimant by the attorney and which would otherwise be payable to the attorney by the claimant. The amount of a

claimant's attorney fees paid by the bureau may not exceed twenty percent of the amount of benefits at issue in the case. No attorney representing a claimant is entitled to attorney fees from the bureau if the attorney is employed by or a member of the staff of any legal services organization funded totally or in part by public funds.

History: Effective September 1, 1985.

General Authority: NDCC 52-02-02

Law Implemented: NDCC 52-06-32

TITLE 37
Highway Department

DECEMBER 1985

37-06-04-01. Authorized combinations of vehicles exceeding seventy-five feet. The following combinations of vehicles exceeding seventy-five feet [22.86 meters] in overall length may be operated on those highways described in 37-06-04-02:

1. Any combination of two units.
2. A truck-tractor and semitrailer may draw a trailer or semitrailer converted to a trailer by use of a converter dolly and fifth wheel. This combination of vehicles is commonly referred to as a double bottom.
3. A truck-tractor and semitrailer may draw a semitrailer. This combination of vehicles is commonly referred to as a B-train.
4. A truck properly registered and designed to legally carry a gross weight of more than twenty-four thousand pounds [10886.22 kilograms] may draw two trailers or semitrailers provided both trailers or semitrailers are designed to legally carry gross weights of more than twenty-four thousand pounds [10886.22 kilograms], provided both trailers or semitrailers are equipped with safety chains and brakes adequate to control the movement of and to stop and hold such trailers or semitrailers. The brakes shall be designed as to be applied by the driver of the truck from the cab. The brakes shall be designed and connected so that in case of an accidental breakaway the brakes shall be automatically applied on the trailer or semitrailer that breaks loose.
5. A combination of four units consisting of a truck-tractor, semitrailer, and two trailers. A semitrailer used with a converter dolly is considered to be a trailer. This combination of vehicles is commonly referred to as triple trailers or a triple bottom.

History: Effective October 1, 1983; amended effective December 1, 1985.
General Authority: NDCC 39-12-04
Law Implemented: NDCC 39-12-04

TITLE 47
State Laboratories Department

SEPTEMBER 1985

47-05-01-01. Analytical specifications.

1. Gasoline specifications. Gasoline specifications are listed and described in the appendix to this chapter labeled North Dakota gasoline specifications. Gasoline must meet the specifications in the appendix.
2. Gasohol specifications. Gasohol is a motor fuel composed of ninety volume percent of unleaded gasoline meeting all of the requirements of the North Dakota gasoline specifications except for those regarding octane and ten volume percent of denatured ethanol meeting the requirements detailed in subsection 5. The final product must meet the octane requirements of the North Dakota gasoline specifications.
3. Leaded gasohol specifications. Leaded gasohol is a motor fuel composed of ninety volume percent of leaded gasoline meeting all of the requirements of the North Dakota gasoline specifications except for those regarding octane and ten volume percent of denatured ethanol meeting the requirements detailed in subsection 5. The final product must meet the octane requirements of the North Dakota gasoline specifications.
4. Alternative specifications. A permitted alternative is gasohol or leaded gasohol prepared by the addition of a nominal ten volume percent of denatured ethanol meeting the requirements of subsection 5 to an unleaded or leaded gasoline, respectively, that may not meet the requirements of the North Dakota gasoline specifications, provided that the finished product does meet the North Dakota gasoline specifications.

5. Alcohol specifications. The denatured ethanol at the time of blending either gasohol or leaded gasohol must contain no more than one and twenty-five one-hundredths weight percent of water. It shall be made unfit for beverage use by the addition of noxious or toxic materials (denaturants), as required by the United States department of treasury, bureau of alcohol, tobacco, and firearms.
6. Permissible levels of alcohol. The maximum permitted level or levels of ethanol, methanol, or other alcohol, in gasoline or gasohol must be in accord with any levels as established by the environmental protection agency of the United States department of the interior. Any blender or wholesaler distributing a gasoline containing methanol which has been granted an exemption or waiver by the environmental protection agency in reference to this section shall inform the state laboratories department and the retailer of the blended product of this exemption or waiver in writing prior to distribution.

History: Amended effective September 1, 1985.

General Authority: NDCC 19-10-10

Law Implemented: NDCC 19-10-10

47-05-01-01.1 Labeling specifications.

1. Road octane. The road octane of a gasoline or gasohol is the mathematical average of the octane as determined by the ASTM Research Method and the octane as determined by the ASTM Motor Method.
 - a. The road octane must appear on the dispenser's front panel in a type not less than one-inch [2.54 centimeters] high.
 - b. Only gasoline or gasohol with a road octane greater than or equal to ninety-two may be labeled "premium".
 - c. Only gasoline or gasohol with a road octane greater than or equal to ninety may be labeled "super".
2. Alcohol-blended gasolines.
 - a. All gasoline or gasohol sold or offered for sale containing ethanol, methanol or cosolvent alcohol, or any combination thereof, shall be labeled with the conventional name or names of the alcohol contained in the gasoline or gasohol if the gasoline or gasohol consists of one percent or more by volume of any alcohol or combinations of alcohols. The label must be on the dispenser's front panel in a position that is clear and conspicuous from the driver's position. These words must be in a type not less than one-inch [2.54 centimeters]

high or one-half the size of the product name, whichever is larger, in permanent marking.

- b. Maximum percentage of methanol and cosolvent alcohol must both be conspicuously displayed or labeled if the product contains three percent or more by volume of methanol.
- c. No person may sell gasoline or gasohol in any manner, including coloring, which shall deceive, tend to deceive, or has the effect of deceiving the purchaser as to grade or type.
- d. Suppliers of alcohol-blended gasoline to retail service stations or to other resuppliers must provide to the retailer or other reseller an invoice or delivery ticket indicating to within one percentage point the specific content by volume of any alcohol contained if the gasoline or gasohol consists of one percent or more by volume of any alcohol or combinations of alcohols. This information must be made readily available to the consumer of an alcohol-blended gasoline.

History: Effective September 1, 1985.

General Authority: NDCC 19-10-02

Law Implemented: NDCC 19-10-01(4), 19-10-04

STAFF COMMENT: Changes to the appendix to chapter 47-05-01 have not been overstruck or underscored so as to improve readability.

NORTH DAKOTA GASOLINE SPECIFICATIONS

TEST	MOTOR			
	a	b	c	d
Water and Sediment.	None	None	None	None
Color Saybolt, min.				
Color, Dye.	e	e	e	e
Dye Content				
Permissible blue dye (f)				
max. mg/gal				
Permissible yellow dye (g)				
max. mg/gal				
Permissible red dye (h)				
max. mg/gal				

Antiknock Compound (j) g/gal. max . . .	i	i	i	i
Distillation Test				
10 percent Evap. degrees F. max . . .	122	131	140	149
50 percent Evap. degrees F. min . . .	170	170	170	170
50 percent Evap. degrees F. max . . .	230	235	240	245
90 percent Evap. degrees F. min . . .	---	---	---	---
90 percent Evap. degrees F. max . . .	365	365	365	374
End Point degrees F. max.	437	437	437	437
Sum of 10 and 50 degrees F				
Evap. Points degrees F. min	---	---	---	---
Distillation Recovery percent min . .	---	---	---	---
Residue percent max	2	2	2	2
Loss percent max.	---	---	---	---
Vapor Pressure (Reid) lbs. max.	15.0	13.5	11.5	10.0
Vapor/Liquid Ratio				
Minimum Test Temp. degrees F.	105	116	124	133
V/L max	20	20	20	20
Corrosion (copper strip) max.	No. 1	No. 1	No. 1	No. 1
Sulphur percent max				
(lead free gasolines)	0.1	0.1	0.1	0.1
Sulphur percent max				
(leaded gasolines).	0.15	0.15	0.15	0.15
Gum, mgs/100 ml max	5	5	5	5
Potential Gum (m) (5 hr. aging gum)				
max. mg/per 100 ml.	---	---	---	---
Freezing Point degrees F. max	---	---	---	---
Net Heat of Combustion				
min. BTU/lb	---	---	---	---
Acidity of Distillation Residue	---	---	---	---
Visible Lead Precipitate (n)				
max. mg/1000 ml	---	---	---	---
Water Reaction.	---	---	---	---
Permissible antioxidants degrees				
max. lb/1000 bbl.	---	---	---	---
Knock Value				
Motor and Research Octane No., min. .	e	e	e	e
Octane Number Lean Rating, min. . . .	---	---	---	---
Octane Number Rich Rating, min. . . .	---	---	---	---

Oxidation stability, Minutes min. . . . --- --- --- ---

NORTH DAKOTA GASOLINE SPECIFICATIONS (Continued)

TEST	STOVE AND LIGHT	AVIATION		
		80	100	100LL
Water and Sediment.	None			
Color Saybolt, min.	15			
Color, Dye.	None	Red(k)	Green	Blue
Dye Content				
Permissible blue dye (f)				
max. mg/gal		0.5	4.7	5.7
Permissible yellow dye (g)				
max. mg/gal		None	5.9	None
Permissible red dye (h)				
max. mg/gal		8.65	None	None
Antiknock Compound (j) g/gal. max . . .	Trace	0.5(j)	4.0	2.0
Distillation Test				
10 percent Evap. degrees F. max . . .	158	167	167	167
50 percent Evap. degrees F. min . . .	---	---	---	---
50 percent Evap. degrees F. max . . .	266	221	221	221
90 percent Evap. degrees F. min . . .	---	---	---	---
90 percent Evap. degrees F. max . . .	365	275	275	275
End Point degrees F. max.	---	338	338	338
Sum of 10 and 50 degrees F				
Evap. Points degrees F. min	---	307	307	307
Distillation Recovery percent min . .	---	97	97	97
Residue percent max	2	1.5	1.5	1.5
Loss percent max.	---	1.5	1.5	1.5
Vapor Pressure (Reid) lbs. max.	10	7.0	7.0	7.0
Vapor/Liquid Ratio				
Minimum Test Temp. degrees F.	---	---	---	---
V/L max	---	---	---	---
Corrosion (copper strip) max.	None	No. 1	No. 1	No. 1
Sulphur percent max (lead free gasolines)	0.1			

Sulphur percent max (leaded gasolines)		0.05	0.05	0.05
Gum, mgs/100 ml max	4	---	---	---
Potential Gum (m) (5 hr. aging gum) max. mg/per 100 ml.	---	6	6	6
Freezing Point degrees F. max	---	-72	-72	-72
Net Heat of Combustion min. BTU/lb	---	18.720	18.720	18.720
Acidity of Distillation Residue	---	Not Acid	Not Acid	Not Acid
Visible Lead Precipitate (n) max. mg/1000 ml	---	3	3	3
Water Reaction.	---	Volume change not to exceed (+)(-) 2 ml		
Permissible antioxidants degrees max. lb/1000 bbl.	---	4.2	4.2	4.2
Knock Value				
Motor and Research Octane No., min.	---	---	---	---
Octane Number Lean Rating, min.	---	80	100	Iso + 47 TEL/gal.
Octane Number Rich Rating, min.	---	87	Iso + 1.28 TEL/gal.	Iso + 2.0 TEL/gal.
Oxidation stability, Minutes min.	480	---	---	---

FOOTNOTES TO NORTH DAKOTA GASOLINE SPECIFICATIONS

- a. Applies to gasoline sold during the months of January, February, March, November, and December.
- b. Applies to gasoline sold during the months of March, April, October, and November.
- c. Applies to gasoline sold during the months of April, May, June, September, and October.
- d. Applies to gasoline sold during the months of June, July, August, and September.
- e. The minimum octane for premium gasoline shall be 92 as determined by the sum of the Research Method plus the Motor

Method all divided by two $((R+M)/2)$. The minimum octane for super gasoline shall be 90 as determined by the sum of the Research Method plus the Motor Method all divided by two $((R+M)/2)$. The minimum octane for leaded regular gasoline shall be 88 as determined by the sum of the Research Method plus the Motor Method all divided by two $((R+M)/2)$. The minimum octane for unleaded regular gasoline shall be 87 as determined by the sum of the Research Method plus the Motor Method all divided by two $((R+M)/2)$. No person shall sell gasoline in any manner, including coloring, which shall deceive, tend to deceive, or has the effect of deceiving the purchaser as to grade or type.

