

NORTH DAKOTA ADMINISTRATIVE CODE

Supplements 107 through 109

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Prepared by the Legislative Council staff
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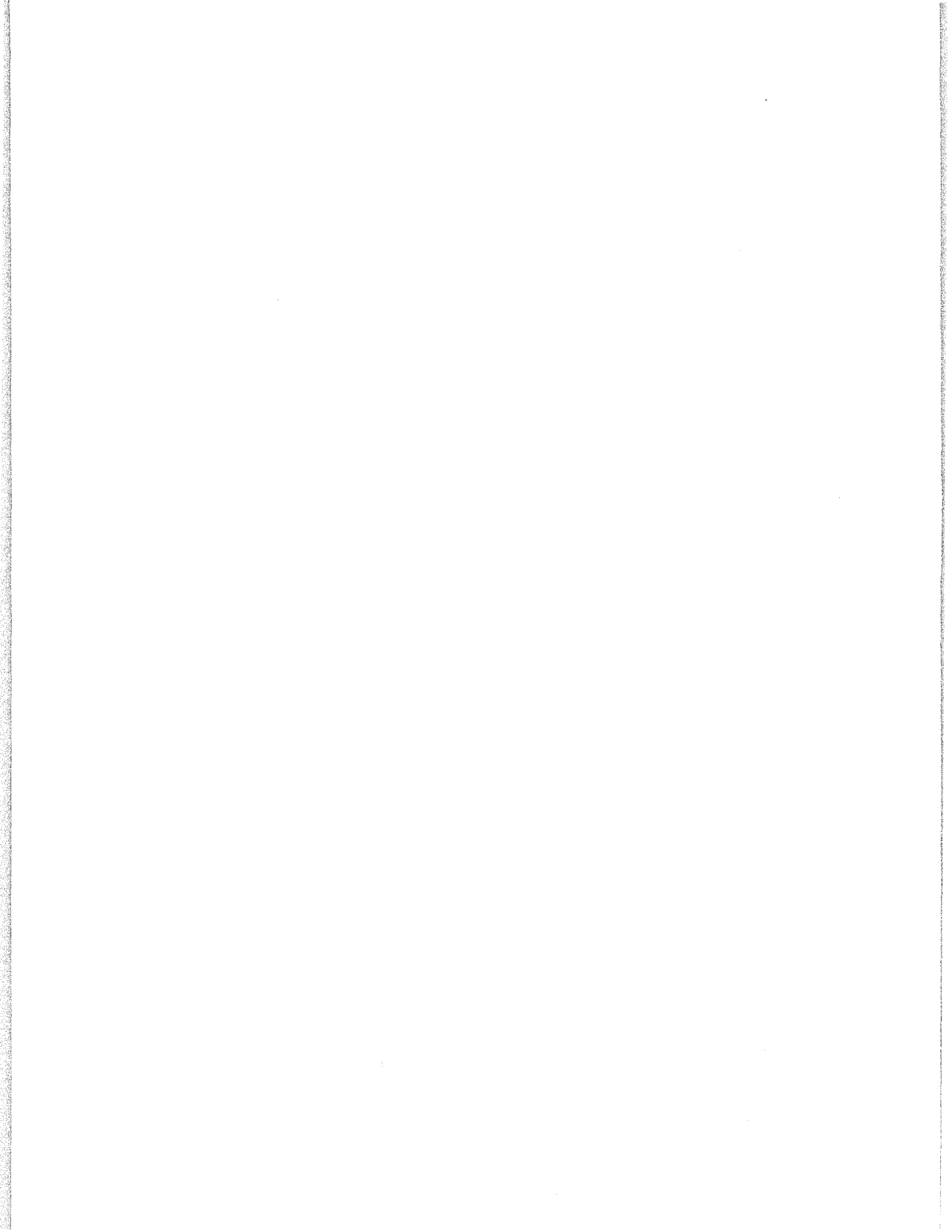
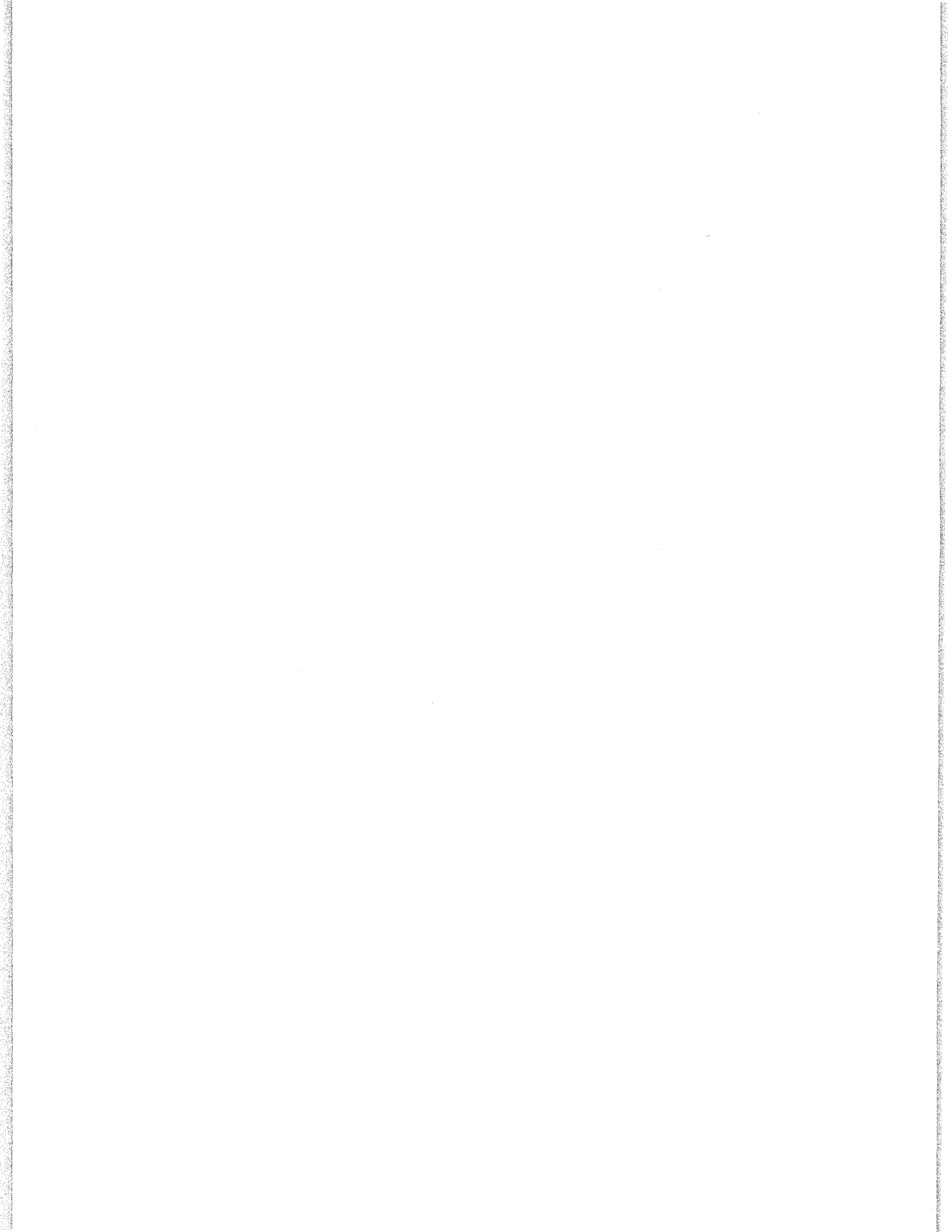


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TITLE 3

Accountancy, Board of Public

JUNE 1988

3-02-02-04. Fee for annual registration and licensure. The annual registration fee for every person legally certified to practice as a certified public accountant and every person legally licensed to practice as a licensed public accountant within this state, whether in actual practice or not, shall be fifty dollars. The fee for nonresidents shall be forty dollars.

History: Amended effective August 1, 1981; October 1, 1982; July 1, 1987; June 1, 1988.

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

Law Implemented: NDCC ~~43-02.1-06~~ 43-02.1-03(3), 43-02.1-04(1)

3-02-02-04.1. Fee for annual registration - Sole practitioner, partnership, or professional corporation. The annual registration fee for every sole practitioner, partnership, or professional corporation required to register under chapter 3-02-03, whether in actual practice or not, is fifty dollars.

History: Effective June 1, 1988.

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

Law Implemented: NDCC 43-02.1-02(6)(d)

3-02-02-07. Return of suspended or revoked certified public accountant's certificate or licensed public accountant's license. Should a certificate holder have his certificate suspended or revoked or a licenseholder have his license suspended or revoked pursuant to North Dakota Century Code section 43-02.1-07, the certificate holder or licenseholder shall return his certificate or license to the North Dakota state board of public accountancy state office within thirty days after receipt of notice of said suspension or revocation. The certificate or license returned under this section must be the original document issued by the board.

History: Effective June 1, 1988.
General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-05

3-02-02-08. Reinstatement fee. Should a certificate holder have his certificate suspended or revoked, or a licenseholder have his license suspended or revoked because of nonpayment of his annual fee, the certificate holder or licenseholder is required to pay in addition to his annual fee, as provided in section 3-02-02-04, a reinstatement fee determined by the board not to exceed one hundred dollars. The certificate holder or licenseholder must also be required to satisfy the state board that all current requirements to hold a certificate or license in good standing have been met.

History: Effective June 1, 1988.
General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-03(3), 43-02.1-04(1)

STAFF COMMENT: Chapter 3-02-03 and Article 3-05 contain all new material but are not underscored so as to improve readability.

**CHAPTER 3-02-03
REGISTRATION OF SOLE PRACTITIONERS, PARTNERSHIPS,
AND PROFESSIONAL CORPORATIONS**

| | |
|------------|--|
| Section | |
| 3-02-03-01 | Registration of Sole Practitioners and Partnerships |
| 3-02-03-02 | Notice of Sole Practitioner and Partnership's Registration Requirements |
| 3-02-03-03 | Sole Practitioner and Partnership's Registration Application |
| 3-02-03-04 | Untimely Registration - Sole Practitioner or Partnership |
| 3-02-03-05 | Sole Practitioner's or Partnership's Failure to Register or Pay Fee |
| 3-02-03-06 | Registration of Corporations |
| 3-02-03-07 | Notice of Corporation's Registration Requirements |
| 3-02-03-08 | Corporation Registration Application |
| 3-02-03-09 | Untimely Registration - Corporation |
| 3-02-03-10 | Corporation's Failure to Register or Pay Fee |

3-02-03-01. Registration of sole practitioners and partnerships.
Each partnership consisting of one or more partners, and each sole practitioner holding unrevoked North Dakota certificates and licenses which engage or intend to engage in the practice of public accounting within North Dakota during all or part of the state board of public accountancy's fiscal year, is required to register for that year. The completed registration form and the appropriate fee shall be submitted

to the board within thirty days prior to engaging in public practice in any year.

History: Effective June 1, 1988.

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

Law Implemented: NDCC 43-02.1-02(6)(d)

3-02-03-02. Notice of sole practitioner and partnership's registration requirements. Each May the board will notify all registered sole practitioners and partnerships of the registration requirements for the succeeding year. However, it is the responsibility of each sole practitioner or partnership in public practice to register and pay the appropriate fee as provided in section 3-02-02-04.1.

History: Effective June 1, 1988.

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

Law Implemented: NDCC 43-02.1-02(6)(d)

3-02-03-03. Sole practitioner and partnership's registration application. Requests for registration by all sole practitioners and partnerships must be on a form provided by the board and must include a check or money order in the amount specified in section 3-02-02-04.1 payable to the state board of public accountancy.

History: Effective June 1, 1988.

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

Law Implemented: NDCC 43-02.1-02(6)(d)

3-02-03-04. Untimely registration - Sole practitioner or partnership. Each sole practitioner or partnership that fails to register by July thirty-first of each year shall pay a late filing fee in addition to the annual registration fee required in section 3-02-02-04.1. In the event the board notifies a sole practitioner or partnership that said fees and registration are in default, and payment is not received by the board for a period of six months, the board shall proceed pursuant to North Dakota Century Code section 43-02.1-05 to suspend or revoke the certificate or license of each sole practitioner or individual partner.

History: Effective June 1, 1988.

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

Law Implemented: NDCC 43-02.1-02(6)(d)

3-02-03-05. Sole practitioner's or partnership's failure to register or pay fee. Failure to register and pay the appropriate fee as provided in section 3-02-02-04.1 by July thirty-first of each year shall be deemed unprofessional conduct and may be cause for suspension or revocation of the certificates and licenses of the sole practitioner or of each individual partner.

History: Effective June 1, 1988.
General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-02(6)(d)

3-02-03-06. Registration of corporations. Each professional corporation consisting of one or more shareholders holding unrevoked North Dakota certificates and licenses which engages or intends to engage in the practice of public accounting within North Dakota during all or part of the state board's fiscal year is required to register with the board annually. The completed registration form and appropriate fee, accompanied by a copy of the articles of incorporation and its annual report, shall be submitted to the board within thirty days prior to engaging in public practice in any year.

History: Effective June 1, 1988.
General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-02(6)(d)

3-02-03-07. Notice of corporation's registration requirements. Each May the board will notify all corporate registrants of the requirements for the succeeding fiscal year. However, it is the responsibility of each corporation in public practice to register and pay the appropriate fee as provided in section 3-02-02-04.1.

History: Effective June 1, 1988.
General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-02(6)(d)

3-02-03-08. Corporation registration application. Requests for registration by a corporation must be on a form provided by the board and must include a check or money order in the amount specified in section 3-02-02-04.1 payable to the state board of public accountancy.

History: Effective June 1, 1988.
General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-02(6)(d)

3-02-03-09. Untimely registration - Corporation. Each corporation that fails to register by July thirty-first of each year shall pay a late filing fee in addition to the annual registration fee required in section 3-02-02-04.1. In the event the board notifies a corporation that said fees and registration are in default, and payment is not received by the board for a period of six months, the board shall proceed pursuant to North Dakota Century Code section 43-02.1-05 to suspend or revoke the certificate or license of each officer, director, or shareholder of the corporation.

History: Effective June 1, 1988.
General Authority: NDCC 43-02.1-02(6)(d)

Law Implemented: NDCC 43-02.1-02(6)(d)

3-02-03-10. Corporation's failure to register or pay fee. Failure to register and pay the appropriate fees as provided in section 3-02-02-04.1 by July thirty-first of each year is deemed unprofessional conduct and may be cause for suspension or revocation of the certificate and license of the corporation's officers, directors, and stockholders licensed to practice in this state.

History: Effective June 1, 1988.

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

Law Implemented: NDCC 43-02.1-02(6)(d)

ARTICLE 3-05

POSITIVE REVIEW PROGRAM

Chapter

| | |
|---------|---|
| 3-05-01 | Purpose of Program and Appointment of Committee |
| 3-05-02 | Submission of Reports |
| 3-05-03 | Review of Reports |
| 3-05-04 | Substandard Reports |

CHAPTER 3-05-01

PURPOSE OF PROGRAM AND APPOINTMENT OF COMMITTEE

Section

| | |
|------------|--|
| 3-05-01-01 | Establishment of Program |
| 3-05-01-02 | Appointment of Positive Review Program Committee |
| 3-05-01-03 | Committee Responsibilities |

3-05-01-01. Establishment of program. There is hereby established a positive review program ("the program"). The purpose of the program is to improve the quality of financial reporting and to assure that the public can rely on the fairness of presentation of financial information on which sole practitioners, partnerships, or professional corporations issue reports. The program emphasizes education and rehabilitation rather than disciplinary action. Appropriate educational programs or procedures will ordinarily be recommended or required where reporting does not comply with appropriate professional standards. However, when a registrant is unwilling or unable to comply with such standards, or a registrant's professional work is so substandard as to warrant disciplinary action, such action may be resorted to as the appropriate means of protecting the public interest.

History: Effective June 1, 1988.
General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-02(6)(d)

3-05-01-02. Appointment of positive review program committee.
The state board of public accountancy shall annually appoint a positive review program committee to assist in the implementation and administration of the program. The positive review program committee will consist of a program coordinator and two board members, all appointed by the board.

History: Effective June 1, 1988.
General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-02(6)(d)

3-05-01-03. Committee responsibilities. The positive review program committee's responsibilities include:

1. Developing procedures for the internal operation of the positive review program committee.
2. Developing criteria for assignment of reviewers to specific tasks taking into account such factors as geographic location, size of firm, technical skill requirements, and such other criteria as the board determines appropriate.
3. Assisting the board in the selection and training of reviewers.
4. Developing and recommending to the board a system for selection of reports to be reviewed.
5. Evaluating the findings of the reviewers and making reports and recommendations to the board.
6. Compiling and reporting to the board statistics on the impact and effect of the program.
7. Considering such other matters and performing such other duties regarding the program as may be assigned to it by the board from time to time.

History: Effective June 1, 1988.
General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-02(6)(d)

**CHAPTER 3-05-02
SUBMISSION OF REPORTS**

| | |
|------------|--|
| Section | |
| 3-05-02-01 | Submission of Reports |
| 3-05-02-02 | Exception to Submission of Report |
| 3-05-02-03 | Format of Report |
| 3-05-02-04 | Request of Additional Information by Committee |
| 3-05-02-05 | Confidentiality of Information in Report |

3-05-02-01. Submission of reports. On or after July first of each year, beginning on July 1, 1988, each sole practitioner, partnership, or professional corporation required to register under chapter 3-02-03 shall furnish to the board in connection with its registration, with respect to each office maintained by the applicant in this state, one copy of each of the following kinds of reports issued by that office during the twelve-month period next preceding the date of application, if any report of such kind was issued during such period:

1. A compilation report (including accompanying financial statements);
2. A review report (including accompanying financial statements); and
3. An audit report (including accompanying financial statements).

History: Effective June 1, 1988.

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

Law Implemented: NDCC 43-02.1-02(6)(d)

3-05-02-02. Exception to submission of report. The requirement of section 3-05-02-01 may not apply with respect to any office which within the three years immediately preceding the registration had been subjected to a quality review conforming to this chapter; provided, that a copy of the report of such quality review and the letter of comments, if any, is submitted with the registration renewal application and such report of the registrant reflected an unqualified opinion.

History: Effective June 1, 1988.

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

Law Implemented: NDCC 43-02.1-02(6)(d)

3-05-02-03. Format of report. Any documents submitted in accordance with section 3-05-02-01 shall have the name of the client, the client's address, and other identifying factors omitted, provided that the omission does not render the type or nature of the enterprise undeterminable. For example, the client name, address, or federal identification number must be omitted, but reference to the type of

organization, such as a financial institution, school district, hospital, etc., may not be omitted.

History: Effective June 1, 1988.
General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-02(6)(d)

3-05-02-04. Request of additional information by committee. The positive review program committee may also solicit for review financial statements and related reports of registrants from clients, public agencies, banks, and other users of financial statements.

History: Effective June 1, 1988.
General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-02(6)(d)

3-05-02-05. Confidentiality of information in report. The identities of the sources of financial statements and reports received by the board or the positive review program committee from other than the registrants who issued the reports must be preserved in confidence. Reports submitted to the board or the positive review program committee pursuant to section 3-05-02-01, and comments of reviewers, the positive review program committee, and the board on such reports or workpapers relating thereto, must also be preserved in confidence except to the extent that they are communicated by the board to the registrant who issued the reports, and except to the extent that they do not violate the open records law of North Dakota.

History: Effective June 1, 1988.
General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-02(6)(d)

CHAPTER 3-05-03 REVIEW OF REPORTS

| | |
|------------|--|
| Section | |
| 3-05-03-01 | Review of Reports |
| 3-05-03-02 | Scope of Review |
| 3-05-03-03 | Appointment of Reviewer by Board |
| 3-05-03-04 | Board Review of Committee's Determinations |

3-05-03-01. Review of reports. The positive review program committee shall annually review approximately one-third of the reports submitted in accordance with section 3-05-02-01, and in addition such reports as it receives pursuant to section 3-05-02-04 and such reports as may be referred to it by the board.

History: Effective June 1, 1988.

General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-02(6)(d)

3-05-03-02. Scope of review. The positive review program committee shall determine, with respect to each report that it reviews:

1. Whether the report is in general conformity with applicable professional standards;
2. If not, in what respect the report is substandard or seriously questionable; and
3. Any recommendations it may have concerning improvement of the quality of the report.

The positive review program committee shall report its determinations and recommendations to the board.

History: Effective June 1, 1988.
General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-02(6)(d)

3-05-03-03. Appointment of reviewer by board. If the positive review program committee reports to the board that a report is substandard or seriously questionable pursuant to section 3-05-03-02, the board may direct that a review of the workpapers be conducted by a reviewer designated by the positive review program committee. The review of the workpapers must be conducted by a person other than the person who performed the review of the report. The findings of any such review of the workpapers must be transmitted by the reviewer to the positive review program committee; and, with such changes or additions as the positive review program committee may deem appropriate, by the positive review program committee to the board.

History: Effective June 1, 1988.
General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-02(6)(d)

3-05-03-04. Board review of committee's determinations. The board shall review the determinations and recommendations regarding reviews of reports by the positive review program committee pursuant to section 3-05-03-02; and in any case where the positive review program committee has determined, and the board concurs, that a report is in general conformity with applicable professional standards, the board shall forward the positive review program committee's determination and recommendations, if any, to the person in charge of the office which submitted the report.

History: Effective June 1, 1988.
General Authority: NDCC 43-02.1-02(6)(d)

Law Implemented: NDCC 43-02.1-02(6)(d)

CHAPTER 3-05-04
SUBSTANDARD REPORTS

Section
3-05-04-01 Substandard Reports and Board Action

3-05-04-01. Substandard reports and board action. If the board determines that a report referred to the board by the positive review program committee is substandard or seriously questionable with respect to applicable professional standards, the board may take any one of the following actions:

1. The board may submit to the registrant firm a letter of comment detailing the deficiencies noted in connection with the review and requiring the registrant to develop a set of planned control procedures to ensure that similar occurrences will not be present in the future. A response from the registrant will be required within forty-five days of the mailing of the board's letter and will be subject to followup review by the board.
2. The board may require any individual who had responsibility for issuance of the report or who substantially participated in preparation of the report or the related workpapers, or both, to successfully complete specific courses or types of continuing education as specified by the board. The cost of the course or courses must be borne by such registrant.
3. The board may require that the office responsible for the substandard report submit all or specified categories of its reports for a preissuance review in a manner and for a duration prescribed by the board.
4. If it appears that the professional conduct reflected in the substandard report is so serious as to warrant consideration of possible disciplinary action, the board may initiate an investigation pursuant to subdivision b of subsection 6 of North Dakota Century Code section 43-02.1-02 and subdivision g of subsection 1 of North Dakota Century Code section 43-02.1-05.

History: Effective June 1, 1988.

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

Law Implemented: NDCC 43-02.1-02(6)(d)

TITLE 7
Agriculture, Commissioner of

MAY 1988

STAFF COMMENT: Chapter 7-02-03 contains all new material but is not underscored so as to improve readability.

**CHAPTER 7-02-03
ALFALFA LEAFCUTTER BEE PROVISIONS**

| | |
|------------|--|
| Section | |
| 7-02-03-01 | Application for Certification or Recertification |
| 7-02-03-02 | Alfalfa Leafcutter Bee Sampling Procedure |
| 7-02-03-03 | Wild Trapping |
| 7-02-03-04 | Standards for Certification |
| 7-02-03-05 | Fees |

7-02-03-01. Application for certification or recertification.

1. Application for certification or recertification is due January first of each year, except that initial applicants shall apply, within ten days after first acquiring bees in the state, to the commissioner for certification.
2. The certification fee must accompany each application.
3. The fee for lab analysis of samples required to be inspected for disease as a requirement for certification must accompany the application. The fee for lab analysis of samples will be based on generally accepted lab charges as determined and approved by the department.
4. The application must include the name, address, and telephone number of the applicant. Additionally, if the applicant is not a resident of North Dakota, a resident agent for service of process must be named and designated.

5. The applicant must arrange a date, prior to April fifteenth of each year, for sampling of the bees for certification purposes. If the beekeeper is newly acquiring bees after April fifteenth, the bees will be considered under quarantine until certification is obtained.
6. Additional location information as required by North Dakota Century Code section 4-12.3-06, not known at the time of application for certification or recertification, may be submitted after January first but no later than June first of each year.
7. Bees quarantined pursuant to this chapter may not be sold, transferred, or distributed, unless the person selling, transferring, or distributing such bees has written approval of the state alfalfa leafcutter bee inspector and any buyer, assignee, or other person who will have control of the bees receives a copy of the certification reports. Any beekeeper may be required to comply with the instructions of the state alfalfa leafcutter bee inspector for control or sanitation of bees infected or infested with regulated diseases.

History: Effective October 1, 1988.

General Authority: NDCC 4-12.3-02

Law Implemented: NDCC 4-12.3-06, 4-12.3-07, 4-12.3-08

7-02-03-02. Alfalfa leafcutter bee sampling procedure. The following procedure must be used to sample bees:

1. All bees must be in a loose cell stage when samples are taken, or in some other life stage or form as approved by the state alfalfa leafcutter bee inspector, provided approval for such life stage or form is obtained from the inspector at the time the applicant makes arrangement for sampling of bees for certification.
2. The official sample sizes for sampling of bees are as follows:

| Bees to be certified Number of pounds | Bees to be sampled Number of ounces |
|--|--|
| 1 - 199 pounds | 8 ounces |
| 200 - 299 pounds | 12 ounces |
| 300 - 399 pounds | 16 ounces |
| 400 - 499 pounds | 20 ounces |
| 500 or more pounds | 24 ounces |

3. All samples will be taken by random sampling.
4. All samples will be collected by the state alfalfa leafcutter bee inspector, a deputy inspector, or other agent of the North Dakota department of agriculture in the presence of the

beekeeper or by the beekeeper in the presence and under the supervision of the state alfalfa leafcutter bee inspector, a deputy inspector, or other agent of the department.

5. Any beekeeper may appeal the results of a lab analysis of samples, provided such appeal is made within thirty days of the receipt of the results by the beekeeper. If more samples are necessary for an appeal, the beekeeper shall pay any additional lab costs and travel expenses.

History: Effective October 1, 1988.

General Authority: NDCC 4-12.3-02

Law Implemented: NDCC 4-12.3-06, 4-12.3-07

7-02-03-03. Wild trapping.

1. Any beekeeper engaged in wild trapping shall apply to the commissioner for a permit before engaging in wild trapping.
2. Any beekeeper engaged in wild trapping shall pay a five dollar fee to the commissioner, enclosed with each application for a wild trapping permit.
3. After obtaining bees by wild trapping means, a beekeeper shall maintain the bees on locations approved by the state alfalfa leafcutter bee inspector, under quarantine, until the bees can be certified.
4. Before engaging in wild trapping, a beekeeper shall obtain written permission from the landowner or lessee of the land on which the wild trapping occurs if the land is not the beekeeper's property. A copy of the written permission obtained must be filed with the department, enclosed with each application for a wild trapping permit.

History: Effective October 1, 1988.

General Authority: NDCC 4-12.3-02, 4-12.3-08

Law Implemented: NDCC 4-12.3-08

7-02-03-04. Standards for certification.

1. The following are regulated diseases of alfalfa leafcutter bees:
 - a. Parasites:
 - (1) Minute chalcid (*Tetrastichus megachi*)
 - (2) Sapyga wasp (*Sapyga pumila*)
 - (3) Canadian chalcid (*Pteromalus venustus*)

(4) Imported chalcid (Monodontomerus obscurus)

b. Pathogens: Alfalfa leafcutter bee chalkbrood (Ascosphaera sp)

2. An unconditional alfalfa leafcutter bee certification must be issued to the beekeeper for bees if not more than ten percent of the bees in the sample of bees examined are infested with any one or more than one of the parasites listed in subdivision 1 of subsection 1; and if not more than zero percent of the bees in the sample of bees examined are infected with the pathogen listed in subdivision b of subsection 1.
3. A restricted alfalfa leafcutter bee certification must be issued to the beekeeper for the bees if more than ten percent of the bees in the sample of bees examined are infested with any one or more than one of the parasites listed in subdivision a of subsection 1; and if more than zero percent of the bees in the sample of bees examined are infected with the pathogen listed in subdivision b of subsection 1. Bees that are certified as restricted may not be sold, transferred, or distributed without prior written approval of the state alfalfa leafcutter bee inspector.

History: Effective October 1, 1988.

General Authority: NDCC 4-12.3-02

Law Implemented: NDCC 4-12.3-02, 4-12.3-05, 4-12.3-06, 4-12.3-07, 4-12.3-08

7-02-03-05. Fees.

1. The fee for certifying alfalfa leafcutter bees is five dollars.
2. The fee for issuing a wild trapping permit is five dollars.
3. The fee for issuing any special permit is five dollars.

History: Effective October 1, 1988.

General Authority: NDCC 4-12.3-02, 4-12.3-06, 4-12.3-08

Law Implemented: NDCC 4-12.3-06, 4-12.3-08

STAFF COMMENT: Article 7-09 contains all new material but is not underscored so as to improve readability.

ARTICLE 7-09
MARKETING DIVISION

Chapter
7-09-01 Pride of Dakota Logo Promotion

CHAPTER 7-09-01
PRIDE OF DAKOTA LOGO PROMOTION

| Section | Purpose |
|------------|-----------------------------|
| 7-09-01-01 | Purpose |
| 7-09-01-02 | Definitions |
| 7-09-01-03 | Eligibility for Use of Logo |
| 7-09-01-04 | Application |
| 7-09-01-05 | Fees |
| 7-09-01-06 | Authorization |
| 7-09-01-07 | Renewal of Authorization |
| 7-09-01-08 | Promotional Use of the Logo |
| 7-09-01-09 | Improper Use |
| 7-09-01-10 | Enforcement |
| 7-09-01-11 | No Warranty of Quality |
| 7-09-01-12 | Compliance with Other Law |

7-09-01-01. Purpose. In keeping with the policy of the North Dakota department of agriculture and its marketing division to expand, improve, and develop markets for North Dakota products by promoting their use and sale and pursuant to house concurrent resolution and appropriation by the 1985 legislative assembly, it is the purpose of the pride of Dakota logo promotion to identify and promote those products which are created, produced, processed, or manufactured in North Dakota.

History: Effective May 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-01-19; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13

7-09-01-02. Definitions.

1. "Business" means any individual, partnership, cooperative association, corporation, business trust, or unincorporated organization or other business with a permanent place of business located completely or in part within the boundaries of North Dakota.

2. "Commissioner" means the commissioner of the North Dakota department of agriculture or his authorized representative or designee.
3. "Commodity council" means any of the agriculture research and promotion councils or commissions created pursuant to the provisions of the North Dakota Century Code, generally in title 4.
4. "Department" means the North Dakota department of agriculture.
5. "Educational institutions" means any North Dakota schools, colleges, universities, or other North Dakota educational institutions.
6. "Improper use" means any use of the logo not authorized by the department or the marketing division or a use of the logo inconsistent with the rules stated in this chapter.
7. "Manufacturer" or "processor" means an individual, partnership, cooperative association, or corporation which processes or manufactures raw materials, agriculture products, or ingredients into food or nonfood products.
8. "Marketing division" means the state marketing bureau within the department of agriculture designated by North Dakota Century Code section 4-01-19.
9. "Nonprofit organization" means any established nonprofit organization in North Dakota.
10. "Pride of Dakota logo", or "logo" means the logo developed for the North Dakota department of agriculture to identify a product which is created, produced, processed, or manufactured in North Dakota.
11. "Producer" means any individual, partnership, family farm, family farm corporation, or cooperative association actually engaged in the production for sale of agriculture products.
12. "Product" means any product that is created, produced, processed, or manufactured within the state of North Dakota for sale or distribution in its final form.
13. "Trade association" means a North Dakota-based organization of producers, processors, manufacturers, retailers, or wholesalers of products.

History: Effective May 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-01-19; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13

7-09-01-03. Eligibility for use of logo.

1. **Producers.** Any North Dakota producer may apply to use the logo on any agriculture product to be used in its original form or on any agriculture product intended to be processed or manufactured, if the agriculture product is produced on a farm or other production unit located completely, or in part, within the boundaries of North Dakota, and if the processed or manufactured agriculture product meets all applicable minimum requirements for the product in North Dakota.
2. **Processors and manufacturers.** Any processor or manufacturer may apply to use the logo on any product, if the product was processed or manufactured in a factory or plant located completely, or in part, within the boundaries of North Dakota, and if the product meets all the applicable minimum requirements of law for processing or manufacturing the product in North Dakota.
3. **Others.** Any business, trade association, educational institution, or commodity council may apply to use the logo on products created, produced, processed, or manufactured by them.

History: Effective May 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-01-19; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13

7-09-01-04. Application.

1. Any eligible producer, processor, manufacturer, business, trade association, commodity council, education institutional, or nonprofit organization located completely or in part within North Dakota may apply to use the logo.
2. Application must be made on forms provided by the department and must contain all of the following:
 - a. The name and address of the applicant.
 - b. The location of the producer, processing or manufacturing facility or plant, business, trade association, commodity council, educational institution, or nonprofit organization providing products on which the logo is intended to be used.
 - c. A list of all products on which the logo may be used.
 - d. A market or promotion plan for use of the logo.

History: Effective May 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-01-19; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13

7-09-01-05. Fees.

1. An eligible producer, processor, manufacturer, or business will pay an annual fee for the use of the logo at a rate to be determined by the department based on the size and number of employees of the operation of the producer, processor, manufacturer, or business. This fee will be no less than fifty dollars and no greater than one thousand dollars.
2. An eligible trade association, commodity council, or educational institution will pay an annual fee for the use of the logo as determined by the department. The minimum annual fee for these organizations will be two hundred fifty dollars.
3. An established North Dakota nonprofit organization will pay an annual fee for the use of the logo as determined by the department. This annual fee will be no less than fifty dollars and no more greater than two hundred fifty dollars.
4. The income from the fees collected by the department will be used by the marketing division of the department in the development of programs to promote recognition and awareness of the logo among the consuming public.
5. Application to use the logo with any product not originally listed with the department may be made at any time.
6. A voluntary advisory council of seven members will be appointed by the commissioner from trade associations, commodity councils, educational institutions, producers, processors, manufacturers, and businesses to advise the department on the use of logo fees and the development of promotional programs.

History: Effective May 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-01-19; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13

7-09-01-06. Authorization.

1. Authorization from the department to use the logo depends upon approval of an application by the commissioner and extends for one year from the authorization date.

2. Use of the logo on approved products remains discretionary with the authorized user during the one-year authorization period.
3. Authorized users will receive a certificate of authorization to use the logo, including a registration number, which they may display in their place of business. Reproduction proofs of the logo will be furnished to authorized users.
4. The marketing division of the department will advise and assist any authorized user of the logo with respect to the size of the logo, its color, its placement on packages, or similar matters, as requested. There may be no alteration in design, color, or makeup of the logo without prior written approval of the commissioner.

History: Effective May 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-01-19; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13

7-09-01-07. Renewal of authorization.

1. The department shall notify authorized users of the logo of their scheduled renewal date sixty days prior to the expiration of their authorization to use the logo.
2. Authorization to use the logo may be renewed if reapplication, including any changes in information provided with the previous application, is made on forms provided by the department and approval is granted by the commissioner.
3. Renewal of authorization may be denied if the commissioner determines that there has been improper use of the logo or if the user fails to reapply for authorization to use the logo within thirty days after the scheduled renewal date.

History: Effective May 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-01-19; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13

7-09-01-08. Promotional use of the logo. The logo may be used for promotional purposes by an authorized producer, processor, or manufacturer on any materials used in a direct national or international marketing effort, by an authorized business, commodity council, trade association, educational institution, or nonprofit organization in any promotion of North Dakota products, or by the department on any stationery, business cards, or other items determined by the commissioner to promote North Dakota products.