- f. The only blue dye which shall be present in the finished gasoline shall be essentially 1, 4-dialkylaminoantraquinone.
- g. The only yellow dye which shall be present in the finished gasoline shall be essentially p-diethylaminoazobenzene (Color Index No. 11020).
- h. The only red dye which shall be present in the finished gasoline shall be essentially methyl derivatives of azobenzene-4-azo-2-naphthol (methyl derivatives of Color Index No. 26105).
- i. The lead content of gasoline shall be in accordance with environmental protection agency requirements.
- j. The tetraethyllead shall be added in the form of an antiknock mixture containing not less than 61 percent by weight of tetraethyllead and sufficient ethylene dibromide to provide two bromine atoms per atom of lead. The balance shall contain no added ingredients other than kerosene, and approved inhibitors, and blue dye, as specified, herein.
- k. If mutually agreed upon between purchaser and supplier, Grade 80 may be required to be free from tetraethyllead. In such case the fuel shall not contain any dye and color shall not be darker than +20 Saybolt.
- l. Vapor pressure shall follow the seasonal requirements for regular and premium gasoline.
- m. If mutually agreed upon between purchaser and supplier, aviation gasoline may be required to meet a sixteen-hour aging gum test instead of the five-hour aging gum test. In some cases the gum content shall not exceed 10 mg per 100 ml and the visible lead precipitate shall not exceed 4 mg per 100 ml. In such fuel the permissible antioxidants shall not exceed 8.4 lb per 1000 bbl (42 gallons).
- n. The visible lead precipitate requirement applies only to leaded fuels.

o. Permissible antioxidants are as follows:

N,N'-diisopropyl-para-phenylenediamine
N,N' di-secondary-butyl-para-phenylenediamine
2,4-dimethyl-6-tertiary-butylphenol
2,6-ditertiary-butyl-4-methylphenol
2,6-ditertiary butylphenol

Mixed tertiary butylphenols, composition:

75 percent 2,6-ditertiary butylphenol - 10 to 15 percent
2,4,6-tritertiary butylphenol 10 to 15 percent 0-tertiary
butylphenol - 75 percent min 2,4-dimethyl-6-tertiary
butylphenol, and 28 percent max monomethyl and dimethyl
tertiary butylphenols.

History: Amended effective September 1, 1985.

DECEMBER 1985

47-03-02-02. Expression of guarantees.

1. Pursuant to subsection 3 of North Dakota Century Code section 19-13.1-04, commercial feeds containing five percent or more mineral ingredients shall include in the guaranteed analysis the minimum and maximum percentages of calcium (Ca) and salt (NaCl) and the minimum percentages of phosphorus (P) and iodine (I), if added. Minerals, except salt (NaCl), when quantitatively guaranteed, shall be stated in terms of percentage of the element. If the concentration of salt (NaCl) exceeds forty percent, the minimum and maximum percentages of sodium (Na) and chloride (Cl) shall be included in the guaranteed analysis in lieu of the minimum and maximum concentrations of salt (NaCl).
2. Products which need not be labeled to show guarantees for crude protein, crude fat, and crude fiber are:
 - a. Products distributed solely as mineral or vitamin supplements, or both.
 - b. Molasses.
 - c. Drug compounds.

History: Amended effective December 1, 1985.

General Authority: NDCC 19-13.1-10

Law Implemented: NDCC 19-13.1-04

STAFF COMMENT: Chapter 47-04-05 contains all new material but is not underscored so as to improve readability.

**CHAPTER 47-04-05
BED AND BREAKFAST FACILITIES**

Section	
47-04-05-01	Definitions
47-04-05-02	Water Supply
47-04-05-03	Sewage
47-04-05-04	Food Supplies
47-04-05-05	General Food Protection
47-04-05-06	Food Service Equipment and Utensils Materials
47-04-05-07	General Employee Health
47-04-05-08	Lighting and Ventilation
47-04-05-09	Toilet, Handwashing, Laundry, and Bathing Facilities
47-04-05-10	Beds, Linens, Furniture
47-04-05-11	Insect and Rodent Control
47-04-05-12	General Requirements
47-04-05-13	Swimming Pools and Spas
47-04-05-14	Fire Safety
47-04-05-15	Inspection - Records Kept
47-04-05-16	License - Application
47-04-05-17	Failure to Comply with Provisions of Chapter

47-04-05-01. Definitions.

1. "Approved" means acceptable to the state laboratories department based on a determination as to conformance with appropriate standards and good public health practice.
2. "Bed and breakfast facility" means a private home which is used to provide accommodations for a charge to the public, with at most two lodging units for up to eight persons per night and in which no more than two family style meals per day are provided.
3. "Corrosion-resistant material" means a material which maintains its original surface characteristics under prolonged influence of the food, cleaning compounds, and sanitizing solutions which may contact it.
4. "Department" means the state laboratories department or its designated agent.
5. "Easily cleanable" means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

6. "Employee" means the permitholder, individuals having supervisory or management duties and any other person working in a a bed and breakfast facility.
7. "Equipment" means stoves, ovens, ranges, hoods, slicers, mixers, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steamtables, and similar items other than utensils, used in the operation of a bed and breakfast facility.
8. "Family style meal" means a meal ordered by persons staying at a bed and breakfast facility which is served from common food service containers, as long as any food not consumed by those persons is not reused or fed to other people if the food is unwrapped.
9. "Food" means any raw, cooked, processed edible substance, or combination of substances, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
10. "Food contact surfaces" means those surfaces of equipment and utensils with which food normally comes in direct contact, and those surfaces with which food may come in contact and drain back onto surfaces normally in contact with food.
11. "Food processing establishment" means a commercial establishment in which food is manufactured or packaged for human consumption. The term does not include a food service establishment, retail food store, or commissary operation.
12. "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its content after processing.
13. "Kitchenware" means all multiuse utensils other than tableware.
14. "Perishable food" means any food of such type or in such condition as may spoil.
15. "Potentially hazardous food" means any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic micro-organisms.
16. "Proprietor" means the person in charge of the bed and breakfast facility whether as owner, lessee, manager, or agent.

17. "Sanitize" means effective bactericidal treatment of clean surfaces of equipment and utensils by a process which has been approved by the department as being effective in destroying micro-organisms, including pathogens.
18. "Single-service articles" means cups, containers, lids or closures, plates, knives, forks, spoons, stirrers, paddles, straws, place mats, napkins, doilies, wrapping materials, and all similar articles which are constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic synthetic, or readily destructible materials, and which are intended for one usage only, then to be discarded.
19. "Tableware" means multiuse eating and drinking utensils.
20. "Utensil" means any implement used in the storage, preparation, transportation, or service of food.

History: Effective December 1, 1985.

General Authority: NDCC 23-09.1-02

Law Implemented: NCC 23-09.1-02

47-04-05-02. Water supply. The water supply must be adequate, of a safe sanitary quality and from a source approved by the department. The water supply may not contain bacteriological, chemical, or physical impurities which affect, or tend to affect public health, must meet the bacteriological standards of the United States public health service for waters used upon public or interstate common carriers, and is subject to examination by the state laboratories department. If it is unfit for drinking under these requirements, it either shall be improved to fulfill the standards or the use thereof shall be discontinued.

1. Each private water source shall be sampled and tested for bacteria initially and every twelve-month period thereafter. Seasonal operations shall be sampled during the peak operating season.
2. Each private water source shall be sampled initially for nitrate analysis and every twelve-month period thereafter. Seasonal operations shall be sampled during the peak operating season.
3. Additional bacteriological or chemical tests may be required by the department.
4. Initially each private source shall be inspected for location, source protection, and design standards.
5. No backflow connections or cross connections with unapproved water supplies may exist.

6. Adequate hot water heating facilities shall be provided. Hot and cold running water under pressure shall be provided to food preparation areas, and any other areas in which water is required for cleaning.

History: Effective December 1, 1985.

General Authority: NDCC 23-09.1-02

Law Implemented: NDCC 23-09.1-02

47-04-05-03. Sewage. All sewage shall be disposed of in a public sewerage system or in a sewage disposal system approved by the department.

1. An initial inspection shall be made of all existing onsite sewage disposal systems by the department. This inspection shall evaluate system adequacy and if no expansion of existing dwelling facilities is occurring, no expansion of the system may be required as long as the system is not failing or otherwise contaminating surface or ground water.
2. If an expansion of the dwelling facilities occurs, then evaluation of the onsite sewage disposal system shall be completed by the health department. If the system is adequate then no expansion of the system will be required. If the system is not adequate in size, then system expansion shall be required as per local regulations or, the requirements in ND Publication WP-74-1 (Septic Tank and Absorption Field Disposal Systems for the Home). Plans for expansion shall be submitted to the local jurisdiction or, the state health department, water supply and pollution control division, for review and approval prior to construction.
3. The department may require that the septic tank be opened to check its construction. If the department sanitarian determines that pumping of the tank is necessary, the sanitarian may require this to occur.
4. If the department determines that the onsite system needs repair or a new system is required, then the system shall be repaired or replaced in accordance with local regulations, or ND Publication WP-74-1 (Septic Tank and Absorption Field Disposal Systems for the Home).

History: Effective December 1, 1985.

General Authority: NDCC 23-09.1-02

Law Implemented: NDCC 23-09.1-02; NDAC 47-04-03.1-64

47-04-05-04. Food supplies. Food must be in sound condition, free from spoilage, filth, or other contamination and must be safe for human consumption. Food shall be obtained from or be equal to food from sources that comply with all laws relating to food and food labeling.

Before serving any food to the public, the bed and breakfast facility shall comply with all applicable inspections of food required by law. The use of food in hermetically sealed containers that was not prepared in a food processing establishment is prohibited. Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the grade A quality standards established by law.

History: Effective December 1, 1985.

General Authority: NDCC 23-09.1-02

Law Implemented: NDCC 23-09.1-02; NDAC 47-04-03.1-02, 47-04-03.1-03

47-04-05-05. General food protection.

1. At all times, including while being stored, prepared, displayed, served or transported, food shall be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage, overhead leakage or overhead drippage from condensation and chemicals. The temperature of potentially hazardous food must be forty-five degrees Fahrenheit [7.2 degrees Celsius] or below or one hundred forty degrees Fahrenheit [60 degrees Celsius] or above at all times, except during necessary periods of preparation and serving. Frozen food shall be kept at such temperatures as to remain frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures of forty-five degrees Fahrenheit [7.2 degrees Celsius] or below; or quick-thawed as part of the cooking process. An indicating thermometer shall be located in each refrigerator. Raw fruits and vegetables shall be washed thoroughly before use. Stuffings, poultry, stuffed meats and poultry, and pork and pork products shall be thoroughly cooked before being served. Salads made of meat, poultry, potatoes, fish, shellfish, or eggs, and other potentially hazardous prepared food, shall be prepared, preferably from chilled products, with a minimum of manual contact. Portions of food once served to an individual may not be served again.
2. Refrigeration facilities, hot food storage facilities, and effective insulated facilities shall be provided as needed to assure the maintenance of all food at required temperatures during storage, preparation, and serving.
3. Live pets are not allowed in any room or area in which food is being prepared for guests.

History: Effective December 1, 1985.

General Authority: NDCC 23-09.1-02

Law Implemented: NDCC 23-09.1-02; NDAC 47-04-03.1-04, 47-04-03.1-07, 47-04-03.1-09, 47-04-03.1-10, 47-04-03.1-11, 47-04-03.1-29, 47-04-03.1-116

47-04-05-06. Food service equipment and utensils materials. Multiuse equipment and utensils shall be constructed and repaired with safe materials, including finishing materials, shall be corrosion resistant and nonabsorbant; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and and single-service articles may not impart odors, color, or taste, nor contribute to the contamination of food.

Multiuse eating and drinking utensils, kitchenware, and tableware used in the facility shall be sanitized after each use or, single-service items may be used.

Acceptable means of dishwashing/sanitization shall be:

1. Manual cleaning and sanitizing utilizing a sink with two or three compartments with approved chemical sanitizer. Utensils shall be air dried.
2. Mechanical home style dishwasher with a one hundred sixty degrees Fahrenheit [71.1 degrees Celsius] water supply provided by a booster heater or sanitizing cycle.

History: Effective December 1, 1985.

General Authority: NDCC 23-09.1-02

Law Implemented: NDCC 23-09.1-02; NDAC 47-04-03.1-32, 47-04-03.1-50, 47-04-03.1-52

47-04-05-07. General employee health.

1. No person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that can cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, may work in a bed and breakfast facility in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.
2. Bed and breakfast personnel shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices. Personnel shall thoroughly wash their hands with soap and warm water before preparing or serving food.

History: Effective December 1, 1985.

General Authority: NDCC 23-09.1-02

Law Implemented: NDCC 23-09.1-02; NDAC 47-04-03.1-28, 47-04-03.1-29, 47-04-03.1-31

47-04-05-08. Lighting and ventilation. Rooms and areas used in conjunction with bed and breakfast homes shall be lighted and ventilated

as needed and shall be effective under actual use conditions. Lighting fixtures and ventilating equipment shall be kept clean and in good repair.

History: Effective December 1, 1985.

General Authority: NDCC 23-09.1-02

Law Implemented: NDCC 23-09.1-02; NDAC 47-04-03.1-95

47-04-05-09. Toilet, handwashing, laundry, and bathing facilities.

1. Bed and breakfast homes shall be provided with approved sanitary toilet, handwashing, and bathing facilities. These facilities, and laundry facilities used in conjunction with bed and breakfast homes, shall be kept clean and in good repair.
2. All lavatories and baths shall be supplied with hot and cold running water. Each person who is provided accommodations shall be provided individual soap and clean individual bath cloths and towels.
3. The temperature of hot water furnished to handwashing sinks (lavatories), showers, and bathtubs may not exceed one hundred twenty degrees Fahrenheit [48.9 degrees Celsius].
4. Clean towels and bath cloths shall be stored and handled in a sanitary manner.

History: Effective December 1, 1985.

General Authority: NDCC 23-09.1-02

Law Implemented: NDCC 23-09.1-02; NDAC 47-04-03.1-76, 47-04-03.1-77, 47-04-03.1-78, 47-04-03.1-114

47-04-05-10. Beds, linens, furniture.

1. Furniture, mattresses, curtains, draperies, etc. shall be kept clean and in good repair.
2. Clean bed linen in good repair shall be provided for each guest who is provided accommodations and shall be changed between guests and as often as necessary.
3. Clean linen shall be stored and handled in a sanitary manner and separate from soiled linen.

History: Effective December 1, 1985.

General Authority: NDCC 23-09.1-02

Law Implemented: NDCC 23-09.1-02

47-04-05-11. Insect and rodent control. Effective measures intended to minimize the presence of rodents, flies, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents. Openings to the outside shall be effectively protected against the entrance of rodents and insects by tight-fitting, self-closing doors, closed windows, screening, or other means.

History: Effective December 1, 1985.

General Authority: NDCC 23-09.1-02

Law Implemented: NDCC 23-09.1-02; NDAC 47-04-03.1-82, 47-04-03.1-83

47-04-05-12. General requirements.

1. Pesticides, herbicides, and other substances which may be hazardous if ingested, inhaled, or handled shall be stored in a closet, cabinet, or box not accessible to young children.
2. Household cleaning agents such as bleaches, detergents, and polishes shall be stored out of the reach of young children.
3. Medications shall be stored in a separate cabinet, closet, or box not accessible to young children.
4. Bed and breakfast facilities shall be kept in a clean and sanitary condition.

History: Effective December 1, 1985.

General Authority: NDCC 23-09.1-02

Law Implemented: NDCC 23-09.1-02

47-04-05-13. Swimming pools and spas. When swimming pools and spas are provided for use by bed and breakfast facility guests, they shall be operated in accordance with article 33-29 (Pool Facilities in North Dakota).

History: Effective December 1, 1985.

General Authority: NDCC 23-09.1-02

Law Implemented: NDCC 23-01-03

47-04-05-14. Fire safety. Bed and breakfast facilities shall be in compliance with the requirements of the Uniform Building Code and Uniform Fire Code as adopted and enforced by the state fire marshal. The state laboratories department and its inspectors shall report to the state fire marshal violations of any provision of the code which might constitute a fire hazard in the premises so inspected.

The requirements for fire/life/safety shall include, but not be limited to, the following:

1. Smoke detectors.
 - a. A smoke detection device in good operating condition shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to rooms used for sleeping purposes. All smoke detectors shall be inspected and listed by underwriters' laboratories or an equivalent. Smoke detectors shall be installed in accordance with the manufacturer's installation instructions.
 - b. A smoke detector shall be installed in the basement of dwelling units having a stairway which opens from the basement into the dwelling. Such detector shall be connected to a sounding device or other detector to provide an alarm which will be audible in the sleeping area.
 - c. The owner of the facility shall test the smoke detectors at least weekly and shall maintain written records which detail the date and results of the test.
2. Every sleeping unit shall provide a minimum of fifty square feet [4.65 square meters] of floor area per guest.
3. Every sleeping unit shall have at least one operable window or exterior door approved for emergency escape or rescue. The units shall be operable from the inside to provide a full clear opening without the use of separate tools. All escapes or rescue windows from sleeping rooms must have a minimum net clear opening of 5.7 square feet [.52 square meters]. The minimum net clear opening height dimension must be twenty-four inches [60.96 centimeters]. The minimum net clear opening width dimensions must be twenty inches [50.8 centimeters]. Where windows are provided as a means of escape or rescue, they must have a finished sill height not more than forty-four inches [111.76 centimeters] above the floor. No sleeping unit in bed and breakfast facilities may be in attic lofts or in basement rooms with a single major means of escape.
4. A fire extinguisher rated 2A and having a BC rating must be conveniently located and accessible in the bed and breakfast facility. The maximum travel distance to the extinguisher must be no more than seventy-five feet [22.86 meters].
5. Emergency numbers shall be posted on the telephones in the bed and breakfast facility.

History: Effective December 1, 1985.

General Authority: NDCC 23-09.1-02

Law Implemented: NDCC 23-09.1-02

47-04-05-15. Inspection - Records kept. Every bed and breakfast facility shall be inspected once in each year by the state laboratories department. The department and its inspectors may not be denied entrance to any such establishment at reasonable hours to determine whether the facility is in compliance with the provisions of this chapter. The state laboratories department shall keep a complete set of books for public use and inspection showing the condition of each establishment inspected, the name of the proprietor thereof, and its sanitary condition, the number and condition of its fire escapes, and any other information which may be required for the betterment of the public service.

History: Effective December 1, 1985.

General Authority: NDCC 23-09.1-02

Law Implemented: NDCC 23-09.1-02

47-04-05-16. License - Application. Before any bed and breakfast facility may be operated in this state, it must be licensed by the state laboratories department. Application for license shall be made to the department during December of every year, or prior to the operating of the bed and breakfast facility. Such application shall be in writing on forms furnished by the department, and shall be accompanied by the required fee.

History: Effective December 1, 1985.

General Authority: NDCC 23-09.1-02

Law Implemented: NDCC 23-09.1-02

47-04-05-17. Failure to comply with provisions of chapter. Any proprietor of any bed and breakfast facility who fails to comply with any of the requirements of this chapter, or chapter 23-09.1 of the North Dakota Century Code, shall be given notice of the violation and of a reasonable time within which to comply with the requirements. The notice shall be in writing and shall be delivered personally by an inspector of the state laboratories department or shall be sent to the proprietor by any form of mail requiring a signed receipt and resulting in delivery to the proprietor. If the proprietor of the bed and breakfast facility fails to remedy the violations within the time stated within the notice, the department may refuse to grant a new license, or suspend or revoke the license through an administrative hearing held pursuant to chapter 28-32 of the North Dakota Century Code.

History: Effective December 1, 1985.

General Authority: NDCC 23-09.1-02

Law Implemented: NDCC 23-09.1-02

TITLE 59.5
State Personnel Board

DECEMBER 1985

STAFF COMMENT: Title 59.5 contains all new material but is not underscored so as to improve readability.

ARTICLE 59.5-01

GENERAL ADMINISTRATION

Chapter
59.5-01-01 Organization of Board

CHAPTER 59.5-01-01
ORGANIZATION OF BOARD

Section
59.5-01-01-01 Organization of State Personnel Board

59.5-01-01-01. Organization of state personnel board.

1. **History and functions.** The 1975 legislative assembly passed a Central Personnel System Act, codified as North Dakota Century Code chapter 54-44.3. The Act created the state personnel board which oversees the development and administration of a unified system of personnel administration for the classified service of the state.

The board is an administrative agency separate from the central personnel division of the office of management and budget, although the board and the division work closely

together. The board promulgates it's own rules, but also reviews the division's policies, procedures and plans, and may modify or repeal them. Additionally, the board can review and change pay ranges and classifications assigned to classified employee positions and hear appeals from classified employees who have satisfactorily completed their probationary period on employee grievances relating to demotion, suspension without pay, reduction-in-force, forced relocation, reprisal action, discrimination, and dismissal from state employment. The board may approve positions not to be included in the classified service. The board also hears discrimination appeals from job applicants and classified employees regardless of their status, as well as appeals from disqualified applicants for positions in the merit system.

The state personnel board also serves as the North Dakota merit system council. In this capacity the board regulates the personnel policies and practices of the state agencies which are by statute subject to the merit system. The board's regulation of merit system agencies includes promulgating rules, approving policies and procedures, and conducting hearings on complaints arising from those rules, policies, and procedures.

2. **Board membership.** The board is composed of a constitutionally elected official who is the chairman, a member appointed by the board of higher education, one member appointed by the governor, and two members elected by classified employees. The term of the constitutionally elected official is four years or the remainder of the official's term of office, whichever is shorter. Constitutionally elected officials meet at the expiration of the term of the elected member and select by a majority vote the constitutionally elected official who serves on the board. The terms of all other members are six years. Any vacancy in office is filled for the unexpired term in the same manner as the selection of the person vacating the office.
3. **Meetings.** The board organizes annually at its first meeting of each fiscal year. It elects a vice chairman to serve for a term of one year. The board meets at least six times a year and at such times and places as are specified by call of the chairman or any three members of the board. All meetings are open to the public with reasonable notice provided by the central personnel division. Three members constitute a quorum for the transaction of business. Three favorable votes are necessary for the passage of any resolution or taking of any official action by the board at any meeting.
4. **Delegation of authority.** The director, central personnel division, as secretary to the board, may issue a notice of hearing and specification of issues and appoint a hearing officer, other than the director, for evidentiary grievance

hearings. The hearing officer, upon completion of the hearing, prepares a summary of the facts and conclusions and a recommendation for the board's action. The hearing officer may issue a proposed order of dismissal prior to a hearing.

5. **Rule suspension.** The board may suspend its rules whenever the public interest or the interest of any party to a procedure is not substantially prejudiced by such suspension.
6. **Board office.** All requests for information or forms required by the rules and all submissions of appeal materials must be mailed to this address postage prepaid:

State Personnel Board
c/o Director, Central Personnel Division
State Capitol Building
Bismarck, North Dakota 58505

History: Effective December 1, 1985.
General Authority: NDCC 54-44.3, 54-42-03
Law Implemented: NDCC 54-44.3

ARTICLE 59.5-02

GRIEVANCE PROCEDURES

Chapter
59.5-02-01 Requirements for Internal Agency Grievance Procedures

CHAPTER 59.5-02-01 REQUIREMENTS FOR INTERNAL AGENCY GRIEVANCE PROCEDURES

Section
59.5-02-01-01 Scope of Chapter
59.5-02-01-02 Requirements for Internal Agency Grievance
Procedure

59.5-02-01-01. Scope of chapter. This chapter applies to all agencies, departments, institutions, and boards and commissions which employ classified employees.