History: Effective May 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-01-19; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13

7-09-01-09. Improper use. Improper use includes use on products not created, produced, processed, or manufactured in whole or in part within the boundaries of North Dakota; allowing use of the logo by another person who is not an authorized user; using the logo without prior approval of the commissioner of agriculture; and any use which the commissioner determines may be detrimental to the promotion of North Dakota products.

History: Effective May 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-01-19; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13

7-09-01-10. Enforcement.

- 1. Investigation and revocation.** If the commissioner has reason to believe there is improper use of the logo, the commissioner may investigate the use to determine whether improper use has occurred. After investigation, the commissioner may revoke authorization or refuse to grant or renew authorization to use the logo if the commissioner determines that improper use has occurred.
- 2. Civil action.** When an investigation by the commissioner reveals improper use of the logo is occurring or has occurred, the commissioner may seek injunctive relief or seek to apply other appropriate legal remedies in a court of competent jurisdiction.

History: Effective May 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-01-19; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13

7-09-01-11. No warranty of quality. Use of the logo does not represent a warranty by the department of any kind, expressed or implied, about the quality of the product on which the logo appears. Authorized use of the logo means only that the product has been approved to use the logo as a product that was created, produced, processed, or manufactured in whole, or in part, within the boundaries of North Dakota, and that the authorized user, and not the department, represents that the product meets all applicable minimum legal requirements for creating, producing, processing, or manufacturing the product in North Dakota.

History: Effective May 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-01-19; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13

7-09-01-12. Compliance with other law. Compliance with the rules of this chapter does not exempt any business producer, processor, or manufacturer from complying with other applicable statutes and rules relating to any product, including the labeling requirements of any product.

History: Effective May 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-01-19; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13

JUNE 1988

STAFF COMMENT: Article 7-10 contains all new material but is not underscored so as to improve readability.

ARTICLE 7-10
CHEMIGATION REGULATIONS

| | |
|---------|--------------------------|
| Chapter | |
| 7-10-01 | Definitions |
| 7-10-02 | Equipment Requirements |
| 7-10-03 | Operational Requirements |

CHAPTER 7-10-01
DEFINITIONS

| | |
|------------|-------------|
| Section | |
| 7-10-01-01 | Definitions |

7-10-01-01. Definitions.

1. "Antisiphon device" means any equipment effectively designed and constructed to prevent the backflow of an injected chemical into any water supply.
2. "Check valve" means a device effectively designed and constructed to provide positive closure which effectively prohibits the flow of material in the opposite direction of

normal flow when operation of the irrigation system pumping plant or injection unit fails or is shut down.

3. "Chemical" means any pesticides, fertilizers, or other chemicals applied by chemigation.
4. "Chemigation" includes, but is not limited to, the application of a chemical to agricultural, nursery, and turf sites.
5. "Interlock" means the arrangement or interconnection of the irrigation pumping plant and chemical injection units in such a manner that, in the event of irrigation pump shut down, shut down of the chemical injection units system will occur.
6. "Low pressure drain" means a self-activating device effectively designed and constructed to drain that portion of an irrigation pipeline or any other method of conveyance whose contents could potentially enter the water supply when operation of the irrigation system pumping plant fails or is shut down.

History: Effective October 1, 1988.

General Authority: NDCC 4-35.1-03

Law Implemented: NDCC 4-35.1-01, 4-35.1-03

CHAPTER 7-10-02 EQUIPMENT REQUIREMENTS

Section

| | |
|------------|--|
| 7-10-02-01 | Antisiphon Devices Required |
| 7-10-02-02 | Allowable Antisiphon Devices |
| 7-10-02-03 | Inspection Port |
| 7-10-02-04 | Chemical Injection Port Location |
| 7-10-02-05 | Backflow Prevention in the Chemical Line |
| 7-10-02-06 | Pressure Sensor in the Irrigation Line |
| 7-10-02-07 | Interlock Devices |
| 7-10-02-08 | Chemical Injection Pump |

7-10-02-01. Antisiphon devices required. Chemigation may take place in North Dakota, as permitted in statute and rule, only when one of the antisiphon devices of section 7-10-02-02 are installed in an irrigation system.

History: Effective October 1, 1988.

General Authority: NDCC 4-35.1-03

Law Implemented: NDCC 4-35.1-02, 4-35.1-03

7-10-02-02. Allowable antisiphon devices. One of the following antisiphon devices must be installed as required in this section before chemigation in an irrigation system may take place.

1. **Check valve with vacuum relief and low pressure drain.** A corrosion-resistant check valve must be located between the water supply pump discharge outlet at the point of chemical injection. Location on the suction side of the water pump is not allowed. The check valve must be either spring loaded with a chemically resistant sealing surface or otherwise capable of preventing leakage. The direction of flow must be clearly indicated on the outside of the device. The vacuum relief valve must be installed on top of the irrigation pipe on the inlet side of the check valve. The vacuum relief valve must be a minimum of three-fourths inch [19.05 millimeters] in diameter. The low pressure drain must be located on the inlet side of the check valve at the lowest point. The drain must be mounted in the pipe in such a way that any check valve leakage enters the drain rather than flowing on toward the water supply. The drain must be at least three-fourths inch [19.05 millimeters] in diameter with a closing pressure of at least one pound per square inch [7 kilopascals] and not exceeding five pounds per square inch [35 kilopascals]. If the drain is within twenty feet [6.10 meters] of the water source, the system must provide a means to carry the drainage away or the surface must be graded to assure drainage away from the water source. Manual valves may not be located on the outlet side of the drain.
2. **Reduced pressure principle device.** The reduced pressure principle device must consist of two independently acting check valves, together with a pressure differential relief valve that is located between the two check valves. This device must be located between the pump discharge outlet and the point of chemical injection. The differential relief valve must have a minimum clearance of twelve inches [30.50 centimeters] above the ground level or grade.
3. **Double check valve.** The double check valve assembly must be composed of two single, independently acting check valves. The double check valve must be located between the pump discharge outlet and the point of chemical injection.
4. **Airgap.** An airgap must be a physical separation between the free flowing discharge end of a water pipeline and an open or nonpressurized receiving vessel. To have an acceptable airgap, the end of the discharge pipe must be located a distance of at least twice the diameter of the pipe above the topmost rim of the receiving vessel. In no case can this distance be less than one inch [2.54 centimeters]. The airgap must be located between the pump discharge outlet and the point of chemical injection.

5. **Other acceptable devices.** Other equipment utilizing new technology or other backflow prevention devices as specifically approved in writing by the commissioner of agriculture may be used.

History: Effective October 1, 1988.

General Authority: NDCC 4-35.1-03

Law Implemented: NDCC 4-35.1-02, 4-35.1-03

7-10-02-03. Inspection port. An inspection port of at least four inches [101.6 millimeters] in diameter must be provided to check for malfunctioning of all antisiphon devices. The inspection port can be combined with a mounting of vacuum relief. If an airgap is used, as required by subsection 4 of section 7-10-02-02, the system is exempt from the requirement of an inspection port.

History: Effective October 1, 1988.

General Authority: NDCC 4-35.1-03

Law Implemented: NDCC 4-35.1-02, 4-35.1-03

7-10-02-04. Chemical injection port location. The chemical injection port into the irrigation line must be located downstream of the antisiphon device.

History: Effective October 1, 1988.

General Authority: NDCC 4-35.1-03

Law Implemented: NDCC 4-35.1-02, 4-35.1-03

7-10-02-05. Backflow prevention in the chemical line. A spring loaded, chemically resistant check valve having a minimum opening pressure of ten pounds per square inch [69 kilopascals] must be located at the injection port of the irrigation system.

History: Effective October 1, 1988.

General Authority: NDCC 4-35.1-03

Law Implemented: NDCC 4-35.1-02, 4-35.1-03

7-10-02-06. Pressure sensor in the irrigation line. A functional pressure switch must be in the irrigation line. The device must shut down the injection pump in the event flow is lost in the irrigation line.

History: Effective October 1, 1988.

General Authority: NDCC 4-35.1-03

Law Implemented: NDCC 4-35.1-02, 4-35.1-03

7-10-02-07. Interlock devices. The irrigation pumping plant and chemical injection units must have a functional interlocking mechanism

that will ensure that, in the event of irrigation pump shutdown, the injection units will shut down.

History: Effective October 1, 1988.

General Authority: NDCC 4-35.1-03

Law Implemented: NDCC 4-35.1-02, 4-35.1-03

7-10-02-08. Chemical injection pump. The chemical injection pump must be effectively designed and constructed of materials that are compatible with the chemicals being injected into the irrigation system. The pump must be effectively designed and constructed to prevent any leakage. The pump must have a means of being calibrated for accurate chemical metering. The pump must be capable of being fitted with a system interlock.

History: Effective October 1, 1988.

General Authority: NDCC 4-35.1-03

Law Implemented: NDCC 4-35.1-02, 4-35.1-03

CHAPTER 7-10-03 OPERATIONAL REQUIREMENTS

Section

| | |
|------------|---|
| 7-10-03-01 | Inspection and Maintenance of Equipment |
| 7-10-03-02 | Calibration |
| 7-10-03-03 | Product Labeling |
| 7-10-03-04 | Posting |

7-10-03-01. Inspection and maintenance of equipment. The operator of the system will be responsible for keeping the system in good operating condition, including determining that the chemigation and safety equipment is operating properly before injecting chemical into the irrigation system.

History: Effective October 1, 1988.

General Authority: NDCC 4-35.1-03

Law Implemented: NDCC 4-35.1-02, 4-35.1-03

7-10-03-02. Calibration. The operator of the irrigation system is responsible for the proper calibration of the system prior to starting the injection of chemical into the irrigation system.

History: Effective October 1, 1988.

General Authority: NDCC 4-35.1-03

Law Implemented: NDCC 4-35.1-02, 4-35.1-03

7-10-03-03. Product labeling.

1. The operator of the system is responsible for following all chemical product label requirements.
2. All bulk pesticides used in chemigation, whether in concentrated or diluted form, must be clearly labeled with their identity and directions for use.

History: Effective October 1, 1988.

General Authority: NDCC 4-35.1-03

Law Implemented: NDCC 4-35.1-02, 4-35.1-03

7-10-03-04. Posting. Posting of warning signs as specified on the label of the chemical product being used at the time of application is required. The operator of the irrigation system is responsible for such posting.

History: Effective October 1, 1988.

General Authority: NDCC 4-35.1-03

Law Implemented: NDCC 4-35.1-02, 4-35.1-03

TITLE 13
Banking and Financial Institutions,
Department of

APRIL 1988

STAFF COMMENT: Chapters 13-03-14 and 13-03-15 contain all new material but are not underscored so as to improve readability.

CHAPTER 13-03-14
FIELD OF MEMBERSHIP

Section

| | |
|-------------|---|
| 13-03-14-01 | Definitions |
| 13-03-14-02 | Field of Membership Expansion |
| 13-03-14-03 | Application to Expand Field of Membership |
| 13-03-14-04 | Waiver |

13-03-14-01. Definitions.

1. "Branch", for the purpose of this chapter, means any credit union facility which is established apart from the principal office where credit union business is transacted, not including remote electronic facilities, such as automated teller facilities, point of sale terminals, etc.
2. "Closed charter" means a credit union charter issued to serve groups having a common bond of occupation or association.
3. "Geographical boundaries" means the outer perimeters of the area which may be served as expressed in the field of membership authority and may be expressed by city, county, township, or highway boundaries, or as a vicinity or trade area which is defined as a radius of fifty miles [80.47 kilometers], or a specifically stated radius from the principal office of the credit union.

4. "Open charter" means a credit union charter issued to serve groups within a well-defined rural or urban district.
5. "Principal office" means the location or place of business, or both, in which the credit union was organized and stated on the certificate of organization or any amendments thereto and recorded with the secretary of state.

History: Effective April 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06, 6-06-07

13-03-14-02. Field of membership expansion.

1. A North Dakota state-chartered credit union may expand its field of membership subject to approval of the state credit union board and in accordance with the provisions of this chapter and North Dakota Century Code chapter 6-06.
2. The state credit union board, when considering the expansion of a charter, shall consider the following:
 - a. If the expansion is for an open charter, the exact geographical boundaries, expressed by city, county, township, or highway boundaries, or a stated radius from the principal or branch office, must be clearly spelled out;
 - b. The negative impact to any other state or federally chartered credit union in North Dakota;
 - c. The expressed need in the expansion area;
 - d. Any expressed opposition to the expansion by any other credit union in North Dakota;
 - e. If the expansion is for an open charter, whether the area being considered is satisfactorily served by a currently operating credit union;
 - f. The credit union must demonstrate the ability to succeed in expanding their field of membership; and
 - g. Any other factor that the state credit union board deems pertinent.

History: Effective April 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06, 6-06-07

13-03-14-03. Application to expand field of membership. A credit union wishing to expand its field of membership shall comply with the following:

1. Approval to expand the field of membership must be given by the board of directors of the credit union by a majority of that board;
2. After approval by the credit union's board of directors, application must be made to the state credit union board to expand its field of membership. The necessary forms for "application for field of membership expansion", including the business plan and the financial impact to the credit union and as required in subsection 3, may be secured from the department of banking and financial institutions;
3. The application to expand the field of membership must be accompanied by the necessary documents for amendment of bylaws as required by North Dakota Century Code section 6-06-04;
4. The credit union shall, at least thirty days prior to the date of consideration by the state credit union board of an open charter application, cause a notice of the proposed field of membership expansion to be published in the official newspaper of the county or counties affected by the proposed charter expansion. The credit union shall, at least thirty days prior to the date of consideration by the state credit union board of a closed charter application, cause a notice of the proposed field of membership expansion to be published in the eight major newspapers in the state set forth in subdivisions a through h of subsection 1 of section 13-01.1-04-01. However, if a closed charter credit union intends to limit its expansion into specified geographical areas within the state, the notice must only be published in the official newspaper of the county or counties affected by the proposed expansion; and
5. The notice must specify the time and place of the meeting of the state credit union board at which the application for the charter expansion will be acted upon. Written comments may be submitted to the board concerning the application, or a written request for an opportunity to be heard before the board may be submitted. The board may, when it believes it to be in the public interest, order a hearing to be held.

History: Effective April 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06, 6-06-07

13-03-14-04. Waiver. The state credit union board, in the exercise of its discretion, may waive the provisions of this chapter when such waiver is in the best interests of a failing institution.

History: Effective April 1, 1988.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-08.2

CHAPTER 13-03-15 BRANCHING

| | |
|-------------|-----------------------------------|
| Section | |
| 13-03-15-01 | Definitions |
| 13-03-15-02 | Establishment of a Branch |
| 13-03-15-03 | Location of Branch |
| 13-03-15-04 | Application to Establish a Branch |
| 13-03-15-05 | Waiver |

13-03-15-01. Definitions.

1. "Branch", for the purpose of this chapter, means any credit union facility which is established apart from the principal office where credit union business is transacted, not including remote electronic facilities, such as automated teller facilities, point of sale terminals, etc.
2. "Closed charter" means a credit union charter issued to serve groups having a common bond of occupation or association.
3. "Geographical boundaries" means the outer perimeters of the area which may be served as expressed in the field of membership authority and may be expressed by city, county, township, or highway boundaries, or a stated radius from the principal office of the credit union.
4. "Open charter" means a credit union charter issued to serve groups within a well-defined rural or urban district.
5. "Principal office" means the location or place of business, or both, in which the credit union was organized and stated on the certificate of organization or any amendments thereto and recorded with the secretary of state.

History: Effective April 1, 1988.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-15-02. Establishment of a branch. Any North Dakota state-chartered credit union may establish a branch facility subject to approval of the state credit union board and in accordance with the provisions of this chapter.

History: Effective April 1, 1988.

General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-15-03. Location of branch.

1. Branches of "closed charter" credit unions established pursuant to the provisions of this chapter, must be reasonably necessary in order to properly serve units of the field of membership which are not being properly served by the principal credit union office. The location of such office shall not be restricted except that, in the judgment of the state credit union board, it must be located so as to accomplish the above.
2. Branches of "open charter" credit unions must be located within the geographical boundaries which are authorized by the charter. The establishment of such branch facility may not, of itself, expand the geographical boundaries of the credit union's field of membership.

History: Effective April 1, 1988.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-15-04. Application to establish a branch.

1. A credit union wishing to establish a branch shall comply with the following:
 - a. Approval to establish the branch must be given by the board of directors of the credit union by a majority of that board;
 - b. After approval by the credit union's board of directors, application must be made to the state credit union board to establish the branch. The necessary forms for "application to establish a branch", including the business plan and the financial impact to the credit union, may be secured from the department of banking and financial institutions;
 - c. The credit union shall, at least thirty days prior to the date of consideration by the state credit union board, cause to be published a notice in the official newspaper of the county or counties affected by the proposed branch expansion. The notice must specify the field of membership, and, if an open charter, the geographical boundaries; and
 - d. The notice must specify the time and place of the meeting of the state credit union board at which the application

for establishing the branch will be acted upon. Written comments may be submitted to the board concerning the application, or a written request for an opportunity to be heard before the board may be submitted. The board may, when it believes it to be in the public interest, order a hearing to be held.

2. The state credit union board, when considering the branching of a credit union, shall consider the following:
 - a. If the branch is for an open charter, and if the application to establish the branch is accompanied by an application to expand the field of membership, the exact geographical boundaries, expressed by city, county, township, or highway boundaries, or a stated radius from the branch office, must be clearly spelled out;
 - b. The negative impact to any other state or federally chartered credit union in North Dakota;
 - c. The expressed need in the branching area;
 - d. Any expressed opposition to the branch by any other credit union in North Dakota;
 - e. If the branch is for an open charter, whether the area being considered is satisfactorily served by a currently operating credit union;
 - f. The credit union must demonstrate ability to succeed with the branch; and
 - g. Any other factor that the state credit union board deems pertinent.

History: Effective April 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-15-05. Waiver. The state credit union board, in the exercise of its discretion, may waive the provisions of this chapter when such waiver is in the best interests of a failing institution.

History: Effective April 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-08.1

MAY 1988

STAFF COMMENT: Chapters 13-03-11 and 13-03-12 contain all new material but are not underscored so as to improve readability.

CHAPTER 13-03-11
AGRICULTURAL LOANS

Section

| | |
|-------------|---------------------------|
| 13-03-11-01 | Definitions |
| 13-03-11-02 | Written Loan Policies |
| 13-03-11-03 | Loans to One Borrower |
| 13-03-11-04 | Allowance for Loan Losses |
| 13-03-11-05 | Prohibitions |
| 13-03-11-06 | Equity Kickers |
| 13-03-11-07 | Prohibited Fees |

13-03-11-01. Definitions.

1. "Agricultural loan" for the purposes of this chapter, means any loan, line of credit, or letter of credit, the proceeds of which will be used for agricultural purposes, except that the following may not be considered an "agricultural loan", regardless of purpose:
 - a. A loan that is fully secured by shares in the credit union or deposits in other financial institutions.
 - b. A loan, the proceeds of which are used for agricultural purposes, made to a borrower or an associated member (as defined in subsection 3 of this section) which, when added to other such loans to the borrower or associated member, is less than forty thousand dollars.

- c. That portion of a loan, the repayment of which is insured or guaranteed by, or where there is an advance commitment to purchase in full by, any agency of the federal government or of a state or any of its political subdivisions.
2. "Associated member" means any member with a common ownership, investment, or other pecuniary interest in an agricultural endeavor.
3. "Immediate family member" means a spouse or other family member living in the same household.
4. "Reserves" means all reserves, including the allowance for loan losses account, and undivided earnings or surplus.
5. "Senior management employees" means the credit union's chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officers (e.g., assistant president, vice president or assistant treasurer/manager) and the chief financial officer (comptroller), and "immediate family member" means a spouse or other family member living in the same household.

History: Effective May 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-11-02. Written loan policies. The board of directors shall adopt specific agricultural loan policies and review them at least annually. The policies must, at a minimum, address the following:

1. Types of agricultural loans that will be made;
2. The credit union's trade area for agricultural loans;
3. Maximum amount of credit union assets, in relation to reserves, that will be invested in agricultural loans;
4. Maximum amount of credit union assets, in relation to reserves, that will be loaned to any one member or group of associated members;
5. Qualifications and experience of personnel involved in making and administering agricultural loans;
6. Analysis of the ability of the borrower to repay the loan, including length of time the borrower has been in operation; balance sheet; ratio analysis of cash flow, income and expenses, and tax data;

7. Financial statements will be obtained, and other documentation required to be maintained and updated, including tax returns, and will be updated on an annual or more frequent basis;
8. Collateral requirements, including loan-to-value ratios; appraisal, title search, and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is reevaluated;
9. Appropriate interest rates and maturities of agricultural loans;
10. Loan monitoring, servicing, and followup procedures, including collection procedures; and
11. Identification, by position, of those senior management employees prohibited by section 13-03-11-05 from receiving member agricultural loans.

History: Effective May 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-11-03. Loans to one borrower. Unless a greater amount is approved by the state credit union board, the aggregate amount of outstanding agricultural loans and business loans as defined in section 13-03-12-01 to any one member or group of associated members may not exceed twenty percent of the credit union's reserves. A credit union may lend an additional ten percent of the credit union's reserves to any one member or group of associated members if such credit is extended for seasonal advances associated with operating purposes for the production of farm products and repayment of which is required to be made within a normal business cycle not to exceed twelve months. The exceptions to the "agricultural loan" definition set forth in subdivisions a and c of subsection 1 of section 13-03-11-01 and the exceptions to the "business loans" set forth in subdivisions a, b, and d of subsection 1 of section 13-03-12-01 may not be calculated in determining the twenty percent limitation. The dollar exceptions set forth in subdivision c of subsection 1 of section 13-03-12-01 for "business loans" (twenty-five thousand dollars) and subdivision b of subsection 1 of section 13-03-11-01 for "agricultural loans" (forty thousand dollars) may not be aggregated for purposes of determining loan limitations under this section. Therefore, the exception for "business loans" may never exceed twenty-five thousand dollars and the aggregate exception for "business loans" and "agricultural loans" may never exceed forty thousand dollars. Credit unions seeking an exception from the limits of this section shall present the board with, at a minimum: the higher limit sought, an explanation of the need to raise the limit, an analysis of the credit union's prior experience in making member agricultural loans, and a copy of its agricultural lending policy.

History: Effective May 1, 1988.

General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-11-04. Allowance for loan losses.

1. The determination whether a member agricultural loan will be classified as substandard, doubtful, or loss, for purposes of the valuation allowance for loan losses, will rely on factors not limited to the delinquency of the loan. Nondelinquent loans may be classified, depending on an evaluation of factors, including, but not limited to, the adequacy of analysis and documentation.
2. Loan classifications.
 - a. Substandard. A loan classified as substandard is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the credit union will sustain some loss if the deficiencies are not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard.
 - b. Doubtful. A loan classified doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include: proposed merger, acquisition, or liquidation actions, capital injection, perfecting liens on additional collateral, and refinancing plans.
 - c. Loss. Loans classified loss are considered uncollectible and of such little value that their continuance as assets is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value but, rather, it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.
3. Loans classified must be reserved as follows:

- a. Loss loans at one hundred percent of outstanding amount;
- b. Doubtful loans at fifty percent of outstanding amount; and
- c. Substandard loans at ten percent of outstanding amount unless other factors (e.g., history of such loans at the credit union) indicate a greater or lesser amount is appropriate.

History: Effective May 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-11-05. Prohibitions. Senior management employees. A credit union may not make agricultural loans to the following nonvolunteer, senior management employees, or to any associated member or immediate family member of such employees:

1. Any member of the board of directors who is compensated;
2. The credit union's chief executive officer (typically this individual holds the title of president or general manager);
3. Any assistant chief executive officers (e.g., assistant president, vice president, assistant manager, or treasurer); and
4. The chief financial office (comptroller).

History: Effective May 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-11-06. Equity kickers. A credit union may not grant a member an agricultural loan where a portion of the amount of income to be received by the credit union in conjunction with such loan is tied to the profit to the agricultural endeavor for which the loan is paid.

History: Effective May 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-11-07. Prohibited fees. A credit union may not make any loan or extend any line of credit if, either directly or indirectly, any commission, fee, or other compensation is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. However, salary for employees is not prohibited by this section.

History: Effective May 1, 1988.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

CHAPTER 13-03-12 BUSINESS LOANS

| | |
|-------------|---------------------------|
| Section | |
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| 13-03-12-02 | Written Loan Policies |
| 13-03-12-03 | Loans to One Borrower |
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| 13-03-12-05 | Prohibitions |
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| 13-03-12-07 | Prohibited Fees |

13-03-12-01. Definitions.

1. "Associated member" means any member with a common ownership, investment or other pecuniary interest in a business or commercial endeavor.
2. "Business loan" for the purposes of this chapter, means any loan, line of credit, or letter of credit, the proceeds of which will be used for a nonagricultural commercial, corporate, or business purpose, except that the following may not be considered a "business loan" regardless of purpose:
 - a. A loan that is fully secured by a lien on a one to four family dwelling that is:
 - (1) The member's primary residence;
 - (2) The member's secondary residence; or
 - (3) One such other dwelling owned by the member;
 - b. A loan that is fully secured by shares in the credit union or deposits in other financial institutions;
 - c. A loan, the proceeds of which are used for a commercial, corporate, or business purpose, made to a borrower or an associated member (as defined in subsection 1) which, when added to other such loans to the borrower or associated member, is less than twenty-five thousand dollars;
 - d. That portion of a loan, the repayment of which is insured or guaranteed by, or where there is an advance commitment to purchase in full by, any agency of the federal

government or of a state or any of its political subdivisions.

3. "Immediate family member" means a spouse or other family member living in the same household.
4. "Reserves" means all reserves, including the allowance for loan losses account, and undivided earnings or surplus.
5. "Senior management employees" means the credit union's chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officers (e.g., assistant president, vice president or assistant treasurer/manager) and the chief financial officer (comptroller), and "immediate family member" means a spouse or other family member living in the same household.

History: Effective May 1, 1988.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-12-02. Written loan policies. The board of directors shall adopt specific business loan policies and review them at least annually. The policies must, at a minimum, address the following:

1. Types of business loans that will be made;
2. The credit union's trade area for business loans;
3. Maximum amount of credit union assets, in relation to reserves, that will be invested in business loans;
4. Maximum amount of credit union assets, in relation to reserves, that will be loaned to any one member or group of associated members;
5. Qualifications and experience of personnel involved in making and administering business loans;
6. Analysis of the ability of the borrower to repay the loan, including length of time the business has been in operation; balance sheet, trend and structure analysis; ratio analysis of cash flow, income and expenses, and tax data; leveraging; and comparison with industry averages;
7. Financial statements will be obtained, and other documentation required to be maintained, including tax returns, will be updated on an annual or more frequent basis;
8. Collateral requirements, including loan-to-value ratios; appraisal, title search, and insurance requirements; steps to

be taken to secure various types of collateral; and how often the value and marketability of collateral is reevaluated;

9. Appropriate interest rates and maturities of business loans;
10. Loan monitoring, servicing, and followup procedures, including collection procedures;
11. Provision for periodic disclosure to the credit union's members of the number and aggregate dollar amount of member business loans and the number and aggregate dollar amount of such loans made to officials and employees of the credit union that are subject to this section; and
12. Identification, by position, of those senior management employees prohibited by section 13-03-12-05 from receiving member business loans.

History: Effective May 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-12-03. Loans to one borrower. Unless a greater amount is approved by the state credit union board, the aggregate amount of outstanding member business loans and agricultural loans as defined in section 13-03-11-01, to any one member or group of associated members may not exceed twenty percent of the credit union's reserves. The exceptions to the "business loan" definition set forth in subdivisions a, b, and d of subsection 2 of section 13-03-12-01 and the exceptions to the "agricultural loans" set forth in subdivisions a and c of subsection 1 of section 13-03-11-01 may not be calculated in determining the twenty percent limit. The dollar exceptions set forth in subdivision c of subsection 2 of section 13-03-12-01 for "business loans" (twenty-five thousand dollars) and subdivision b of subsection 1 of section 13-03-11-01 for "agricultural loans" (forty thousand dollars) may not be aggregated for purposes of determining loan limitations under this section. Therefore, the exception for "business loans" may never exceed twenty-five thousand dollars and the aggregate exception for "business loans" and "agricultural loans" may never exceed forty thousand dollars. Credit unions seeking an exception from the twenty percent limit must present the board with, at a minimum: the higher limit sought; an explanation of the need to raise the limit; and analysis of the credit union's prior experience in making member business loans; and a copy of its business lending policy.

History: Effective May 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-12-04. Allowance for loan losses.

1. The determination whether a member business loan will be classified as substandard, doubtful, or loss, for purposes of the valuation allowance for loan losses, will rely on factors not limited to the delinquency of the loan. Nondelinquent loans may be classified, depending on an evaluation of factors, including, but not limited to, the adequacy of analysis and documentation.
2. Loan classifications.
 - a. Substandard. A loan classified as substandard is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the credit union will sustain some loss if the deficiencies are not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard.
 - b. Doubtful. A loan classified doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include: proposed merger, acquisition, or liquidation actions, capital injection, perfecting liens on additional collateral, and refinancing plans.
 - c. Loss. Loans classified loss are considered uncollectible and of such little value that their continuance as assets is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value but, rather, it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.
3. Loans classified must be reserved as follows:
 - a. Loss loans at one hundred percent of outstanding amount;
 - b. Doubtful loans at fifty percent of outstanding amount; and
 - c. Substandard loans at ten percent of outstanding amount

unless other factors (e.g., history of such loans at the credit union) indicate a greater or lesser amount is appropriate.

History: Effective May 1, 1988.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-12-05. Prohibitions. Senior management employees. A credit union may not make member business loans to the following nonvolunteer, senior management employees, or to any associated member or immediate family member of such employees:

1. Any member of the board of directors who is compensated;
2. The credit union's chief executive officer (typically this individual holds the title of president or general manager);
3. Any assistant chief executive officers (e.g., assistant president, vice president, assistant manager, or treasurer); and
4. The chief financial officer (comptroller).

History: Effective May 1, 1988.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-12-06. Equity kickers. A credit union shall not grant a member a business loan where a portion of the amount of income to be received by the credit union in conjunction with such loan is tied to the profit to the business endeavor for which the loan is paid.

History: Effective May 1, 1988.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-12-07. Prohibited fees. A credit union may not make any loan or extend any line of credit if, either directly or indirectly, any commission, fee, or other compensation is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. However, salary for employees is not prohibited by this section.

History: Effective May 1, 1988.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

TITLE 33

**Health and Consolidated Laboratories,
Department of**

APRIL 1988

STAFF COMMENT: Chapter 33-03-23 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-03-23
HEALTH CARE DATA

| | |
|-------------|--|
| Section | |
| 33-03-23-01 | Definitions |
| 33-03-23-02 | Requests for Data |
| 33-03-23-03 | Prepublication Review |
| 33-03-23-04 | Mutual Responsibilities of the Department and the Board with Regard to a Physician Directory |
| 33-03-23-05 | Confidentiality |
| 33-03-23-06 | Accessibility |
| 33-03-23-07 | Maintenance of Data |
| 33-03-23-08 | Interagency Agreements |
| 33-03-23-09 | Civil Penalty |

33-03-23-01. Definitions. As used in this article, except as otherwise specifically provided or where the context indicates otherwise:

1. "Board" means the North Dakota board of medical examiners.
2. "Committee" means the health care data committee established in accordance with North Dakota Century Code chapter 23-01.1.
3. "Comprehensive health association of North Dakota members" means those insurance companies who are participating members in the North Dakota comprehensive health association as

determined by the insurance commissioner under North Dakota Century Code section 26.1-08-03.

4. "Council" means the state health council as established under North Dakota Century Code section 23-01-02.
5. "Data supplier" means any insurer, nonprofit health service corporation, health maintenance organization, self-funded employer health insurance plan regulated by the North Dakota insurance department, or state agency which the committee requires to provide data.
6. "Department" means the North Dakota state department of health and consolidated laboratories.
7. "Diagnosis related group" (DRG) means the categorizations established by the health care financing administration for the purposes of hospital payment and any subsequent similar set of categorizations so established.
8. "Health maintenance organization" means any health maintenance organization certified by the North Dakota insurance department.
9. "Hospital data" means any claims for inpatient, outpatient, or ambulatory surgical services or other services normally submitted to the third-party payer on form UB-82 or a revised form.
10. "Insurers" means any insurance company licensed to do business in North Dakota by the insurance department.
11. "Provider" means a person, agency, or organization which is engaged in the provision of health care or nursing home care services to the public.
12. "UB-82" means the health care financing administration form UB-82 or successor forms.

History: Effective April 1, 1988.

General Authority: NDCC 23-01.1-04

Law Implemented: NDCC 23-01.1-04

33-03-23-02. Requests for data. The committee may require data suppliers and agencies of state government to provide certain data and information.

1. The committee shall establish uniform formats for the different types of data for use by data suppliers in providing hospitalization data, nursing home data, health maintenance organization data, and other types of data as the committee finds necessary.

2. Data required to be submitted must be provided to the committee in the format established or, if the data supplier requests in writing, in a format which is technically equivalent and which supplies all of the necessary information. Third-party payers who cannot meet these reporting specifications and third-party payers who determine that it is not economically feasible to report in accordance with these specifications shall request in writing approval to report the data in a specific, alternative form. These requests must be submitted to and approved by the department.
3. Data requests must be specific regarding the time period covered, data elements to be provided, and the form and format in which the data is to be provided.
4. Hospital data required to be provided must be limited to those data elements provided for on the health care financing administration form UB-82 (or replacement form) using the current definitions developed by the North Dakota uniform billing committee.
5. Data must be provided within forty-five days of the committee's request for data. A fifteen-day extension of time for providing data may be granted if the data source adequately justifies the delay.
6. Prior to collecting hospital data from any data supplier, the data supplier must be provided an exact format for reporting data and an explicit description of each data item to be reported. Descriptions of data elements shall include specifications in terms of form location, definitions and alternate specifications, and definitions for those data suppliers that do not maintain the exact UB-82 data as described in the North Dakota uniform billing procedures manual, UB-82. Those data suppliers that maintain similar elements shall report the comparable data elements ~~that~~ they maintain and a detailed code structure for each element to the department.
7. Data must be collected at least annually but not more often than quarterly from the following data suppliers:
 - a. Those comprehensive health association of North Dakota members, including health maintenance organizations, found by the North Dakota insurance commissioner to be subject to an assessment of one percent or more as a participating member of the comprehensive health association of North Dakota.
 - b. The committee may request, but may not require, that self-funded employer health plans submit claims data.

- c. State agencies that have paid any inpatient claims during the calendar year, including medicare and medicaid data in the possession of the agency.
8. The committee shall require that the data suppliers include a contract identifier number for contracts or plans paid for or subsidized by the North Dakota public employees retirement system or the comprehensive health insurance association of North Dakota and for those employer groups who have requested in writing that the department retain a contract identifier number.
9. Data must be collected at least annually, but not more often than quarterly, from the department of human services regarding basic care, intermediate care, and skilled nursing care provided in long-term care facilities located in this state. The data must include medicare and medicaid claims for these facilities as collected by the department of human services.

History: Effective April 1, 1988.

General Authority: NDCC 23-01.1-04

Law Implemented: NDCC 23-01.1-02, 23-01.1-04

33-03-23-03. Prepublication review. Prior to publication the committee shall allow data suppliers and providers an opportunity to review the data to be published and comment.

Data reports and analyses which are to be made available to the general public and which identify specific providers or which are solely derived from the records of a specific data supplier are subject to the following prepublication review procedures:

1. Data, information, analyses, or reports relating to individual providers must be submitted to the provider prior to publication for verification of the accuracy of the information contained in the report. In the event that the provider finds a discrepancy between the data available to the provider and the information contained in the draft report, the provider may submit information substantiating or refuting the draft report.
2. If the committee has not received the provider's response in writing within thirty days of the mailing date of the draft report, the committee shall assume that the data contained in the report has been verified and shall proceed with publication.
3. If the provider responds within thirty days of the mailing date of the draft report that the information is incorrect and provides documentation that an error has occurred, the

committee may accept the documentation and revise the draft report correspondingly or it may reject the documentation as inadequate and proceed with publication.