History: Effective December 1, 1985.
General Authority: NDCC 54-44.3
Law Implemented: NDCC 54-44.3-12.2

59.5-02-01-02. Requirements for internal agency grievance procedure. Each agency, department, institution, board and commission which employs classified employees shall establish an internal grievance procedure which meets the following requirements:

1. A standard grievance form is used throughout the agency.
2. The agency define and enumerate the steps to be followed in processing the grievance, establish appropriate cutoff dates, and set reasonable time limitations to be followed by all parties.
3. The method of counting time shall be in working days.
4. Parties to the grievance are obligated to respond.
5. The employee is allowed a reasonable time during regular working hours, without loss of pay or benefits, to process a grievance.
6. Prior to the termination of employment of a classified employee who has successfully completed the probationary period, the employer shall give a written notice of the reasons for such action, an explanation of the evidence, and provide an opportunity for the employee to respond.

History: Effective December 1, 1985.

General Authority: NDCC 54-44.3

Law Implemented: NDCC 54-44.3-12.2

ARTICLE 59.5-03

APPEAL PROCEDURES

Chapter

- 59.5-03-01 Application Appeals - Merit System
- 59.5-03-02 Classification and Pay Grade Appeals
- 59.5-03-03 Appeals of Employer Actions
- 59.5-03-04 Appeals of Discrimination

CHAPTER 59.5-03-01 APPLICATION APPEALS - MERIT SYSTEM

Section

- 59.5-03-01-01 Scope of Chapter
- 59.5-03-01-02 Appeal Procedure

59.5-03-01-01. Scope of chapter. This chapter applies to any applicant who has submitted a timely and properly completed application for a position within an agency, department, or institution required to comply with the standards for a merit system of personnel administration and who has been determined by the central personnel division to be disqualified for such position for failure to meet the minimum qualifications for a position as established by the central personnel division.

History: Effective December 1, 1985.

General Authority: NDCC 54-42-03

Law Implemented: NDCC 54-42-03

59.5-03-01-02. Appeal procedure.

1. The central personnel division must notify an applicant who fails to meet the minimum qualifications for a position of their disqualification and right to appeal by letter mailed to the applicant's last known address. If an applicant wishes to appeal the disqualification, the applicant shall file a written appeal to the director, central personnel division. The appeal must be postmarked no later than fifteen working days from the date of mailing of the letter of notification of rejection by the central personnel division.
2. The director, central personnel division, has thirty working days from the receipt of the appeal to review the appeal and provide a written response to the applicant.
3. If the applicant does not agree with the response of the director, central personnel division, the applicant may appeal to the state personnel board. The appeal must be commenced by the applicant with a written complaint postmarked no later than fifteen working days from the date of the director's response to the appeal. The complaint must specify the basis upon which the applicant relies to assert that the applicant meets the minimum qualifications for the position.
4. Upon receipt of a written complaint, the director, central personnel division, in the capacity of secretary to the board shall schedule the appeal for hearing before the board. The director shall give adequate notice to the applicant of the hearing date within ten working days from receipt of the request.
5. The central personnel division shall provide to each member of the state personnel board and the applicant a copy of each document to become a part of the appeal file. The appeal file must consist of, but is not limited to, copies of the following:

- a. The original application form.
 - b. The letter of appeal to the director, central personnel division.
 - c. All written correspondence relating to the original application and appeal.
 - d. The written complaint commencing the appeal before the state personnel board.
 - e. Other relevant documents submitted by the applicant or the central personnel division.
6. The appeal file must be disseminated to all participating parties at least ten working days prior to the board hearing date. Documents submitted by any participant after the appeal file is disseminated may cause the board to delay the hearing, generally to the next scheduled board meeting date.
 7. The applicant and a representative may appear at the board meeting for the hearing of the disqualification complaint. The central personnel division shall first make an oral presentation relative to the matter under appeal. The applicant or representative shall make an oral presentation relative to the matter under appeal following the presentation of the central personnel division. Such presentations should be limited to ten minutes and directly relate to the issues of the appeal. The board may ask questions of those making oral presentations.
 8. The central personnel division shall notify the applicant, appointing authority, and respective agency in writing of the board's decision within five working days following the board's hearing of the appeal. The appointing authority and the respective agency shall implement the state personnel board's decision within the time period specified by the board.
 9. An agency or applicant who is dissatisfied with the decision of the state personnel board may petition the board for a rehearing. The petition must be commenced with a written request to the board postmarked no later than fifteen working days from the date the board's decision was mailed. The request must specify the reason for the rehearing. The state personnel board may grant or deny the request based on the board's determination whether the reason specified has significant merit.

History: Effective December 1, 1985.

General Authority: NDCC 54-42-03, 54-44.3-07

Law Implemented: NDCC 54-42-03, 54-44.3-07

**CHAPTER 59.5-03-02
CLASSIFICATION AND PAY GRADE APPEALS**

Section	
59.5-03-02-01	Scope of Chapter
59.5-03-02-02	Classification Appeals
59.5-03-02-03	Pay Grade Appeals

59.5-03-02-01. Scope of chapter. This chapter applies to all classified employees who have satisfactorily completed their probationary period.

History: Effective December 1, 1985.

General Authority: NDCC 54-42-03, 54-44.3-07

Law Implemented: NDCC 54-42-03, 54-44.3-07, 54-44.3-12

59.5-03-02-02. Classification appeals.

1. Following the completion of a classification review by the central personnel division, the central personnel division shall notify the agency appointing authority and the employee in writing of the division's decision and the right to appeal. If either an employee or agency appointing authority perceives that a classification inequity exists, an appeal may be initiated by the proper completion and submission of an appeal form designated by the director, central personnel division. The completed appeal form must be postmarked no later than fifteen working days from the date on which the central personnel division's classification response was mailed. All required signatures and attachments must be complete when the appeal form is received by the central personnel division except as provided in subsection 2.
2. When circumstances preclude the submission of a completed appeal form within the fifteen-day time limit, the employee or the agency appointing authority shall submit a notice, in writing, within said fifteen working days that an appeal is to be commenced describing the circumstances which preclude completion of the appeal form within the fifteen-working-day limitation and the specific items which cannot be completed. The notice must also contain a reasonable date by which time the appeal form will be completed and received by the central personnel division. The central personnel division shall advise the appellant in writing whether the requested delay is approved. An appeal is not considered as received by the central personnel division until all information required on the appeal form is complete and all approved delays have expired.

3. The director, central personnel division, has thirty working days from the receipt of the completed appeal form to review the appeal and provide a written response to the employee and agency.
4. If an appellant does not agree with the final response of the director, central personnel division, an appeal may be commenced by filing a complaint with the state personnel board. Such complaint must be in writing and directed to the director, central personnel division. The complaint must be postmarked no later than fifteen working days from the date of mailing of the director's final response to the initial appeal.
5. Upon receipt of a written complaint, the director, central personnel division, as secretary to the board, shall schedule the appeal for hearing before the board. The director, on behalf of the state personnel board, shall notify the employee and agency in writing of the board hearing date within ten working days from receipt of the complaint and at least ten days prior to the board hearing date.
6. The central personnel division shall provide each member of the state personnel board, the employee, and the agency appointing authority with a copy of each document to become a part of the appeal file. The appeal file must consist of, but is not limited to, copies of the following:
 - a. The original classification/reclassification request under appeal and all attachments and responses thereto.
 - b. The appeal form and all attachments thereto.
 - c. All written correspondence relating to the original classification request and appeal, including written requests for extension and notices of extensions granted.
 - d. The written complaint commencing the appeal before the state personnel board.
 - e. Other directly relevant and significant documents submitted by the employee, appointing authority, or the central personnel division.
7. The central personnel division shall disseminate the appeal file to all participating parties at least ten working days prior to the board hearing date. Documents submitted by any participant after the appeal file is disseminated may cause the board to delay the hearing, generally to the next scheduled board meeting date.
8. The employee, appointing authority, and their representatives may appear at the board meeting for the hearing of their

classification appeal. The central personnel division shall first make an oral presentation relative to the matter under appeal followed by the employee, appointing authority, or their representatives. Such presentations should be limited to ten minutes and directly relate to the issues of the appeal. The board may ask questions of those making oral presentations. The employee's agency shall reimburse the appealing employee for the required time, travel, meals, and lodging expenses to appear before the board. The reimbursement may not exceed the amounts allowed state employees.

9. The central personnel division shall notify the employee and appointing authority in writing of the board's decision within five working days following the board's hearing of the appeal. Decisions which result in a classification either higher or lower than that previously established by the central personnel division are effective on the first day of the month in which the hearing is held.
10. An agency or applicant who is dissatisfied with the decision of the state personnel board may petition the board for a rehearing. The petition must be commenced with a written request to the board postmarked no later than fifteen working days from the date the board's decision was mailed. The request must specify the reason for the rehearing. The state personnel board may grant or deny the request based on the board's determination whether the reason specified has significant merit.

History: Effective December 1, 1985.

General Authority: NDCC 54-42-03, 54-44.3-07

Law Implemented: NDCC 54-42-03, 54-44.3-07, 54-44.3-12

59.5-03-02-03. Pay grade appeals.

1. The director, central personnel division, shall act on the written requests from either an employee or an appointing authority to review the pay grade assigned to a class as promptly as possible, and in no event may the time to act exceed sixty days from receipt of a written request.
2. Unresolved differences between the director of the central personnel division, and the employee or appointing authority as to pay grades assigned may be submitted to the state personnel board for a hearing.

3. The state personnel board, after considering the matter, may approve or modify the central personnel division's recommendations or otherwise resolve the differences.

History: Effective December 1, 1985.

General Authority: NDCC 54-44.3-07

Law Implemented: NDCC 54-44.3-07, 54-44.3-12

CHAPTER 59.5-03-03 APPEALS OF EMPLOYER ACTIONS

Section

59.5-03-03-01	Scope of Chapter
59.5-03-03-02	Definitions
59.5-03-03-03	Appeals of Employer Actions
59.5-03-03-04	Demotion
59.5-03-03-05	Dismissal
59.5-03-03-06	Forced Relocation
59.5-03-03-07	Reduction-in-Force
59.5-03-03-08	Reprisal Action
59.5-03-03-09	Suspension Without Pay
59.5-03-03-10	Notice to Employee
59.5-03-03-11	Waiver
59.5-03-03-12	Appeals Procedure

59.5-03-03-01. Scope of chapter. This chapter applies to all classified employees who have satisfactorily completed their probationary period.

History: Effective December 1, 1985.

General Authority: NDCC 54-44.3

Law Implemented: NDCC 54-44.3

59.5-03-03-02. Definitions. The terms used throughout this title have the same meanings as in North Dakota Century Code chapter 54-44.3, except:

1. "Cause" includes conduct related to the employee's job duties, job performance, or working relationships which is detrimental to the discipline and efficiency of the service in which the employee is or was engaged.
2. "Demotion" includes an involuntary reduction for cause in the status of an employee from a position in one class to a position in a lower class having a lower entrance salary or a significant reduction of a salary in grade.
3. "Dismissal" includes an involuntary termination of employment of an employee for cause.

4. "Forced relocation" includes the involuntary transfer or reassignment of a classified employee from one work location in the state to another work location in the state when an employee is likely to need to relocate their place of residence.
5. "Reduction-in-force" includes the loss of employment by layoff of an employee from their present position as a result of the elimination of a program, a reduction in the number of full-time equivalent positions by the legislative assembly, lack of work, curtailment of work, lack of funds, expiration of grants, or reorganization.
6. "Reprisal action" includes unfavorable adverse employment-related actions taken against an employee by an appointing authority for either appealing to the state personnel board or for exercising their rights under the State and Political Subdivision Employees Relations Act of 1985, or for requesting timely assistance under the employee assistance program.
7. "Suspension without pay" includes an enforced unpaid leave of absence for cause or pending an investigation.
8. "Waiver" includes a written agreement between an employee and the appointing authority not to proceed with the internal agency grievance procedure and to permit an appeal to be made directly to the state personnel board when the employee has been dismissed from employment.