The committee shall notify the provider of its decision.

4. The provider may appeal the decision of the committee pursuant to North Dakota Century Code chapter 28-32.
5. Providers may have their data-specific comments published as an appendix to the final report.

History: Effective April 1, 1988.
General Authority: NDCC 23-01.1-04
Law Implemented: NDCC 23-01.1-02

33-03-23-04. Mutual responsibilities of the department and the board with regard to a physician directory. The department and the board shall establish, in a memorandum of agreement approved by the committee, the procedures for sharing the cost of producing and distributing a directory of physicians licensed to practice in North Dakota. The memorandum of understanding must specify the relative responsibilities of the department and the board for the collection, maintenance, and analysis of the information contained in the directory as specified by law.

1. The department shall prepare and distribute a uniform survey form to all physicians currently practicing medicine in North Dakota from a current listing of licensed physicians supplied by the board.
2. Physicians who choose to provide fee information for publication must complete the required information items contained in the survey form and return it within forty-five days of the mailing date of the survey.
3. The department shall devise a format for the separate section of the physician directory containing physician fee information and for determining its method of publication. The extent of the distribution of the physician directory must be determined in conjunction with the board and set forth in the memorandum of understanding.
4. The board may charge a reasonable fee for providing copies of the directory.
5. The publication of the physician directory is not subject to the prepublication review procedures of section 33-03-23-03.

History: Effective April 1, 1988.
General Authority: NDCC 23-01.1-04
Law Implemented: NDCC 23-01.1-03

33-03-23-05. Confidentiality. Individual patient confidentiality shall be protected.

1. The committee shall adopt such procedures as it finds necessary for the protection of patient confidentiality provided that in no case shall data that specifically identify a patient by name or that could be used to identify a patient by name be released to the public, data researchers, or employers. Any provider that is identified in the claims data submitted to the committee may be identified by name in the tabulations released by the committee.
2. The committee may enter into agreements with data users, researchers, and employers for the release of data in other than final published form. The committee shall establish within these agreements appropriate safeguards regarding the release of such data so that individual patients will not be identified. The agreements shall prohibit the public re-release of provider specific data by data users, researchers, and employers.

History: Effective April 1, 1988.
General Authority: NDCC 23-01.1-04
Law Implemented: NDCC 23-01.1-05

33-03-23-06. Accessibility and cost of reports. The committee shall make certain information available to the public, providers, data suppliers, researchers, and state agencies.

1. The committee shall direct and the department shall produce an annual report comparing the cost of hospitalization by hospital and for those diagnosis-related groups selected by the committee by diagnosis-related group.
2. Any person, organization, governmental agency, or other entity may request special tabulations of the UB-82 data that are reported to the department, or direct access to a machine-readable, final data set prepared and maintained by the department. The final data set must include the exact list of data elements specified by the committee. All requests must be made in writing to the department. The written request must include the name, address, telephone number, employer, or organizational affiliation, and a detailed description of the data or tabulations being requested.
3. With the exception of those analyses, reports, and projects undertaken pursuant to section 33-03-23-08, no special tabulations may be produced by the department until all editing and updating of the data for the year to be included in the tabulations have been completed, and the data set is determined to be the final corrected data set.

4. When a request for special tabulations or computer tapes is received by the department that would include identification of a specific provider in the special tabulations or on the requested computer tapes, the provider must be notified by the department that data including the provider identification are being released. The notification must consist of a copy of the completed request form filed with the department and a cover letter indicating the anticipated date that the data shall be provided.
5. All direct and indirect costs associated with the fulfillment of special requests including staff time, computer time, copying costs, and supplies must be borne by the requestor.

History: Effective April 1, 1988.

General Authority: NDCC 23-01.1-04

Law Implemented: NDCC 23-01.1-02, 23-01.1-06

33-03-23-07. Maintenance of data. All data reported to the committee in response to the committee's requests for necessary data must be maintained for five years. A diagnosis-specific subset of the hospitalization claims data set (UB-82) must be maintained for a period of not less than ten years.

History: Effective April 1, 1988.

General Authority: NDCC 23-01.1-04

Law Implemented: NDCC 23-01.1-02

33-03-23-08. Interagency agreements.

1. The committee shall maintain memoranda of understanding with the department of human services, the workers compensation bureau, the public employees retirement system, the office of the insurance commissioner, and any other state agency which the committee deems to have access to or authority over, or both, significant health care and nursing home data resources, for the sharing of information, data, data processing resources, and expertise.
2. These memoranda of understanding must contain provisions regarding the security and storage of data and data processing media, patient confidentiality, release restrictions, and the routine uses of the data reports to be produced.

History: Effective April 1, 1988.

General Authority: NDCC 23-01.1-04

Law Implemented: NDCC 23-01.1-02

33-03-23-09. Civil penalty. Failure to respond to a request for data as set forth in this chapter shall constitute a violation subject

to a civil penalty not to exceed five hundred dollars per day of violation. Procedures for the determination of a violation, assessment, and appeal of a penalty are governed by North Dakota Century Code chapter 28-32.

History: Effective April 1, 1988.
General Authority: NDCC 23-01.1-04
Law Implemented: NDCC 23-01.1-07

JUNE 1988

33-07-01-12. Medical staff. The hospital shall have a medical staff organized under bylaws approved by the governing body, and responsible to the governing body of the institution for the quality of all medical care provided patients in the hospital and for the ethical and professional practices of its members. The bylaws must provide that formal professional review actions, including actions involving the credentialing, competence, or professional conduct of medical staff members concerning hospital privileges, must be conducted substantially in the following manner:

1. Notice of proposed action. The medical staff member must be given notice stating:
 - a. That a professional review action has been proposed to be taken against the medical staff member;
 - b. The reasons for the proposed action;
 - c. That the medical staff member has the right to request a hearing on the proposed action;
 - d. Any time limit (of not less than thirty days) within which to request such a hearing; and
 - e. A summary of the rights in the hearing.
2. Notice of hearing. If a hearing is requested on a timely basis, the medical staff member involved must be given notice stating:
 - a. The place, time, and date of the hearing, which date may not be less than thirty days after the date of the notice; and

- b. A list of the witnesses (if any) expected to testify at the hearing on behalf of the professional review body.
3. Conduct of hearing and notice. If a hearing is requested on a timely basis:
- a. The hearing must be held, unless the medical staff member fails without good cause to appear:
- (1) Before an arbitrator mutually acceptable to the medical staff member and the governing board,
 - (2) Before a hearing officer who is appointed by the hospital and who is not in direct economic competition with the involved medical staff member, or
 - (3) Before a panel of other medical members who are appointed by the hospital and who are not in direct economic competition with the involved medical staff member;
- b. The involved medical staff member has the right:
- (1) To representation by an attorney or other person of the medical staff member's choice;
 - (2) To have a record made of the proceedings, copies of which may be obtained by the medical staff member upon payment of any reasonable preparation charges;
 - (3) To call, examine, and cross-examine witnesses;
 - (4) To present evidence determined to be relevant by the hearing officer, regardless of its admissibility in a court of law; and
 - (5) To submit a written statement at the close of the hearing; and
- c. The medical staff member has the right, at the close of the hearing:
- (1) To receive the written recommendation of the arbitrator, officer, or panel, including a statement of the basis for the recommendations; and
 - (2) To receive a written decision of the hospital's governing board, including a statement of the basis of the decision.

Any action relating to professional incompetence or professional conduct adversely affecting the clinical

privileges of the medical staff member must be reported by the governing board of the hospital, within ten days, to the state board charged with responsibility for licensure of the professional to practice.

4. Adequate procedures in investigations or health emergencies. For purposes of this section, nothing in this section may be construed as:

a. Requiring the procedures referred to in subsection 3:

(1) Where there is no adverse professional review action taken; or

(2) In the case of a suspension or restriction of clinical privileges, for a period of not longer than fourteen days, during which an investigation is being conducted to determine the need for a professional review action; or

b. Precluding an immediate suspension or restriction of clinical privileges, subject to subsequent notice and hearing or other adequate procedures, where the failure to take such an action may result in an imminent danger to the health of any individual.

History: Amended effective June 1, 1988.

General Authority: NDCC 23-01-03(3), 23-01-03(4), 28-32-02

Law Implemented: NDCC ~~28-32-02~~ 23-01-03(3), 23-01-03(4)

33-09-03-02. Notification of intent - Filing fee.

1. Each applicant shall submit a notification of intent on forms prescribed by the health council. Each notification of intent must be accompanied by a filing fee of seventy-five dollars payable to the North Dakota state department of health and consolidated laboratories.
2. The department, with concurrence of the health council, will determine purview.
3. The department will notify the applicant of the purview determination or seek additional information necessary to the determination of purview within fifteen working days of the receipt of a notification of intent. When appropriate, application forms prescribed by the health council will be sent to the applicant by the department.
4. Notifications of intent ~~deemed subject to review~~ will expire one year following the mailing of the notice of the purview determination. Failure In the case of any notification of intent deemed not subject to review, failure by the applicant

to obligate funds for implementation of the proposal within the designated time will require the filing of a new notification of intent prior to implementation. In the case of any notification of intent deemed subject to review, failure by the applicant to complete the application form and to provide sufficient information to satisfy requirements to deem the application complete, as specified in subdivision b of subsection 1 of section 33-09-03-03, prior to the expiration of the notification of intent will cause both the notification of intent and the application to expire.

History: Effective November 1, 1987; amended effective June 1, 1988.

General Authority: NDCC 23-01-03, 23-17.2-05

Law Implemented: NDCC 23-17.2-09

TITLE 38
Highway Patrol

MAY 1988

38-06-03-01. Permit fees. The following fees are to be effective January 1, 1988; however, fees may be paid prior to January 1, 1988, for those permitted movements to be made after January 1, 1988.

1. The fee for registered motor vehicles hauling or towing overdimensional or overweight, or both, loads is ten dollars per each single trip permit.
2. The fee for registered motor vehicles that exceed legal size or legal weight, or both, limitations is ten dollars per each single trip permit.
3. The fee for nonregistered self-propelled special mobile equipment that exceeds legal weight limitations is ~~twenty-five~~ fifteen dollars per each single trip permit.
4. The fee for nonregistered self-propelled special mobile equipment that exceeds legal size limitations only is ten dollars per each single trip permit.
5. The fee for each identification supplement, identifying a motor vehicle and axle configuration so that self-issuing single trip permits can be used, is ten dollars each.
6. The fee for exceeding the federal gross vehicle weight limitation of eighty thousand pounds [36,287 kilograms] on the interstate highway system is five dollars per each "interstate only" single trip permit.
7. The fee for vehicles hauling overwidth loads of hay bales or haystacks, overwidth self-propelled fertilizer spreaders, and overwidth hay grinders is fifty dollars per year.

8. The fee when movement requires highway department engineer approval is fifteen dollars in addition to permit fee.
9. There is an additional heavyweight fee of seventy dollars per ton for all weight in excess of one hundred five thousand five hundred pounds [47,910 kilograms] gross vehicle weight but not to exceed two hundred thousand pounds [90,718 kilograms] gross vehicle weight. The fee may be prorated on a monthly basis and does not apply on those motor vehicles which are North Dakota titled and registered.
10. There is an additional ton/mile fee on all those movements that exceed two hundred thousand pounds [90,718 kilograms] gross vehicle weight. The following ton/mile fee is assessed upon that portion of gross vehicle weight exceeding the maximum legal gross weight of one hundred five thousand five hundred pounds [47,910 kilograms].

| Gross Vehicle Weight | Ton/Mile Fee | Minimum |
|----------------------|--------------|------------------|
| 200,001 to 210,000 | \$.05 | \$ 50.00 |
| 210,001 to 220,000 | .10 | 50.00 |
| 220,001 to 230,000 | .15 | 50.00 |
| 230,001 to 240,000 | .20 | 50.00 |
| 240,001 to 250,000 | .25 | 50.00 |
| 250,001 to 275,000 | .50 | 100.00 |
| 275,001 to 300,000 | 2.00 | 200.00 |
| 300,001 to 325,000 | 3.00 | 350.00 |
| 325,001 to 350,000 | 4.00 | 500.00 |
| 350,001 to 400,000 | 7.00 | 1,000.00 |
| 400,001 to 450,000 | 10.00 | 2,000.00 |
| 450,001 to 500,000 | 15.00 | 3,000.00 |
| 500,001 to 550,000 | 20.00 | 5,000.00 |
| 550,001 to 600,000 | 30.00 | 7,500.00 |
| 600,001 to 650,000 | 40.00 | 10,000.00 |
| 650,001 to 700,000 | 50.00 | 15,000.00 |
| 700,001 to 750,000 | 75.00 | 25,000.00 |
| 750,001 or more | 100.00 | Minimum one mile |

11. On those movements of extraordinary size or weight that require highway patrol escort there is an escort service fee of thirty cents per mile [kilometer] and thirty dollars per hour.

History: Effective January 1, 1988; amended effective May 1, 1988.

General Authority: NDCC 39-12-02, 39-12-04

Law Implemented: NDCC 39-12-02

TITLE 48
Livestock Sanitary Board

APRIL 1988

48-09-01-02. Brand inspection. For the purpose of complying with North Dakota Century Code chapters 36-05, 36-09, and 36-22:

1. When cattle, horses, or mules are offered for sale at any brand inspection point, proof of ownership must be established by the shipper of the cattle, horses, or mules, either by a recorded brand, bill of sale, livestock market clearance, local inspection certificate, or an affidavit of ownership.
2. If any animal inspected bears the recorded brand of the shipper or seller and also bears a recorded brand or brands other than the recorded brand of the shipper or seller, then the said shipper or seller may be required, at the discretion of the brand inspector, to establish ownership of such animal by bills of sale, market clearance, local inspection certificate, or any other satisfactory evidence of ownership.
3. No claim for feed, pasture, or gathering shall be allowed at market. All such claims must be referred to and approved for payment from proceeds of sale by the North Dakota stockmen's association, unless payment is authorized in writing by the owner of the brand carried by such livestock.
4. Sales agency, packing plant, and buying stations where inspection is maintained must furnish necessary help without charge to assist the brand inspectors in handling cattle, horses, or mules to be inspected for brands.
5. All cattle, horses, or mules entering an inspection point shall be placed in pens assigned to individual sellers, and shall be kept separate from all other cattle, horses, or mules until inspected by the brand inspector and released for sale or shipment.

6. No cattle, horses, or mules shall be inspected after dark or by artificial light or inspected when loaded in trucks; provided, however, that under emergency circumstances deemed by the brand inspector to warrant inspection by artificial light, such inspection may be made at places designated by the chief brand inspector as having lighting which meets the specifications required by the chief brand inspector for inspection by artificial light. The chief brand inspector shall have authority to give approval to premises which meet such specifications, and to extend or remove such approval.
7. It shall be the responsibility of the North Dakota stockmen's association to provide a sufficient and competent force of brand inspectors at inspection points to carry on the brand inspection in an efficient and timely manner.
8. Brand inspectors may not inspect their own livestock or trade at a market where they conduct inspections.
9. A buying station is a point where cattle, horses, or mules are gathered for sale.
10. A bill of lading is required by railroads or motor carriers when livestock is going to out-of-state markets where inspection is maintained for North Dakota livestock.
11. The North Dakota stockmen's association shall, when determined advisable by the chief brand inspector, make an inspection of any butcher shop, buying station, locker plant, or custom meat cutting and processing establishment where cattle are slaughtered or processed for the owner for a fee. Authorized inspectors of the association, when directed to do so by the chief brand inspector, shall be authorized to go upon the premises of any such butcher shop, buying station, locker plant, or custom meat cutting establishment, for the purpose of making physical inspection on the premises as to the ownership or identity of animals or their carcasses that may be found therein.
12. A fee of fifty cents per head on all cattle, horses, or mules subject to brand inspection at points where such inspection is maintained shall be paid by the owner of the cattle, horses, or mules, and when sold by a commission firm, sales agency, or when purchased by a buying station operator or packing plant, it shall be the obligation of the commission firm, sales agency, buying station operator, or packing plant company to collect and withhold from the proceeds of such sale the inspection fee and to pay over to the association upon demand the amounts so collected without any deductions whatsoever. Whenever a brand inspector is required to travel to points other than the inspector's official stations to perform local brand inspection, the inspector shall be paid mileage by the shipper, owner, or consignor, at the same rate per mile [1.61

kilometers] paid state officials in addition to the regular brand inspection fee. A permanent transportation inspection permit may be obtained, for horses and mules only, by payment of a ten dollar inspection fee.

13. The following terminal markets and auction markets outside the state of North Dakota are designated official brand inspection markets for North Dakota cattle, horses, and mules by the North Dakota stockmen's association: Sioux City stockyards, Sioux City, Iowa; Mobridge livestock auction, Mobridge, South Dakota; McLaughlin sales, inc., McLaughlin, South Dakota; Lemmon livestock market, inc., Lemmon, South Dakota; Sisseton livestock sale co., Sisseton, South Dakota; Britton livestock sale co., Britton, South Dakota; hub city livestock sale co., Aberdeen, South Dakota; Aberdeen livestock sales, Aberdeen, South Dakota; Leola livestock sale co., Leola, South Dakota; Herreid livestock sale co., Herreid, South Dakota; Bowdle livestock sales, co., Bowdle, South Dakota; Baker livestock auction, inc., Baker, Montana; Glendive livestock auction, Glendive, Montana; Sidney livestock market center, Sidney, Montana.

History: Amended effective April 1, 1980; July 1, 1982; June 1, 1983; April 1, 1988.

General Authority: NDCC 36-22-03

Law Implemented: NDCC 36-05-10, 36-09-15, 36-09-23, 36-22-02, 36-22-03

TITLE 55.5
Occupational Therapy Practice, Board of

2. **Board membership.** The board consists of five members appointed by the governor. Three members are occupational therapists, one member is an occupational therapy assistant, and one member is a consumer. Each board member serves a term of three years. No member may serve more than two successive terms on the board.
3. **Officers.** Officers are elected annually. The board may hire an executive secretary as necessary.
4. **Inquiries.** Inquiries regarding the board may be addressed to:

Board of Occupational Therapy Practice
1834 South Fifteenth Street
Fargo, North Dakota 58103

or

Board of Occupational Therapy Practice
North Dakota State Department of Health
and Consolidated Laboratories
Division of Legal Services
1200 Missouri Avenue, P.O. Box 5520
Bismarck, North Dakota 58502

History: Effective April 1, 1988.
General Authority: NDCC 28-32-02.1, 43-40-05
Law Implemented: NDCC 43-40-04

ARTICLE 55.5-02

OCCUPATIONAL THERAPY PRACTICE LICENSURE

| | |
|------------|---------------------------------------|
| Chapter | |
| 55.5-02-01 | Initial Licensure and Renewals |
| 55.5-02-02 | Code of Ethics |
| 55.5-02-03 | Supervision |
| 55.5-02-04 | Grievances |
| 55.5-02-05 | Address, Name, or Educational Changes |

CHAPTER 55.5-02-01 INITIAL LICENSURE AND RENEWALS

| | |
|---------------|-----------------------|
| Section | |
| 55.5-02-01-01 | Licensure Application |
| 55.5-02-01-02 | Licensure Renewal |
| 55.5-02-01-03 | Fees |

55.5-02-01-04 Continuing Competency
55.5-02-01-05 Passing Score

55.5-02-01-01. Licensure application. An application for a license to practice occupational therapy must be made to the state board of occupational therapy on forms approved by the board upon request. The application must contain such information as the board may reasonably require.

1. Each application for a license must be accompanied by:
 - a. A prescribed fee.
 - b. An official transcript verifying completion of an academic program in occupational therapy recognized by the board.
2. All applications must be signed by the applicant and notarized.
3. The board may request such additional information or clarification of information provided in the application as it deems necessary.
4. If the board so directs, an applicant shall personally appear before the board concerning the application.

History: Effective April 1, 1988.
General Authority: NDCC 43-40-05
Law Implemented: NDCC 43-40-08

55.5-02-01-02. Licensure renewal. Licenses are renewable annually.

1. Applications for renewal of license will be mailed by the board on or before May first to all licenseholders. Fees are payable to the board on or before June first of the year preceding the renewal year.
2. License fees are considered delinquent and a late charge is assessed if the renewal application is not postmarked on or before June first of the year preceding the renewal year.
3. Licenses will be revoked if the renewal form and fees are not received within ninety days from July first of the renewal year. To reapply for licensure, an applicant must submit:
 - a. An application form;
 - b. The initial license fee; and
 - c. Late charges as assessed by the board.

4. The renewal of license will be mailed to the applicant by July first of the renewal year if the renewal request is complete and postmarked on or before June first.
5. Practicing certified occupational therapy assistants requesting renewal shall submit a "substantiation of supervision" form with their renewal application beginning with renewal year 1986, and annually thereafter.

Substantiation of supervision requirements are as follows:

- a. Supervision means providing direction in the performance of specific, delineated tasks and responsibilities that are delivered by a licensed occupational therapist assistant and includes the responsibility of reviewing the results of any occupational therapy procedure conducted by the supervisee.
- b. The entry level occupational therapy assistant who has practiced occupational therapy less than one year (one thousand six hundred fifty hours) shall receive onsite supervision from a licensed occupational therapist. The supervising occupational therapist must be on the premises during the occupational therapy assistant's occupational therapy work hours.
- c. The occupational therapy assistant, with greater than one year (one thousand six hundred fifty hours) but less than five years of work experience in occupational therapy, shall receive onsite supervision by a licensed occupational therapist a minimum of two hours per forty occupational therapy work hours or five percent of the total occupational therapy work hours as a practicing therapist assistant.
- d. The occupational therapy assistant with greater than five years of occupational therapy work experience shall receive onsite supervision by a licensed occupational therapist at a minimum of one hour per forty occupational therapy work hours or two and one-half percent of the total occupational therapy work hours.
- e. Under special circumstances the board may provide exemption to this section upon receipt of a written request by the parties involved.

History: Effective April 1, 1988.

General Authority: NDCC 43-40-05

Law Implemented: NDCC 43-40-15

55.5-02-01-03. Fees. The board has adopted the following fee payment schedule:

1. Initial license fee:

| | |
|--------------------------------|---------|
| Occupational therapist | \$40.00 |
| Occupational therapy assistant | 30.00 |

2. Limited permit fee:

| | |
|--------------------------------|---------|
| Occupational therapist | \$40.00 |
| Occupational therapy assistant | 30.00 |

No additional charge will be assessed when the limited permit is replaced with a license.

3. License renewal fee. Renewal and late renewal fees are based on an assessment of the previous year's expenses divided by the number of total licensed therapists and therapy assistants. In no event may the renewal fee exceed the initial license fee.

4. Therapists who initially become licensed after April first of any year are exempt from the renewal fee for one year.

History: Effective April 1, 1988.

General Authority: NDCC 43-40-05

Law Implemented: NDCC 43-40-07

55.5-02-01-04. Continuing competency. To renew a license each occupational therapist and occupational therapy assistant shall display maintenance of a current membership with the American occupational therapy association.

Failure to meet the continuing competency requirements as outlined in this section may subject a licensee to disciplinary action as outlined in North Dakota Century Code section 43-40-16.

History: Effective April 1, 1988.

General Authority: NDCC 43-40-05

Law Implemented: NDCC 43-40-15

55.5-02-01-05. Passing score. The successful passing of a national examination means obtaining a score equal to or greater than the passing score established by the American occupational therapy association which is in effect at the time of the administration of the test.

History: Effective April 1, 1988.

General Authority: NDCC 43-40-05

Law Implemented: NDCC 43-40-11

**CHAPTER 55.5-02-02
CODE OF ETHICS**

Section
55.5-02-02-01 Code of Ethics

55.5-02-02-01. Code of ethics. The board has adopted and incorporated into this article by reference, the principles of occupational therapy ethics of the American occupational therapy association as revised in April of 1979.

History: Effective April 1, 1988.
General Authority: NDCC 43-40-05
Law Implemented: NDCC 43-40-16

**CHAPTER 55.5-02-03
SUPERVISION**

Section
55.5-02-03-01 Supervision

55.5-02-03-01. Supervision. The occupational therapist shall exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensed therapist. No occupational therapist may supervise more than two occupational therapy assistants at the same time.

History: Effective April 1, 1988.
General Authority: NDCC 43-40-05
Law Implemented: NDCC 43-40-13

**CHAPTER 55.5-02-04
GRIEVANCES**

Section
55.5-02-04-01 Grievance Procedure

55.5-02-04-01. Grievance procedure. Grievances must be processed in accordance with the provisions of North Dakota Century Code chapter 28-32.

History: Effective April 1, 1988.
General Authority: NDCC 43-40-05
Law Implemented: NDCC 28-32-05

CHAPTER 55.5-02-05
INFORMATION CHANGES

Section
55.5-02-05-01 Address, Name, or Educational Changes

55.5-02-05-01. Address, name, or educational changes. Any licensee must report a change of address, name, or educational degree to the board. Proof of any educational degree change must also be submitted.

History: Effective April 1, 1988.
General Authority: NDCC 43-40-05
Law Implemented: NDCC 43-40-05

TITLE 61
Pharmacy, Board of

APRIL 1988

61-02-01-03. Equipment required. The minimum of technical equipment to be considered as adequate shall include:

1. Suitable storage facilities.
2. Two scales or balances for bulk and medium weighing, at least one of which must be sensitive to one-half grain [32.40 milligrams].
3. Weights; apothecary set from one-fourth grain to one ounce; avoirdupois set from one-half ounce to two pounds; metric set for ten milligrams to fifty grams.
4. Graduates capable of accurately measuring from five minims to one pint and from one-half cubic centimeter to five hundred cubic centimeters.
5. Mortars and pestles; glass and wedgewood.
6. Spatulas; steel and nonmetallic.
7. Glass funnels, assorted sizes.
8. Stirring rods.
9. Pill tile or ointment pad.
10. Suitable heating apparatus.
11. Poison record book and suitable prescription files.
12. The latest ~~edition~~ revision of the United States Pharmacopeia and National Formulary and supplements thereto, or the United

States Pharmacopeia Dispensing Information, volumes I and II (USPDI).

13. A reasonable amount of consumable material, such as filter paper, powder papers, litmus paper, empty capsules, ointment jars, bottles, vials, safety closures, powderboxes, labels, and distilled water.

The board of pharmacy recognizes that the equipment needed will depend on the type of pharmaceutical services offered, and therefore, variations for required equipment may be granted by the board of pharmacy.

History: Amended effective August 1, 1983; April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-35(2), 43-15-35(3), 43-15-36

Law Implemented: NDCC 28-32-03, 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-35(2), 43-15-35(3), 43-15-36

61-02-01-14. Limitation on rent. Before a pharmacy permit is issued, in the case of a pharmacy leasing space, a copy of the lease agreement must be furnished to the board which must include rental terms and information. The lease rental amounts, less in-house sales and wholesale sales, may not exceed ten percent of the total gross sales of the pharmacy, with the further provision that the landlord shall furnish all utilities including heat, electrical, and janitorial services, but not including phone service. The board recognizes that the lease terms and rent will depend on the type of pharmaceutical services offered, and therefore, variations for rent may be granted by the board of pharmacy.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36

Law Implemented: NDCC 28-32-02, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36

61-02-02-01. Building standards for pharmacies. Any new pharmacy, or any existing pharmacy which is being remodeled, except in the cases of institutional practice, must comply with the following provisions:

1. **Approval of plans.** The prescription area, merchandising area, waiting area, storeroom, restroom, and all partitions, doors, windows, and fixtures shall be indicated on floor plans showing appropriate elevations submitted to the board at the time the application for a new pharmacy is filed, or prior to remodeling. Such plans shall be submitted to the board prior to proceeding with the new construction. Before a pharmacy permit is issued, the plans submitted must meet the approval of the board.

2. **Minimum size of the prescription area.** The minimum size of the prescription area, including adjacent drug storage areas shall be not less than five hundred square feet [46.45 square meters], with an additional two hundred fifty square feet [23.23 square meters], to be used but not restricted to prescription receiving, patient counseling, checkout, and entrance area, but in all cases shall be large enough to carry out efficiently the elements of the practice of pharmacy at the level of activity of that operation. All of the allotted square footage space, including adequate shelving, shall lend itself to efficient pharmaceutical practice so as to permit free movement and visual surveillance.

3. **Prescription compounding counter.** There shall be a prescription compounding counter which shall provide a minimum of sixteen square feet [1.49 square meters] of unobstructed working space for one pharmacist, and a minimum of twenty-four square feet [2.23 square meters] of unobstructed working space where two or more pharmacists are on duty at any one time.

The floor area to be occupied by the dispensing pharmacists shall extend the full length of the prescription compounding counter, and shall be clear and unobstructed for a minimum distance of thirty inches [76.2 centimeters] from the counter.

4. **Prescription area.** The prescription area shall be separated from other areas in such a manner that prescription or nonproprietary drugs or devices are inaccessible to the reach of any unauthorized person.

5. **Light and ventilation.** The prescription area and all storerooms shall be well-lighted, ventilated, and kept free of obnoxious odors.

6. **Refrigerator.** The restricted area shall contain a refrigerator for its exclusive use.

7. **Change in location of a pharmacy.** Before a licensed pharmacy changes the location of its business, or its physical dimensions or elements of physical security, it shall first submit the changes to the board for its approval that the changes do conform with all rules of the board.

8. **Storage of other merchandise - telephone.** The prescription department shall not be used for storage of merchandise other than that used in the preparation or dispensing of medical needs. If such stored material is present, such area shall not be included as part of the prescription department. A telephone shall be immediately accessible in the prescription area, and the telephone number shall coincide with the telephone number on prescription labels.

9. Building standards variations. The board of pharmacy recognizes that the building standards for pharmacies will depend on the type of pharmaceutical services offered, and therefore, variations for required building standards may be granted by the board of pharmacy.

History: Amended effective August 1, 1983; April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(14)

Law Implemented: NDCC 28-32-03, 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(14)

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

1. **Pharmacist in charge.** Every pharmacy must have a pharmacist designated as the pharmacist-in-charge who shall be responsible to the board for a pharmacy's compliance with the laws and regulations, both state and federal, pertaining to the practice of pharmacy. The pharmacist-in-charge shall see that directives from the board are communicated to, and complied with by, the management, other pharmacists, and interns of the pharmacy.
2. **Personnel permitted in prescription area.** Personnel permitted in the prescription area are pharmacists, interns, drug inspectors, peace officers when acting in their official capacity, drug salesmen, and supporting personnel of the pharmacy. Interns, drug salesmen, and supporting personnel shall be permitted in the prescription area only when a pharmacist is on duty, except in an extreme emergency. No more than one clerical person shall be permitted in the prescription area per pharmacist.
3. **Prescription area and storage shall be kept locked.** The prescription area and any additional storage area for drugs restricted to a pharmacist, except in an extreme emergency, shall be kept locked when a pharmacist is not on duty. The pharmacist shall keep each portion of the prescription area secured and locked at all times the pharmacist does not have full vision or control of such portions of the prescription area. The prescription area shall be open for business to the public at all times that the retail establishment is open for business to the public, or for a minimum of eight hours a day should the retail establishment be open longer than eight hours per day. The board of pharmacy recognizes that the hours that the prescription area of a pharmacy is open for business to the public will depend on the type of pharmaceutical services offered, as well as other factors, and therefore, variations in the required hours that a prescription area shall be open for business to the public may be granted by the board of pharmacy.

4. **Only pharmacist permitted to unlock prescription area or storage area.** The pharmacist shall be the only person permitted to unlock the prescription area or any additional storage area for drugs restricted to a pharmacist, except in an extreme emergency. Only the pharmacist shall maintain possession of the key to the prescription area. The pharmacist shall be responsible for assuring that only authorized personnel have access to the legend and nonproprietary drugs stored in the prescription area or additional storage area.
5. **Extreme emergency.** An extreme emergency shall be in case of fire, water leak, electrical failure, public disaster, or other catastrophe, whereby the public is better served by overlooking the safety security restrictions on drugs.
6. **Receiving and checking area for drugs.** The area where prescription drugs are received, opened, and marked shall be under the immediate supervision of a pharmacist, and immediately thereafter the prescription drugs shall be kept or moved into the secured area of the pharmacy.
7. **Security of prescription area.** In order for the prescription area to be left without a pharmacist on duty when other people are in the store, after business hours, the prescription area shall be enclosed by a permanent barrier or partition from floor to ceiling, with entry doors that can be securely locked. If a prescription area is continually attended by a pharmacist when other people are in the store, the prescription area need not be enclosed by the permanent barrier. The barrier shall be so designed that only a pharmacist with a key, except in an extreme emergency, shall have access to the area where prescription only drugs, dangerous drugs, narcotics, and other drugs and devices restricted to sales by pharmacists are stored, compounded, and dispensed.
8. **Types of permanent barrier.** The permanent barrier may be constructed of other than a solid material. If constructed of a material other than a solid, the openings or interstices in the material shall not be large enough to permit removal of items in the prescription area by any means. Any material used in the construction of the permanent barrier must be of sufficient strength and thickness that it cannot be readily or easily removed, penetrated, or bent. The plans and specifications of the permanent barrier shall be submitted to the board for approval that it affords adequate security.
9. **Additional storage area.** When additional storage area is required for drugs that are restricted to pharmacists, the area shall be contained by a permanent barrier from floor to ceiling. All doors or gates to the storage area shall be able to be locked, and only a pharmacist with a key shall be

permitted to enter the storage area, except in an extreme emergency.

10. Security standards variations. The board of pharmacy recognizes that the security standards for pharmacies will depend on the type of pharmaceutical services offered, and therefore, variations for required security standards may be granted by the board of pharmacy.

History: Amended effective May 1, 1984; April 1, 1988.

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

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

61-02-04-01. Sanitary standards for pharmacies. A pharmacy must comply with the following sanitary standards:

1. **Pharmacies and equipment.** All pharmacies and equipment therein shall be maintained in a clean condition and in good repair.
2. **Sanitary facilities.** All sanitary facilities shall be constructed in accordance with the laws and ordinances applying thereto.
3. **Trash.** Adequate trash receptacles shall be provided. No waste material shall be permitted to collect in the prescription area.
4. **Toilet.** A toilet available to the prescription area shall be maintained in a sanitary condition and in good repair at all times. All new pharmacies shall maintain a restroom immediately adjacent to the prescription area.
5. **Personnel's apparel.** All authorized persons working in relation to the pharmacy shall be required to keep themselves and their apparel neat and clean while in the pharmacy.
6. **Hot and cold running water.** There shall be a sink with hot and cold running water within the prescription area for pharmaceutical purposes only.
7. **Storerooms.** Storerooms shall be dry and well-ventilated, free from rodents and insects, and equipped with adequate lighting facilities.
8. Sanitary standards variations. The board of pharmacy recognizes that the sanitary standards for pharmacies will depend on the type of pharmaceutical services offered, and therefore, variations for required sanitary standards may be granted by the board of pharmacy.

History: Amended effective April 1, 1988.

General Authority: NDCC 43-15-10(11), 43-15-35(3)

Law Implemented: NDCC 43-15-10(11), 43-15-35(3)

61-03-01-09. Inactive status. Any pharmacist holding a certificate of registration as a pharmacist in North Dakota may go on inactive status, and continue to hold a certificate of registration in North Dakota, provided that the pharmacist on inactive status may not practice pharmacy within North Dakota. A pharmacist on inactive status may not be required to meet the requirements of continuing pharmaceutical education as required by North Dakota Century Code section 43-15-25.1 or rules of the boards under chapter 61-03-04. In order for a pharmacist to change an inactive status certificate of registration to an active status of registration, the pharmacist will have to complete fifteen hours of approved continuing pharmaceutical education and comply with continuing pharmaceutical education requirements of the board and state of North Dakota thereafter.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(2), 43-15-10(12), 43-15-10(14), 43-15-15, 43-15-25.1

Law Implemented: NDCC 28-32-02, 43-15-10(2), 43-15-10(12), 43-15-10(14), 43-15-15, 43-15-25.1

61-04-03-01. Destruction of controlled substances. Pharmacists and pharmacies are prohibited from destruction of controlled substances as defined in subsection 4 of North Dakota Century Code section 19-03.1-01. Destruction of controlled substances is permitted and shall be limited to the executive secretary of the board, or a compliance officer of the board, or any one member of the board. A board member may not destroy controlled substances within a pharmacy in which the member is employed, has an ownership interest, or is the pharmacist in charge.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(12), 43-15-10(14)

Law Implemented: NDCC 28-32-03, 43-15-10(12), 43-15-10(14)

STAFF COMMENT: Articles 61-06, 61-07, and 61-08 contain all new material but are not underscored so as to improve readability.

ARTICLE 61-06

HOME HEALTH CARE PHARMACY SERVICES

Chapter

61-06-01

Home Health Care Pharmacy Services

**CHAPTER 61-06-01
HOME HEALTH CARE PHARMACY SERVICES**

| | |
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61-06-01-01. Definitions. For the purpose of this chapter, the following definitions apply:

1. Pharmacy providing home health care pharmacy services. A pharmacy providing home health care pharmacy services is a licensed pharmacy that routinely prepares and dispenses compounded, sterile parenteral products to outpatients.
2. Outpatient. An outpatient is defined as a patient in the home environment or an institutionalized patient that is receiving compounded sterile parenteral products from a pharmacy outside the institution.
3. Compounded, sterile parenteral products. Compounded, sterile parenteral products are defined as those parenteral drug products that require manipulation by the pharmacist and which must be sterile, stable, and effective when dispensed for patient use.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

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

61-06-01-02. Registration. All pharmacies providing home health care pharmacy services shall have a current pharmacy permit as provided by North Dakota law and rules of the board. They shall comply with all pharmacy laws and rules as well as the following special rules. The requirements of this chapter are in addition to, and not in substitution for, other applicable laws of North Dakota and rules of the board.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

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

61-06-01-03. Personnel.

1. **Pharmacist-in-charge.** In addition to the pharmacist-in-charge requirements of section 61-02-01-10, that section of the pharmacy providing home health care pharmacy services must be managed by a pharmacist licensed to practice pharmacy in the state and who is knowledgeable in the specialized functions of preparing and dispensing compounded, sterile parenteral products, including the principles of aseptic technique and quality assurance. This knowledge is usually obtained through residency training programs, continuing education programs, or experience in an intravenous admixture facility. The pharmacist-in-charge is responsible for the purchasing, storage, compounding, repackaging, dispensing, and distribution of all drugs and pharmaceuticals and is also responsible for the development and continuing review of all policies and procedures, training manuals, and the quality assurance programs. The pharmacist-in-charge may be assisted by additional pharmacists adequately trained in this area of practice.
2. **Supportive personnel.** The pharmacist managing the section of the pharmacy providing home health care pharmacy services may be assisted by supportive personnel. These personnel must have specialized training in this field, and shall work under the immediate supervision of a licensed pharmacist. The training provided to these personnel must be described in writing in a training manual. The duties and responsibilities of these personnel must be consistent with their training and experience.
3. **Secretarial support.** Secretarial support must be provided as required to assist with recordkeeping and other administrative duties.
4. **Staffing.** A pharmacist must be accessible at all times to respond to patients' and other health professionals' questions and needs.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

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

61-06-01-04. Physical requirements. The physical requirements are as follows:

1. **Space.** The pharmacy providing home health care pharmacy services shall have a designated area for preparing compounded, sterile parenteral products. This area must be physically separate from other areas and should be designed to avoid unnecessary traffic and airflow disturbances. It must be used only for the preparation of these specialty products. It must be of sufficient size to accommodate a laminar airflow hood and to provide for the proper storage of drugs and

supplies under appropriate conditions of temperature, light, moisture, sanitation, ventilation, and security.

2. Equipment.

- a. Laminar airflow hood.
- b. Infusion pumps, if appropriate.
- c. Sink with hot and cold running water which is convenient to the compounding area for the purpose of hand scrubs prior to compounding.
- d. Facility for light/dark field examination.
- e. Appropriate disposal containers for used needles, syringes, etc., and if applicable, cytotoxic waste from the preparation of chemotherapy agents.
- f. A class II vertical flow biological safety cabinet, if chemotherapy agents are routinely prepared.
- g. Refrigerator/freezer.

3. Supplies.

- a. Disposable needles, syringes, and other supplies needed for aseptic admixture.
- b. Disinfectant cleaning solutions.
- c. Handwashing agent with bactericidal action.
- d. Disposable, lint-free paper towels.
- e. Appropriate filters and filtration equipment.
- f. Disposable masks and sterile, disposable gloves.
- g. Gowns, if chemotherapy agents are routinely prepared.
- h. An oncology drug spill kit, if chemotherapy agents are routinely prepared.

- 4. References.** In addition to references required in a retail pharmacy, current edition of an established reference on intravenous stability and incompatibility, such as, Handbook on Injectable Drugs, or King's Guide to Parenteral Admixtures.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(14)

61-06-01-05. Drug distribution and control.

1. **General.** A drug distribution system is the entirety of that mechanism by which a physician's prescription is executed, from the time the drug is ordered and received in the primary, to the time the prescribed drug is dispensed to the patient.
2. **Purchasing.** All drugs and pharmaceutical products purchased and dispensed by a pharmacy providing home health care pharmacy services must meet national standards of quality (USP-NF standards) and must be clearly and accurately labeled by the manufacturer or distributor as to contents.
3. **Procedure manual.** A policy and procedure manual must be prepared and maintained at each pharmacy providing home health care pharmacy services and be available for inspection. The policy and procedure manual must set forth in detail the objectives and operational guidelines of the pharmacy. The manual must be reviewed and revised on an annual basis. A copy must be provided the board of pharmacy when applying for a permit or engaging in this specialized area of practice.
4. **Prescription.** The pharmacist or pharmacy intern acting under the immediate supervision of a pharmacist must receive a written or verbal prescription from a physician before dispensing any compounded, sterile parenteral product. Prescriptions must be filed as required by law or rules of the board.
5. **Profile.** A pharmacy generated profile must be maintained for each patient as required by North Dakota Century Code section 43-15-31.1, and must also include:
 - a. Age.
 - b. Weight.
 - c. Sex.
 - d. Patient directions.
 - e. Other drugs patient is receiving.
 - f. Drug sensitivities and allergies to drugs and foods.
 - g. Primary diagnosis.
 - h. Documentation of patient training and continued competency.
 - i. Documentation of patient visits.

6. **Labeling.** Each compounded, sterile parenteral product dispensed to outpatients must be labeled with a permanent label with the following information:
 - a. Name, address, and telephone number of the pharmacy providing home health care pharmacy services.
 - b. Date and identifying prescription number.
 - c. Patient's full name.
 - d. Name of each drug, strength, and amount.
 - e. Directions for use to the patient, including infusion rate.
 - f. Physician's full name.
 - g. Required precautionary information.
 - h. Date and time of compounding.
 - i. Expiration date and time.
 - j. Identity of pharmacist compounding and dispensing.
7. **Records and reports.** The pharmacist managing the section of the pharmacy providing home health care pharmacy services shall maintain access to and submit, as appropriate, such records and reports as are required to ensure patient's health, safety, and welfare. Such records must be readily available, maintained for five years, and subject to inspections by the board of pharmacy or its agents. These must include, as a minimum, the following:
 - a. Policy and procedures manual.
 - b. Training manuals.
 - c. Policies and procedures for cytotoxic waste, if applicable.
 - d. Such other records and reports as may be required by law and rules of the board of pharmacy.
8. **Delivery service.** The pharmacist managing the section of the pharmacy providing home health care pharmacy services is responsible for the environment control of all products shipped. Therefore, any compounded, sterile parenteral product that is frozen, or requires refrigeration, must be shipped or delivered to a patient in appropriate coolers and stored appropriately in the patient's home.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-31, 43-15-31.1

61-06-01-06. Cytotoxic agents. The following additional requirements are necessary for those pharmacies providing home health care pharmacy services that routinely prepare chemotherapy agents to ensure the protection of the personnel involved:

1. All chemotherapy agents should be compounded in a vertical flow, class II, biological safety cabinet. If possible, other products should not be compounded in this cabinet.
2. Protective apparel must be worn by personnel compounding chemotherapy drugs. This includes disposable masks, gloves, and gowns with tight cuffs.
3. Proper aseptic and safety techniques must be used by personnel compounding chemotherapy agents.
4. Appropriate disposal procedures for cytotoxic waste must be developed that comply with applicable state and federal regulations.
5. Written procedures for handling both major and minor spills of cytotoxic agents must be developed.
6. Prepared doses of chemotherapy must be dispensed and shipped in a manner to minimize the risk of accidental rupture of the primary container.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

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

61-06-01-07. Patient care guidelines.

1. **Primary provider.** There must be a designated physician primarily responsible for the patient's medical care. There must be a clear understanding between the physician, the patient, and the pharmacist of the responsibilities of each in the areas of the delivery of care, the monitoring of the patient, and the reimbursement for services. This must be documented in the patient's profile.
2. **Patient training.** The patient, the patient's physician, or the patient's pharmacist shall demonstrate or document the patient's training and competency in managing this type of therapy in the home environment prior to any drugs, supplies, or equipment being dispensed. A pharmacist must be involved

in the patient training process in any area that relates to drug compounding, labeling, storage, stability, or incompatibility. The pharmacist shall reassess and document on the profile the patient's competency in the necessary areas at least every six months.

3. **Pharmacist-patient relationship.** It is imperative that a pharmacist-patient relationship be established and maintained throughout the patient's course of therapy. The patient should be visited by the pharmacist at least monthly; telephone contact will not suffice. This must be documented in the patient's profile.
4. **Patient monitoring.** The pharmacist should have access to clinical and laboratory data concerning each patient and should monitor each patient's response to the patient's drug therapy. Any unexpected or untoward response should be reported to the prescribing physician.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

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

61-06-01-08. Quality control. There must a documented, ongoing quality control program that monitors personnel performance, equipment, and facilities. The end product must be examined on a sampling basis as determined by the pharmacist-in-charge to assure that it meets required specifications.

1. **Hood certification.** All laminar flow hoods must be certified by federal standard 209B for operational efficiency at least every twelve months. Appropriate records must be maintained.
2. **Prefilters.** Prefilters for the clean air source must be replaced on a regular basis and these activities documented.
3. **Bulk compounding.** If bulk compounding of parenteral solutions is performed utilizing nonsterile chemicals, extensive end product testing must be documented prior to the release of the product from quarantine. This process must include testing for sterility and pyrogens.
4. **Expiration dates.** If the product is assigned a lengthy expiration date (anything exceeding ten days), there must be in-house data or data in the literature to assure the sterility and stability of the product at the time it is used by the patient.
5. **Quality control audits.** There must be documentation of quality assurance audits at regular, planned intervals.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-15-10(9), 43-15-10(12), 43-15-10(14)

ARTICLE 61-07

HOSPITAL PHARMACY

Chapter
61-07-01 Hospital Pharmacy

CHAPTER 61-07-01 HOSPITAL PHARMACY

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61-07-01-01. Definitions. For purposes of this chapter, the following definitions apply:

1. The terms "hospital" and "medical center" are synonymous.
2. "Hospital pharmacy" is defined as those portions of a hospital where drugs, medications, devices, and other materials used in the diagnosis and treatment of injury, illness, and disease (hereinafter referred to as "drugs") are manufactured, produced, sold, or distributed.

History: Effective April 1, 1988.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-15-10(9), 43-15-10(12), 43-15-10(14)

61-07-01-02. Applicability. This chapter is applicable to all hospital pharmacies as defined by section 61-07-01-01.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

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

61-07-01-03. Registration. All hospital pharmacies shall register annually with the board of pharmacy; certificates of registration may be issued only to those hospital pharmacies which satisfy the provisions of all rules of the board and laws of North Dakota.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

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

61-07-01-04. Personnel.

1. **Director.** Each hospital pharmacy must be directed by a pharmacist-in-charge, hereinafter referred to as the director of pharmacy, who is licensed to engage in the practice of pharmacy in this state, and who is knowledgeable in and thoroughly familiar with the specialized functions of hospital pharmacies. The director of pharmacy is responsible for all activities of the hospital pharmacy, and for meeting the requirements of the North Dakota pharmacy practice act and this chapter. Contractual providers of pharmacy services shall meet the same requirements as director of pharmacy services.
2. **Supportive personnel.** The director of a hospital pharmacy must be assisted by a sufficient number of additional pharmacists and ancillary personnel as may be required to operate such pharmacy competently, safely, and adequately to meet the needs of the patients of the hospital.
 - a. Pharmacy technicians may be employed provided they have been approved by the director. The director shall develop and implement written policies and procedures to specify the duties to be performed by such technical personnel. These policies and procedures shall, at a minimum, specify that ancillary technical personnel are properly or adequately supervised by a registered pharmacist and that ancillary technical personnel are not assigned duties which may be performed only by pharmacists.
 - b. Secretarial support should be provided as required to assist with recordkeeping, report submission, and other administrative duties.

3. **Supervision.** All of the activities and operations of each hospital pharmacy must be personally and directly supervised by its director or pharmacist's designee. All functions and activities of ancillary personnel must be personally and directly supervised by a sufficient number of registered pharmacists to ensure that all such functions and activities are performed competently, safely, and without risk of harm to patients.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

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

61-07-01-05. Absence of pharmacist.

1. **General.** During such times as a hospital pharmacy may be unattended by a pharmacist, arrangements must be made in advance by the director for the provision of drugs to the medical staff and other authorized personnel of the hospital, by use of night cabinets or floor stock, or both, and in emergency circumstances, by access to the pharmacy. A pharmacist must be available for consultation during all absences; this protocol can be accomplished by telephone.
2. **Night cabinets.** If night cabinets are used, the following should prevail: absence of a pharmacist, must be by locked cabinets or other enclosures constructed and located outside of the pharmacy area, to which only specifically authorized personnel may obtain access by key or combination, and which is sufficiently secure to deny access to unauthorized persons by force or otherwise. The director shall, in conjunction with the appropriate committee of the hospital, develop inventory listings of those drugs to be included in such cabinets and shall ensure that:
 - a. Such drugs are available therein, properly labeled.
 - b. Only prepackaged drugs are available therein, in amounts sufficient for immediate therapeutic requirements.
 - c. Whenever access to such cabinets shall have been gained, written physician's orders and proofs of use, if applicable, are provided.
 - d. Written policies and procedures are established to implement the requirements of this subsection.
3. **Access to pharmacy.** Whenever any drug is not available from floor supplies or night cabinets, and such drug is required to treat the immediate needs of a patient whose health would otherwise be jeopardized, such drug may be obtained from the pharmacy in accordance with the requirements of this section.

One supervisory registered professional nurse and only one in any given eight-hour shift is responsible for removing drugs therefrom. The responsible nurse, in times of emergency, may delegate this duty to another nurse. The responsible nurse must be designated by position, in writing, by the appropriate committee of the hospital and, prior to being permitted to obtain access to the pharmacy, shall receive thorough education and training in the proper methods of access, removal of drugs, and records and procedures required. Such education and training must be given by the director of pharmacy, who shall require, at a minimum, the following records and procedures:

- a. Removal of any drug from the pharmacy by an authorized nurse must be recorded on a suitable form showing patient name, room number, name of drug, strength, amount, date, time, and signature of nurse.
 - b. Such form must be left with the container from which the drug was removed, both placed conspicuously so that it will be found by a pharmacist and checked properly and promptly; or, in the case of a unit dose, place an additional dose of the drug, or the box, on the form.
4. **Emergency kits.** Emergency drugs, as approved by the medical staff, must be in adequate and proper supply in the pharmacy and in designated hospital areas. The pharmacist is responsible both for the contents of emergency medication carts, kits, and for the inspection procedure to be used.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

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

61-07-01-06. Physical requirements.

1. **Area.** A hospital pharmacy shall have within the hospital its services, sufficient floor space allocated to it to ensure that drugs are prepared in sanitary, well-lighted, and enclosed places, and which meet the other requirements of this section.
2. **Equipment and materials.** Each hospital pharmacy shall have sufficient equipment and physical facilities for proper compounding, dispensing, and storage of drugs, including parenteral preparations, and, as a minimum, access to the references for the following subjects:
 - a. Drug interactions.
 - b. Drug compatibility.

- c. Poison and antidote information.
- d. Chemistry:
 - (1) Organic;
 - (2) Pharmaceutical; and
 - (3) Biological.
- e. Toxicology.
- f. Pharmacology.
- g. Bacteriology.
- h. Sterilization and disinfection.
- i. Pharmacy technology.
- j. Patient counseling.
- k. Rational therapy.
- l. Pathology.
- m. Current United States Pharmacopeia and National Formulary dispensing information.
- n. Current state and federal regulations applicable to controlled substances.

The technical equipment required by section 61-02-01-03 may be either at the hospital pharmacy or the community pharmacy servicing the hospital pharmacy.

- 3. **Storage.** All drugs must be stored in designated areas within the hospital pharmacy which are sufficient to ensure proper sanitation, temperature, light, ventilation, moisture control, segregation, and security.
- 4. **Alcohol and flammables.** Alcohol and flammables must be stored in areas that shall meet, at a minimum, basic local building code requirements for the storage of volatiles and such other laws, ordinances, or regulations as may apply.
- 5. **Unattended areas.** In the absence of authorized personnel, and whenever any area of a hospital pharmacy is not under the personal and direct supervision of authorized personnel, such area must be locked.
- 6. **Security.** All areas occupied by a hospital pharmacy must be capable of being locked by key or combination, so as to

prevent access by unauthorized personnel. The director shall designate, in writing, by title and specific area, those persons who shall have access to particular areas within the pharmacy.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(14)

61-07-01-07. Drug distribution and control.

1. **General.** The director of pharmacy services shall establish written procedures for the safe and efficient distribution of pharmaceutical products. An annual updated copy of such procedures must be on hand for inspections.
2. **Responsibility.** The director is responsible for the safe and efficient distribution of, control of, and accountability for drugs. The other professional staff of the hospital shall cooperate with the director in meeting this responsibility and in ordering, administering, and accounting for pharmaceutical materials so as to achieve this purpose. Accordingly, the director is responsible for, at a minimum, the following:
 - a. Preparation and sterilization of parenteral medications manufactured within the hospital.
 - b. Admixture of parenteral products, including education and training of nursing personnel concerning incompatibility and provision of proper incompatibility information when the admixture of parenteral products is not accomplished within the hospital pharmacy.
 - c. Manufacture of drugs, if applicable.
 - d. Establishment of specifications for procurement of all materials, including drugs, chemicals, and biologicals, subject to approval of the appropriate committee of the hospital.
 - e. Participation in development of a formulary for the hospital.
 - f. Filling and labeling all containers from which drugs are to be administered.
 - g. Maintaining and making available a sufficient inventory of antidotes and other emergency drugs, both in the pharmacy and inpatient care areas, as well as current antidote information, telephone numbers of regional poison control centers, and other emergency assistance organizations, and

such other materials and information as may be deemed necessary by the appropriate committee of the hospital, if any.

- h. Records of all transactions of the hospital pharmacy as may be required by applicable law, state and federal, and as may be necessary to maintain accurate control over and accountability for all pharmaceutical materials.
- i. Participation in drug usage evaluation activities.
- j. Fullest cooperation with teaching or research programs, or both, in the hospital, if any.
- k. Implementation of the policies and decisions of the appropriate committees of the hospital.
- l. Effective and efficient messenger and delivery service to connect the pharmacy with appropriate parts of the hospital on a regular basis throughout the normal workday of the hospital.
- m. Meeting all compliance and other requirements of the North Dakota board of pharmacy rules and laws and this chapter.

3. Labeling.

- a. For use inside the hospital. All drugs dispensed by a hospital pharmacy, not on an individual prescription, intended for use within the hospital, must be dispensed in appropriate containers and adequately labeled so as to identify, at a minimum, brand name or generic name, strength, quantity, source, and expiration date.
- b. For use outside the pharmacy. All drugs dispensed by a hospital pharmacy to patients about to be discharged or to whom it is certain will carry the item dispensed outside of the hospital, in compliance with pharmacy practice act and rules, must be labeled with the following information:
 - (1) Name, address, and telephone number of the hospital pharmacy.
 - (2) Date and identifying serial number.
 - (3) Full name of patient.
 - (4) Name of drug strength, and number of units.
 - (5) Directions for use to the patients.
 - (6) Name of physician prescribing.

- (7) Required precautionary information regarding controlled substances.
 - (8) Such other and further accessory cautionary information as may be required or desirable for proper use and safety to the patient.
- c. Drugs added to parenteral admixtures. Whenever any drugs are added to parenteral admixtures, whether within or outside the direct and personal supervision of a pharmacist, such admixtures must be labeled with a distinctive supplementary label indicating the name and the amount of the drug added, date and time of addition and expiration, and name of person so adding.
4. **Discontinued drugs.** The director shall develop and implement policies and procedures to ensure that discontinued and outdated drugs and containers with worn, illegible, or missing labels are returned to the pharmacy for proper disposition or that the director or the director's designee make proper disposition or dispose of such drugs at the storage site.
5. **Physician's orders.** Drugs may be dispensed from the hospital pharmacy only upon written or verbal orders, direct copies or facsimiles thereof, of authorized physicians. Verbal orders for drugs are accepted only by personnel so designated in accordance with applicable law and regulations governing such acts and in accordance with the approved medical staff rules and regulations.
- a. **Authorization.** The appropriate committee of the hospital shall designate, from time to time as appropriate, those physicians who are authorized to issue orders to the pharmacy.
 - b. **Abbreviations.** Orders employing abbreviations and chemical symbols may be utilized and filled only if such abbreviations and symbols appear on a published list of accepted abbreviations developed by the appropriate committee of the hospital.
 - c. **Requirements - Orders for drugs for use by inpatients.** Orders for drugs for use by inpatients shall contain, at a minimum: patient name and room number, drug name, strength, directions for use, date, and physician's signature or that of the physician's authorized representative.
 - d. **Requirements - Orders for drugs for use by outpatients.** Orders for drugs for use by outpatients become prescriptions and must meet all requirements of the law.

- e. **Pharmacist review.** The pharmacist shall review the prescriber's order, or a direct copy thereof, before the initial dose of medication is dispensed (with the exception of emergency orders when time does not permit). In cases when the medication order is written when the pharmacy is "closed" or the pharmacist is otherwise unavailable, the medication order should be reviewed by the pharmacist as soon thereafter as possible, preferably within twenty-four hours.
 - f. **Signature.** A means of identifying the signatures of all practitioners authorized to use the pharmaceutical services, as well as a listing of their drug enforcement administration numbers, must be maintained.
6. **Controlled drug accountability.** The hospital shall establish effective procedures and maintain adequate records regarding use and accountability of controlled substances and such other drugs as the appropriate hospital committee may designate which may specify at least the following:
- a. Name of drug.
 - b. Dose.
 - c. Physician.
 - d. Patient.
 - e. Date and time of administration.
 - f. Person administering the drug.
7. **Recall.** The director shall develop and implement a recall procedure that can be readily activated to assure the medical staff of the hospital that all drugs included on the recall, whether within or outside the hospital, are returned to the pharmacy for proper disposition.
8. **Suspected adverse drug reactions.** Any and all suspected adverse drug reactions must be reported orally immediately to the ordering physician and in writing to the pharmacy, and to the appropriate committee of the hospital. Appropriate entry on the patient's record must also be made. The director may, at the director's discretion, make further reports of such suspected reactions to the hospital reporting program of the United States food and drug administration, to the manufacturer, and to the United States pharmacopeia.
9. **Records and reports.** The director shall maintain and submit, as appropriate, such records and reports as are required to ensure patient health, safety, and welfare, and, at a minimum, the following:

- a. Physician's orders, direct copies, or facsimiles thereof.
- b. Controlled drug accountability report.
- c. Reports of suspected adverse drug reactions.
- d. Inventories of night cabinets and emergency kits.
- e. Inventories of the pharmacy.
- f. Biennial controlled substances inventories.
- g. Alcohol and flammables reports.
- h. Such other and further records and reports as may be required by law and this chapter.

10. Distribution systems.

- a. Floor or ward stock system. In this system, all but the most unusual drug items are stocked on the nursing stations. Drug products which require special control (e.g., antineoplastic agents) are often omitted from floor stock, and are sent to the nursing unit upon receipt of a prescription order for the individual patient. All containers used for floor stock must meet specific labeling requirements as addressed in these rules.
- b. Individual prescription order system. In this system, all medications are dispensed by the pharmacist on individual prescription orders.
- c. Combination of floor stock and the individual prescription order system. In this system, most drugs are dispensed on an individual prescription basis. The remaining drugs are obtained via limited floor stock.
- d. Unit dose. In this system, medications are contained in single unit packages; they are dispensed in as ready-to-administer form as possible, for most medications. All doses will be labeled properly to include name, strength, expiration date, or lot number or control number, or both.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

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

61-07-01-08. Nondistributive roles of the pharmacist. These functions include, but are not limited to, chart review; audits; clinical tasks; committee participation; drug information; inservice training of the pharmacists, the pharmacy staff, and other health

professionals; poison control; nursing unit inspections; preparation of medication histories; monitoring of drug therapy; patient education; detection and reporting of adverse drug reactions; drug therapy selection; participation in drug usage evaluation; and other quality assurance programs.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

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

61-07-01-09. Administration of drugs.

1. **General.** Drugs may be administered at a hospital only upon the orders of those members of the medical staff who have been granted clinical privileges or who are authorized members of the house staff and, by authorized licensed hospital personnel in accordance with policies and procedures specified by the appropriate committee of the facility, under applicable law and rules, and by usual and customary standards of good medical practice.
2. **Self-administration.** Self-administration of drugs by patients may be permitted only when specifically authorized by the treating or ordering physician; provided, however, the patient has been educated and trained in the proper manner of self-administration and there is no risk of harm to the patient or others. The label should contain patient's name, room number, date directions, and name and strength of medication, at a minimum.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

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

61-07-01-10. Drugs from outside sources.

1. **Outside pharmacies.** Whenever drugs or pharmaceutical services are obtained from outside of a hospital, arrangements must be made to ensure that such outside pharmacist provides services with sufficient professionalism, quality, and availability to adequately protect the safety of the patients and to properly serve the needs of the hospital. Such arrangements must be made in writing and must, at a minimum, specify that:
 - a. The outside pharmacist shall act in the capacity of the director (subsection 1 of section 61-07-01-04) and, therefore, is subject to this chapter.
 - b. Such arrangement is contingent upon approval of the board of pharmacy.

- c. The pharmacist must be available for consultation during all absences, or provide a protocol to contact another pharmacist.
 - d. Adequate storage facilities for drugs will be provided.
 - e. All drugs supplied must be labeled so as to ensure that recalls can be effected and that proper control and supervision of such drugs may be exercised.
2. **Brought by patients.** Whenever patients bring drugs into a hospital, such drugs may not be administered unless they can be precisely identified; administration must be pursuant to a physician's order only. The director of pharmacy will specify the policy and procedure for handling these medications.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

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

61-07-01-11. Quality assurance. The director of pharmacy services is responsible for developing procedures for an ongoing quality assurance program of pharmaceutical services that includes a mechanism for reviewing and evaluating drug-related patient care, as well as an appropriate response to findings. This written plan should clearly establish responsibility and the need for documentation of an effective program.

The director of pharmacy services is responsible for developing procedures for quality assurance in centralized intravenous admixture services. Such procedures must encompass selection, education, and training of personnel, inprocess controls, end-product testing, and sampling guidelines. Cautionary measures for the safe admixture of parenteral products must be developed.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

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

61-07-01-12. Investigational drugs. Investigational drugs must be properly labeled and may be administered only under the personal and direct supervision of the principal physician-investigator or physician-investigator's authorized clinician with prior approval of the appropriate committees of the hospital. Nurses may administer such drugs only after they have been educated and trained concerning relevant pharmacologic information about such drugs by the clinician or the pharmacist. A central unit must be maintained wherein essential information regarding such drugs may be obtained. Patients' or representatives' informed consent must be obtained prior to

investigational drug therapy. Investigational drugs must be stored under the same regulations as Schedule II controlled substances.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

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

61-07-01-13. Inspection.

1. **Monthly.** The director of pharmacy shall inspect, no less than once a month, personally or by qualified designee, all matters within the director's jurisdiction and responsibility and make appropriate written records and notations of such inspections. Such inspections shall verify, at a minimum, that:
 - a. Drugs are dispensed only by pharmacists.
 - b. Ancillary pharmacy personnel are properly directed and supervised.
 - c. Disinfectants and drugs for external use are stored separately and apart from drugs for internal use or injection.
 - d. Drugs requiring special storage conditions to ensure their stability are properly stored.
 - e. Outdated drugs or otherwise unusable drugs have been identified and their distribution and administration prevented. An area must be designated for authorized storage of such drugs prior to their proper disposition.
 - f. Distribution and administration of controlled substances are properly and adequately documented and reported by both pharmacy and medical personnel.
 - g. Emergency drugs designated pursuant to subsection 4 of section 61-07-01-05 are adequate and in proper supply both within the pharmacy and at outside storage locations.
 - h. All necessary and required security and storage standards are met.
 - i. Metric-apothecaries' weight and measure conversion tables and charts are reasonably available to all medical personnel.
 - j. All policies and procedures of the director and of appropriate committees of the hospital relevant to pharmacy are followed.

- k. The telephone number of the regional poison control information center should be posted by all telephones in the nursing stations where drugs are stored.
2. **Annual.** The board of pharmacy shall inspect, no less than once a year, by one of its members or by its qualified designee, all aspects of the management and operation of all hospital pharmacies in the state, to verify compliance with the law, this chapter, and such other standards as may be appropriate to ensure that the health, safety, and welfare of patients of the hospital serviced by the pharmacy are protected. Written reports of an inspection must be filed with the board and the director. Any discrepancies or deficiencies noted must be corrected within a reasonable time. Written notice of such corrections must be filed with the board. Board recommendations may be questioned by written notice to the executive secretary of the board of pharmacy. Consideration must be given by the board's inspector or designee to giving thirty days' notice of an inspection to the director of the pharmacy to be visited. Consideration must also be given to any recent survey by the joint commission on accreditation of health care organizations.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02

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

ARTICLE 61-08

OUT-OF-STATE PHARMACIES

Chapter

61-08-01 Requirements for Out-of-State Pharmacies

CHAPTER 61-08-01

REQUIREMENTS FOR OUT-OF-STATE PHARMACIES

Section

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61-08-01-01. Permit. Any pharmacy operating outside the state which ships, mails, or delivers in any manner a dispensed prescription drug or legend drug into North Dakota shall obtain and hold a pharmacy permit issued by the North Dakota state board of pharmacy and that part of the pharmacy operation dispensing the prescription for a North Dakota resident shall abide by state law and rules of the board.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

Law Implemented: NDCC 28-23-03, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

61-08-01-02. Permit application - Renewal. Pharmacy permit application forms must be available from the board and submitted for approval. Pharmacy permits must be renewed annually by July first.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

Law Implemented: NDCC 28-23-03, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

61-08-01-03. Fees. The out-of-state pharmacy annual permit fee must be set by the board not to exceed three hundred dollars.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

Law Implemented: NDCC 28-23-03, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

61-08-01-04. Pharmacy permit - Home state. An out-of-state pharmacy doing business in North Dakota by dispensing and delivering prescription drugs to North Dakota consumers shall maintain a document that they have a pharmacy permit in good standing in their respective home state.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(7), 43-15-10(8),
43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36,
43-15-38

Law Implemented: NDCC 28-23-03, 43-15-10(7), 43-15-10(8),
43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36,
43-15-38

61-08-01-05. Applicable law and rules. North Dakota pharmacy laws and rules shall be applicable to control interstate prescription commerce and to govern the practice of pharmacy for that portion of the pharmacy practice or operation.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(7), 43-15-10(8),
43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36,
43-15-38

Law Implemented: NDCC 28-23-03, 43-15-10(7), 43-15-10(8),
43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36,
43-15-38

61-08-01-06. Compliance. The pharmacist in charge and pharmacy owner, or partners, or corporate officer and owners where applicable, appearing on the permit or the permittee will be responsible for complete compliance with the North Dakota laws or rules insofar as the standards of practice for the pharmacy operation pertaining to the provisions of receiving, dispensing, and delivering prescription drugs to North Dakota.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(7), 43-15-10(8),
43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36,
43-15-38

Law Implemented: NDCC 28-23-03, 43-15-10(7), 43-15-10(8),
43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36,
43-15-38

61-08-01-07. Reporting. The pharmacist in charge appearing on the permit shall submit an affidavit with the initial permit application and renewal applications annually which affirm that the pharmacist understands North Dakota pharmacy laws and rules and that the pharmacy is in complete compliance with applicable standards of care when dispensing prescription orders for delivery to North Dakota consumers. The out-of-state pharmacy shall also disclose the pharmacist in charge and location, names, and titles of all principal corporate officers and all pharmacists who are dispensing prescription drugs to residents of this state. This disclosure must be on an annual basis.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

Law Implemented: NDCC 28-23-03, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

61-08-01-08. Administrative inspection. North Dakota pharmacy inspectors may conduct onsite periodic routine inspections during reasonable business hours of out-of-state pharmacies registered to do business in North Dakota. Alternatively, the North Dakota board of pharmacy may contract with the respective out-of-state state boards of pharmacy to conduct and perfect periodic routine inspections.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

Law Implemented: NDCC 28-23-03, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

61-08-01-09. Records. Prescription records documenting prescriptions dispensed and distributed to North Dakota consumers must be readily retrievable and available for board review. North Dakota prescription orders, when initially dispensed, must be separated or readily retrievable or stamped in the lower left-hand corner of the order form face with a one-inch [25.40-millimeters] green letter "ND" or separate prescription files.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

Law Implemented: NDCC 28-23-03, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

61-08-01-10. Counseling services. Out-of-state pharmacies shall provide accessible telephone counseling service for patients' drug inquiries with a registered pharmacist during regular working hours. Available telephone counseling service must be provided that is consistent with the standard of due care. The pharmacies' telephone number will be prominently identified and affixed on the prescription container label.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

Law Implemented: NDCC 28-23-03, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

61-08-01-11. Patient profile record system and prescription drug information required. An out-of-state pharmacy shall comply with the patient profile record system requirements of North Dakota Century Code section 43-15-31.1 and the prescription drug information requirements of North Dakota Century Code section 43-15-31.2 for that part of the pharmacy operation dispensing a prescription for a North Dakota resident.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

Law Implemented: NDCC 28-23-03, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

61-08-01-12. Jurisdiction. Out-of-state pharmacies soliciting, receiving, and dispensing prescription orders delivered to North Dakota ultimate residents constitutes doing business in the state.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

Law Implemented: NDCC 28-23-03, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

61-08-01-13. Agent. The out-of-state pharmacies doing business in North Dakota by dispensing and delivering prescription orders to North Dakota consumers shall designate a resident agent and a registered office in North Dakota for the service of process.

History: Effective April 1, 1988.

General Authority: NDCC 28-32-02, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

Law Implemented: NDCC 28-23-03, 43-15-10(7), 43-15-10(8), 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

TITLE 66
Psychologist Examiners, Board of

APRIL 1988

STAFF COMMENT: The Application for License form, which is attached as an appendix to chapter 66-02-01, has been removed and is not reprinted here.

66-02-01-01. Application form. All psychologists who wish to apply for licensing either with or without examination shall fill out the application form attached as an appendix to this chapter.

History: Amended effective April 1, 1988.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-12

66-02-01-04. Licensure by equivalency. Licensing of ~~psychologists~~ individuals whose doctoral programs are considered equivalent to doctoral programs in psychology will follow the procedures described in chapter 66-02-02.