History: Effective December 1, 1985.

General Authority: NDCC 28-32-02, 54-44.3

Law Implemented: NDCC 54-44.3

59.5-03-03-03. Appeals of employer actions. For the purpose of this chapter, the state personnel board shall hear appeals of employer actions limited to demotion, dismissal, forced relocation, reduction-in-force, reprisal action, and suspension without pay.

History: Effective December 1, 1985.

General Authority: NDCC 54-44.3

Law Implemented: NDCC 54-44.3

59.5-03-03-04. Demotion. The appointing authority, after giving the employee a written notice of the reason, may demote an employee for cause. Classified employees who have satisfactorily completed their probationary periods have the right to appeal a demotion.

History: Effective December 1, 1985.

General Authority: NDCC 54-44.3

Law Implemented: NDCC 54-44.3

59.5-03-03-05. Dismissal. The appointing authority, after giving the employee a written notice of the reasons, may dismiss an employee for cause. Classified employees who have satisfactorily completed their probationary periods have the right to appeal a dismissal.

History: Effective December 1, 1985.

General Authority: NDCC 54-44.3

Law Implemented: NDCC 54-44.3

59.5-03-03-06. Forced relocation. An appointing authority may, after giving written notice to the employee, require the employee to work in another location in the state. Classified employees who have satisfactorily completed their probationary periods have the right to appeal a forced relocation when the action taken is for punitive reasons or when there is not a work-related reason for the relocation.

History: Effective December 1, 1985.

General Authority: NDCC 54-44.3

Law Implemented: NDCC 54-44.3-07

59.5-03-03-07. Reduction-in-force. The appointing authority may, after giving written notice to the employee, lay off the employee as a result of a reduction-in-force. Classified employees who have satisfactorily completed their probationary periods have the right to appeal a reduction-in-force only on the basis that approved agency reduction-in-force policies were not followed.

All agencies, departments, and institutions shall include the following as a minimum in their reduction-in-force actions:

1. An analysis of the acquired knowledge, demonstrated skills, and versatility of their employees compared to the work to be done and the available funding. Employees lacking the necessary skills and versatility should be considered for reduction.
2. An analysis of the level of demonstrated work performance. Employees having a consistently low level of performance should be considered for reduction.
3. A review of the length of service of their employees. Appointing authorities should list the number of years and months employees have been in the classified service. Employees with the fewest years of service should be considered for reduction.
4. An analysis of the extent of required training needed to train a reassigned employee to full productivity in a different position. Employees requiring substantial retraining should be considered for reduction.

Agencies shall develop and retain written documentation of the required analysis and review.

An agency may not subject classified employees who have satisfactorily completed their probationary period to reduction-in-force while there are emergency, temporary, provisional, or probationary employees serving either in the same class, or in the same agency location. Classified employees who are subject to reassignment must possess the skills and abilities required to perform the other work after appropriate training.

Agencies shall conduct reductions-in-force in a nondiscriminatory manner and may not use such actions as a substitute for disciplinary measures.

History: Effective December 1, 1985.

General Authority: NDCC 54-44.3

Law Implemented: NDCC 54-44.3-07

59.5-03-03-08. Reprisal action. An appointing authority may not take a reprisal action against an employee. A classified employee has the right to appeal a reprisal action.

History: Effective December 1, 1985.

General Authority: NDCC 54-44.3

Law Implemented: NDCC 54-44.3-07

59.5-03-03-09. Suspension without pay. The appointing authority, after giving the employee a written notice of the reason, may suspend any employee without pay for cause for a period not to exceed thirty calendar days. Classified employees who have satisfactorily completed their probationary periods have the right to appeal a suspension without pay.

History: Effective December 1, 1985.

General Authority: NDCC 54-44.3

Law Implemented: NDCC 54-44.3

59.5-03-03-10. Notice to employee.

1. An appointing authority, taking an employer action of suspension without pay, demotion, or dismissal which may be appealed to the state personnel board under these rules, shall notify the employee in writing of the right to appeal within three working days, excluding weekends and state holidays, of the appealable employer action. Time limitations for commencing an appeal to the state personnel board do not begin until the agency gives this notice of the right to appeal to the employee.

2. The notice given by the appointing authority must state as follows:

You have the right to appeal your (specify suspension without pay, demotion, or dismissal, etc.) to the state personnel board.

In order to start the appeals procedure you must first process a grievance through the internal grievance procedure of the (list agency name).

For information regarding how to start the agency internal grievance procedure, you should contact (list name, title, or department address and telephone number).

Failure to start the internal grievance procedure within ten working days from (the date of notice of employer action) may result in your losing your right to appeal to the state personnel board.

If you are not satisfied with the result of the internal grievance procedure, you may further formally appeal to the state personnel board. The appeal to the state personnel board must be started no more than ten working days from the date you received notice of the result of the internal grievance procedure. For information regarding the appeals procedure before the state personnel board, you should contact the Central Personnel Division, Office of Management and Budget, State Capitol, 14th Floor, Bismarck, North Dakota 58505, telephone (701) 224-3290.

3. An appeal may not be considered by the board more than one year from the date of the employer action.

History: Effective December 1, 1985.

General Authority: NDCC 54-44.3

Law Implemented: NDCC 54-44.3

59.5-03-03-11. Waiver. An employee who has been dismissed and who has been given notice and the opportunity to respond to the reason for the dismissal may request a waiver from the requirement to complete the internal agency grievance procedure. The employee and appointing authority must both sign a written agreement to waive the internal agency grievance procedure within fifteen days from the date the employee was dismissed. An employee who has the written waiver may then appeal directly to the state personnel board. The appeal must be commenced by the employee with a written complaint postmarked no later than five working days from the date of the waiver.

History: Effective December 1, 1985.

General Authority: NDCC 54-55.3

59.5-03-03-12. Appeals procedure.

1. Unless the employee and appointing authority have agreed to waive the requirements of the internal agency grievance procedure as provided for in section 59.5-03-03-10, an employee shall complete the employing agency's internal grievance procedure prior to submitting an appeal to the board for an appeal hearing.
2. An employee shall submit the properly completed prescribed grievance form to the state personnel board in care of the director, central personnel division, within ten working days of receipt of the results of the final step of the agency grievance procedure. The director, central personnel division, serving as secretary to the state personnel board, shall appoint a hearing officer who may conduct an evidentiary hearing on behalf of the state personnel board.
3. The hearing officer shall initially determine whether the state personnel board has jurisdiction over the subject matter of the appeal and whether all rules and regulations were followed prior to activating the final step in the grievance process. If it is initially determined that the board does not have jurisdiction in the matter of the appeal, within ten working days from receipt of the appeal, a written proposed order dismissing the complaint submitted to the state personnel board must be provided to the appellant and the state personnel board. The state personnel board shall consider each proposed order of dismissal at its next regularly scheduled meeting, hear comments from the hearing officer and the appellant, and decide whether to proceed with a hearing or issue an order of dismissal. The board shall provide a copy of its order to all parties. If it is initially determined that the board has jurisdiction over the appeal matter, the hearing officer shall arrange a hearing.
4. After the hearing officer has conducted the hearing and investigated and gathered all pertinent facts, the hearing officer shall make and present a summary of the facts and conclusions and a recommendation to the state personnel board for a decision.
5. The central personnel division shall provide to each member of the state personnel board, the appellant, and the agency appointing authority a copy of each document to become a part of the appeal file. The appeal file must consist of, but is not limited to, copies of the following:
 - a. The written complaint commencing the appeal before the state personnel board.

- b. The grievance form and all attachments.
 - c. All written correspondence relating to the original grievance including written requests for extension of time frames and notices of extensions granted.
 - d. The hearing officer's summary of facts, conclusions, and recommendation.
 - e. Any written briefs or statements by the parties concerned submitted after the hearing.
6. The appeal file must be disseminated to all participating parties at least ten working days prior to the board hearing date. Documents submitted by any participant after the appeal file is disseminated may cause the board to delay the hearing, generally to the next regularly scheduled board meeting date.
 7. At the scheduled meeting of the board, the board shall review the appeal file. Oral presentations relative to the matter under appeal may be made by the appellant, appointing authority, or their representative. Such presentations must be limited to summarizing their written briefs or statements submitted after the hearing and may not exceed ten minutes in length. The employee's agency shall reimburse the appealing employee for the required time, travel, meals, and lodging expenses to appear before the board. The reimbursement may not exceed the amounts allowed state employees. Reimbursement may not be made to a dismissed employee unless the employee is reinstated.
 8. The central personnel division shall notify the employee and the appointing authority in writing of the board's decision within fifteen working days of the board's hearing of the appeal by mailing them the findings of fact, conclusions of law, and order of the board. The appointing authority and the respective agency shall implement the board's decision within the time period specified by the board.
 9. An agency or appellant who is dissatisfied with the decision of the state personnel board may petition the board for a rehearing. The petition must be commenced with a written request to the board postmarked no later than fifteen working days from the date the board's decision was mailed. The request must specify the reason for the rehearing. The state personnel board may grant or deny the request based on the board's determination whether the reason specified has significant merit.

History: Effective December 1, 1985.

General Authority: NDCC 54-44.3, 54-44.3-07

Law Implemented: NDCC 54-44.3, 54-44.3-07, 54-44.3-12

**CHAPTER 59.5-03-04
APPEALS OF DISCRIMINATION**

Section

59.5-03-04-01 Scope of Chapter
59.5-03-04-02 Appeals Procedure

59.5-03-04-01. Scope of chapter. This chapter applies to job applicants for positions in the classified service and to classified employees regardless of status who want to appeal discrimination in employment because of sex, race, color, national origin, age, handicapped condition, or religious or political opinions or affiliations. Additionally, this chapter applies to job applicants and classified employees regardless of status in the merit system who want to appeal discrimination on any nonmerit factor.

History: Effective December 1, 1985.

General Authority: NDCC 54-44-03, 54-44.3

Law Implemented: NDCC 54-44.2-03, 54-44.3-01, 54-44.3-22

59.5-03-04-02. Appeals procedure.

1. An employee shall complete the employing agency's internal grievance procedure prior to submitting an appeal to the board for an appeal hearing. Job applicants may appeal directly to the board.
2. An employee shall submit the properly completed prescribed grievance form to the state personnel board in care of the director, central personnel division, within ten working days of receipt of the notice of the final step of the agency grievance procedure. Job applicants shall submit a complaint to the state personnel board in care of the director, central personnel division, within ten working days of their knowledge of the discriminatory action. Job applicants and classified employees may also file a complaint directly with the North Dakota Department of Labor. The complaint must state the basis upon which the applicant maintains discrimination occurred. The director, central personnel division, serving as secretary to the state personnel board, shall appoint a hearing officer who may conduct an evidentiary hearing on behalf of the state personnel board.
3. The hearing officer shall initially determine whether the state personnel board has jurisdiction over the subject matter of the appeal, and whether all rules were followed prior to activating the final step in the grievance process. If it is initially determined that the board does not have jurisdiction in the matter of the appeal, within ten working days from receipt of the appeal, a written proposed order dismissing the

complaint submitted to the state personnel board must be provided to the appellant and the state personnel board. The state personnel board shall consider each proposed order of dismissal at its next regularly scheduled meeting and hear comments from the hearing officer and the appellant and decide whether to proceed with a hearing or issue an order of dismissal. The board shall provide a copy of its order to all parties. If it is initially determined that the board has jurisdiction over the appeal matter, the hearing officer shall arrange a hearing.