History: Amended effective April 1, 1988.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20

66-02-01-08. Fees. The license fee is ~~one~~ two hundred fifty dollars for all persons receiving licensure under sections 66-02-01-02, 66-02-01-03, 66-02-01-04, and 66-02-01-06 and fifty dollars for all persons receiving licensure under section 66-02-01-05. An annual renewal fee of ~~thirty~~ fifty dollars will be charged all licensed psychologists regardless of the procedure by which they obtained licensing.

History: Amended effective March 1, 1985; April 1, 1988.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-12, 43-32-13

66-02-01-10. Guidelines for oral examinations. The oral examination will be administered by at least three board members in addition to any other licensed psychologist whom the board sees fit to add to the examining committee. However, only the board members present may vote. Oral examinations will be conducted scheduled as appropriate but not less than twice a year at approximately the same time of the written examination. The examination committee will use a structured oral examination, will record the applicants' answers, will discuss the results, and the board members will vote with the majority opinion being necessary for the candidate to pass. The examination will cover generic content, ethics, state regulations legal issues, and areas of stated competence as listed on the application form. Specific questions to be used will be selected at the time of the examination from a pool of questions available for that purpose.

History: Effective March 1, 1985; amended effective April 1, 1988.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20, 43-32-22

66-02-01-11. Additional documentation for clinical work or counseling for or therapy. For an applicant desiring to do clinical work or provide counseling or therapy, there must be additional evidence of training in applying academic course content in a service setting. This must include therapy, diagnosis, intelligence/personality testing, or other specialized examination procedures, and a relevant supervised internship of not less than twelve months full time (forty-hour week). The internship should be supervised by a licensed psychologist practicing in the designated specialty. The documentation of the additional evidence of training must be a detailed description of the internship as to the setting, nature of clients, precisely what the applicant's routine was, how the applicant was supervised as well as the amount of supervision, what skills were exposed to the applicant, and the specific skills in which the applicant is proficient. Successful completion of an American psychological association approved internship will be accepted as fulfilling this requirement.

History: Effective March 1, 1985; amended effective April 1, 1988.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20

66-02-01-12. Identifying doctoral program as professional psychology program. The following criteria will be used to identify doctoral programs as professional psychology programs:

1. Programs that are accredited by the American psychological association are recognized as meeting the definition of a professional psychology program, with the. The criteria for accreditation serving as a model for professional psychology training; or
2. All of the following criteria, subdivisions a through i:

- a. Training in professional psychology is doctoral training offered in a regionally accredited institution of higher education.
- b. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.
- c. The psychology program must stand as a recognizable, coherent organizational entity within the institution.
- d. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.
- e. The program must be an integrated, organized sequence of study.
- f. There must be an identifiable psychology faculty and a psychologist responsible for the program.
- g. The program must have an identifiable body of students who are matriculated in that program for a degree.
- h. The program must include supervised practicum, internship, field, or laboratory training appropriate to the practice of psychology.
- i. The curriculum must encompass a minimum of three academic years of full-time resident graduate study. In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics, and psychometrics, the core program must require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate hours (five or more graduate quarter hours) in each of these four substantive content areas:
 - (1) Biological basis of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.
 - (2) Cognitive-affective basis of behavior: learning, thinking, motivation, emotion.
 - (3) Social basis of behavior: social psychology, group processes, organizational and systems theory.
 - (4) Individual differences: personality theory, human development, abnormal psychology.

In addition, all professional education programs in psychology must include course requirements in specialty areas.

History: Effective March 1, 1985; amended effective April 1, 1988.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20

66-02-02-01. General equivalency requirements. If the applicant is applying for licensure under the equivalency provision described in subsection 3 of North Dakota Century Code section 43-32-20, all provisions of this chapter must be met as judged by the board of psychologist examiners. The substantial portion of the applicant's doctorate program must be ~~taken~~ in an organized program within the department deemed equivalent to a department of psychology and deemed equivalent to coursework in a psychology program, as judged by the board of psychologist examiners.

History: Amended effective April 1, 1988.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20

66-02-02-03. Documentation of training and coursework. There must be training in the specific skills related to the specialty which the applicant desires to practice ~~or teach~~. There must be documented evidence of the coursework considered equivalent, substantially graduate level, in four or more of the following areas: learning, personality, statistics, research design, psychological test theory, abnormal and developmental psychology, physiological psychology, educational psychology, industrial psychology, and social and therapeutic theory or technique as follows:

1. The curriculum must encompass a minimum of three academic years of full-time resident graduate study.
2. In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program must require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (five or more graduate quarter hours) in each of these four substantive content areas.
 - a. Biological basis of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.
 - b. Cognitive-affective basis of behavior: learning, thinking, motivation, emotion.

- c. Social basis of behavior: social psychology, group processes, organizational and systems theory.
- d. Individual differences: personality theory, human development, abnormal psychology.

The documentation should be in the form illustrated in the appendix to this chapter.

History: Amended effective March 1, 1985; April 1, 1988.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20

TITLE 69
Public Service Commission

May 1988

69-05.2-12-01. Performance bond - General requirements.

1. Applicants for permit revisions or permit renewals shall review the requirements for performance bond pursuant to section ~~69-05.2-12-07~~ considering the proposed surface coal mining and reclamation operations and Permit applicants shall submit an estimate of bond as is necessary to meet the requirements of this chapter. The estimate shall be for the entire permit area or that area specified in subsection 5 when incrementing the bond.
2. The commission shall review the estimated bond amount of performance bond in accordance with section ~~69-05.2-12-07~~ and shall either, approve or require modification of the amount of bond required. The commission shall modify the required amount and notify the applicant of the bond amount determined to be sufficient so the applicant can secure performance bond.
3. Liability on the performance bond shall cover all surface coal mining and reclamation operations pursuant to subsection 3 of North Dakota Century Code sections ~~38-14.1-16~~ to be conducted within that the legally described area attached to each performance the bond. The applicant shall attach to each performance bond that legally described area for which the bond is to be subject.
4. The applicant may file either:
 - a. The entire performance bond required during the term of for the permit term; or
 - b. An incremental bond schedule and the performance bond required for the first scheduled increment in the schedule.

5. When the permittee elects to increment the amount of the performance bond during the term of the permit, the permittee shall:
 - a. Furnish a legal description of the initial and successive each incremental areas for bonding area.
 - b. Furnish a schedule for the dates when the successive increments each increment will require bond.
 - c. Furnish with the application the estimated costs for the commission to complete the reclamation plan pursuant to section 69-05.2-12-07 for the initial increment.
 - d. Provide to the commission at least ninety days prior to the expected starting date for each successive increment the estimated cost to the commission to complete the reclamation plan pursuant to section 69-05.2-12-07 for each successive the next increment at least ninety days prior to the expected starting date of mining.
6. The commission shall notify the permittee of the amount of bond determined sufficient within thirty days of the commission receipt of a successive increment bond estimation. The permittee will be notified of the commission's bond determination within thirty days of receipt of the permittee's reclamation cost estimate for the next bond increment.
7. The permit applicant or permittee shall not disturb any areas within the permit area or incremental bond area prior to receipt of approval from the commission for approval of the entire bond or incremental bond covering the area to be affected.
8. Once surface coal mining operations have begun within the bond area, adequate bond coverage must be in effect at all times. Except as provided by subsection 3 of section 69-05.2-12-03, operating without a bond is a violation of a permit condition.
9. The indemnity agreement for a collateral bond or self-bond must be executed according to the following:
 - a. If a corporation or rural electric cooperative:
 - (1) By two officers authorized to sign the agreement by a resolution of the board of directors, a copy of which must be provided; and
 - (2) To the extent the history or assets of a parent organization are relied upon to make the required showings for a collateral bond or self-bond, by every parent organization at any tier.

b. If a partnership, each general partner and each parent organization or principal investor. "Principal investor" or "parent organization" means anyone with a ten percent or more beneficial ownership interest, directly or indirectly, in the applicant.

c. If married, the permit applicant's spouse, if directly involved as part of the business on a regular basis or as an officer of the organization.

10. The name of each person who signs the indemnity agreement must be typed or printed beneath the signature. Any person who occupies more than one of the positions shall indicate each capacity in which that person signs the agreement. The agreement is binding jointly and severally on all who execute it.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-02. Performance bond - Form of the performance bond. The form for the performance bond shall be prescribed by the commission in accordance with this chapter. The commission shall allow for either:

1. A surety bond;
2. A collateral bond; or
3. A self-bond; or
4. A combination of the above.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-03. Performance bond - Surety bond. Surety bonds shall be subject to the conditions specified in of subsections 6 and 7 of North Dakota Century Code section 38-14.1-16 and the following conditions:

1. The commission shall not accept the bond of a surety company unless the bond shall not be cancelable by the surety at any time for any reason including, but not limited to, nonpayment of premium or bankruptcy of the permittee during the period of liability, except as provided in subsection 6 of North Dakota

~~Century Code section 38-14.1-16 and subsection 2 of this section.~~

2. The notice required by subsection 6 of North Dakota Century Code section 38-14.1-16 shall be given by certified mail to both the permittee and the commission and shall is not be effective until received by both the permittee and the commission.
 - a. Cancellation shall is not be effective for lands subject to bond coverage which are disturbed after receipt of notice, but prior to approval by the commission.
 - b. The commission may approve such cancellation only if a replacement bond is filed by the permittee prior to the cancellation date, or the permit is revised so that the surface coal mining operations approved under the permit are reduced to the degree necessary to cover all the costs attributable to the for completion of reclamation operations on the reduced permit area in accordance with North Dakota Century Code section 38-14.1-16 and the remaining performance bond liability.
3. The bond shall provide that the surety and permittee shall be jointly and severally liable.
4. 2. The bond shall must provide that:
 - a. The surety will give prompt notice to promptly notify the permittee and the commission of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business.
 - b. In the event if the surety becomes unable to fulfill its obligations under the bond for any reason, notice, it shall be given immediately to notify the permittee and the commission.
 - c. The surety and permittee are jointly and severally liable.
 - d. The surety may not cancel the bond during the period of liability, except as provided in subsection 6 of North Dakota Century Code section 38-14.1-16 and subsection 1 of this section.
- c. 3. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license to do business in North Dakota, the permittee shall be deemed to be without bond coverage thereafter, and shall, within thirty days after receiving notice from the commission, substitute for such that surety, a good and sufficient corporate surety

licensed to do business in North Dakota, or security in the form of a collateral bond as provided in section ~~69-05.2-12-04~~.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

~~69-05.2-12-04. Performance bond - Collateral bond. A collateral bond may be a cash deposit, negotiable bonds of the United States or of North Dakota, negotiable certificates of deposit of any North Dakota bank, or a perfected first lien security interest on real property. The guarantor of a collateral bond may be the permit applicant or a qualified third party meeting the requirements of this section.~~

1. Collateral bonds, other than real property collateral, shall be are subject to the following conditions:
 - a. ~~The commission shall obtain possession of and keep in custody all~~ All collateral deposited by the guarantor, must be kept in the commission's custody until authorized for release or replacement as provided in this chapter and in North Dakota Century Code sections 38-14.1-16 and 38-14.1-17.
 - b. ~~The commission shall value collateral at its market value, not face value.~~ Collateral must be valued at market value.
 - c. ~~The commission shall require that certificates~~ Certificates of deposit must be assigned to the state of North Dakota, in writing, and upon the books of the bank issuing such certificates issuer.
 - d. ~~The~~ Except for certificates issued by the Bank of North Dakota, the commission shall not accept an individual certificate for a denomination in excess of one hundred thousand dollars, or the maximum ~~insurable~~ insured amount as determined insured by the federal deposit insurance corporation and the federal savings and loan insurance corporation, whichever is greater.
 - e. ~~The commission shall require the banks issuing these certificates to~~ An issuer shall waive all rights of setoff or liens which it has or might have lien against those certificates the certificate.
 - f. The commission shall only accept only automatically renewable certificates of deposit.

- g. ~~The commission shall require the~~ The permit applicant to shall deposit sufficient amounts of certificates of deposit, collateral to assure that the commission will be able to liquidate those the certificates prior to maturity, upon forfeiture, for the amount of the bond.
2. A real property collateral bond ~~shall be~~ is subject to the following conditions:
- a. ~~The permit applicant shall designate the name and address of a suitable agent to receive service of process in the state of North Dakota.~~
 - b. ~~The guarantor shall grant the state of North Dakota a mortgage or security interest in real property located in the state of North Dakota which shall have a fair market value equal to or greater than the obligation created under the indemnity agreement.~~
 - c. ~~The instrument creating such mortgage or security interest shall vest such interest in the state of North Dakota so as to secure the right and power in the commission on behalf of the state of North Dakota to immediately attach said property concurrent with the issuance of a notice of forfeiture under section 69-05.2-12-16, and to sell or otherwise dispose of the property by a public or private transaction, and to establish the commission as the sole secured creditor with respect to such property, so as to assure the commission of a preferred claim over all other creditors in case of bankruptcy.~~
 - d. ~~The property subject to the security interest shall not be subject to any conflicting or prior security interest. The instrument creating the interest in real property shall be recorded as authorized for fee interests.~~
 - e. ~~In order for the commission to evaluate the adequacy of the property offered to satisfy this requirement, the permit applicant shall submit a schedule of the real property which will be pledged to secure the obligations under the indemnity agreement.~~
 - (1) ~~The schedule of the real property shall include:~~
 - (a) ~~A description of the property.~~
 - (b) ~~The value of the property.~~
 - (1) ~~The property shall be valued at fair market value as determined by an appraisal conducted by appraisers appointed by the commission.~~

{2} The appraisal shall be expeditiously made, and a copy thereof furnished to the commission and the permittee.

{3} The reasonable expense of the appraisal shall be borne by the permittee.

(2) Proof of the mortgagor's possession of and title to the unencumbered real property within the state of North Dakota which is offered to secure the obligations under the bond. Such proof shall include:

(a) If the interest arises under a federal or state lease, a status report prepared by an attorney, satisfactory to the commission as disinterested and competent to so evaluate the asset, and an affidavit from the owner in fee establishing that the leasehold could be transferred to the commission upon forfeiture.

(b) If title is in fee, an abstract of title prepared by an abstract office authorized to transact business within the state of North Dakota and satisfactory to the commission.

(c) The property shall not include any lands in the process of being mined, reclaimed, or the subject of the permit application. The permit applicant may offer any lands for which the bonds have been released. In addition, any land used as a security shall not be mined while it is security.

f. If at any time the conditions upon which the property collateral bond was approved no longer prevail, the commission may require the posting of a surety or other collateral bond. The permittee shall have forty-five days from the date of receipt of the notice to substitute bond to deliver to the commission an acceptable replacement bond. In default thereof, the permittee must suspend all mining operations in accordance with North Dakota Century Code section 38-14.1-28.

a. The applicant shall grant the commission a first mortgage, first deed of trust, or perfected first-lien security interest in real property with a right to dispose of the property in case of forfeiture under section 69-05.2-12-16.

b. For the commission to evaluate the adequacy of the real property offered, the applicant shall submit a schedule of the real property to be mortgaged or pledged to secure the

obligations under the indemnity agreement. The list must include:

- (1) A description of the property;
- (2) The fair market value determined by an independent appraisal by a certified appraiser approved by the commission; and
- (3) Proof of possession and title to the real property.

c. Land pledged as collateral may not be disturbed under any permit while it is serving as security.

3. For all a collateral bonds bond the guarantor shall execute an indemnity agreement must be executed by the guarantor and according to subsections 9 and 10 of section 69-05.2-12-01.

a. ~~If a corporation, then by two corporate officers who are authorized to sign the agreement by a resolution of the board of directors, a copy of which shall be provided.~~

b. ~~To the extent the history or assets of a parent organization are relied upon to make the showings of this section, then the parent organization and every parent organization of which it is a subsidiary, whether first-tier, second-tier, or further removed, in the form of subdivision a.~~

c. ~~If the guarantor is a partnership, all of its general and limited partners and their parent organization or principal investors.~~

d. ~~If the guarantor is married, the permit applicant's spouse, if directly involved as part of the business on a regular basis or as an officer of the organization.~~

e. ~~The name of each person who signs the indemnity agreement shall be typed or printed beneath the signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which that person signs the indemnity agreement.~~

f. ~~The indemnity agreement shall be a binding obligation, jointly and severally, on all who execute it.~~

g. ~~For purposes of this subsection, "principal investor" or "parent organization" means anyone with a ten percent or more beneficial ownership interest, directly or indirectly, in the permit applicant.~~

4. Persons with an interest in collateral posted as a bond, who desire notice of actions relating to the bond, shall request

the notice in writing to the commission when collateral is offered.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-05.1. Performance bond - Self-bond of permit applicant.

1. The commission may accept a self-bond if the following conditions are met:

a. The applicant designates an agent for service of process in the state.

b. The applicant has been in continuous operation as a business entity the five years preceding the application. The commission may allow a joint venture with less than five years of continuous operation if each member has been in continuous operation for the five years preceding the application.

c. The applicant submits financial information in sufficient detail to show one of the following:

(1) The applicant has a current Moody's investors service or Standard and Poor's rating for its most recent bond issuance of "A" or higher.

(2) The applicant has a tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater.

(3) The applicant's fixed assets in the United States total at least twenty million dollars and the applicant has a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater.

d. The applicant submits:

(1) Financial statements for the last complete fiscal year audited by an independent certified public accountant, and a report containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion; and

(2) Financial statements for completed quarters in the current fiscal year and additional information requested by the commission.

e. "Tangible net worth" means net worth less intangibles.

2. The commission may accept a written guarantee for an applicant's self-bond from any third-party guarantor, whenever the applicant meets the provisions of subdivisions a, b, and d of subsection 1 and the guarantor meets the provisions of subdivisions a, b, c, and d of subsection 1. The commission may require the applicant to submit information pertaining to the provisions of subdivision c of subsection 1 in order to determine the financial capabilities of the applicant. The written guarantee must provide that:

a. If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide to the commission funds, up to the bond amount, sufficient to complete the reclamation plan.

b. The guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the commission at least ninety days in advance of the cancellation date, and the commission accepts the cancellation.

c. The cancellation may be accepted by the commission if the applicant obtains suitable replacement bond before the cancellation or if the covered lands have not been disturbed.

3. The total amount of the outstanding and proposed self-bonds for surface coal mining and reclamation operations may not exceed twenty-five percent of the applicant's or third-party guarantor's tangible net worth in the United States.

4. If the commission accepts a self-bond, an indemnity agreement executed by the applicant and any third-party guarantor must be submitted subject to the following:

a. The indemnity agreement is executed according to subsections 9 and 10 of section 69-05.2-12-01.

b. An affidavit is submitted certifying that such an agreement is valid under all applicable federal and state laws.

c. The guarantor provides a copy of the corporate authorization demonstrating that it may guarantee the self-bond and execute the indemnity agreement.

- d. In the event of forfeiture, the applicant or third-party guarantor will complete the approved reclamation plan for the land in default or pay to the commission an amount necessary to complete the approved reclamation plan, not to exceed the bond amount.
5. Self-bonded permittees and third-party guarantors shall submit an update of the information required under subdivisions c and d of subsection 1 within ninety days after the close of their fiscal years.
6. If the financial conditions of the permittee or the third-party guarantor change so that the criteria of this section are not satisfied, the permittee shall notify the commission immediately and post an alternate bond in the same amount as the self-bond. If substitution is not made within thirty days, the commission may suspend the permit. If substitution is not made within ninety days, the commission shall suspend the permit and the operator shall cease surface mining activities and comply with section 69-05.2-13-11.

History: Effective May 1, 1988.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-06. Performance bond - Replacement of bonds.

1. The commission may allow permittees to replace existing surety or collateral bonds with other surety or collateral bonds one form of bond with another, if the liability which has accrued against the permittee on the permit area is transferred to such the replacement bonds.
2. The existing performance bonds Bonds shall remain in effect until the permittee has submitted and the commission has approved acceptable replacement performance bonds.
3. A replacement of performance bonds pursuant to this section shall Bond replacement is not constitute a release of bond under this chapter and North Dakota Century Code section 38-14.1-17.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-07. Performance bond - Determination of bond amount.

1. The standard applied by the commission in determining the amount of performance bond shall be amount of bond required is the estimated cost to for the commission if it had to perform the reclamation, restoration, and abatement work required of a person who conducts surface coal mining and reclamation operations under North Dakota Century Code chapter 38-14.1, this article, and the permit, and such additional work as would be required to achieve compliance with the general standards for revegetation in section 69-05.2-22-07 in the event the permittee fails to implement an approved alternative postmining land use plan within the two years required by subsection 4 of section 69-05.2-22-07.

2. The amount of performance bond required for each bonded area shall be based on, but not limited to:
 - a. The estimated costs submitted by the permit applicant pursuant to subsection 2 of section 69-05.2-09-11 including, but not limited to, cost estimates of:
 - (1) Backfilling and grading.
 - (2) Replacing suitable plant growth material.
 - (3) Revegetation.
 - b. The additional estimated costs to the commission which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform reclamation, restoration, and abatement work.
 - c. All additional estimated costs necessary, expedient, and incident to the satisfactory completion of the requirements identified in this subsection.
 - d. An additional amount based on factors of cost changes during the preceding five years for the types of activities associated with the reclamation to be performed.
 - e. Cost estimates for the reclamation of any unusual conditions known to exist in the proposed permit area, which shall be submitted to the commission and described in detail by the permit applicant.
 - a. Be determined by the commission;
 - b. Depend upon the requirements of the approved permit and reclamation plan;

- c. Reflect the probable difficulty of reclamation considering topography, geology, hydrology, and revegetation potential; and
- d. Consider the estimated cost submitted by the permit applicant.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-08. Performance bond - Adjustment of amount.

1. The commission shall ~~conduct a review of each performance bond or collateral at a frequency consistent with section 69-05.2-11-01 or, if necessary, on a more frequent basis~~ frequently and shall notify the permittee of any proposed bond adjustment following completion of the review.
2. The commission shall reevaluate performance bonds in accordance with the standards provided for in section 69-05.2-12-07.
3. If the commission determines that a performance bond adjustment is required, the commission shall provide the permittee with the opportunity for is entitled to an informal conference on the adjustment in accordance with under chapter 69-05.2-10 and North Dakota Century Code section 38-14.1-19.
4. A permittee may request reduction of the required bond amount upon submission of evidence showing the permittee's operations or other circumstances will reduce the maximum estimated cost for the commission to complete reclamation. Bond reductions which involve undisturbed land or revision of the cost estimate of reclamation are not bond releases. A request for reduction in bond for reclamation work performed on disturbed areas is a request for bond release.

History: Effective August 1, 1980; amended effective May 1, 1988.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-09. Performance bond - Period of liability.

1. The period of liability for the performance bond shall be that amount of liability period is the time necessary to achieve compliance with meet the requirements of North Dakota Century Code chapter 38-14.1, this article, and the permit and shall continue a minimum of ten years beginning as specified in subsection 2 of section 69-05.2-22-07. The period of extended

responsibility ~~shall begin~~ begins again whenever augmented seeding, fertilization, irrigation, or other work is required or conducted on the site prior to bond release, unless the management practice conducted is a part of normal management for that particular land use and is approved by the commission.

2. If the commission approves a long-term postmining land use of developed water resources, recreation, residential, ~~or industrial/commercial~~ industrial, or commercial, the commission may approve a liability period of less than ten years provided if the other requirements of this subsection and the requirements of subsection 5 of section 69-05.2-22-07 ~~have been complied with~~ are met prior to the final release of bond.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-10. Performance bond - Request for reduction. A permittee may request reduction of the required performance bond amount upon submission of evidence to the commission proving that the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the commission to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount. The request shall be considered as a request for partial bond release pursuant to North Dakota Century Code section ~~38-14.1-17~~ and this chapter. Repealed effective May 1, 1988.

History: Effective August 1, 1980.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-11. Release of performance bond - Criteria for bond release.

1. The commission shall not release any liability under a performance bond applicable to a permit liability if such a the release would reduce the total remaining liability to an amount less than that necessary for the commission to complete the approved required reclamation plan, achieve compliance with North Dakota Century Code chapter ~~38-14.1~~, this article, and abate any significant environmental harm to air, water, or land resources, or danger to the public health and safety which might occur prior to the release from performance bond of all lands within the permit area. Where the permit includes an alternative postmining land use plan approved pursuant to chapter ~~69-05.2-23~~, the commission shall also retain sufficient liability for the commission to complete any

additional work which would be required to achieve compliance with subsection 3 of section 69-05.2-22-07 in the event the permittee fails to implement the approved alternative postmining land use plan within the two years required by subsection 4 of section 69-05.2-22-07.

2. Release of performance bond for any combination of release stages identified in subsection 7 of North Dakota Century Code section 38-14.1-17, ~~shall require~~ requires compliance with the reclamation standards established for each individual bond release stage.

History: Effective August 1, 1980; amended effective May 1, 1988.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-17

69-05.2-12-12. Release of performance bond - Bond release application.

1. The permittee may ~~file~~ a request with the commission for release of all or part of a performance bond ~~furnished subsequent to~~ for lands disturbed after July 1, 1975, as follows:
 - a. For lands disturbed between July 1, 1975, and June 30, 1979, the application shall ~~be filed in accordance with the public notice and procedural requirements of~~ comply with subsection 1 of North Dakota Century Code section 38-14.1-17 and subsections 3 and 4 of this section. The criteria for release of all or part of the performance bond ~~and the success of reclamation shall be determined~~ according to the reclamation requirements in effect at the time of the disturbance.
 - b. For lands disturbed after June 30, 1979, the application shall ~~be filed in accordance~~ comply with the requirements of this section and section 69-05.2-12-11.
2. The permittee may ~~only~~ file performance bond release applications only at times and seasons that allow the commission to properly evaluate the completed reclamation operations ~~alleged to have been completed.~~
3. Within thirty days after filing a request for bond release, the permittee shall submit proof of the publication of the advertisement required by North Dakota Century Code section 38-14.1-17. ~~Such proof of publication shall be considered part of the bond release application.~~
4. Lands for which the permittee requests performance bond release shall be legally described and delineated on maps of the permit area.

5. When the permittee requests a partial release of ~~performance~~ bond after regrading ~~pursuant to~~ under subdivision a of subsection 7 of North Dakota Century Code section 38-14.1-17, the application shall, unless ~~otherwise~~ waived by the commission, include surface profiles or topographic maps ~~prepared~~ in accordance with section 69-05.2-21-06.
6. When the permittee requests a partial release of ~~performance~~ bond after resspreading suitable plant growth material ~~pursuant to~~ under subdivision b of subsection 7 of North Dakota Century Code section 38-14.1-17, the application shall include the thickness of the resspread first lift and second lift suitable plant growth materials.
7. When the permittee requests a partial release of ~~performance~~ bond after vegetation has been established ~~pursuant to~~ under subdivision c of subsection 7 of North Dakota Century Code section 38-14.1-17, the application shall include ~~the~~ following:
 - a. The data collected, analyses conducted, and ~~an appropriate~~ a narrative demonstrating vegetation establishment ~~pursuant to the requirements of as required by~~ subsection 3 of section 69-05.2-22-07.
 - b. Documentation ~~showing~~ that the lands to which the release would be applicable are not contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 69-05.2-16-04.
 - c. A discussion of how the provisions of a plan approved by the commission for the sound future management of any permanent impoundment by the permittee or landowner have been implemented.
8. When the permittee ~~is requesting~~ requests final ~~performance~~ bond release ~~pursuant to~~ under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application shall include:
 - a. The data collected, analyses conducted, and ~~an appropriate~~ a narrative detailing compliance with subsection 4 of section 69-05.2-22-07.
 - b. The ~~complete~~ history of initial and subsequent seedings and fertilization (including mixtures and rates), appropriate soil tests, supplemental irrigation, or ~~any~~ other management practices employed.
 - c. Documentation showing ~~that~~ the reestablishment of essential hydrologic functions of alluvial valley floors ~~has been achieved~~.

9. When the permittee requests release of performance bond for any combination of release stages detailed in subsection 7 of North Dakota Century Code section 38-14.1-17, the application shall contain all the information required at each bond release stage.
10. Requests for a reduction in bond amount for reclamation work performed according to subsection 4 of section 69-05.2-12-08 must include a detailed description of the work performed and a new reclamation cost estimate.
11. The commission may request any additional information as is necessary to properly evaluate the application for performance bond release application.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-17

69-05.2-12-13. Release of performance bond - Location of hearing. Any formal hearing on the release of performance bond provided for in under subsection 2 of North Dakota Century Code section 38-14.1-17 shall be held in the town or city nearest the permit area, or the state capitol, at the option of the objector. Any person having a valid legal interest which is or may be adversely affected by in a proposed release from performance bond shall specify that person's preference for the place of hearing in that person's the request for a formal hearing.

History: Effective August 1, 1980; amended effective May 1, 1988.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-17

69-05.2-12-14. Release of performance bond - Commission inspection - Time of release.

1. The surface owner, agent, or lessee shall be given notice notified by the commission of the bond release inspection required by subsection 3 of North Dakota Century Code section ~~38-14.1-17~~ and may participate with the commission in making the inspection. If requested by a person with an interest in the bond release, the commission may arrange with the permittee access to the permit area for that person to gather relevant information within the time specified by subsection 3 of North Dakota Century Code section 38-14.1-17.
2. The commission shall not release performance bond until the time period to request a formal hearing pursuant to section ~~69-05.2-12-15~~ has expired, or the commission has issued a final decision on after a formal hearing has been issued by

the commission pursuant to North Dakota Century Code section 38-14.1-30.

History: Effective August 1, 1980; amended effective May 1, 1988.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-17

69-05.2-12-15. Release of performance bond - Objections to the decision and request for a public hearing.

1. The permittee or any person having a valid legal interest which is or may be adversely affected by in the decision to release or not release all or part of the performance bond, or the responsible officer or head of any state or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the surface coal mining operations, or is authorized to develop and enforce environmental standards with respect to such operations shall have the right to file written objections to the performance bond release decision with the commission and to request a formal hearing pursuant to the procedures established in under subsection 3 of North Dakota Century Code section 38-14.1-30 within thirty days of the decision.
2. The location of the formal hearing shall be selected in accordance with section 69-05.2-12-13.

History: Effective August 1, 1980; amended effective May 1, 1988.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-17

69-05.2-12-16. Forfeiture of performance bond - Procedures.

- ~~+~~ In the event If forfeiture of the bond is required by section 69-05.2-12-18, the commission shall:
- a. 1. Send written notification notice by certified mail to the permittee, and the any surety on the bond, if applicable, of the commission's determination final decision to require forfeiture of all or part of the performance bond and, the reasons for the forfeiture, including a finding of and the amount to be forfeited.
 - b. 2. Advise the permittee and any surety, if applicable, of the permittee's right to request judicial review pursuant to under North Dakota Century Code section 38-14.1-35.
 - c. 3. Proceed in an appropriate action for collection to collect on the performance bond.

- 2- The written determination to require forfeiture of all or part of the performance bond, including the reasons for forfeiture and the amount to be forfeited, shall be a final decision of the commission.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16, 38-14.1-30, 38-14.1-33, 38-14.1-35

69-05.2-12-18. Forfeiture of performance bond - Amount of forfeiture. If the commission requires forfeiture of all or a part of the performance bond, the commission shall either:

- 1- Determine the amount of the performance bond to be forfeited on the basis of the estimated cost to the commission or its contractor to complete the reclamation plan and other regulatory requirements in accordance with North Dakota Century Code chapter 38-14.1, this article, and the requirements of the permit; or
- 2- Require forfeiture of the entire amount of the performance bond for which liability is outstanding shall be forfeited. Any performance bond proceeds remaining after the reclamation plan is completed shall be refunded to the permittee.

History: Effective August 1, 1980; amended effective May 1, 1988.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16, 38-14.1-30

69-05.2-13-04. Performance standards - General requirements - Signs and markers. The permittee shall, at a minimum, comply with the following requirements for areas within a permit where a performance bond has been posted.

1. Specifications. Signs and markers required under this section shall:
 - a. Be posted and maintained by the operator.
 - b. Be of a uniform design throughout the operation that can be easily seen and read.
 - c. Be made of durable material.
 - d. Conform to local ordinances and codes.
2. Duration of maintenance. Signs and markers shall be maintained during the conduct of all pertinent activities to which they pertain.

3. **Mine and permit identification signs.**
 - a. Identification signs shall be displayed at **each point of** access to the permit area from public roads.
 - b. Signs shall show the name, business address, and telephone number of the operator and the identification number of the current permit authorizing surface mining activities.
 - c. Signs shall be **retained and maintained until after the release of all bonds for the permit area bond is released.**
4. **Perimeter markers.** The perimeter of a permit area shall be clearly marked before the beginning of surface mining activities.
5. **Buffer zone markers.** Buffer zones shall be marked along their boundaries as required by section 69-05.2-16-20.
6. **Blasting signs.** If blasting is conducted **incident to surface mining activities**, the person who conducts these activities shall:
 - a. Conspicuously display signs reading "Blasting Area" along the edge of any blasting area that comes within fifty feet [15.24 meters] of any road within the permit area, or within one hundred feet [30.48 meters] of any public road right of way.
 - b. Conspicuously flag, or post within the blasting area, the immediate vicinity of charged holes as required by section 69-05.2-17-05.
 - c. Place at all entrances to the permit area from public roads or highways conspicuous signs which state "Warning! Explosives in Use!", which clearly explain the blast warning and all-clear signals **that are in use and which explain** the marking of blast areas and charged holes **within the permit area.**
7. **Suitable plant growth material markers.** ~~Where Stockpiled suitable plant growth material or other suitable strata are segregated and stockpiled as required by section 69-05.2-15-03,~~ the stockpiled material shall be clearly marked.
8. **Sedimentation pond markers.** The design sediment storage volume, calculated according to the requirements of subsection 2 of section 69-05.2-16-09, shall be clearly marked at the appropriate pool elevation.

History: Effective August 1, 1980; amended effective May 1, 1988.

General Authority: NDCC 38-14.1-03, 38-14.1-24

Law Implemented: NDCC 38-14.1-24, 38-14.1-27

69-05.2-23-01. Performance standards - Postmining land use - Determining premining land use.

1. The premining uses of land to which the postmining land use is must be compared shall be determined to be those uses which the land previously supported with the following exceptions:
 - a. If under proper management unless the land has been previously mined and not reclaimed. In that case, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas.
 - b. If the land has received improper management or use, the postmining land use shall be judged on the basis of the premining use of surrounding lands that have received proper management.
2. If the premining use of the land was changed within five years of the beginning of mining, the comparison of postmining use to premining use shall also include a comparison with the historic use of the land as well as its use immediately preceding mining.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988.

General Authority: NDCC 38-14.1-03, 38-14.1-24

Law Implemented: NDCC 38-14.1-24

69-05.2-23-02. Performance standards - Postmining land use - Land use categories. Land use is categorized in the following groups: Change from one to another land use category in premining to postmining constitutes an alternate land use and the permittee shall meet the requirements of section 69-05.2-23-03 and all other applicable environmental protection performance standards. as follows:

- ~~1.~~ Agricultural land: Land used for:
 - a. 1. Cropland.
 - b. 2. Tame pastureland.
 - c. 3. Native grassland.
 2. 4. Woodland.
 3. 5. Fish and wildlife habitat.
 4. 6. Developed water resources.

- 5- 7. Recreation.
- 6- 8. Residential.
- 7- 9. Industrial and commercial.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988.

General Authority: NDCC 38-14.1-03, 38-14.1-24

Law Implemented: NDCC 38-14.1-24

69-05.2-23-03. Performance standards - Postmining land use - Criteria for approving alternative postmining land uses. An alternative postmining land use may be approved by the commission, after consultation with consulting the landowner or the land management agency having jurisdiction over state or federal lands, if the following criteria are met:

- 1- The proposed postmining land use is compatible with adjacent land use and, where applicable, with existing local or state land use policies and plans. A written statement of the views of the authorities with statutory responsibilities for land use policies and plans must be submitted with the request for approval to the commission before any surface mining activities begin. Any required approval, including any necessary zoning or other changes required for land use by local, state, or federal land management agencies, must be obtained and must remain valid throughout the surface mining activities.
- 2- Specific plans have been prepared and submitted to the commission which show the feasibility of the proposed land use as related to needs, projected land use trends, and markets, and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and will be sustained. The commission may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.
- 3- Provision is made for any necessary public facilities and is ensured.
- 4- Specific and feasible plans have been prepared and submitted to the commission which show that financing, attainment, and maintenance of the postmining land use are feasible.
- 5- The plans are designed under the general supervision of a registered professional engineer, or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability.

drainage, vegetative cover, and esthetic design appropriate for the postmining use of the site.