4. After the hearing officer has conducted the hearing and investigated and gathered all pertinent facts, the hearing officer shall make and present a summary of the facts and conclusions and a recommendation to the state personnel board for a final administrative decision.
5. The central personnel division shall provide to each member of the state personnel board, the appellant, and the agency appointing authority a copy of each document to become a part of the appeal file. The appeal file must consist of, but is not limited to, copies of the following:
 - a. The written complaint commencing the appeal before the state personnel board.
 - b. The grievance form or complaint and all attachments.
 - c. All written correspondence relating to the original grievance/complaint including written requests for extension of time frames and notices of extensions granted.
 - d. The hearing officer's summary of the facts, conclusions, and recommendation.
 - e. Any written briefs or statements submitted after the hearing.
6. The appeal file must be disseminated to all participating parties at least ten working days prior to the board hearing date. Documents submitted by any participant after the appeal file is disseminated may cause the board to delay the hearing, generally to the next scheduled board meeting date.
7. At the scheduled meeting of the board, the board shall review the appeal file. Oral presentations relative to the matter under appeal may be made by the appellant, appointing authority, or their representative. Such presentations must be limited to summarizing their written briefs or statements submitted after the hearing and may not exceed ten minutes in length. The employee's agency shall reimburse the appealing employee for the required time, travel, meals, and lodging

expenses to appear before the board. The reimbursement may not exceed the amounts allowed state employees. Reimbursements may not be made to a dismissed employee unless the employee is reinstated.

8. The central personnel division shall notify the employee and the appointing authority in writing of the board's decision within fifteen working days of the board's hearing of the appeal by mailing them the findings of fact, conclusions of law, and order of the board. The appointing authority and the respective agency shall implement the board's decision within the time period specified by the board.
9. An agency or appellant who is dissatisfied with the decision of the state personnel board may petition the board for a rehearing. The petition must be commenced with a written request to the board postmarked no later than fifteen working days from the date the board's decision was mailed. The request must specify the reason for the rehearing. The state personnel board may grant or deny the request based on the board's determination whether the reason specified has significant merit.

History: Effective December 1, 1985.

General Authority: NDCC 54-44.3, 54-44.3-07

Law Implemented: NDCC 54-44.3, 54-44.3-07, 54-44.3-12

ARTICLE 59.5-04

CLASSIFICATION AND COMPENSATION PLANS

Chapter

59.5-04-01 Classification and Compensation Plan Review

CHAPTER 59.5-04-01

CLASSIFICATION AND COMPENSATION PLAN REVIEW

Section

59.5-04-01-01 Scope of Chapter
59.5-04-01-02 Classification Plan Review
59.5-04-01-03 Compensation Plan Review

59.5-04-01-01. Scope of chapter. This chapter outlines the review procedures for the state classification plan and the compensation plan.

History: Effective December 1, 1985.
General Authority: NDCC 54-44.3
Law Implemented: NDCC 54-44.3-12

59.5-04-01-02. Classification plan review. Periodically, but not less than annually, the central personnel division shall notify the board of additions and deletions to the currently approved classification plan as instituted by the central personnel division. In addition, the board may approve positions not to be included in the classified service when deemed inappropriate by the central personnel division.

History: Effective December 1, 1985.
General Authority: NDCC 54-44.3
Law Implemented: NDCC 54-44.3-07

59.5-04-01-03. Compensation plan review. After the legislative session, but prior to July first of the new biennium, the director, central personnel division, shall submit a state compensation plan for each year of the biennium to the board for review, modification, and adoption.

This plan must be developed by the central personnel division based upon the funds appropriated by the legislative assembly for salaries.

History: Effective December 1, 1985.
General Authority: NDCC 54-44.3
Law Implemented: NDCC 54-44.3-12.1

ARTICLE 59.5-05

SEVERABILITY

Chapter
59.5-05-01 Severability

CHAPTER 59.5-05-01 SEVERABILITY

Section
59.5-05-01-01 Severability

59.5-05-01-01. Severability. If any provision of title 59.5 or application thereof to any person or circumstances is held invalid, such

invalidity may not affect other provisions or applications of these rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are declared to be severable.

History: Effective December 1, 1985.

General Authority: NDCC 54-44.3

TITLE 69
Public Service Commission

SEPTEMBER 1985

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; amended effective
September 1, 1985.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-12, 49-18-20

69-03-02-11. Guarantee bond. The following form of guarantee bond is prescribed for carriers offering collect on delivery service:

Know all men by these presents, that we
..... as principal and a
corporation, as surety, are held and firmly bound unto the
state of North Dakota, in the sum of
(\$.....) dollars, good and lawful money of the
United States, to be paid to the state of North Dakota for
which payment, well and truly to be made, we do bind
ourselves, our heirs, executors, administrators, successors
and assigns, jointly and severally, firmly by these
presents.

Sealed with our seals and dated this day
of, 19....., has
been or is about to be granted a certificate of public
convenience and necessity as a common, or permit as a
contract, motor carrier, in North Dakota to conduct an
automobile or truck, freight or passenger, transportation
business in North Dakota.

Now, therefore, if the said shall
pay any final judgment not exceeding the penalty hereof,
obtained against it for or on account of any and all cash or
collect on delivery charges collected by said carrier in
connection with the operation or conduct of
..... business as such common motor
carrier or contract carrier, then this obligation shall be
void, otherwise to be and remain in full force and effect.

Provided, further, that this bond shall cover only such
aforesaid legal obligations incurred by said
..... during the term beginning
....., 19....., and ending April 15,
19....., and that the surety hereunder may cancel this bond
as to future liability by serving registered mail notice to
the public service commission of North Dakota for its
intention to so cancel, the cancellation notice to take
effect fifteen days after its actual receipt by the public
service commission of North Dakota.

This bond is written in pursuance of and is to be
construed in accordance with North Dakota Century Code
chapter 49-18 and the rules and regulations of the public
service commission of North Dakota.

Signed, sealed, and delivered
in presence of:

.....

.....

As to principal

.....

.....

As to surety

Countersigned at

Resident agent

.....

By

.....

By

its attorney-in-fact

State of
County of
City of

(Individual principal)

On this day of in the year of 19
before me came principal, to
me personally known to be the individual described in
and executed the foregoing bond, and
acknowledged to me that executed the
same.

State of
County of
My commission expires

Notary public
(Corporation principal)

State of
County of
City of

On this day of in the year of 19
before me a notary public, within and for the
said county and state, personally appeared
..... and
known to me to be the respectively
of the corporation that is described in and that
executed the within and foregoing instrument and
acknowledged to me that such corporation executed same.

State of
County of
My commission expires
Notary public

Guarantee bonds submitted by carriers offering collect on delivery
service must be on forms furnished by the commission.

History: Amended effective September 1, 1985.
General Authority: NDCC 49-18-08, 49-18-19
Law Implemented: NDCC 49-18-33

69-03-06-01.3. Short-term lease requirements. A carrier need
not comply with the requirements of section 69-03-06-01.1 where
transportation with a leased vehicle is performed pursuant to a lease of
not more than ~~seventy-two~~ thirty days duration and where the
following conditions are met:

1. Lease. There shall be a written lease granting the use of
the vehicle and meeting the requirements contained in section
69-03-06-01.2.

2. **Insurance.** Every vehicle subject to a lease shall be covered by insurance in amounts not less than those prescribed in chapter 69-03-02.
3. **Identification.** During the period of the lease there shall 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 legible, during daylight hours, from a distance of fifty feet [15.24 meters] while the vehicle is not in motion, and such signs maintained as to remain legible.
4. **Identification permit.** The carrier shall complete and issue for the leased vehicle an a temporary identification permit certificate secured from the commission which shall be carried in the vehicle at all times while it is under lease. The commission shall collect a fee of twenty dollars for each identification permit. A copy of each temporary identification permit certificate shall be returned to the commission within five days after issuance along with a signed copy of the written lease.

History: Effective July 1, 1983; amended effective September 1, 1985.

General Authority: NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-08, 49-18-09, 49-18-39.1, 49-18-41

CHAPTER 69-03-07

PARTS AND ACCESSORIES

[Repealed effective September 1, 1985]

CHAPTER 69-03-08

QUALIFICATIONS OF DRIVERS

[Repealed effective September 1, 1985]

CHAPTER 69-03-09

DRIVING OF MOTOR VEHICLES

[Repealed effective September 1, 1985]

CHAPTER 69-03-10

HOURS OF SERVICE - DRIVERS

[Repealed effective September 1, 1985]

CHAPTER 69-03-12

HAZARDOUS MATERIALS

[Repealed effective September 1, 1985]

CHAPTER 69-03-13

DEFINITIONS

[Repealed effective September 1, 1985]

69-04-01-01. Class A tariffs. All class A operators must operate according to the rates, rules, and regulations as fixed by the commission in its orders. The carrier before commencing operations must file one copy of tariff for approval by the commission. Common motor carrier tariffs. Each common motor carrier of property or passengers must file a tariff setting forth its rates and rules for approval by the commission before commencing operations.

History: Amended effective September 1, 1985.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-08, 49-18-18

69-04-01-02. Special passenger motor carrier tariffs. Special passenger motor carriers are authorized to transport passengers over irregular routes not on scheduled time. Rates, rules, and regulations must be filed with and approved by the commission.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-01, 49-18-08

Repealed effective September 1, 1985.

69-04-01-03. Special motor freight carrier tariffs. Special motor freight carriers must charge the rates fixed by the commission in its orders. One copy of tariff to be charged

must be filed with and approved by the commission before operations are commenced.

General Authority: NDEC 49-18-08

Law Implemented: NDEC 49-18-01, 49-18-08

Repealed effective September 1, 1985.

69-04-01-06. Tariffs generally - Available to subscribers.

1. Tariffs or supplements filed with the commission shall comply with all laws, rules, regulations, and orders applicable thereto, and any tariff or supplement or part thereof not so complying shall be of no force and effect as of a date to be determined by the commission. Except as otherwise authorized in subsection 2, one copy of each new tariff, supplement, and looseleaf page must be transmitted to each subscriber thereto by first-class mail (or other means requested in writing by the subscriber) not later than the time the copies for official filing are transmitted to the commission.
2. If a new tariff or supplement, or looseleaf page is filed which in its entirety is published under an authority from the commission to publish and file without notice or on notice of less than ten days, or if a new looseleaf page is filed which contains a provision published under an authority from the commission to publish and file without notice or on notice of less than ten days, subsection 1 need not be complied with as to such publication if it cannot be or compliance would cause excessive delay, but one copy of such publication must be transmitted to each subscriber thereto by first-class mail (or other means requested in writing by the subscriber) within five calendar days, starting with the calendar day following that on which the copies for official filing are transmitted to the commission.

Included in this exception are supplements issued for the purpose of announcing suspensions made by the commission, publications (published in the name of a carrier only) announcing adoptions, and publications reproducing service orders.

- 3- When copies of different publications are transmitted to the commission at the same time, some copies of which have been transmitted to subscribers in compliance with subsection 1 and some copies of which will be transmitted to subscribers in compliance with subsection 2, two letters of transmittal must accompany the copies to the commission, one complying with subsection 1 and the other complying with subsection 2.

If copies of different publications are transmitted to the commission at the same time, some of which are subscribed to and some of which are not, only the provisions of subsection 1 or 2, or both, as the case may be, need be complied with.

- 4- 3. Expedited service, when transmitting one copy of each publication must be provided to each subscriber requesting it. The cost of this service may be passed on to the subscriber.
- 5- 4. Carriers and agents shall furnish without delay one copy of any of their tariff publications, effective or published but not yet effective, to any person upon reasonable request therefor at a reasonable charge not to exceed that assessed a subscriber.
- 6- 5. As used in this section, "subscriber" means a party who voluntarily or upon reasonable request is furnished at least one copy of a particular tariff and amendments thereto (including reissues thereof) by the publishing carrier or agent. The term does not, however, pertain to requests for a copy or copies of a tariff without a request for future amendments thereto.