6. The proposed use will neither present actual or probable hazard to public health or safety nor will it pose any actual or probable threat of waterflow diminution or pollution.
7. The use will not involve unreasonable delays in reclamation.
8. Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants has been obtained from the commission and have been reviewed by the state game and fish department and the appropriate federal fish and wildlife management agencies.
9. Proposals to change premining land uses of range, fish and wildlife habitat, woodland, or pastureland to a postmining cropland or hayland use, where the cropland or hayland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable state and local laws shall be reviewed by the commission to ensure that:
 - a. The proposed postmining cropland or hayland use is practical and reasonable.
 - b. There is sufficient water available to maintain crop production.
 - c. Suitable plant growth material quality and depth are shown to be sufficient to support the proposed use.
10. The commission has provided by public notice not less than sixty days for interested citizens and local, state, and federal agencies to review and comment on the proposed land use.

1. There is reasonable likelihood the use will be achieved.
2. The use does not present an actual or probable hazard to public health or safety, or threat of water diminution or pollution.
3. The use will not:
 - a. Be impractical;
 - b. Be inconsistent with applicable land use policies or plans;
 - c. Involve unreasonable delay in implementation; or

d. Cause or contribute to violation of federal, state, or local law.

History: Effective August 1, 1980; amended effective May 1, 1988.

General Authority: NDCC 38-14.1-03, 38-14.1-24

Law Implemented: NDCC 38-14.1-24, 38-14.1-42

TITLE 72
Secretary of State

MAY 1988

STAFF COMMENT: Article 72-02.1 contains all new material but is not underscored so as to improve readability.

ARTICLE 72-02.1

ATHLETIC COMMISSIONER

Chapter

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| 72-02.1-02 | Contracts |
| 72-02.1-03 | Tickets for Contests and Exhibitions |
| 72-02.1-04 | Conduct of Licensees |
| 72-02.1-05 | Rules to Safeguard Health |
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CHAPTER 72-02.1-01

POWERS AND PROCEDURES OF ATHLETIC COMMISSIONER

Section

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72-02.1-01-01. Office hours. The general offices of the commissioner are located at the capitol, Bismarck, North Dakota, and the office hours of the commissioner are from eight a.m. to noon and one p.m. to five p.m. each day, except Saturday, Sunday, and legal holidays.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-01-02. Suspension of license. The commissioner may suspend any license issued by a dated notice to that effect, mailed to the licensee, and specifying the effective date and term of the suspension. Such suspension shall be without any advance hearing but upon the receipt of such notice of suspension, the suspended licensee may apply to the commissioner for a hearing on the matter to determine whether such suspension should be revoked. Such application for a hearing must be in writing and must be received by the commissioner within thirty days after the date of notice of suspension.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-01-03. Revocation of license.

1. Before any license is revoked by the commissioner, the licensee will be notified to attend a hearing of the commissioner and to show cause at such hearing why the license should not be revoked. Notice of such hearing must be dated and must contain the alleged misconduct of the licensee upon which the contemplated revocation is predicated. Before or upon the return date of a notice to a licensee why the licensee should not show cause why the license should not be revoked, the licensee may appear in person or by the licensee's attorney. If such licensee shall appear, after

such appearance has been noted or filed and before any application for an adjournment, or otherwise, shall be made, the licensee shall interpose his or its answer to the specifications mentioned in the charges. This must be done by separately admitting or denying the specifications mentioned in the said charges.

2. At any stage of the proceedings, the commissioner may require the licensee to take the stand and give sworn testimony.
3. In the event that the licensee does not appear at such a hearing, or, if having appeared, the facts and evidence adduced at such hearing warrant, in the discretion of the commissioner, a revocation of such license, such license must be revoked and notice of such revocation must be promptly mailed to the licensee.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-01-04. Authority of commissioner or deputy. At all contests and exhibitions, the commissioner's representative or deputy, or both, shall have the full power to act on behalf of the commissioner to fully enforce all the rules of the commissioner and has the power and authority to immediately suspend, without prior notice, any licensee for any violation of this article or of the laws of this state.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-01-05. Commissioner bulletins. The commissioner shall from time to time issue bulletins concerning suspensions, revocations, fines, and penalties. All licensed corporations and matchmakers must keep the commissioner bulletin on file.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-01-06. Commissioner hearings. At all hearings conducted by the commissioner, the witnesses and licensees must testify under oath, which may be administered to them by any commissioner's representative present. The commissioner shall be the sole judge of the relevancy and competency of the testimony, the credibility of the witnesses, and the sufficiency of the evidence.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-01-07. Papers filed with commissioner. All applications, records or other papers, and documents filed or submitted to the commissioner hearing at any hearing become the property of the commissioner.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-01-08. Records of licensee available for inspection. All the books and records of any licensee of this commissioner, or of any partnership of which he is a partner or of any corporation of which he is an officer, director, or stockholder and which directly or indirectly concern boxing are, at all times, subject to the inspection of the commissioner at such times and under such circumstances as the commissioner may direct from time to time.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-01-09. Personnel changes in corporate licensee. The commissioner must be notified immediately of any new or additional officers, stockholders, or directors; and any changes in such corporate licensee shall be upon notice to and with the consent and approval of the commissioner.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-01-10. Violation of state laws or commissioner rules by licensee.

1. Any licensee who violates the laws of the state of North Dakota or the rules of the commissioner, may have his license revoked or may be fined, suspended, or otherwise disciplined, in such manner as the commissioner may direct. The commissioner has the power, in his discretion, to declare forfeited any purse, or any part thereof, belonging to the contestants or either of them or, the share thereof of any manager, if the commissioner has reason to believe such contestant or contestants, or manager of a contestant, as the case may be, has committed an act in violation of any rule of the commissioner.

2. The amount so forfeited must be paid within forty-eight hours to the commissioner. Such purse must be held by the commissioner until there is a final determination whether such violation has in fact been committed.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-01-11. Imposition of fine upon licensee. Where a fine has been imposed upon a licensee, his license may, in the judgment of the commissioner, be suspended until such fine has been paid.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-01-12. Registered address of licensee. All commissioner bulletins and notices to any licensee must be addressed and sent to such licensee at the registered address of such licensee. The registered address of any licensee is the licensee's address as specified in the licensee's application for a license, and in the event any licensee moves, the licensee shall promptly file with the commissioner an appropriate change-of-address rider to such application. All licensees are bound by the notices and bulletins sent to their registered addresses, and the commissioner will not entertain any plea or request based upon the contention that such notice or bulletin was not sent to any other known or more frequented address of the licensee.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-01-13. Disqualification of women. No women may be licensed to compete in any boxing exhibition with men.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-01-14. Persons prohibited from holding financial interest in contestant. No official or employee of the commissioner or of any of its medical panels or advisory boards and no judge or referee, licensed by the commissioner, may directly or indirectly have any financial interest whatsoever in any boxer, promoting corporation, or in any manager's contract with any licensed athlete or in any assignment thereof.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-01-15. Managers' records. Managers shall keep accurate records of the receipts and expenses of the boxers under their management and control.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-01-16. Financial reports. A manager of a boxer participating in a main event contest shall file with the commissioner, no later than five days after the contest, a report in triplicate listing the expenses and division of the proceeds of the contest. These reports are to be on forms supplied by the commissioner. A copy of this report must forthwith be sent by the commissioner to the boxer.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-01-17. Issuance of a license to box.

1. In order to obtain a license to box, and before each contest or exhibition in which he fights or spars, a boxer must present to the commissioner the following information:
 - a. The boxer's name, a current photograph, social security number, date of birth, and other identifying information;
 - b. The boxer's prior fight history including the date, location, name of opponent, and decision of such fights; and
 - c. The boxer's medical history relating to any physical condition, medical test or procedure which relates to his ability to fight, and a record of all medical suspensions.
2. In addition, the boxer must present to the commissioner each and every "passport" or other license to box issued to the boxer by a state, country, or association.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

**CHAPTER 72-02.1-02
CONTRACTS**

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72-02.1-02-01. How contract must be executed. Contracts between boxers and managers and between boxers or managers and licensed promoting corporations must be executed on printed forms approved by the commissioner, and such forms must be issued by the commissioner upon request to licensed boxers, managers, and promoting corporations.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-02-02. "Low-blow" clause mandatory. All contracts between a boxer and a licensed promoting corporation for the services of a boxer in a boxing contest, must contain the following paragraph:

The party of the first part agrees to equip himself with a foul-proof guard of his own selection, type to be approved by the commissioner, which will obviate the necessity of any claim being made for a low blow during the contest. It is expressly understood that this contest is not to be terminated by a low blow, as the protector selected by the party of the first part, is, in his opinion, sufficient protection to withstand any so-called low blow which might incapacitate the said boxer.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-02-03. Filing of contract between managers and boxers.
A copy of all contracts entered into between managers and boxers must be placed on file with the commissioner for approval. A contract, however, becomes null and void if at any time during its term the manager or boxer loses his license through affirmative action by the commissioner by revocation for misconduct of the licensee or by refusal of the commissioner to issue or renew the license upon formal application and not otherwise. A boxer is permitted to have one manager only and no manager is allowed to participate in more than thirty-three and one-third percent of the ring earnings of the boxer. No assignment of any part or parts of the boxer's or manager's interest in a contract, filed and approved by the commissioner, will be permitted without the approval and consent of the commissioner, and the consent to assign will not be granted unless a copy of the proposed assignment is submitted to the commissioner for his approval. No licensee is permitted to work with a boxer without the written consent of the manager of record.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-02-04. Execution of minor's contract. Contracts to which a minor is a party must be executed on behalf of such minor by the proper legal guardian of such minor.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-02-05. Validity of contract between manager and boxer.
A contract is not valid between manager and boxer unless both parties appear at the same time before the commissioner and receive its approval unless otherwise directed by the commissioner.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-02-06. Execution of contract by boxer mandatory. All boxers must carry out all the terms and conditions of the contracts to which they are a party, and any boxer failing to fulfill the terms of any such contract will be subject to the disciplinary action of the commissioner. Any boxer who becomes ill or is injured prior to a contest must immediately report such illness or injury to the commissioner and report for any medical examinations directed by the commissioner. Any boxer who, without the specific authority of the

commissioner, fails to timely appear for any examination or weigh-in scheduled by the commissioner or fails to timely appear at the place of contest pursuant to section 72-02-08-12 is subject to a fine or the suspension of his license for a period of up to one year, or both.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-02-07. Illness, injury, or other default. Any boxer who becomes ill or is injured prior to a contest must immediately report such illness or injury to the commissioner and report for any medical examinations directed by the commissioner. In the event that either no such claim is made or if made, is rejected by the commissioner, the commissioner may fine the boxer or suspend or revoke the license of the defaulting boxer or both, awarding the amount of any forfeit posted under the terms of the contract to the opponent of the defaulting boxer or declare the defaulting boxer ineligible for any other bout, or both, until all the terms of the breached contract have been filled by such boxer. Any boxer who, without the specific authority of the commissioner, fails to timely appear for any examination or weigh-in scheduled by the commissioner or at the place of contest pursuant to section 72-02-08-12 is subject to a fine or the suspension of his license for a period of up to one year, or both.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-02-08. Bout contracted to occur after expiration of manager's contract with boxer. No manager is allowed to contract for the services of a boxer under his management for a bout to take place on a date after the expiration of the contract between the manager and his boxer, unless such bout has been approved in advance by the commissioner.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-02-09. Use of boxer's true name in signing contract. The commissioner will not approve any contract for the services of a boxer unless such contract is signed by the boxer under his true and legal name, but if he is licensed to box in this state under any other name, he may sign the contract under his licensed name provided that his true name appears in the body of the contract as the name under which he is otherwise known.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-02-10. Condition for approval of contracts for bouts. Contracts for a bout will not be approved by the commissioner unless both boxers have signed contracts with the same licensed promoting corporation.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-02-11. Minimum payment to boxers in main bout. In all such contracts for bouts the minimum percentage of the receipts to be paid for boxers in the main bout shall not be less than ten percent for each contestant, and all payments of any nature to be paid each main bout boxer must be specified.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-02-12. Persons who may sign contract for bout. Except as provided in section 72-02-02-04, contracts must be signed by the boxer's manager, on the boxer's behalf, or personally by the boxer when he has no licensed manager of record, unless otherwise directed by the commissioner.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-02-13. Time for filing contract for bout with commissioner. All contracts between licensed promoting corporations and any boxer or manager of a boxer affecting or calling for the services of a boxer must be filed with the commissioner by such corporation within forty-eight hours after the execution of such contract and at least forty-eight hours prior to any bouts to which they relate.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-02-14. How payment for services must be made. All compensation to boxers must be made by check payable jointly to the participating boxer and his licensed manager who shall sign receipts for such payment. No boxer may be paid or receive any portion of his purse, except for training expenses, prior to the conduct of the bout, without

approval of the commissioner. No boxer may be paid or receive compensation in the form of an irrevocable letter of credit or other such form of payment which would preclude the commissioner from withholding that boxer's purse should it determine that he gave or participated in a sham or collusive boxing or sparring match or exhibition. No payment may be made to any person or party other than as set forth unless the commissioner has in advance approved all the details of the transactions.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-02-15. When bout or exhibition may be publicly announced. No licensed promoting corporation, matchmaker, manager, or boxer may publicly announce or advertise that any bout or exhibition will take place unless such bout or exhibition has been formally approved by the commissioner. Licensed promoting corporations must notify the commissioner of any proposed contest or exhibition, including in such notice the full details of such contest or exhibition, at least five days before the scheduled date of such contest or exhibition.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-02-16. Negotiations for a bout with person other than manager of record. Whenever any promoter or matchmaker is negotiating for a bout with any person or party who is not the manager of record for the boxer involved, the matchmaker shall sign a form supplied by the commissioner indicating the identity of the boxer and the representative, the compensation of the representative, and by whom such compensation is to be paid.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-02-17. Broadcast or telecast of bout. All contracts entered into by any licensee of the commissioner or any and all amendments, changes, or modifications calling for or referring to any motion picture, telecast or radio broadcast of any bout, exhibition, or match must be promptly filed with the commissioner for approval, and no person or party may announce or conduct any such broadcast to telecast any bout, exhibition, or match conducted under the jurisdiction of the commissioner without first obtaining the approval of the commissioner.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-02-18. Licensing and training standards for managers. Prior to the issuance of a license of a boxing manager, an individual shall pass a written or oral examination, or both, relating to the commissioner's rules. In addition, prior to the issuance of a license to a manager, the manager must exhibit a knowledge of the background, skills, and experience of each boxer the manager seeks to place under contract. In addition, licensed managers of professional boxing must periodically, as mandated by the commissioner, attend seminars relating to the rules of the commissioner and skills as a manager of professional boxers.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

CHAPTER 72-02.1-03 TICKETS FOR CONTESTS AND EXHIBITIONS

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72-02.1-03-01. Marking of press tickets. All tickets issued to the press must be marked "Working Press". The rows of working press tickets must be consecutively lettered and each seat numbered. Only six such rows are allowed unless the commissioner authorized any different number. There must be an adequate aisle space between the end of the working press section and the beginning of the ringside section.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-03-02. Conditions to be met before tickets are sold. The sale of tickets for any proposed contest or exhibition is prohibited until plans and statements showing the seating arrangements and the location of tickets of each price have been approved by the commissioner, and until the aisle spacing, the exit facilities, and the location of fire appliances have been approved by the appropriate county or municipal authority.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-03-03. Indication of location on ringside or press tickets. Tickets marked "Ringside" or marked "Working Press" must indicate their actual location, in accordance with the following examples:

| | Working Press | | |
|---------------------------|---------------|---------------|------|
| | Section | Row | Seat |
| Working press ticket..... | 10 | A | 1 |
| Ringside ticket..... | 10 | Ringside 1 | 1 |

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-03-04. Complimentary tickets. All complimentary tickets must be so designated in the manner approved by the commissioner and must be priced and printed to include not only taxes but such service charges as the commissioner may from time to time direct or approve. The numbers of such complimentary tickets issued for each event must be approved by the commissioner. The issuance of cutrate tickets must be approved in advance by the commissioner.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-03-05. Persons excused from holding tickets. No person, with the exception of (1) the commissioner, (2) persons designated by the commissioner for official duty, (3) the officials required to attend under provisions of state laws or the commissioner's rules, (4) the principals, managers, and seconds who are involved in the contest or exhibitions, and (5) the policemen, firemen, and other public officials actually on duty, may be admitted to any contest or exhibition unless he holds a ticket of admission. For the above-excepted classes appropriate admission tickets may be issued in such number and in such form as is approved by the commissioner.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-03-06. Licensed printers of tickets. Licensed corporations may sell or distribute only tickets obtained from a printer licensed by the secretary of state. Such tickets must be printed and made in such form as the commissioner may in each case direct. Licensed printers shall mail to the commissioners, at least fourteen days before the exhibition or contest for which such tickets are to be used, a sworn manifest of all tickets delivered to the licensed corporation.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-03-07. Reports required by commissioner. The authorized representative of any licensed corporation holding a contest or exhibition shall submit in writing to the commissioner within forty-eight hours after the close of the contest or exhibition, a report showing the number of each class of tickets sold, unsold or unused, and permit the commissioner to examine all sold, unsold or unused tickets, stub coupons, the financial records of the event, and investigate all other matters relating to the receipts and conduct of the box office and ticket takers. The ticket tally must conform to the manifest issued by the licensed printer and an "inspector's financial statement" for the particular contest or exhibition must be approved and signed by (1) the deputy commissioner in attendance or by the acting commissioner's official in charge, (2) by the commissioner's inspectors making the count, and (3) by the authorized representative of the licensed corporation promoting the event. An "after contest report" must be submitted by such corporation within forty-eight hours after the close of the contest on such form as may be from time to time required by the commissioner, and including the payments to the competitors and officials and the manner and form in which such payments were made.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-03-08. Reserved seating chart. Licensed corporations shall have available in their main box office a chart which plainly indicates the location of all reserved seats.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-03-09. Selling tickets at discount or in excess of price printed thereon. Without the consent of the commissioner or of the representative in charge, licensed corporations are prohibited from selling any tickets for any price other than the price printed thereon, changing the price of tickets at any time after tickets for the contest or exhibition have been placed on sale, or selling any tickets at any time during the contest or exhibition for a price less than tickets for similar seats were sold or offered before the exhibition or contest.

Licensed corporations must be vigilant to prevent speculation in tickets.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-03-10. How tickets must be printed. Tickets for reserved seats must be printed with a stub to be retained by the purchaser and there must be a new set of such tickets printed for every exhibition or contest. General admission tickets must be printed with such stub and must be consecutively numbered. No exchange of tickets may be made anywhere except at the box office of the licensed corporation, and no tickets may be sold after the main event has commenced. Tickets of different price must be printed in different distinctive colors unless otherwise sanctioned by the commissioner.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-03-11. Unsold tickets. All parties and persons promoting boxing shows shall deliver all unsold tickets to the commissioner and a complete report on all tickets sold. After the unsold tickets have been returned by the commissioner, such persons or parties shall hold all the unsold tickets and all the stubs of sold tickets for a period of six months.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-03-12. Standing room or roll tickets. No standing room or roll tickets are to be sold for any contest or exhibition without the approval of the commissioner and of the appropriate local or municipal safety departments.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-03-13. Seller's right to cancel ticket privileges. All tickets of admission to boxing matches held in licensed clubs in the state of North Dakota must have printed thereon the following legend:

This ticket is sold and purchased upon the express understanding that it is a personal license and not transferable. The issuer hereby reserves the right to cancel the privileges of this ticket and refund the money to the purchaser for any violation by the purchaser of the rules of the commissioner.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-03-14. Supervision of ticket sale by treasurer. The treasurer of each licensed corporation shall, in addition to other duties which may be prescribed for him, supervise the sale of tickets to the general public and prepare the necessary and proper tax returns as are required by law.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-03-15. Duties of box office employees. Box office employees of each licensed corporation shall assist the corporation treasurer in the sale of tickets and cooperate with the commissioner's representatives in the tabulating of the receipts as well as the counting of sold and unsold tickets directly after the main bout enters the ring.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-03-16. Persons to whom tickets may not be issued. No known gambler nor any person whose license has been revoked by the commissioner for conduct detrimental to the best interests of boxing may be issued a ticket or admitted to any boxing program conducted by a promoting corporation licensed by the commissioner.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

**CHAPTER 72-02.1-04
CONDUCT OF LICENSEES**

| | |
|---------------|--|
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72-02.1-04-01. Completion of training in state of North Dakota.
Unless otherwise authorized by the commissioner, the last five days of training of principals in main events of boxing programs must be completed in the state of North Dakota. The training quarters of each such principal is subject at all times to inspection by representatives of the commissioner, and the expenses incurred for such inspection must be borne by the licensed corporation promoting the program.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-02. Duty to safeguard premises. All promoting corporations licensed by the commissioner are required to make such arrangements to safeguard the premises where boxing bouts are conducted so as to ensure to the commissioner's satisfaction that adequate protection against riot, stampede, or disorderly conduct has been provided. Any disorderly act, assault, or breach of decorum on the part of any licensee at such premises is prohibited and a violation of this section subjects the offending licensee to such penalties as the commissioner may thereafter decide.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-03. Number of manager's boxers on program. No manager is permitted to have more than one boxer whom he manages compete on any one boxing program without the special permission of the commissioner.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-04. Duty of licensee to report offer to conduct sham or collusive contest. Whenever any person or party licensed by the commissioner is approached with a request or a suggestion that the licensee participate in, contribute to, or aid and abet a sham or collusive contest, or a contest that is not to be conducted honestly and fairly, such licensee shall immediately report the entire matter and the full circumstances to the commissioner and failure to report shall subject the licensee to such disciplinary action as the commissioner may thereafter decide.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-05. Mandatory resting period for boxers between bouts. If a boxer has competed anywhere in a bout of six rounds or more, he may not be allowed to box in this state until seven days have elapsed since his last bout. If a boxer has competed anywhere in a four-round bout, four days must elapse before his next bout.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-06. Use of assumed names by boxers. Boxers may use and be licensed under assumed names, provided the use of such assumed

names is approved by the commissioner. No person may be licensed as a boxer under the name of, or a name deceptively similar to, the name of any other boxer or athlete.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-07. Negotiating with person whose license is suspended or revoked. No licensed matchmaker, nor any licensed promoting corporation, nor any person or party employed or connected with such corporation shall enter into a contract or commence negotiations for any bout or exhibition with any boxer or manager of such boxer, or both, if the license of either the boxer or manager has been suspended or revoked by the commissioner.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-08. Duty to provide insurance for licensed boxers. All persons, parties, or corporations having licenses as promoters will continuously provide insurance for the protection of licensed boxers appearing in boxing bouts or exhibitions. Such insurance coverage must provide for reimbursement to the licensed athlete for medical, surgical, and hospital care, with a maximum limit of seven hundred fifty dollars for injuries sustained while participating in any program operated under the control of such licensed promoter and for a payment of ten thousand dollars to the estate of any deceased athlete where such death is occasioned by injuries received during the course of a program in which such licensed athlete participated under the promotion or control of any licensed promoter.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-09. Effect of failure to pay insurance premiums. The failure to pay premiums on such insurance as is required by this chapter or by law is cause for the suspension or the revocation of the license of such defaulting promoting corporation.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-10. Duty to inform commissioner of boxer's illness. All licensed promoting corporations, licensed matchmakers, and licensed managers shall promptly furnish the commissioner with all information

concerning of boxer's illness or other reason for his failing to fulfill any contract, and such information must be submitted to the commissioner before its release to the press and before any such boxer is in any way relieved from his contractual obligations.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-11. Effect of reporting boxer ill. Any boxer who is reported ill may be placed upon the ill and unavailable list and will not be reinstated until he has been examined and approved by the commissioner's physician and until he either fulfills all his pending commitments at the time of his suspension or is released therefrom by the promoting club or corporation.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-12. Compensation of boxers. In any principal or main bout the licensed promoting corporations, without the advance approval of the commissioner, cannot pay the contestants in excess of fifty percent of the net proceeds of the boxing program after the state tax and compensation for the ring officials have been deducted. The minimum compensation to any boxer who competes in at least a four-round bout shall be fifty dollars, or in such other sum as the commissioner shall approve.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-13. Approval of boxing match by commissioner. Before approving any boxing bout or match, the commissioner will inquire into the relative merits of the contestants, their past records, and whether or not they are suitable opponents, and the commissioner reserves the right to disapprove any match or bout on the ground that it is not in the best interest of boxing or of the health of either of the contestants.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-14. Limitation of number of weekly boxing programs. Licensed promoting corporations will not be allowed to conduct more than one boxing program per week without the special permission of the

commissioner, and no such program may be canceled or adjourned without the consent of the commissioner.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-15. Duty to provide private room for use of judges and referees. Licensed promoting corporations shall provide, in each of the premises where boxing programs are conducted, a special private room for the exclusive use of the judges and referees. No other persons excepting the commissioner's representatives may be allowed to enter such room.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-16. Effect of promoting corporation's default in debts or obligations. Any licensed promoting corporation in default of any of its debts or obligations will be suspended forthwith, and upon full payment of all such debts and obligations may be reinstated by the commissioner, but only upon posting with the commissioner a deposit in such amount and for such time as must be determined by the commissioner.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-17. Boxing program in conjunction with charitable organization. No licensed promoting corporation will be permitted to conduct any boxing program under the auspices of or in conjunction with any charitable organization unless such promoting corporation submits to the commissioner the agreement setting forth the terms and conditions of the said program and receives from the commissioner its approval.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-18. License card. No corporation, referee, judge, matchmaker, timekeeper, corporation treasurer, box office employee, ticket taker, doorman, usher, professional boxer, manager, trainer, second, announcer, or special policeman licensed by the commissioner may participate, either directly or indirectly, in any boxing or sparring match or exhibition, or the holding thereof, unless such corporation or

person displays his license card and, upon request, relinquishes same to a representative of the commissioner immediately prior to each boxing event.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-19. Licensed matchmaker acting as manager or assignee of boxer. Licensed matchmakers are forbidden from acting as the manager or assignee of any boxer and from participating in any way, directly or indirectly, in the ring earnings or management of any boxer, except with the specific permission of the commissioner.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-20. Licensed manager forbidden to act as matchmaker. Licensed managers and assignees are forbidden from acting in any direct or indirect way as a matchmaker of boxing bouts, except with the specific permission of the commissioner.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-21. Promoting corporation as employer of boxers, managers, or seconds. No licensed promoting corporation may have in its employ or be in any way commercially connected with any licensed boxer, licensed manager, or licensed second except with the specific permission of the commissioner.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-22. Director, officer, employee, or stockholder of licensed club acting as manager, assignee, or second of any boxer. No director, officer, employee, or stockholder of any licensed club or promoting corporation may, either directly or indirectly, serve or act as the manager, assignee, or second of any boxer, and, without the approval of the commissioner, may not be employed by or in any way be connected with any other such club or corporation.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-04-23. Distribution of receipts of contest or exhibition.
All licensed promoting corporations in distributing the receipts of any contest or exhibition shall first deduct all sums due for federal and state taxes and then deduct all sums due for payments to the referee and judges and for insurance premiums. Thereafter, the balance may be distributed in accordance with the amounts or percentages agreed upon for the compensation of the boxers.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

CHAPTER 72-02.1-05 RULES TO SAFEGUARD HEALTH

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72-02.1-05-01. Contents of medical examination.

1. In order to obtain a license or the renewal of a license, all boxers shall submit to a thorough medical examination by a physician approved by the commissioner. The examination must include a complete history of the applicant and any or all of the following laboratory procedures at the discretion of such physician: chest X-ray, skull X-ray, flat abdominal X-ray, electrocardiogram, complete blood count for bleeding and coagulation time, urine analysis, serological examination for syphilis, neurological and psychiatric examination, ophthalmological examination, and any other test or survey which might be indicated by the past record or present condition of the applicant.

2. The medical examining room provided for the use of such physician must have the following diagnostic equipment: X-ray, electrocardiographic machine, electroencephalographic machine, ophthalmoscopes, illuminated eye chart, snellen chart, laboratory equipment for chemical tests, mercury manometers, sterilizing unit, examination tables, and otoscopes.
- 3 All boxers applying for an original license must be given an electroencephalographic examination, chest X-ray, electrocardiographic examination, serological tests, and laboratory and other tests as may be required by such physician.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-05-02. Physical examinations of boxers in championship or main bout. All boxers in a championship or other main bout must be given a physical examination at least five days prior to the date of the contest. Such examination must be performed in this state, by a physician approved by the commissioner, and must include as many of the laboratory procedures outlined in section 72-02-05-01 as the examining physician may decide are necessary.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-05-03. Physical examination of boxers in all bouts. Boxers in all bouts shall have the type of examination outlined in section 72-02-05-02 on the day of the bout, both at the noon weigh-in and in the evening a short while before the boxing program commences.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-05-04. Specifications for bandages on boxers' hands. In all classes up to and including middleweights, the bandages on each hand of a boxer must be restricted to soft gauze cloth not more than ten yards [9.14 meters] in length and two inches [5.08 centimeters] in width, held in place by not more than four feet [1.22 meters] of surgeon's tape one inch [2.54 centimeters] in width. In all other classes (light heavyweights and heavyweights) the bandages must be twelve yards [10.97 meters] in length and not more than two inches [5.08 centimeters] in width, held in place by not more than eight feet [2.44 meters] of surgeon's tape one inch [2.54 centimeters] in width for each hand. The use of six inches [15.24 centimeters] of adhesive tape, not more than one inch [2.54 centimeters] in width, will be permitted across

the back of each hand before bandaging the hands, provided same is not put across the knuckles. The bandages must be evenly distributed across the hand. No tape or gauze may be placed across or below the knuckles. These bandages must be adjusted in the dressing room in the presence of the commissioner's representative. Under no conditions are gloves to be

placed on the hands of the contestant until the approval of the commissioner is stamped on the bandages by its representative.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-05-05. Duties of ringside physician. The ringside physician shall terminate any boxing bout if in the opinion of such physician any contestant has received severe punishment or is in danger of serious physical injury. In the event of any serious physical injury, such physician shall immediately render any emergency treatment necessary, recommend further treatment or hospitalization if required, and fully report the entire matter to the commissioner within twenty-four hours and subsequently thereafter, if necessary. Such physician may also require that the injured boxer and his manager remain in the ring or on the premises or report to a hospital after the contest for such period of time as such physician deems advisable.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-05-06. When ringside physician may enter ring. Anything to the contrary notwithstanding in this article, the ringside physician may enter the ring during the progress of a bout or between rounds and terminate any boxing bout to prevent severe punishment or serious physical injury to a contestant.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-05-07. Commissioner physicians. The number of commissioner physicians required to be in attendance at each bout, and the type and quantity of medical and emergency equipment and instruments which the licensed promoting corporations shall have available at ringside or elsewhere in the premises, shall be as the commissioner may prescribe from time to time by bulletin.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-05-08. Examination of boxer after severe injury or actual knockout. Any boxer who has sustained any severe injury or actual knockout in a bout must, within twenty-four hours, be thoroughly examined by a physician approved by the commissioner. Such examination must include any or all of the procedures as provided in section 72-20-05-01 or as is specially directed by the commissioner, the commissioner's physician, or the ringside physician. Upon the board's request, the commissioner may suspend the boxer until he is fully recovered and, similarly, may extend any such suspension already imposed.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-05-09. Confidential nature of medical reports. All medical reports submitted to, and all medical records of, the commissioner relative to the physical examination or condition of boxers are considered confidential, and are open to examination only to the commissioner or his authorized representative, to the licensed boxer upon his written application to examine said records, or upon the order of a court of competent jurisdiction in an appropriate case.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-05-10. Mandatory medical examination of contestant losing six consecutive fights. Any contestant who has lost six consecutive fights must be automatically suspended and cannot be reinstated until he has submitted to a medical examination of the type specified in section 72-02.1-05-01.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-05-11. Submission of report of boxer's personal physician. In the event that a boxer who has suffered a knockout or any severe injury has on such account been treated by his personal physician or has been hospitalized, he or his manager shall promptly submit to the commissioner a full report from such physician or hospital.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-05-12. When special examination of boxer is required. The commissioner shall appoint physicians to specially examine any

licensed boxer when a question arises, as to the physical ability of such licensee to engage in a scheduled match, and the findings of such physicians shall be a conclusive determination of such question. Any injury or illness before a scheduled match or while in training for such match must be fully reported to the commissioner within twenty-four hours by the licensee or his licensed manager, and in the event the commissioner does not request the appointment of such a physician, the licensee must be examined in accordance with the procedures outlined in section 72-02.1-05-01.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-05-13. Medical examination forms. The commissioner will provide the forms listed below for the various types of examination:

1. Form 100 must be used for annual medical examinations before licensing.
2. Form 101 must be used for the five-day-before examination and noon weigh-in examination.
3. Form 102 must be completed just prior to the boxer's entry into the ring for the examination conducted at the arena.
4. Injury form 103 must be used for all injuries that occur.
5. Form 43 must be used as a medical certificate for boxers with defects that have been passed upon by the medical advisory board.
6. Form 42 must be used as a request to the department of health and consolidated laboratories for chest X-ray, wassermann, or other examination.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-05-14. Required seminars for ringside physicians and referees. All ringside physicians and referees of boxing matches and exhibitions shall attend such neurological training seminars as specified and approved by the commissioner.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

**CHAPTER 72-02.1-06
RING OFFICIALS**

Section

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72-02.1-06-01. The referee.

1. The referee shall inspect each boxer's gloves and make sure that no foreign detrimental substances have been applied to either the gloves or the bodies of the boxers.
2. The boxing referee shall have the following exclusive powers:
 - a. To stop a bout or contest at any stage on the grounds that it is too one sided. In such event, he may award the bout to the superior contestant as a technical knockout.
 - b. To stop a bout or contest at any stage if he considers one or both of the boxers are not competing in earnest. In such event he may disqualify one or both of the contestants, and if only one contestant is disqualified, he may award the bout as a technical knockout to the other.
 - c. To stop a bout or contest at any stage on account of a major foul being committed by either contestant and to award the decision, under such circumstances, to the fouled boxer.
3. Referees are required to stop any bout in which a boxer has been knocked down three times in one round from the result of a blow as distinguished from a slip or a fall from being off balance.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-06-02. The ring announcer.

1. No individual will be permitted to act as ring announcer at any boxing bouts held under the supervision and authority of the commissioner without having first obtained a license to so act from the commissioner, and no licensed promoting

corporation may employ any unlicensed person to act as such announcer.

2. The announcer of the bout shall be the master of ceremonies and at the conclusion of each bout must collect the score cards from the judges and referees and submit them to the commissioner's representative in attendance for inspection before making any announcement of the decision.
3. Introductions from the ring of persons not connected with the sport of boxing is forbidden and the announcer shall receive the advance approval from the commissioner's representative in attendance as to each of the persons introduced from the ring. After such introductions are completed, the announcer shall announce the names of the contestants and their correct weights, and any other matters the announcer is directed to announce by the commissioner.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-06-03. The timekeeper.

1. The timekeeper shall sit outside the ring platform and close to the gong.
2. Each timekeeper shall have either a whistle or a buzzer and a stopwatch, which must be submitted for approval to the commissioner's representative in attendance at the boxing program.
3. In the event that a bout terminates by a knockout during any round, the timekeeper shall inform the announcer of the exact duration of such round.
4. The timekeeper may not signal during the progress of a round except to indicate that only ten seconds remain in the round. He shall also signal ten seconds prior to the beginning of any round and at such signal all seconds shall leave the interior of the ring and all stools and equipment must be removed from

the ring platform. The timekeeper shall strike the gong with a metal hammer to indicate the beginning and ending of each round.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-06-04. Referees, judges, and timekeepers.