History: Amended effective July 1, 1983; September 1, 1985.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-08

69-04-01-09. Transmittal. Issuing carriers or their agent shall transmit to the commission one copy of each tariff, supplement, or revised page. All copies shall be included in one package accompanied by a letter of transmittal (in duplicate if a receipt is desired) listing all tariffs enclosed and addressed to the public service commission, state capitol, Bismarck, North Dakota 58505. If verification of receipt of the tariff is desired, the carrier or agent must request verification in its transmittal letter and provide a self-addressed stamped envelope for mailing the verification.

History: Amended effective September 1, 1985.

General Authority: NDCC 49-18-08

Law Implemented: NDCC 49-18-08

69-04-01-18. Short notice changes. The commission may, in its discretion and for good cause shown, permit changes in rates, rules, regulations, and changes on less than thirty days' notice and also permit departure from the commission's regulations. The commission will exercise this authority only in cases where actual emergency and real merit are shown. Applications must contain a clear, concise, and definite explanation of necessity for such permission

together with an exposition of matters proposed to be changed as well as that proposed to be published, if any.

General Authority: NDCE 49-18-08

Law Implemented: NDCE 49-18-08

Repealed effective September 1, 1985.

69-04-01-19. When short notice not allowed. When a formal order of the commission requires publication on a stated number of days' notice, a request addressed to the commission for authority to file on less notice will not be granted. In any such instance a petition for modification of the order should be filed on the formal docket concerning the case.

General Authority: NDCE 49-18-08

Law Implemented: NDCE 49-18-08

Repealed effective September 1, 1985.

69-04-01-20. Applications for short notice waiver. Applications for permission to establish rates, rules, or other provisions on less than statutory notice, or for waiver of the provisions of this chapter must be made by the carrier or agent that holds authority to file the proposed publications. If the application requests permission to make changes in joint tariffs, it must state that it is filed for and on behalf of all carriers parties to the proposed change.

General Authority: NDCE 49-18-08

Law Implemented: NDCE 49-18-08

Repealed effective September 1, 1985.

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

1. A railroad or railroads entering into a contract for railroad transportation services with one or more purchasers of rail service shall file with the commission the original and one copy of the contract and two copies of the contract summary in the following manner:
 - a. Contracts and contract summaries may not be filed in the same packages with standard tariff filings.
 - b. The confidential contract may not be attached to the contract summary.

- c. The envelope or wrapper containing the contract and summary must be marked "Confidential, Rail Contract".
- d. A contract and summary must be accompanied by a transmittal letter identifying the submitted documents and the name and telephone number of a contact person.

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

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

- (2) In the center of the page, the issuing carrier's name, followed by the words "CONTRACT SUMMARY" in large print.
 - (3) Date of issue and date to be effective.
 - (4) In the center lower portion, the issuing individual's name and address.
 - (5) Supplements to contract summaries must also show, in the upper right corner, the supplement number (see subsection 3).
3. Each issuing carrier shall sequentially number the contract and contract summary it issues. The contract and contract summary identification number must include the letters "NDPSC", the industry standard alphabet code for the issuing railroad (limited to four letters), the letter "C", and the sequential number, with each separated by a hyphen. Any amendment to a contract must be reflected in a corresponding supplement to the contract summary. If the change in the contract is only in confidential matter, a statement to that effect must be made in the supplement. At the carrier's option, the carrier's tariff publishing officers may reserve blocks of numbers if tariffs are issued from different departments. An index to the blocks of reserved numbers must be filed with the commission. Contract amendments and contract summary supplements must be sequentially numbered.
4. a. Contract summaries for agricultural commodities and, forest products, ~~but not including woodpulp, woodchips, pulpwood, or paper,~~ must contain the following terms in the order named:
- (1) A list alphabetically arranged, of the corporate names of all carriers that are parties to the contract plus their addresses for service of complaints.
 - (2) The commodity or commodities to be transported under the contract.
 - (3) The origin stations and destination stations.
 - (4) The duration of the contract.
 - (5) Railcar data by number of dedicated cars, or, at the carrier's option, car days by major car type used to fulfill the contract or contract options:
 - (a) Available and owned by the carriers listed pursuant to paragraph 1 with average number of bad-order cars identified;

- (b) Available and leased by the carriers listed pursuant to paragraph 1 with average number of bad-order cars identified;
- (c) [Optional] On order (for ownership or lease) along with delivery dates; and
- (d) In the event a complaint is filed involving common carrier obligation and carrier furnished cars, the carrier shall immediately submit to the commission and the complainant additional data on cars used to fulfill the challenged contract. Data must include (by major car type used to fulfill the contract) the total bad car orders, the assigned car obligations, and free running cars.

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

- (6) Identification of base rates or charges and movement type (e.g. single car, multiple car, unit train), the minimum annual volume, and a summary of escalation provisions.
 - (7) Identification of existence (but not terms or amount) of special features such as transit time commitments, guaranteed car supply, minimum percentage of traffic requirements, credit terms, discount, et cetera.
- b. Contract summaries for other commodities or services shall contain the information contained in paragraphs 1, 2, 4, and 5 of subdivision a of this subsection. Paragraph 7 of subdivision a is applicable to the extent that service requirements are placed in the contract.

- c. The contract summary and supplements must enumerate and have each item completed. Where the item does not pertain to the contract or amendment, the term "Not applicable" ("NA") must be used.
5. Copies of contract summaries will be available from the commission's traffic division. Copies of contract summaries will also be available from carriers participating in the contract.
6. All filed contracts, and amendments, and contract summaries, and supplements, must provide thirty days' notice to the public as required by subsection 5 of section 69-04-03-09.

History: Effective July 1, 1984; amended effective September 1, 1985.

General Authority: NDCC 49-10.1-03

Law Implemented: NDCC 49-10.1-01

TITLE 75
Department of Human Services

NOVEMBER 1985

STAFF COMMENT: Chapter 75-03-15 contains all new material but is not underscored so as to improve readability.

AGENCY SYNOPSIS: Defines seven terms used in the chapter.

75-03-15-01. Definitions.

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred regardless of when they are paid.
2. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by the department of human services' regulations.
3. "Department" means the North Dakota department of human services.
4. "Historical cost" means those costs reported on the cost statement which were incurred and recorded in the facility's accounting records.
5. "Interest" means the cost incurred with the use of borrowed funds.
6. "Reasonable cost" means the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, personal incidentals for children in care, staff liability insurance with respect to children in care, travel of the child to the child's home for visitation, and operation of the facility which must be incurred by an efficient and economically operated facility to provide services in

conformity with applicable federal and state laws, regulations, and quality and safety standards. Reasonable cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or service.

7. "Related organization" means an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or organization has the power, directly or indirectly, to significantly influence or direct the policies of an organization or facility.

History: Effective November 1, 1985.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-01.3

AGENCY SYNOPSIS: Identifies those records which the facility is required to keep, establishes requirements for the system of accounting to be used by the facility, identifies material which must be reported to the department for ratesetting purposes, and describes the auditing responsibilities of the department.

75-03-15-02. Financial reporting requirements.

1. Records.

- a. The provider shall maintain on the premises the required census records and financial information sufficient to provide for a proper audit or review. For any cost being claimed on the cost report, sufficient data must be available as of the audit date to fully support the report item.
- b. Where several programs are associated with a group and their accounting and reports are centrally prepared, added information, for items known to be lacking support at the facility, must be submitted with the cost report or provided to the local program prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost.
- c. Each provider shall maintain, for a period of not less than three years following the date of submission of the cost report to the department, financial and statistical records of the period covered by such cost report which are accurate and in sufficient detail to substantiate the cost data reported. If an audit has begun, but has not

been finally resolved, the financial and statutory records relating to the audit shall be retained until final resolution. Each provider shall make such records available upon reasonable demand to representatives of the department or to the secretary of health and human services or representatives thereof.

2. Accounting and reporting requirements.

- a. The accounting system must be double entry.
- b. The basis of accounting for reporting purposes must be accrual.
- c. To properly facilitate auditing, the accounting system must be maintained in such a manner that cost accounts will be grouped by cost center and be readily traceable to the cost report.
- d. Generally accepted accounting principles will prevail unless alternative treatment is specified by the department.
- e. The annual cost report, prescribed by the department, must be filed with the management services division, provider audit unit, within three months of the fiscal yearend or the audited rate will be reduced by five percent for the following year. The penalty may be waived by the department upon a showing of good cause for the delay.
- f. Costs reported must include all actual costs and adjustments for nonallowable costs. The audit unit will forward to the appropriate investigative unit all items identified as fraudulent or abusive claims for nonallowable costs.

- 3. Auditing.** In order to properly validate the accuracy and reasonableness of cost information reported by the provider, the department will provide for audits as necessary. Persons conducting an audit on behalf of the department shall offer an exit interview at the conclusion of the site visit.

History: Effective November 1, 1985.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-01.3

AGENCY SYNOPSIS: Requires the facility to keep a daily record of children in care.

75-03-15-03. Resident census. A daily census record must be maintained by the facility. Any day for which the facility receives remuneration for an available bed must be counted as a resident day.

History: Effective November 1, 1985.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-01.3

AGENCY SYNOPSIS: Describes the method by which the rate of payment for foster care will be established, identifies specific limitations, and describes adjustments and appeal procedures.

75-03-15-04. Reimbursement.

1. The method of determining the reimbursement rate per day will be through the use of the prospective ratesetting system. The system requires that the rate be established during the year following the facility's previous fiscal year and be effective from the date the rate is set until a subsequent rate is set based upon a subsequent fiscal year.
2. The determination of a prospective rate for all accommodations begins with the actual cost of the facility's operations for the previous fiscal year. Once the reasonable resident-related costs from the previous year are determined, adjustments are then applied to the historical cost to determine the prospective rate. Reasonable resident-related costs will be determined with reference to instructions issued by the department.
3. The historical costs combined with the adjustments take into consideration the economic conditions and trends during the period to be covered by the rate. Rate adjustments to provide appropriate compensation may be requested where major unforeseeable expenses are incurred. Such requests may be made to the director of the children and family services division who shall determine if the expense is resident related and beyond the control of those responsible for the management of the facilities. The following adjustment methods will be used:
 - a. Salary and fringe benefits will be adjusted using historical costs and budgeted salaries for permanent employees as approved by the board or a designee of the board if such designated authority is noted in the facility's board minutes. All approved raises will be included from the effective date of the raise, but will be limited to the unadjusted annual percentage increase, if any, in the consumer price index for urban wage earners and clerical workers, nonfood expenditure categories, United States city average, as of the ending day of the

fiscal year of the facility reflected in the cost report under consideration. Signed copies of the board or board designee approval of salaries must be submitted with the cost report.

- b. Property costs will be included in the rate at the historical amount unless adjusted in accordance with these rules.
- c. The other costs of the facility will be projected based upon the historical cost plus the annual percent of increase, if any, in the "all items" index of the consumer price index, for the United States city average, as of the facility's fiscal yearend.

4. Limitations.

- a. The department may accumulate and analyze statistics on costs incurred by the facilities. These statistics may be used to establish reasonable ceiling limitations and incentives for efficiency and economy based on reasonable determination of standards of operations necessary for efficient delivery of needed services. These limitations and incentives may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations.
- b. At such time as federal regulations establish a ceiling on foster care rates for these facilities, that ceiling shall also be considered the maximum for title IV-E payment.
- c. A facility is expected to maintain an average annual occupancy rate of seventy-five percent. The computed resident days will apply only to the following areas:
 - (1) Administrative costs;
 - (2) Plant operation costs; and
 - (3) Property costs.

A reserved paid bed will be counted as an occupied bed. A waiver of the minimum bed occupancy allowance may be made for new facilities or existing facilities at the discretion of the department.

- d. Administrative cost shall be limited to ten percent of total allowable costs exclusive of administrative costs.

5. Adjustments and appeal procedures.

- a. Rate adjustments may be made to correct errors subsequently determined.
- b. An adjustment must be made for those facilities which have terminated participation in the program and have disposed of its depreciable assets or which have changed ownership.
- c. Any requests for reconsideration of the rate should be filed with the children and family services division for administrative consideration within thirty days of the date of the rate notification.
- d. An appeal may be initiated by indicating a desire for an appeal hearing to the appeals referee supervisor, department of human services, state capitol. The appeal will be governed by chapter 75-01-03.

History: Effective November 1, 1985.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-01.3

AGENCY SYNOPSIS: Requires the facility to accurately allocate costs which are only, to some extent, properly chargeable to the foster care program.

75-03-15-05. Cost allocation. Where services of a facility are jointly used for maintenance, service, administration, or nonallowable activities, the facility must allocate the cost by a method which reflects the most reasonable cost based on the data available. Basic allocation methods include:

1. Salaries must be allocated based on time studies or other reasonable methods.
2. Housekeeping costs must be allocated based on usable square footage.
3. Property and plant costs must be allocated based on usable square footage.
4. Administration costs must be allocated on the basis of percentage of total direct cost of the activity to total costs other than administration.

History: Effective November 1, 1985.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-01.3

AGENCY SYNOPSIS: Establishes the maximum rate to be paid for foster care at the amount charged, by the facility, to private payors.

75-03-15-06. Private pay rates. The department's foster care maintenance rate will not exceed the usual and customary rate charged to private pay or other public pay residents. Amounts paid by the department in excess of the usual and customary private or other public pay rate must be reimbursed to the department.

History: Effective November 1, 1985.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-01.3

AGENCY SYNOPSIS: Identifies specific items of cost to be included in the rate for reimbursement purposes.

75-03-15-07. Maintenance rate. Reimbursable costs for room and board include, unless limited by section 75-03-15-09:

1. Salary and fringe benefits for direct care personnel, limited to the following:
 - a. One supervisor of houseparents.
 - b. Houseparents.
 - c. Relief houseparents.
 - d. Aides.
 - e. Cooks.
 - f. Janitors and housekeepers.
 - g. Laundry.
2. Food. Actual food costs. The value of donated food may not be included in food costs.
3. Operating supplies. The cost of supplies necessary to maintain the household for the residents. Costs include such items as cleaning supplies, paper products, and hardware supplies.
4. Personal supplies and allowances. The cost of supplies used by an individual resident including medicine chest supplies, personal hygiene items, sanitary needs, and of moneys given periodically to residents for personal use. Personal supplies and allowance does not include payment, whether in cash or in kind, for work performed by the resident or for bonuses or rewards paid based on behavior.
5. School supplies. The cost of school supplies, books, activity fees, class dues, and transportation to school. Costs related

to facility operated schools or to correspondence courses are unallowable.

6. Clothing. The cost of clothing to maintain a resident's wardrobe.
7. Recreation. Costs incurred for providing recreation to the residents including magazine and newspaper subscriptions, sports equipment, games, dues for clubs, and admission fees to sporting, recreation, and social events.
8. Utilities. The cost of heat, lights, water, sewage, garbage, and cable TV.
9. Telephone. The cost of local service to the living quarters. Long distance calls are allowable only if specifically identified as being related to maintenance and are not service or administrative in nature. Mobile phone costs will not be allowable.
10. Repairs. The cost of routine repairs and upkeep of property and equipment used for the residents. Major repair costs in excess of one thousand dollars on equipment or buildings must be capitalized. If the repairs cannot be directly associated with the maintenance of a resident, a generally accepted method of allocation such as machine hours or square footage may be used.
11. Travel. All costs related to transporting residents exclusive of evaluations and social service activities. Transportation costs may include actual vehicle expenses or actual costs not to exceed the maximum mileage and per diem paid to state employees.
12. Leases/rentals. The cost of leasing assets from a nonrelated organization. If the lease cost cannot be directly associated with a function, an allocation must be made in accordance with section 75-03-15-05.
13. Depreciation expense. Depreciation expense on all capitalized equipment and property which was not donated or purchased with funds made available through other government programs or grants is allowable. Equipment and property having a cost in excess of one thousand dollars and a useful life of more than one year must be capitalized and depreciated. Depreciation will be calculated using the straight line method. Depreciation on property and equipment not used solely for the maintenance of residents must be allocated in accordance with section 75-03-15-05.
14. Insurance. Cost of insuring property and equipment used in the maintenance of residents and liability insurance for direct care staff.

15. Medical. Costs for necessary medical-related items for residents which are not covered by insurance or governmental medical care programs, provided that facility records demonstrate that reasonable attempts have been made to secure such insurance or program benefits. Costs may include resident physical examinations, drugs, dental work, corrective appliances, and required medical care and treatment.
16. Administration. Costs of administration which do not exceed limitations, provided that the department, in its discretion, may exclude costs of administration based upon a lack of appropriated funds.

History: Effective November 1, 1985.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-01.3

AGENCY SYNOPSIS: Establishes the items of cost to be included in the social service component of the rate.

75-03-15-08. Service rate.

1. A service rate for the facility shall be established based on census and allowable social service costs. Costs which may be included in the social service rate determination are:
 - a. Salaries and fringe benefits for social workers, psychologists, psychiatrists, nursing, and other professional social service staff.
 - b. Staff development for the professional social service staff.
 - c. Travel and phone costs related to evaluations and social service activities.
2. The established rate shall be the lesser of the actual costs of providing the social services in the facility or the monthly amount authorized by the department.

History: Effective November 1, 1985.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-01.3

AGENCY SYNOPSIS: Identifies specific costs which will not be included in setting the rate.

75-03-15-09. Nonallowable costs. Nonallowable costs include, but are not limited to:

1. Administrative costs, overhead, and other expenses paid on behalf of employees who are not direct care personnel.
2. Advertising and public relations expenses.
3. Any cost which has not actually been incurred by the facility including the value of donated goods and services.
4. Bad debt expense.
5. Costs incurred solely to enhance income from investments.
6. Costs of securing contributions or donations.
7. Costs related to income-producing activities, including, but not limited to, farms, rodeos, grass cutting services, or gaming, whether or not the activity is profitable.
8. Depreciation costs for idle facilities except when such facilities are necessary to meet caseload fluctuations.
9. Dues and subscriptions for employees.
10. Fines and penalties resulting from failure to comply with federal, state, and local laws.
11. Interest expense on borrowed funds or finance and late charges.
12. Recreational costs for activities including staff only.
13. Religious salaries, space and supplies.
14. Research and development costs.
15. Taxes, including federal and state income taxes, special assessments which must be capitalized, taxes from which exemptions are available, self-employment taxes, and taxes on property not used in providing maintenance for the resident.
16. Telephone costs attributable to personal usage by residents and employees.

History: Effective November 1, 1985.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-01.3

AGENCY SYNOPSIS: Requires that revenues received from other parties, exclusive of gifts, donations, or memorials, be used to offset costs prior to determining the reimbursement rate.

75-03-15-10. Offsetting of revenues. Available revenues from third parties, exclusive of gifts, donations, or memorials, will be used to offset costs prior to determining a reimbursement rate. Costs commonly offset by revenues include, but are not limited to:

1. **Clothing.** Facilities receiving initial clothing allowances separately from the state or other sources must reduce costs by the amount of the reimbursement.
2. **Food.** Facilities receiving reimbursements for food and related costs from other programs, such as United States department of agriculture or public instruction, must reduce allowable food costs by the revenue received. If the agency making the reimbursement permits an administrative cost, that amount will not be offset.
3. **Insurance recoveries.** Any amount received from insurance for a loss incurred shall be offset against costs reported in the current year to the extent of costs allowed in prior or current year for such loss.
4. **Refunds and rebates.** Any refund or rebate received for a reported cost must be offset against the appropriate cost.
5. **Transportation.** Any reimbursement of transportation costs included in the facility's cost statement must be offset.

History: Effective November 1, 1985.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-01.3

AGENCY SYNOPSIS: Identifies the methodology for treating costs incurred when the provider makes payments to organizations which are related, i.e., the home office costs of chain organizations.

75-03-15-11. Related organization.

1. Costs applicable to services, facilities, and supplies furnished to a provider by a related organization shall not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. Providers must identify such related organizations and costs in the cost report. An appropriate statement of costs and allocations must be submitted with the cost reports. For cost reporting purposes, management fees will be considered administrative costs.
2. A chain organization consists of a group of two or more program entities which are owned, leased, or through any other device, controlled by one business entity.

3. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to their member facilities. Although the home office of a chain is normally not a provider in itself, it may furnish to the individual provider, central administration or other services such as centralized accounting, purchasing, personnel, or management services. Only the home office's actual cost of providing such services is includable in the provider's allowable costs under the program. Any services provided by the home office which are included in costs as payments to an outside provider will be considered a duplication of costs and not be allowed.

History: Effective November 1, 1985.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-01.3

AGENCY SYNOPSIS: Establishes a specific methodology for establishing the facility cost to be included in a rate when the provider rents a facility from a related organization.

75-03-15-12. Rental expense paid to a related organization.

1. A provider may lease a facility from a related organization within the meaning of the principles of reimbursement. In such a case, the rent paid to the lessor by the provider is not allowable as a cost. The cost of ownership of the facility would, however, be an allowable cost to the provider. Generally, these would be costs such as depreciation, real estate taxes, and other expenses attributable to the leased facility. The effect is to treat the facility as though it were owned by the provider. Therefore, the owner's equity in the leased assets is includable in the equity capital of the provider.
2. In order to be considered an allowable cost, the home office costs must be directly related to those services performed for individual providers and relate to client services. An appropriate share of indirect costs will also be considered. Documentation as to the time spent, the services provided, the hourly valuation of services, and the allocation method used must be available to substantiate the reasonableness of the cost.

History: Effective November 1, 1985.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-01.3

AGENCY SYNOPSIS: Identifies the principal that taxes assessed against a provider are an allowable cost for inclusion in the rate, but precludes

the reimbursement of tax expense related to fines, penalties, and a specific list of taxes.

75-03-15-13. Taxes.

1. **General.** Taxes assessed against the provider, in accordance with the levying enactments of the several states and lower levels of government and for which the provider is liable for payment, are allowable costs. Tax expense may not include fines, penalties, or those taxes listed in subsection 2.
2. **Taxes not allowable as costs.** The following taxes are not allowable as costs:
 - a. Federal income and excess profit taxes, including any interest or penalties paid thereon.
 - b. State or local income and excess profit taxes.
 - c. Taxes in connection with financing, refinancing, or refunding operation, such as taxes in the issuance of bonds, property transfers, issuance or transfers of stocks, etc. Generally, these costs are either amortized over the life of the securities or depreciated over the life of the asset. They are not recognized as tax expense.
 - d. Taxes from which exemptions are available to the provider.
 - e. Special assessments on land which represent capital improvements, such as sewers, water, and pavements, should be capitalized and may be depreciated.
 - f. Taxes on property which is not used in the provision of covered services.

History: Effective November 1, 1985.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-01.3

AGENCY SYNOPSIS: Incorporates the general provisions regarding tax allowability and limitations found at title IV-A of the Social Security Act and 45 CFR part 74.

75-03-15-14. Cost allowability and limitations. Any questions regarding cost allowability and limitations will be governed by title IV-E of the Social Security Act [42 U.S.C. Section 670, et seq.] and 45 CFR part 74, unless further limited by this chapter.

History: Effective November 1, 1985.

General Authority: NDCC 50-06-16, 50-11-03
Law Implemented: NDCC 50-06-05.1, 50-11-01.3

AGENCY SYNOPSIS: Authorizes the department to grant variances from the provisions of this chapter provided that no variance may permit or authorize a danger to the health or safety of the residents of a facility.

75-03-15-15. Variance. Upon written application, and good cause shown to the satisfaction of the department, the department may grant a variance from the provisions of this chapter upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of the residents of a home.

History: Effective November 1, 1985.
General Authority: NDCC 50-06-16, 50-11-03
Law Implemented: NDCC 50-06-05.1, 50-11-01.3