1. At all boxing programs each ring official on duty, directed by the commissioner to be in attendance thereat, shall be paid by the licensed promoting corporation in such sum and amounts as the commissioner shall order the licensed promoting corporation to pay, in accordance with the schedule furnished to the said promoting corporation and on file with the commissioner.
2. Without the special permission of the commissioner, no licensed referee, judge, or timekeeper may officiate in any way at any boxing program which is not conducted under the authority or supervision of the commissioner.
3. All judges and referees for bouts or exhibitions conducted by promoting corporations must be assigned by the commissioner, and the number of officials required to be in attendance, or the substitution of officials for any reason at any time during the bout or exhibition, is solely within the power and discretion of the commissioner.
4. Annual medical examinations must be given to all licensed judges and referees by the commissioner's physician and such examination must be of the same type and thoroughness as is outlined in section 72-02.1-05-01.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-06-05. Licensing and training standards for judges.

Prior to the issuance of a license of a boxing judge, an individual shall pass a written or oral examination, or both, relating to the commissioner's rules as well as unofficially score, to the satisfaction of the commissioner, a minimum of ten rounds of professional boxing. In addition, licensed judges of professional boxing shall periodically, as mandated by the commission, attend seminars relating to the rules of the commissioner and skills as a judge of professional boxing. The

performance of each boxing judge will be the subject of periodic review and evaluation by a designated commissioner's official.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-06-06. Licensing and training standards for referees.

Prior to the issuance of a license of a boxing referee, an individual shall pass a written or oral examination, or both, relating to the commissioner's rules as well as have refereed a minimum of one hundred rounds of amateur or out-of-state professional boxing, or both. Upon receiving a license of a professional boxing referee, each referee must

first be assigned a minimum of no less than four 4-round preliminary bouts, followed by a minimum of no less than four 6-round preliminary bouts. The referee's conduct and performance will be reviewed and evaluated by an official designated by the commissioner and if it is found that said referee's conduct and performance is satisfactory, that referee may thereafter officiate bouts of eight rounds or more. In addition, prior to the issuance of a license, each referee shall attend a neurological seminar conducted by a physician designated by the commissioner. All referees shall meet health and physical standards as may be established from time to time by the commissioner. In addition, licensed referees of professional boxing shall periodically, as mandated by the commissioner, attend seminars relating to the rules of the commissioner and skills as a referee of professional boxing. The performance of each boxing referee will be the subject of periodic review and evaluation by a designated commissioner's official.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

CHAPTER 72-02.1-07 PUBLIC ACCESS TO RECORDS

Section

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72-02.1-07-01. Applicability. The provisions of this chapter are applicable to all records for public inspection and copying except where same are inconsistent with statutory provisions or specific rules of this title.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-07-02. List of available records. A current list of the records available for inspection and copying must be maintained in the general offices of the commissioner located at the capitol in Bismarck, which list must be available for public inspection and copying.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-07-03. Location of records. All records of the commissioner available for inspection and copying must be inspected and copied in the general office of the commissioner located at the capitol in Bismarck.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-07-04. Hours of inspection. Records may be inspected and copied each business day the office is opened to the public after such office hours begin and terminating fifteen minutes before the close of such hours.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-07-05. To whom and where request made. The request for a particular record must be made to the head of the division responsible for such record and at such place as the division head shall designate in the office of the commissioner in which the record is located.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-07-06. Form of request and identification. Where original or official records are requested to be examined or copied, a written signed request, on forms provided by the commissioner, must be presented by the applicant showing the applicant's name and address and whom the applicant represents, together with appropriate proof of identity when requested.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-07-07. Description of record required. A request for a record must be specific and adequately describe and identify the record sought to be inspected or copied.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-07-08. Number of records permitted. It is discretionary with the head of the division responsible for the record as to the number of records of any type or types an applicant may request and receive at any one time.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-07-09. Use of pens prohibited. The use of pens is prohibited when inspecting or copying records. No marks of any kind may be made on any record provided.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-07-10. Area restriction. Inspection or copying of records is permitted only in the areas designated for such purpose.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-07-11. Duplicate requests. If more than one request is received for the same record, the order of request shall determine which applicant shall first receive the record.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-07-12. Limitation of examination time. The head of the division responsible for the record or the head of the division's designee may fix reasonable limitation on the time an applicant may examine any record.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-07-13. Temporary unavailability of records. Where a record is in use by the commissioner, or the filing or intake procedures relating thereto have not been concluded, the filing of a request for the record may be reasonably delayed until such use or procedures are completed.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-07-14. Return for department business. Whenever a record made available for inspection or copying is required for the business of the commissioner, the division head or his designee may require the return of the record upon such demand.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-07-15. Provision of copies.

1. A copy or certified copy of an available record must be provided the applicant upon payment of the fee prescribed by law.
2. The commissioner, in the commissioner's discretion, may permit an applicant to bring the applicant's own equipment on commission premises for the purposes of copying records. The terms and conditions upon which such permission is granted must be accepted in writing by the applicant who shall pay in advance such fee for the use of space and energy as may be charged.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-07-16. Denial of access. In the event a request for a record is denied on grounds other than that the commissioner does not maintain such a record or no such record is found, the applicant must be provided with a form advising the applicant of the applicant's right to appeal the denial of the application to the commissioner.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

**CHAPTER 72-02.1-08
PREMISES, FACILITIES, AND EQUIPMENT**

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72-02.1-08-01. Approval of premises for boxing required. Licensed promoting corporations may only arrange for and hold boxing bouts in premises approved by the commissioner.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-08-02. Notice concerning gambling. In all such premises there must be prominently displayed in at least four places and during the entire course of the bouts, as well as the period of one hour preceding the commencement of the bouts, the following notice:

NO GAMBLING ALLOWED

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-08-03. Posting of license in box office. The license issued to the promoting corporation must be posted in the box office of the premises where the boxing bouts are taking place and must at all times be enclosed in a suitable frame so as to be completely visible for inspection.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-08-04. Providing seats for ring officials and commissioner representatives. The premises must provide suitable separate ringside seats for the judges, timekeeper, knockdown counter, physicians, and commissioner's representatives, which must be approved by the commissioner's representative in attendance before the commencement of any boxing program. The licensing promoting corporation shall also provide seats in each boxer's corner for the occupancy of the inspectors on duty at the program.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-08-05. Advertising on round cards. Round cards exhibited in the ring between rounds may not bear advertising matter of any kind whatsoever, unless the advertising matter has been approved by the commissioner.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-08-06. Provision for clean bucket and bottle in boxer's corner. For each bout there must be a clean bucket and a clean plastic bottle in each boxer's corner.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-08-07. Emergency medical facilities and equipment. All licensed corporations promoting boxing shall provide medical information, facilities, and equipment, including, but not limited to, a stretcher and emergency oxygen, adequate for emergency occasions, and all such medical facilities and equipment must be approved in advance by the commissioner. Specifications of the commissioner for the medical information and equipment, and for the platform, padding, and the covering must be prescribed by the commissioner from time to time by bulletin and forwarded by the commissioner to each licensed promoting corporation. The promoters at all boxing contest and exhibitions shall, unless alternate arrangements are approved by the commissioner, have an ambulance with medical attendants available at the site of the event.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-08-08. Inspection of ring by commissioner. No boxing contest or exhibition may be permitted in any ring unless such ring has

been inspected and approved by the commissioner. All rings must be between eighteen and twenty-two feet [5.49 and 6.40 meters] square, and have a minimum of a two-foot [0.61-meter] apron; the platform must have a smooth, firm surface and be covered with clean canvas, duck, or other resilient material. The ropes for boxing must consist of four strands. Each rope must be at least one inch [2.54 centimeters] thick, covered with soft covering and must be securely fastened to the ring post and remain taut throughout the contest. The corners must have protective padding extending from the top rope to the bottom rope. All ring platforms must be padded, and for those boxing matches and exhibitions must be additionally padded with ensolite, or a similar material approved by the commissioner at least one inch [2.54 centimeters] in thickness.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-08-09. The gong. The gong must not be less than ten inches [2.54 centimeters] in diameter, adjusted securely on a level with the ring platform.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-08-10. Condition and size of gloves. The gloves shall be new for all main events and also for all bouts scheduled to be ten or more rounds. All gloves are to be furnished by the licensed promoting corporation, and shall weigh not less than eight ounces [226.80 grams]. Unless otherwise approved by the commissioner, in all matches and exhibitions, except championship bouts, thumbless gloves approved by the commissioner must be used.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-08-11. Types of shoes barred from ring. No shoes with spikes, cleats, hard soles, or hard heels are permitted in the ring.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-08-12. Miscellaneous equipment. Licensed promoting corporations must provide water buckets, powdered resin for the canvas, second's stools for each corner, and such other articles as are required by the commissioner for the proper conduct of any boxing program.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-08-13. Scales. All scales used for any weigh-in must be approved in advance by the commissioner.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-08-14. Persons authorized to enter boxer's dressing room. No one is allowed in a boxer's dressing room except the boxer's manager and seconds, the commissioner's representatives, member of the press, and such members of the promoting corporations as are permitted by the commissioner. This section must be posted by such corporation at the entrance of all dressing rooms.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

CHAPTER 72-02.1-09 CONDUCT OF BOXING BOUTS

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72-02.1-09-01. Number of officials required. At each boxing bout the officials shall consist of one referee, three judges, one timekeeper, one knockdown counter, and one announcer. In addition, for all bouts there must be two physicians in attendance.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-02. Position of judges and physicians. The judges must be stationed at opposite sides of the ring and the physicians must be stationed at places designated by the commissioner's representative in charge.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-03. Number of seconds. Each contestant may have no more than three seconds and each such second while assisting in the boxer's corner may wear only such costume as may be prescribed by the commissioner from time to time. Only one of such seconds may be inside the ring ropes between rounds.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-04. Conduct of seconds. No second may coach any of the boxers during the progress of any round; he shall remain seated during each round. No second may enter the ring between rounds and assist a boxer back to his corner unless the bout has been terminated by the referee or ringside physician.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-05. Excessive spraying of water on boxer. Any excessive or undue spraying or throwing of water on any boxer between rounds is forbidden.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-06. Throwing towel into ring. All seconds are prohibited from throwing any towel into the ring as a token of defeat.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-07. Application of monsel's solution. The application of monsel's solution or any of its derivatives on the body of a boxer between rounds is prohibited.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-08. Approval of seconds by commissioner. Each boxer shall submit to the commissioner for approval the name of the boxer's chief second and the boxer's assistant seconds and no other persons other than the boxer's approved seconds may be permitted in the corner of the boxer.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-09. Referee's instructions to contestants. Before the start of each bout the referee shall call the contestants together for final instruction, at which time each contestant may be accompanied by his chief second only, except in the case of a boxer who also requires the services of an interpreter. After receiving the referee's instructions, the boxers shall shake hands and return to their corners to await the gong for the first round.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-10. Time for starting main bouts. All main bouts shall start no later than ten p.m., unless otherwise ordered or approved by the commissioner.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-11. Number of boxing rounds allowed in one program.
There shall be no less than thirty and no more than forty rounds of boxing on any one program unless otherwise approved by the commissioner. Emergency bouts must be provided by the licensed promoting corporation in case the arranged program cannot be fulfilled. Boxers in the emergency bout if not used must be paid a minimum standby fee of twenty-five dollars, and each such boxer must be engaged for a preliminary bout within a reasonable time thereafter by such licensed corporation.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-12. Time when boxers must report to dressing rooms.
All boxers participating at a boxing program must report to the designated dressing room of the premises no later than one and one-half hours before the scheduled commencement of the first bout, except the contestants in the main bout, who may report at or before one hour before the scheduled commencement of the first bout. All boxers will remain in their dressing rooms until ordered to the ring by the commissioner's representative in charge. Before entering the ring, boxers shall have a clean appearance, and be shaven and their hair must be trimmed or tied back in such a way as to not interfere with the vision of either fighter or cover any part of the boxer's face.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-13. Changes in announced or advertised boxing programs. A notice of any change in the announced or advertised programs for any main-bout contest must be filed with and approved by the commissioner at least forty-eight hours before the weigh-in time of the contest. Notices of such change or substitution must also be conspicuously posted at all box offices on the premises and announced from the ring before the opening bout, and if any of the patrons apply for refunds on tickets already purchased, the promoting corporation shall make such refunds upon demand, provided such tickets are presented at the box office on the day or night of the contest.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-14. Persons disqualified from officiating. No official, director, matchmaker, or stockholder of any promoting corporation or licensed club shall officiate in any capacity at any boxing bout conducted by such corporation, or interfere in any way with the contestants participating in such boxing program.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-15. Referee's wearing apparel. The type, style, and color of apparel of all referees must be as the commissioner may from time to time prescribe, and all such referees shall conform their apparel accordingly while on duty at the boxing bouts. No jewelry or wristwatches may be worn while refereeing a bout.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-16. Weigh-in ceremonies. The times and places of all weigh-in ceremonies for indoor and outdoor shows must be as determined by the commissioner, and all contestants must be weighed in on scales approved by the commissioner, and in the presence of their opponents, the matchmaker, and representatives of the commissioner. In the event of a postponement of the bout in excess of twenty-four hours for any reason whatsoever, a second weigh-in and additional physical examination may be required on the day to which the bout has been adjourned.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-17. Boxer's ring costume. Each boxer on a program shall provide himself with the ring costume selected and approved by the commissioner, and such costume must include a foul-proof guard of the boxer's own selection, type to be approved by the commissioner, which will obviate the necessity of any claims being made for a low blow during the contest.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-18. Adjustment of boxer's gloves. In all bouts, the gloves of each boxer will be adjusted in the dressing room under the supervision of the commissioner's representative in charge and the laces of each glove must be knotted on the back of the wrists and there must be placed on the wrists of the gloves, over the laces, a strip of

one-inch [2.54-centimeters] adhesive tape. The gloves must be removed in the dressing room after the bout.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-19. Announcement of decision. After the decision of any bout has been announced, both contestants and their seconds shall leave the ring at once and retire to their dressing rooms, and a contestant is prohibited from indicating in any way to the officials or to the spectators the contestant's opinion as to whether the contestant won or lost the bout.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-20. Persons forbidden to coach contestant. The employees of any licensed promoting corporation and the matchmaker are forbidden from coaching any contestant at any time during the progress of any bout.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-21. Duration of matches. In nonchampionship matches, boxers can only be matched for four, six, eight, ten, or twelve rounds, unless otherwise approved by the commissioner. All world championship matches must be of fifteen rounds' duration. State championships may be conducted at either twelve or fifteen rounds, at the discretion of the commissioner.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-22. Intermission between rounds. There must be a one-minute intermission between rounds, unless otherwise approved by the commissioner. The ringside physician may extend this intermission, if necessary to further examine a contestant, for up to thirty additional seconds.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-23. Age of boxers as affecting duration of matches. Unless special permission otherwise is granted by the commissioner, boxers eighteen years of age are permitted to box six rounds; boxers nineteen years of age, eight rounds; boxers twenty years of age, ten rounds; and for all bouts over ten rounds, each boxer in such bout must be at least twenty-one years of age.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-24. Outdoor boxing shows. Sections 72-02.1-08-25 through 72-02.1-08-28 pertain to outdoor boxing shows only, and all other rules of the commissioner not affected or modified by those sections remain in force and effect for all such shows.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-25. Postponement of boxing event. In the event of rain immediately before or during the course of any outdoor show, except during the course of the main bout, the promoting corporation may postpone the show to such time and at such place as is approved by the commissioner. An announcement giving the full details of the postponement must forthwith be made by the promoting corporation, and any patron desiring a refund of the purchase price of his ticket may apply for the same at the box office of the promoting corporation on the premises, except when the main bout is held on the scheduled or one of the successive rain-out dates indicated on the ticket. However, all contestants who have fulfilled their boxing contracts before the event of the rain must be paid in full, and on the postponed date, substitute bouts in such number and of such duration as is approved by the commissioner must be provided by the promoting corporation.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-26. Rearrangement or shortening of program. In the event of threatening weather and rain, the program of bouts may be rearranged or shortened by the promoting corporation with the consent of the commissioner's representative in charge.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-27. Reimbursement of expenses to contestants. All contestants in bouts other than the main bout, who were unable to compete because of weather conditions or a rearrangement or shortening of the boxing program, shall have such of their expenses and other fees paid by the promoting corporation as the commissioner may direct.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-28. Stopping of main bout because of rain. In the event that rain occurs after the main bout is completed, the boxing program must be considered as having been completed. In the event of rain during the progress of the main bout, such bout must be continued or stopped at the discretion of the commissioner's representative in charge. If the main bout is stopped, the provisions of section 72-02.1-08-25 as to postponement and refunds apply.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-29. Start of each round. In all boxing and sparring contests and exhibitions, both boxers shall come to the center of the ring at the start of each round.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-30. Items permitted in the boxer's corner. A bucket with ice, plastic water bottle, sponge, and surgical tape must be available in each boxer's corner. Without specific permission of the commissioner, the only other materials which a second may bring to or use at ringside are vaseline, adrenalin (in a manufacturer's vial, premeasured in a 1/1,000 solution) and anticoagulant (either avitene, thrombin, thrombinplastin, or fibroplastin).

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-09-31. Licensing and training standards for seconds. Prior to the issuance of a license of a boxing second, an individual shall pass a written or oral examination, or both, relating to the commissioner's rules, treatment of injuries, physical conditioning, health care, nutrition, training, first aid, effects of drugs and alcohol, and the bandaging of a boxer's hand. In addition, licensed

seconds of professional boxing shall attend seminars relating to the rules of the commissioner and skills as a second of professional boxers.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

CHAPTER 72-02.1-10 SCORING SYSTEM

Section

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72-02.1-10-01. Points. All bouts must be scored by three judges. Unless otherwise approved by the commissioner, the following scoring system must be used by the judges in each boxing bout to determine which, if any, contestant has won a round. In each round, such officials shall observe (1) clean hitting, (2) effective aggressiveness, (3) defense, and (4) ring generalship. At the conclusion of each round, each official shall score each contestant's performance on these four items, and if the boxer is just slightly superior to his opponent in such round, one point must be scored for such boxer and the score of zero posted for his opponent. If a boxer is clearly superior to his opponent in any one round, two points should be scored for such boxer and the score of zero posted for his opponent. If a boxer is overwhelmingly the winner of a round and the round is therefore one sided, three points should be scored for such boxer and the score of zero posted for his opponent. If in a one-sided round, a boxer also scores one or more knockdowns, four points should be posted for the boxer and the score of zero posted for his opponent.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-10-02. Knockdowns. The officials may score a knockdown in any one round as either one or two points in favor of a boxer who

scored such knockdown, and each official shall determine for himself which value shall be placed on the knockdown.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-10-03. The tally and decision. At the conclusion of the bout, each official shall tally up the rounds and points the official has awarded each contestant and submit the official's scorecard to the announcer. After such scorecards have all been checked by the commissioner's representative, they must be returned to the announcer, who shall announce the decision of the officials from the ring, and in main events the announcer shall call out the rounds and points awarded by each official. The boxer who has won the most number of rounds on the scorecard of the official is the winner on that official's scorecard, except when a boxer has not been credited with the greatest number of rounds, he may be declared the winner of the bout on an official's scorecard if, in the judgment of the official, such boxer has definitely proven his superiority over this opponent, has finished in better physical condition than his opponent, and has been awarded by each official a greater number of points than those awarded by such official to the opponent. If the official has not awarded the decision as thus set forth and if there is no winner by rounds, the decision must be awarded to the boxer with the greatest number of points. If no decision has been awarded and the rounds and points are both inclusive, the winning boxer is the one who, in the official's opinion, is in better physical condition at the end of the bout. The boxer who has been awarded the decision on two of the official's scorecards is the winner of the fight.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-10-04. Scorecards. Judges must mark their cards in ink or in indelible pencil, at the end of each round, with the symbols of W or L or E; a capital W in a boxer's column indicates the win of that round, a capital L, the loss of that round, and a capital E that the round was even.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-10-05. Major fouls. The following are major fouls and upon the occurrence of any major foul in any round, the referee may disqualify the offending boxer and award the bout or any round thereof to the fouled boxer:

1. Hitting an opponent who is down or who is rising from down.
2. Using the knee against the opponent.
3. Purposely going down without being hit.
4. Failure to heed the referee's warnings concerning low blows or other minor fouls.
5. Any dangerous and unsportsmanlike conduct in the ring.
6. Butting, intentional or unintentional, or low blows, intentional or unintentional, or both.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-10-06. Minor fouls. The following are minor fouls and it is within the discretion of the referee as to whether the offending boxer should merely be warned or should lose the round because of the commission of a minor foul:

1. Holding an opponent.
2. Deliberately maintaining a clinch.
3. Hitting with the inside or butt of the hand, the wrist, or the elbow.
4. Backhand blows.
5. Low blows.
6. Hitting or "flicking" with the open gloves.
7. Wrestling or roughing at the ropes.
8. Deliberately striking at that part of the body over the kidneys.
9. Use of pivot blow or rabbit punch.
10. Hitting on the break.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-10-07. Referee's notice to judges concerning foul. In the event that the referee has awarded the round to the fouled boxer,

the referee shall so notify the judges at the end of that round and in addition to the loss of the round because of such foul, the boxer who was fouled must also be awarded one point in such round.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-10-08. When referee must count boxer out. A referee shall count a boxer out who falls to the floor claiming foul because of a low blow.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-10-09. Report to commissioner because of fouls. If in any bout a boxer is penalized with the loss of three or more rounds because of fouls, the referee and each judge shall report the matter in writing to the commissioner within twenty-four hours.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-10-10. Technical knockout. A technical knockout is the ending of a bout by a referee for any reason other than a count out or a disqualification. When a referee stops a contest to save any boxer from further punishment, the referee shall award the other boxer the decision by technical knockout and shall inform the announcer of the name of the boxer who was unable to continue, and direct the announcer to declare the other boxer the winner by technical knockout.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-10-11. When boxer is down. A boxer is down if (1) any part of the boxer's body other than the boxer's feet is on the ring floor, or (2) the boxer is hanging helplessly on the ring ropes, or (3) the boxer is rising from a down position.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-10-12. Counting.

1. When a contestant is "down" the timekeeper shall at once commence calling off the seconds, indicating the count with a motion of his arm. The referee shall immediately order the other boxer to a neutral corner and shall thereafter pick up the count from the timekeeper and indicate it with a motion of his arm. If a contestant is unable to continue at the count of ten, the referee shall declare the other boxer the winner by a knockout. If a contestant who has been knocked or has fallen through the ropes and onto to the ring platform fails to be on his feet in the ring before the expiration of ten seconds, the referee shall count him out as if he were down. If a contestant who has been knocked or has fallen out of the ring and off the ring apron fails to be on his feet in the ring before the expiration of twenty seconds, the referee shall count him out as if he were down. A contestant who has fallen or has been knocked out of the ring must return to the ring unassisted.
2. When a round in any boxing contest, except the last round, terminates before a contestant who has been knocked down has risen from the floor of the ring, the timekeeper's count must be continued and, if the fallen contestant fails to rise before the count of ten, he shall be considered to have lost the bout by a knockout in the round lately concluded.
3. When a boxer is clearly knocked down, he must be required to take a count of eight whether or not he has regained his feet before the count of eight has been reached. At the bell, if the fighter has arisen and the count is in progress, the count must cease and the fighter shall return to his corner. Should a boxer slip, or fall down, or be pushed, he must be ordered to his feet immediately. Failure to rise may subject him to disqualification.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-10-13. When contest terminates. If the contest is terminated between rounds, the knockout must be recorded as having taken place in the round just terminated. However, if the bell for the subsequent round has already sounded, the contest ends in the subsequent round.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

CHAPTER 72-02.1-11
BOXING CLASSES AND CHAMPIONSHIPS

| | |
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72-02.1-11-01. When a boxer must defend title. With the exception of champions in the armed forces, a boxer holding a championship title shall defend his title against a suitable contender within a period of six months after winning or after last defending it, or his title may be vacated by the commissioner. In the event that a champion fails to so defend his title, any boxer in the same class who is considered by the commissioner to be a suitable contender, may, at the lapse of said six months, forward to the commissioner a challenge. Such challenge must be accompanied by deposits of the following amounts for the following classes:

- \$1,000 - flyweight, bantamweight, and featherweight.
- \$1,500 - lightweight.
- \$2,000 - welterweight and middleweight.
- \$2,500 - light heavyweight.
- \$5,000 - heavyweight.

Each such deposit must be by certified check or by a bank cashier's check drawn to the order of the commissioner.

History: Effective May 1, 1988.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-11-02. Procedure when commission receives challenge. Upon receipt of such challenge, the commissioner shall forward it to the champion and announce the challenge at the office of the commissioner. Thereafter, such champion, within twenty days after such announcement, shall enter into articles of agreement to defend his championship title

against the contender. In the event the champion does not enter into such articles of agreement or capriciously refuses promptly to defend his title against such contender, his license must be suspended by the commissioner until he either defends his title against the challenger or against some other contender considered suitable by the commissioner, or until his title is otherwise vacated, unless he is prevented by circumstances beyond his control, in which case the time may be extended.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-11-03. Champion's selection between challengers. In the event that more than one suitable contender's challenge is received by the commissioner and forwarded to the champion, the champion may select to defend his title against any one of such challengers.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-11-04. When a championship is forfeited. In the event that the champion is permanently unable to physically qualify for the defense of his title, the commissioner shall forfeit his championship and declare the title vacant. In each defense of his title, the champion must be at the weight required by the class for which he holds the title.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-11-05. Contracts for championship bouts. All contracts for championship bouts must be signed with the commissioner present. On the date of the signing of the contracts, the two contestants and the licensed corporation promoting the bout will each post forfeits with the commissioner in the following amounts per class:

- \$1,000 - flyweight, bantamweight, and featherweight.
- \$1,500 - lightweight.
- \$2,000 - welterweight and middleweight.
- \$2,500 - light heavyweight.
- \$5,000 - heavyweight.

Such forfeits are to ensure that each of the contestants will appear at the championship contest and to make the proper weight, and that the promoting corporation will fulfill its obligations. In the event that a forfeit is declared, the deposit or deposits so forfeited will be distributed equally between the nondefaulting depositors.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-11-06. Individual may hold only one championship title at a time. No individual may hold a world's championship title in two or more classes at the same time, but the holder of one such championship title may enter a contest for the world's championship title of another class. In the event that such individual wins such world's championship title in such other class, his original world championship is automatically vacated.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-11-07. Weight limits for contestants in championship bouts. The weight limit for each contestant in a championship bout must be as listed below, and championships are recognized in the following classes only:

| | |
|----------|-------------------|
| 112 | flyweight |
| 118 | bantamweight |
| 126 | featherweight |
| 135 | lightweight |
| 147 | welterweight |
| 160 | middleweight |
| 175 | light heavyweight |
| over 175 | heavyweight |

In the heavyweight class there is no maximum weight limit for any contestant.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-11-08. Weight limits in nonchampionship bouts other than four-round contests. In nonchampionship bouts, other than four-round contests, the following limitations of weights between contestants may be permitted.:

| | |
|-----------------------------------|---------------|
| flyweights (112 pounds) | 5 pounds |
| bantamweights (118 pounds) | 7 pounds |
| featherweights (126 pounds) | 8 pounds |
| lightweights (135 pounds) | 10 pounds |
| welterweights (147 pounds) | 12 pounds |
| middleweights (160 pounds) | 13 pounds |
| light heavyweights (175 pounds) | 14 pounds |
| heavyweights, all over 175 pounds | no limitation |

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-11-09. Weight limits in four-round bouts. In all four-round bouts, except in the light heavyweight and heavyweight classes, the difference between the weights of the contestants may not exceed five pounds [2.27 kilograms].

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-11-10. Boxers overweight in nontitle bout. In nontitle bouts, boxers overweight under the terms of the contract may be suspended after the match for such period as the commissioner may from time to time decide.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-11-11. Weight of holder of championship in contest of title. Whenever a recognized holder of a championship engages in a championship contest in this state he must be at the weight required by the class for which he holds the championship except were a champion of one class competes as a contender for the championship in another class.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-11-12. How championship can be lost. A championship can be lost by default, forfeit, or inability to pass the scale, but a championship can only be won by a contender in a contest.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

72-02.1-11-13. When contestants in championship bout must "pass the scale". All contestants in a championship bout shall pass the scale at noon of the contest or at an additional weigh-in two hours thereafter.

History: Effective May 1, 1988.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07, 53-01-16

TITLE 74
Seed Commission

MAY 1988

74-02-01-01. Seed testing fees - Sample size - Free seed tests.
The definition of terms used in this section shall be the same as those defined in North Dakota Century Code section 4-09-01.

The free seed tests provided for in North Dakota Century Code section 4-09-08 shall apply only to seed samples received by the seed department laboratory before the first day of November of each fiscal year.

The following schedule of fees shall apply to tests on all samples of seed which are not eligible for free tests. All fees must accompany samples unless previous credit arrangements have been made.

| | Germination Test | Seed Purity Test |
|-------------------|---------------------|---------------------|
| Alfalfa | 4.50 | 5.00 |
| Bluegrass | 5.00 | 5.00 |
| Bluestem | 6.00 | 6.00 |
| Bromegrass | 5.00 | 5.00 |
| Buckwheat | 4.00 | 4.00 |
| Cereals | 4.00 | 4.00 |
| Clovers | 4.50 | 5.00 |
| Corn | 4.00 | 3.50 |
| Edible beans | 5.00 | 4.00 |
| Fescues | 5.00 | 5.50 |
| Flax | 4.00 | 4.00 |
| Green needlegrass | 6.00 | 4.00 |
| Indiangrass | 6.00 | 6.00 |
| Meadow foxtail | 7.00 | 12.00 |
| Millet | 4.00 | 4.00 |
| Mustard and rape | 4.00 | 4.00 |
| Orchardgrass | 5.00 | 5.00 |
| Peas (field) | 4.50 | 4.00 |

| | | |
|--------------------|---------|---------|
| Red top | 5.00 | 5.00 |
| Reed canarygrass | 4.50 | 5.00 |
| Ryegrass | 4.50 | 5.00 |
| Sideoats grama | 6.00 | 6.00 |
| Sorghum | 4.00 | 4.00 |
| Soybeans | 5.00 | 4.00 |
| Sudangrass | 4.00 | 4.00 |
| Sunflowers | 5.00 | 4.00 |
| Switchgrass | 6.00 | 5.00 |
| Timothy | 5.00 | 5.00 |
| Trefoil | 4.50 | 5.00 |
| Wheatgrass | 6.00 | 6.00 |
| Trees and shrubs | 7.00 | 3.50 |
| Vegetable seeds | 4.50 | 3.50 |
| Alfalfa | \$ 5.00 | \$ 5.00 |
| Bluegrass | 5.00 | 7.00 |
| Bluestem | 10.00 | 20.00 |
| Bromegrass | 5.00 | 10.00 |
| Buckwheat | 4.50 | 4.00 |
| Cereals | 4.50 | 4.00 |
| Clovers | 5.00 | 5.00 |
| Corn | 5.50 | 4.00 |
| Edible beans | 5.50 | 4.00 |
| Fescues | 5.00 | 5.50 |
| Flax | 5.00 | 7.00 |
| Green needlegrass | 10.00 | 7.00 |
| Indiangrass | 10.00 | 15.00 |
| Meadow foxtail | 8.00 | 20.00 |
| Millet | 4.50 | 4.50 |
| Mustard and rape | 4.50 | 4.50 |
| Orchardgrass | 5.00 | 5.00 |
| Peas (field) | 5.50 | 4.00 |
| Red top | 5.00 | 10.00 |
| Reed canarygrass | 5.00 | 5.00 |
| Ryegrass | 5.00 | 5.00 |
| Sideoats grama | 10.00 | 10.00 |
| Sorghum | 4.50 | 4.00 |
| Soybeans | 5.50 | 5.00 |
| Sudangrass | 4.50 | 4.00 |
| Sunflowers | 5.50 | 4.00 |
| Switchgrass | 10.00 | 5.00 |
| Timothy | 5.00 | 5.00 |
| Trefoil | 5.00 | 5.00 |
| Western wheatgrass | 10.00 | 10.00 |
| Other wheatgrasses | 7.00 | 10.00 |
| Trees and shrubs | 8.00 | 4.00 |
| Vegetable seeds | 4.50 | 3.50 |

Charge For Tests on Kinds of Seed Not Listed:

The fees for testing kinds of seeds not listed will be comparable to those listed for a similar kind of seed.

"Rush" service: ~~2.50~~ \$3.00 per sample. Tests are made immediately upon receipt of sample.

Samples which require excessive time - screenings, low-grade, dirty, or unusually difficult sample - ~~8.00~~ \$10.00 per hour.

Mixtures:

Mixtures of two or more kinds of seeds shall carry a fee equal to the fees for testing each component in the mixture.

Examinations:

For noxious weeds - ~~2.50~~ \$4.00.

150 gram noxious - \$5.00.

For mottled seed (sweet clover) - ~~2.00~~ Copper sulfate, ammonia for sweet clover - \$2.50.

Weed check: identify weeds present in sample; preconditioning test (not for labeling) - \$3.00.

Size of sample:

The minimum weights of samples submitted for tests shall be as follows:

1. Seed purity tests:

- a. Two ounces [56.70 grams] of grass seed, white or alsike clover, or seeds of similar size.
- b. Five ounces [141.75 grams] of sweet clover, red clover, alfalfa, grasses, millet, rape, flaxseed, or seeds of similar size.
- c. One pound [~~553.59~~ 453.59 grams] of cereals, soybeans, or seeds of similar size.

2. Germination tests:

The minimum size of samples for a germination test shall be at least eight hundred seeds for testing (send one cup of seed to ensure best results).

Samples of uncleaned seed:

A seed purity analysis will not be made on samples of uncleaned unconditioned seed received for free testing.

Special tests:

Embryo test: To determine loose smut in barley - ~~8.00~~ \$12.00

Tetrazolium test: To give a quick estimate of
potential seed viability -

| | |
|-------------|---------------------------------|
| Cereals | 8.00 \$ 9.00 |
| Other Seeds | 10.00 <u>\$11.00</u> |

History: Amended effective September 1, 1981; May 1, 1988.

General Authority: NDCC 4-09-03, 4-09-08

Law Implemented: NDCC 4-09-08

74-02-01-04. Sale and exchange of seed by farmers. The definition of terms used in this section and in North Dakota Century Code section 4-09-15 shall be the same as those defined in this section and in North Dakota Century Code section 4-09-01.

The exemption provided for in North Dakota Century Code section ~~4-09-15~~ for seeds which are sold or exchanged by farmers within any community who are not engaged in commercial seed business, shall not apply to seeds which have been publicly advertised in newspapers, periodicals, pamphlets, posters, by radio or otherwise, or which are transported by common carrier. Where the purpose for which the seed is intended may be in question, all seeds advertised for sale by a variety name or as processed or tested or treated or offered at a price substantially higher than current market prices, shall be presumed to be offered for seeding purposes and subject to the labeling provisions of North Dakota Century Code sections ~~4-09-10~~ and ~~4-09-11~~. The exemption as provided in subsection 5 of North Dakota Century Code section ~~4-09-15~~ shall apply only to seeds which are sold or exchanged and delivered to the purchaser on the premises of the producer. No farmer who sells or exchanges seed which is exempt from the provisions of North Dakota Century Code sections ~~4-09-10~~ and ~~4-09-11~~ shall be exempt from any of the other provisions, requirements, and prohibitions under North Dakota Century Code chapter ~~4-09~~.

The exemption found in subsection 5 of North Dakota Century Code section 4-09-15 does not apply to a farmer who sells only his own seed which has been publicly advertised for sale. For the purposes of this section "publicly advertised for sale" includes advertising in newspapers, periodicals, pamphlets, or posters, by radio or television, or in any other media. For the purposes of this section and North Dakota Century Code section 4-09-15 "sells only his own seed" includes any disposition of seed or transaction whereby the farmer sells, exchanges, or trades his own seed. The exemption found in subsection 5 of North Dakota Century Code section 4-09-15 also does not apply to any farmer who is engaged in the seed business. For the purposes of this section "engaged in the seed business" includes the sale of any seed by a person which seed was not grown on that person's own farm, publicly advertising for sale any seed, or making use of any third party as an agent or broker to bring a buyer and seller of seed together for purposes of sale, exchange, or trade.

History: Amended effective May 1, 1988.

General Authority: NDCC 4-09-03
Law Implemented: NDCC 4-09-15

74-03-01-09. Field inspection.

1. **Applications.** Applications for field inspection, accompanied by the correct fees, past due accounts, and proof of seed eligibility, must be mailed or received at the state seed department office in Fargo not later than June ~~twentieth~~ fifteenth. The penalty fee will apply after that date. Applications may not be accepted after July fifth except for later planted crops. Soybean, millet, field peas, and buckwheat will be accepted until July fifteenth without late penalty. In case of an emergency or unusual circumstances due to weather and crop conditions, the deadline may be extended at the discretion of the seed commissioner. Application blanks are available at all county extension offices and the seed department offices at Fargo, Grand Forks, and Grafton.
2. **Information required on application.** The application blank shall be filled out by the grower and returned to the office. It is important that all questions be answered completely and correctly. Information is required regarding the variety of the crop, number of acres [hectares] seeded, and source of seed. The location of the farm and field shall be given clearly so that the inspector will be able to find the farm and field readily without waste of time and extra travel. A diagram of the field location shall be made on the bottom of the application blank. If the seed is purchased, an official certified seed tag must accompany the application.
3. **Roguing and spraying fields.** Roguing fields prior to inspection is desirable to remove undesirable plants from fields which are intended for seed certification. Plants that should be removed include off-type plants, prohibited and restricted noxious weeds, other crop plants such as sweet clover in alfalfa, oats in barley, winter rye in winter wheat, and other impurities which may be growing in the field.

Roguing is usually done by pulling out other crop plants or weeds and removing them from the field. In the case of small grain, roguing should be done after heading as foreign plants are seen most easily at this time. In hybrid seed production, off-type and undesirable plants should be removed before pollen is shed. Roguing is very essential in maintaining the purity of varieties and high standards of certified seed.

Wherever practical and advisable, seed fields should be sprayed with herbicides according to the best recommendations for the control of undesirable weeds.

4. **Weeds and diseases.**

- a. Prohibited noxious weeds under North Dakota seed laws and rules are: leafy spurge, field bindweed (creeping jenny) Canada thistle, perennial sow thistle, Russian knapweed, and hoary cress (perennial peppergrass). For purposes of seed certification, musk thistle and absinth wormwood shall be included.
 - b. Restricted noxious weeds under North Dakota seed laws and rules are: dodder species, wild mustard, field pennycress (frenchweed), hedge bindweed (wild morning glory), wild oats, and quackgrass.
 - c. A field may be rejected if it is the opinion of the field inspector that the amount and kind of common weeds present materially affect its appearance or make it difficult to give adequate inspection, or the condition is such that the quality of the cleaned seed may be questionable.
 - d. Objectionable weed seeds are restricted noxious weeds under North Dakota seed laws and rules and some common weeds which cause a specific problem in the conditioning of some individual crops.
 - e. Diseases not governed by specific crop standards may be cause for rejection if it is the opinion of the inspector that the quality of the cleaned seed may be affected or if results of tests made on the seed indicate a disease condition which will affect the crop produced from such seed.
5. **Cancellation of field inspection.** An application may be canceled by the grower before the field inspection is made and the application fee minus ten dollars will be refunded. The request for cancellation, however, must reach the state seed department before the inspector arrives in the general locality of the field or before inspection expense has been incurred. Refunds will not be made after fields are inspected or because fields have been rejected.

History: Amended effective May 1, 1986; May 1, 1988.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-10. **Fees.** Charges for fees and services are subject to change. For current fees contact the state seed department.

1. **Field inspection fees.**

Each applicant for field seed certification must pay a grower fee of five dollars once annually plus:

~~To June 20~~ ~~After June 20~~ July 5

| | <u>To June 15</u> | <u>After June 15-July 5</u> |
|--|--|--|
| Small grains, grasses, legumes, flax and other annual and perennial crops | \$1.50 per acre for the first 100 acres \$1.25 per acre for additional acreage (per field) | \$2.00 per acre for the first 100 acres \$1.75 per acre for additional acreage (per field) |
| Sunflower open pollinated | \$2.25 per acre | \$2.75 per acre |
| hybrids | \$3.50 per acre | \$4.00 per acre |
| Dry field bean | \$2.50 per acre | \$3.00 per acre |
| | <u>To July 15</u> | <u>After July 15- August 1</u> |
| Late crops - soybean, millet, field peas, buckwheat | \$1.50 per acre for the first 100 acres \$1.25 per acre for additional acreage (per field) | \$2.00 per acre for the first 100 acres \$1.75 per acre for additional acreage (per field) |

Minimum all crops \$20.00 per farm - \$10.00 per field

EXAMPLE

185-acre wheat field:

| | |
|--|----------------------|
| 100-A x \$1.50 = \$150.00 | Add membership fee |
| 85-A x \$1.25 = 106.25 | (only one time) 2.00 |
| \$256.25 | \$258.25 |
| 100-A x \$1.50 = \$150.00 | Grower fee |
| 85-A x \$1.25 = 106.25 | (once annually) 5.00 |
| <u>\$256.25</u> | <u>\$261.25</u> |

2. Laboratory fees.

Germination tests: grains four dollars and fifty cents, soybean, sunflower, dry field bean five dollars and fifty cents, and flax five dollars.

Seed purity tests: grains, soybean, sunflower, dry field bean four dollars, and flax seven dollars.

Barley embryo test for loose smut: eight dollars and fifty cents (one test required for each lot). Regular fee for noncertified barley twelve dollars.

Bacterial bean blight test: fifty dollars. Each lot of edible beans passing field inspection must be tested. See current price list for all laboratory charges.

3. Final certification fees.

Minimum fee is two dollars. Two cents per bushel [35.24 liters] plus four cents per tag for annual crops including grains, flax, and row crops.

Six cents per one hundred pounds [45.36 kilograms] plus four cents per tag for alfalfa, clovers, and perennial grasses.

(The two cents for each bushel [35.24 liters] and six cents for each hundred pounds [45.36 kilograms] of alfalfa, clovers, and perennial grasses will be used to promote North Dakota certified seed.)

Bulk certification: ten dollars per lot plus four cents per bushel [35.24 liters].

4. Carryover seed tagging. New certification tags will be furnished for carryover seed at a cost of four cents per tag. All carryover seed must be retested for germination before new certified tags will be issued.

5. Carryover bulk seed. All carryover bulk seed must be retested for germination before new bulk certificates will be issued at ten dollars per lot (four certificates - extra copies twenty-five cents per copy). Carryover bulk seed cannot be recertified in bags unless new samples are submitted for analysis.

History: Amended effective May 1, 1986; May 1, 1987; May 1, 1988.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16, 28-32-01

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-11. Seed sampling and laboratory inspection.

1. Identification in storage. Field inspected seed must be positively identified by lot number (field inspection number) at all times. Bins of bulk lots of uncleaned or cleaned seed should be marked. Bags should be identified by a stenciled lot number or an identification tag securely sewn or fastened to the bag.

2. Germination sample. To speed up tagging and determine suitability of seed prior to conditioning a representative sample of seed from each field which has passed field inspection may be submitted to the state seed department soon after the crop is harvested. A special seed envelope for this sample is furnished the grower. This sample should be cleaned

on a small mill or hand sieve to correspond as nearly as possible to the condition of the entire lot after cleaning or conditioning. Only a germination test and embryo test in the case of susceptible barley varieties is made on this sample. This germination test and embryo test (in the case of barley) can be used in the final tagging of the lot and all sublots. A grower may, however, request a new test on each lot after final conditioning or delay the germination test and embryo test until after conditioning. The labeler is responsible for the germination stated on the seed label.

3. Sampling procedures.

- a. All seed lots for final certification should be sampled during conditioning by taking samples from the mills at periodic intervals.
- b. Specific instruction to samplers are found on reverse side of sampler's report.

4. Maximum lot size and numbering.

- a. The maximum size of lot for sampling of cereals and flax is five hundred bushels [176.20 dekaliters] for bagged seed, with no maximum size for bulk seed. For grasses and legumes the maximum size of lot shall be two thousand pounds [907.18 kilograms]. When desired, subplot samples can be combined under one lot number in which case, the average analysis of all subplot samples will be used for tagging. Field inspection numbers should not be changed. The maximum size for any bagged lot is two thousand bushels [704.78 dekaliters]. Bulk certified lots do not have a maximum limit except bin capacity.
- b. The lot number should be preceded by the initials of both the variety and kind of seed. When large lots of seed are broken up into smaller lots and conditioned at different times, a subplot number should be used. For example, the seed from a field of Larker barley, which has field inspection number eight hundred ninety-seven, will be designated as lot lb 897. If only a part of the entire lot is conditioned at one time, the subplot will be designated lb 897-1. When another portion of the lot is conditioned, this subplot will be designated lb 897-2.

- 5. Bulking seed lots.** Seed from different fields of the same kind and variety, which have passed field inspection, may be bulked if the seed is of the same class, generation, or general quality. If the seed of different classes or generations is bulked the seed becomes eligible for the lowest class only.

6. Conditioning.

- a. All field inspected seed which is to be tagged and sealed must be conditioned and must meet the minimum seed standards and conditioning requirements for the crop and class.
- b. Field inspected seed may be conditioned either by the grower or at an approved seed conditioning plant.

7. **Conditioning by grower farmer/grower - Procedure.**

- a. Condition the seed. A grower farmer/grower does not need an approved conditioning plant permit if the grower farmer/grower conditions seed on the grower's farmer's/grower's premises.
- b. Complete section A of the grower's declaration, designate sampler, sign, and mail to the state seed department at Fargo. Meets farmer/grower requirements for equipment and management.
- c. The designated sampler will be sent sampling instructions, sampler's report and sample bag. Complete section A of the grower's declaration, and sampler's report, sign, and mail to the state seed department at Fargo.

8. **Conditioning at an approved plant.**

- a. Growers must fill in grower's declaration - section B only or C.
- b. The completed grower's declaration should be presented to the manager of the approved conditioning plant when the seed is delivered for conditioning.
- c. After conditioning all seed is sampled by the authorized sampler in the plant.

9. **Regulatory sampling.** The state seed department may resample any lot of seed either before final certification or after the seed is tagged and sealed.

10. **Laboratory analysis.**

- a. All laboratory testing shall be done by qualified personnel of the state seed department. Analysis and tests of seed samples and definition of analysis terms shall be in accordance with the rules of the association of official seed analysis.
- b. If more than one sample of seed is tested from the same lot without additional conditioning, an average shall be taken of all tests made.

History: Amended effective May 1, 1986; May 1, 1988.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-15. Misuse of certification privileges. Any seed grower, conditioner, or seedsman who is found guilty of misusing certification tags, misrepresenting seed, or who violates any of the rules governing the growing, conditioning, and marketing of foundation, registered, or certified seed, or who is guilty of violations of the North Dakota seed laws and rules with respect to any seed which the grower, conditioner, or seedsman sells, may at the discretion of the state seed commissioner or the commissioner's agents be denied the right to produce, condition, or market seed under certification.

History: Amended effective May 1, 1986; May 1, 1988.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-02-04. Seed standards (wheat - oats - barley - rye - triticale).

| Factor | Standards for Each Class | | |
|--|--------------------------|----------------|--------------|
| | Foundation | Registered | Certified |
| Pure seed (minimum) *..... | 99.0 percent | 99.0 percent | 99.0 percent |
| Total weed seeds (maximum) | 2 per pound | 5 per pound | 10 per pound |
| Other varieties ** .. | 1 per 2 pounds | 1 per pound | 3 per pound |
| Other crop seeds (maximum) | 1 per 2 pounds | 1 per pound | 3 per pound |
| Inert matter (maximum) *** | 1.0 percent | 1.0 percent | 1.0 percent |
| Prohibited noxious weed seeds + | none | none | none |
| Objectionable weed seeds (maximum) ++ | 1 per 4 pounds | 1 per 2 pounds | 1 per pound |
| Germination +++ | 85.0 percent | 85.0 percent | 85.0 percent |

* The standard for durum and rye shall be 98.0 percent minimum.

** Other varieties shall not include variations which are characteristic of the variety.

*** For all crops foreign matter other than broken seed shall not exceed 0.2 percent. Durum and rye may contain 2.0 percent maximum inert matter.

+ Prohibited noxious weed seed including the seeds of quackgrass.

++ Objectionable weed seeds shall include the following: dodder, wild mustard, wild oats, hedge bindweed (wild morning glory), field pennycress (frenchweed), giant ragweed (kinghead), falseflax, and dragonhead.

+++ Winter wheat and rye minimum 80.0 percent.

Note: The loose smut content of any class of certified seed of barley shall not exceed four percent unless a special seed treatment has been applied. The percentage of loose smut as determined by the embryo test will be printed on the certification tag or labeled with an approved seed treatment. The foundation class of barley has a zero tolerance for barley stripe mosaic virus.

History: Amended effective May 1, 1986; May 1, 1988.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-02-05. Seed standards (flax).

| Factor | Standards for Each Class | | |
|---|--------------------------|----------------|--------------|
| | Foundation | Registered | Certified |
| Pure seed | | | |
| (minimum) | 99.0 percent | 99.0 percent | 98.5 percent |
| Total weed seeds | | | |
| (maximum) | 15 per pound | 15 per pound | 30 per pound |
| Other varieties | | | |
| (maximum) * | 2 per pound | 8 per pound | 16 per pound |
| Other crop seeds | | | |
| (maximum) | 2 per pound | 5 per pound | 10 per pound |
| Inert matter | | | |
| (maximum) ** | 1.0 percent | 1.0 percent | 1.5 percent |
| Prohibited noxious weed seeds *** | none | none | none |
| Objectionable weed seeds (maximum) + . | none | + per 2 pounds | 3 per pound |
| | 1 per 2 pounds | 1 per 2 pounds | 3 per pound |
| Germination | | | |
| (minimum) | 85.0 percent | 85.0 percent | 85.0 percent |

* Other varieties shall not include variations which are characteristic of the variety. For golden or yellow varieties the figures should be multiplied by two.

** May not exceed two-tenths percent foreign matter.

*** Prohibited noxious weed seeds including seeds of quackgrass.

+ Objectionable weed seeds shall include the following:
dodder species, wild mustard, wild oats, field pennycress
(frenchweed), hedge bindweed (wild morning glory), giant
ragweed (kinghead), small seeded falseflax and American
dragonhead.

History: Amended effective May 1, 1986; May 1, 1987; May 1, 1988.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-07-03. Field standards.

1. A portion of the field may be accepted for certification if the boundary is well defined.
2. Fields should be rogued before blooming and before inspection is made to remove other species, off-type plants, and weeds, the seeds of which are difficult to separate in cleaning.
3. A seed field to be eligible for the production of foundation, registered or certified seed must be isolated from any other strain or strains of the same species in bloom at the same time in accordance with the requirements given in the following table:

| | Symbol | Minimum Isolation Distance Required (feet) | | |
|----------------------------------|--------|---|------------|-----------|
| | | Foundation | Registered | Certified |
| All cross-pollination species | C | 1320 | 660 | 330 |
| Strains entirely apomictic | A | 165 | 165 | 82.5 |
| Highly self-fertile species | S | 165 | 165 | 82.5 |

4. Specific requirements. The maximum field tolerance for other varieties and off-type plants of the same species, when recognized, shall be as follows:

| | |
|------------------|---------------|
| Foundation | ± 0.1 percent |
| Registered | 0.5 percent |
| Certified | 1.0 percent |

History: Amended effective May 1, 1986; May 1, 1988.
 General Authority: NDCC 4-09-03, 4-09-16
 Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-07-04. Specific seed standards (non-chaffy seeded species).

| Species | Type of Reproduction | Minimum | | | | | | Maximum | | | | | | Registered 1.0% Weed Seed ¹ F & R C | Certified 2.0% 1.0% F & R C | | | |
|-------------------------|----------------------|---------------------------|----|-----------------------------|----|----------------------------|-----|-----------------------------|-----|-----------------------|------|--|------|--|-----------------------------|-----|----|----|
| | | Percent Pure Seed F & R C | | Percent Germination F & R C | | Percent Other Crop F & R C | | Percent Other Grass F & R C | | Percent Inert F & R C | | Percent Weed Seed ¹ F & R C | | | | | | |
| | | F | R | F | R | F | R | F | R | F | R | F | R | | | | | |
| Smooth Bromegrass | C | 90 | 85 | 80 | 80 | 80 | 0.2 | 0.2 | 0.5 | 0.1 | 0.5 | 10.0 | 15.0 | 0.25 | 0.2 | 0.5 | 9 | 13 |
| Timothy | C | 99 | 99 | 80 | 80 | 0.2 | 0.2 | 0.5 | 0.1 | 0.2 | 1.0 | 1.0 | 1.0 | 0.2 | 0.5 | 9 | 13 | |
| *Crested Wheatgrass | C | 90 | 90 | 80 | 80 | 0.2 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.25 | 0.5 | 9 | 13 | |
| Intermediate Wheatgrass | C | 90 | 90 | 80 | 80 | 0.2 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.25 | 0.5 | 9 | 13 | |
| Pubescent Wheatgrass | C | 90 | 90 | 80 | 80 | 0.2 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.25 | 0.5 | 9 | 13 | |
| Slender Wheatgrass | S | 90 | 90 | 80 | 80 | 0.2 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.25 | 0.5 | 9 | 13 | |
| Tall Wheatgrass | C | 90 | 90 | 80 | 80 | 0.2 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.25 | 0.5 | 9 | 13 | |
| Western Wheatgrass | C | 85 | 85 | 60 | 60 | 0.2 | 0.2 | 1.0 | 0.2 | 0.5 | 15.0 | 15.0 | 0.25 | 0.25 | 0.5 | 9 | 13 | |
| Canada Wildrye | S | 90 | 85 | 70 | 70 | 0.2 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 15.0 | 0.25 | 0.25 | 0.5 | 9 | 13 | |
| Russian Wildrye | C | 90 | 90 | 80 | 80 | 0.2 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.25 | 0.5 | 9 | 13 | |
| Feather Grass | S | 90 | 80 | 65 | 65 | 0.2 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 20.0 | 0.25 | 0.25 | 0.5 | 9 | 13 | |
| Creeping Foxtail | C | 80 | 80 | 80 | 80 | 0.2 | 0.2 | 1.0 | 0.1 | 0.5 | 20.0 | 20.0 | 0.25 | 0.25 | 0.5 | 9 | 13 | |
| Switchgrass | C | 95 | 90 | 50 | 50 | 0.2 | 0.2 | 1.0 | 0.2 | 0.5 | 5.0 | 10.0 | 0.50 | 1.0 | 1.0 | 9 | 13 | |

¹Untreated (awned) - 15%
²Treated (deawned) - 65%

24-02-07-04. SPECIFIC SEED STANDARDS (CHAFFY SEEDED SPECIES).
 Other varieties (maximum) 1.0% Foundation. 0.1% Registered. 1.0% Certified 1.0%

| Species | Type of Proton duction | Minimum | | | | | Maximum | | | Objectible weed seeds Per Pound F & R G | | | |
|--------------------|------------------------------|------------------------------------|--------------------------------------|-------------------------------------|--------------------------------------|--------------------------------|------------------------------------|------|----|---|-----|---|----|
| | | Percent Pure Seed F & R G | Percent Germination F & R G | Percent Other Crop F & R G | Percent Other Grass F & R G | Percent Inert F & R G | Percent Weed Seed F & R G | | | | | | |
| Sidcoats Grass | C & A | 50* | 20* | == | 0.2 | 1.0 | 0.1 | 0.50 | == | 0.50 | 1.0 | 9 | 13 |
| Big Bluestem | C | 50* | 25* | == | 0.2 | 1.0 | 0.1 | 0.50 | == | 0.50 | 1.0 | 9 | 13 |
| Sand Bluestem | C | 40* | 20* | == | 0.2 | 1.0 | 0.1 | 0.50 | == | 0.50 | 1.0 | 9 | 13 |
| Little Bluestem | C | 12* | 12* | == | 0.2 | 1.0 | 0.1 | 0.50 | == | 0.50 | 1.0 | 9 | 13 |
| Indiangrass | C | 50* | 25* | == | 0.2 | 1.0 | 0.1 | 0.50 | == | 0.50 | 1.0 | 9 | 13 |

*Pure Live Seed Index
 †Prohibited noxious weed seeds including seeds of Quackgrass, Horsebettle, Johnsongrass, Wild Garlic and Dodder, are not allowed.
 ‡Objectible weed seeds shall contain the following:
 Hodge Bindweed (Wild Morningglory)
 Giant Ragweed (Kinchead)
 Nighflowering Catchfly
 Hoary Alyssum
 White Cockle
 Dragonhead
 Buckhorn Plantain
 Field Pennyress (Frenchweed)

→ History: Amended effective May 1, 1988.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16
 Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-07.1-03. Field standards.

1. Isolation.

- a. At the time of inspection, the field must be separated from other fields by a fence row, natural boundaries or by a strip at least five feet [1.52 meters] wide which is either mowed, uncropped, or planted to some other separable crop.
- b. When it is necessary to remove a strip to obtain proper isolation, a part of the strip to be removed must be cut into the field to be inspected.
- c. All buckwheat fields producing certified seed must be isolated by at least six hundred sixty feet [201.17 meters] from buckwheat fields of any other variety or fields of the same variety that do not meet the varietal purity requirements for certification.

2. Roguing.

- a. All roguing must be done before field inspection is made. Rogued plants must not be left in the field to be harvested.
- b. Patches of prohibited weeds must be either removed by cutting or must be controlled by other means so that no seed is produced.

3. Specific field standards.

| Factor | Maximum Tolerance | | |
|------------------------|---------------------|--------------------|--------------------|
| | Foundation | Registered | Certified |
| Other varieties * | 1:10,000 | 1:5,000 | 1:2,000 |
| Inseparable other | | | |
| crops | 1:10,000 | 1:7,500 | 1:5,000 |
| crops | 1:10,000 | 1:10,000 | 1:5,000 |
| Prohibited weed | | | |
| seeds ** | none | none | none |

* Other varieties shall be considered to include plants that can be differentiated from the variety that is being inspected. However, other varieties shall not include variations which are characteristic of the variety.

** Includes only leafy spurge and Russian knapweed. The

tolerance for other prohibited weeds in the field will be determined by the inspector on the basis of stages of development of both the crop and the weed.

History: Effective May 1, 1986; amended effective May 1, 1988.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-09-04. Seed standards (mustard).

| Factor | Foundation | Certified |
|---|---------------|---------------|
| Pure seed (minimum) | 99.00 percent | 99.00 percent |
| Inert matter (maximum) | 1.00 percent | 1.00 percent |
| Prohibitive noxious weed seeds | none | none |
| Objectionable weed seeds * | † per pound | 6 per pound |
| seeds * | 1 per pound | 5 per pound |
| Other weeds | 5 per pound | 15 per pound |
| Total other crop seeds (maximum) | 0.05 percent | 0.25 percent |
| Other varieties (maximum) | 0.05 percent | 0.25 percent |
| Other kinds ** (maximum) | 0.01 percent | 0.01 percent |
| Germination (minimum) | 85.00 percent | 85.00 percent |
| Sclerotia (maximum) *** | 1 per pound | 1 per pound |

* Objectionable weed seeds are: dodder, wild mustard, wild oats, quackgrass, field pennycress (frenchweed), hedge bindweed (wild morning glory), nightflowering catchfly, giant foxtail, hoary alyssum, wild radish, wild vetch species, buckhorn plantain, horsenettle.

** Shall not exceed one per pound for foundation, and six per pound for certified.

*** One sclerotium per pound is all that is allowed in North Dakota certified seed to prevent the dissemination to areas not previously infected with sclerotia (sclerotinia sclerotiorum).

History: Amended effective May 1, 1986; May 1, 1988.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-10-01. Land requirements. Safflower will not be considered for certification if planted on land where safflower has been grown the past two years. It is recommended that the crop be planted on summerfallow or on land immediately following a ~~row~~ separable crop.

History: Amended effective May 1, 1988.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-11-02. Field inspection. Open pollinated varieties, hybrids and inbreds.

1. Open pollinated inspections.

- a. The first inspection shall be made prior to the bloom stage.
- b. The second inspection shall be made after the crop is at least fifty percent in bloom and before it is fully matured.

2. Hybrid and inbred production.

- a. At least three field inspections shall be made, one during the bud to early bloom stage and two during bloom.
- b. In a field producing hybrid sunflower seed, at least fifty percent of the male parent plants must be in bloom and producing pollen at the time the female parent is in full bloom. The heads of female plants shedding pollen must be removed. They shall be disposed of in a manner which will prevent their pollen from being disseminated.
- c. The field shall be considered the unit for certification. Fields shall be separated from other inseparable crops by a distance adequate to prevent mechanical mixture and from other sunflowers by five thousand two hundred eighty feet [1609.34 meters].
- d. In inbred lines and foundation single crosses only the foundation class shall be recognized. In hybrid varieties only the certified class shall be recognized.
- ~~e. In increase field of inbred parental lines and in the male rows of commercial hybrid production fields all off-types must be removed before any pollination has taken place.~~

- 3. Diseases.** Standards for seed-borne diseases in sunflowers are not specified; however, the inspector may reject fields for disease if the quality of the seed will be affected.

History: Amended effective May 1, 1986; May 1, 1988.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16
 Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-11-03. Field standards.

| Factor | Foundation | Registered | Certified |
|---------------------------------------|------------|------------|------------|
| Off-type-plants-(per-1000)-(maximum)* | | | |
| Hybrid-Production** | | | |
| Female-seed-parent | 4 | | 4 |
| Male-pollinating-parent | 4 | | 4 |
| Open-pollinating-varieties | 5 | 5 | 5 |
| Isolation | | | |
| Open-pollinated | 5,280-feet | 5,280-feet | 5,280-feet |
| Hybrid-or-inbred-lines | 5,280-feet | | 5,280-feet |
| Corn-plants-bearing-seed | none | none | none |

| Factor | Open Pollinated* | Female Seed Parent | | Male Pollinating Parent |
|---|-----------------------------------|--------------------|------------|-------------------------|
| | Varieties | Foundation | Certified | |
| | Foundation, Registered, Certified | Foundation | Certified | |
| Pollen shedding female plants (maximum) | | 1:1,000 | 4:1,000 | |
| Off-types other than pollen shedding female plants (maximum) | | 1:5,000* | 1:5,000* | 1:5,000* |
| Isolation allowances** (maximum) per plants in the production field | 1:5,000 | 1:5,000 | 1:5,000 | 1:5,000 |
| Total including above (maximum) | 5:1,000 | 1:1,000 | 4:1,000 | 1:2,000 |
| Isolation (minimum)** | 5,280 feet | 5,280 feet | 5,280 feet | 5,280 feet |
| Corn plants bearing seed | none | none | none | none |

*To include not more than one plant per 5,000 plants of the following types: wild type branching, purple, white seeded. Other varieties shall be considered to include plants that can be differentiated from the variety that is being inspected. However, other varieties shall not include variations which are characteristic of the variety. For example, some pollen plants may be of the branching-type.

**Must be isolated from other varieties, strains, hybrids, volunteer sunflower, noncertified crops of the same variety, which are not monitored, and hybrid and wild Helianthus annuus species.

→ History: Add 3 May 1, 1988.

History: Amended effective May 1, 1986; May 1, 1988.
 General Authority: NDCC 4-09-03, 4-09-05, 4-09-16
 Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-11-04. Seed standards (sunflower).

| Factor | Foundation | Registered | Certified |
|-------------------------------|--------------|--------------|--------------|
| Pure seed | | | |
| (minimum) | 98.0 percent | 98.0 percent | 98.0 percent |
| Total weed seeds | | | |
| (maximum) | 1 per pound | 1 per pound | 3 per pound |
| Other varieties | | | |
| (maximum) * | 1 per pound | 1 per pound | 5 per pound |
| Other crop seeds | | | |
| (maximum) | 1 per pound | 1 per pound | 3 per pound |
| Inert matter | | | |
| (maximum) | 2.0 percent | 2.0 percent | 2.0 percent |
| Objectionable weed seeds ** | none | none | none |
| Prohibited noxious weed seeds | none | none | none |
| Germination | | | |
| (minimum) | 85.0 percent | 85.0 percent | 85.0 percent |
| Sclerotia *** | 1 per pound | 1 per pound | 1 per pound |

* To include not more than two purple seeds, or two white seeds per pound. Other varieties shall not include variations which are characteristic of the variety.

** Objectionable weed seeds shall include the following: buckhorn plantain, dodder, wild oats, wild mustard, nightflowering catchfly, field pennycress (frenchweed), giant foxtail, hoary alyssum, horsenettle, quackgrass, wild vetch species, wild radish, hedge bindweed (wild morning glory).

*** One sclerotium per pound is all that is allowed in North Dakota certified seed to prevent the dissemination to areas not previously infected with sclerotia (sclerotinia sclerotiorum).

Repealed effective May 1, 1988.

History: Amended effective May 1, 1986.
 General Authority: NDCC ~~4-09-03~~, ~~4-09-05~~, ~~4-09-16~~
 Law Implemented: NDCC ~~4-09-16~~, ~~4-09-17~~, ~~4-09-18~~

74-03-11-04.1. Precontrol standards. If field inspection shows one or more of the following, the applicant may request that seed certification be based on the results of a precertification grow-out test approved by the North Dakota state seed department.

1. Inadequate isolation.
2. Too few male parent plants shedding pollen when female plants are receptive.
3. Excess off-types not to include wild types.

In such cases at least two thousand plants must be observed and meet the following standards before hybrid and inbred seed can be certified from fields with problems listed above.

| Factor | Maximum Permitted | |
|-------------------------------|-------------------|--------|
| | Hybrid | Inbred |
| Sterile plants | 5.0% | |
| Sterile or fertile plants | | 5.0% |
| Morphological off-types | 0.5% | 0.5% |
| Wild types | 0.2% | 0.2% |
| Total (including above types) | 5.0% | 5.0% |

For nonoil types, hybrid seed which contains not more than fifteen percent sterile plants may be certified. If it contains eighty-five percent to ninety-five percent hybrid plants, the percentage of hybrid shall be shown on the certification label.

History: Effective May 1, 1988.
 General Authority: NDCC ~~4-09-03~~, ~~4-09-05~~, ~~4-09-16~~
 Law Implemented: NDCC ~~4-09-16~~, ~~4-09-17~~, ~~4-09-18~~

74-03-11-05. Postcontrol standards. Samples from all certified hybrid seed fields and all foundation inbred fields must be entered in approved winter growout tests. They must meet the following standards in such tests:

| Factor | Hybrids | Inbreds |
|--------------------------|-------------|---------|
| Sterile plants (maximum) | 5.0 percent | |

| | | |
|----------------------------|-------------|-------------|
| Sterile or fertile plants | | |
| (maximum) | | 5.0 percent |
| Morphological variants | | |
| (maximum) | 0.3 percent | 0.3 percent |
| Wild types (maximum) | 0.3 percent | 0.3 percent |
| Total including above | | |
| types (maximum) | 5.0 percent | 5.0 percent |

For nonoil types, seed which contains not more than fifteen percent sterile plants may be certified. If it contains eighty-five percent to ninety-five percent hybrid plants, the percentage of hybrid shall be shown on the certification label.

Repealed effective May 1, 1988.

History: Effective May 1, 1986.

General Authority: NDCE ~~4-09-03~~, ~~4-09-05~~, ~~4-09-16~~

Law Implemented: NDCE ~~4-09-16~~, ~~4-09-17~~, ~~4-09-18~~

74-03-11-05.1. Seed standards (sunflower).

| Factor | Standards for Each Class | | |
|-------------------------------|--------------------------|--------------|--------------|
| | Foundation | Registered | Certified |
| Pure seed | | | |
| (minimum) | 98.0 percent | 98.0 percent | 98.0 percent |
| Total weed seeds | | | |
| (maximum) | none | none | 3 per pound |
| Other varieties | | | |
| (maximum) * | 1 per pound | 1 per pound | 5 per pound |
| Other crop seeds | | | |
| (maximum) | 1 per pound | 1 per pound | 3 per pound |
| Inert matter | | | |
| (maximum) | 2.0 percent | 2.0 percent | 2.0 percent |
| Objectionable weed seeds ** | none | none | none |
| Prohibited noxious weed seeds | none | none | none |
| Germination | | | |
| (minimum) | 85.0 percent | 85.0 percent | 85.0 percent |
| Sclerotia *** | 1 per pound | 1 per pound | 1 per pound |

* To include not more than two purple seeds, or two white seeds per pound. Other varieties shall not include variations which are characteristic of the variety.

** Objectionable weed seeds shall include the following:
buckhorn plantain, dodder, wild oats,

wild mustard, nightflowering catchfly, field pennycress (frenchweed), giant foxtail, hoary alyssum, horsenettle, quackgrass, wild vetch species, wild radish, hedge bindweed (wild morning glory).

*** One sclerotium per pound is all that is allowed in North Dakota certified seed to prevent the dissemination to areas not previously infected with sclerotia (sclerotinia sclerotiorum).

History: Effective May 1, 1988.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-12-04. Seed standard (soybean and field peas).

| Factor | Standard for Each Class | | |
|----------------------------------|-------------------------|--------------|--------------|
| | Foundation | Registered | Certified |
| Pure seed (minimum) | 98.0 percent | 98.0 percent | 98.0 percent |
| Total weed seeds (maximum) | none | 1 per pound | 2 per pound |
| Other varieties (maximum) * | 0.1 percent | 0.2 percent | 0.2 percent |
| Other crop seeds (maximum) | none | none | none |
| (maximum) | none | none | 1 per pound |
| Inert matter | 2.0 percent | 2.0 percent | 2.0 percent |
| Prohibited noxious weed seeds | none | none | none |
| Objectionable weed seeds ** | none | none | none |
| Germination and hard seeds | 85.0 percent | 85.0 percent | 85.0 percent |

* Other varieties shall not include variations which are characteristic of the variety.

** Objectionable weed seeds are: dodder, wild mustard, field pennycress (frenchweed), hedge bindweed (wild morning glory), wild oats, buckhorn, hoary alyssum, horsenettle, quackgrass, wild vetch species, giant foxtail, wild radish, nightshade species, and cocklebur.

History: Amended effective May 1, 1986; May 1, 1988.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-13-03. Specific field standards (dry field beans).

| Factor | Maximum Tolerance | | |
|------------------------------|-------------------|-------------------------|------------------------|
| | Foundation | Registered | Certified |
| Other varieties or classes * | 0.03 percent | 0.05 percent | 0.1 percent |
| Inseparable other crops .. | none | none | none |
| Bacterial bean blights | | | |
| (leaves) | .005 percent | .005 percent | .005 percent |
| (pods) | none | none | none |
| Anthracnose | none | none | none |
| Wilt | none | none | none |
| Common bean mosaic | none | 0.05 percent | 1.0 percent |
| Common bean mosaic | none | 0.5 percent | 1.0 percent |

* Other varieties shall not include variations which are characteristic of variety.

History: Amended effective May 1, 1986; May 1, 1988.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-06-01-07. Inspection fees and types of analysis on rapeseed.

1. Grade determination - Official samples.

(Form CI-1) samples taken by North Dakota state seed department authorized inspectors or samplers licensed by the federal grain inspection service.

Grading - not including sampling - \$12.00

2. Grade determination - Submitted samples.

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

Grading - \$12.00

3. Percentage of Admixtures.

(Form - Seed Analysis Report)
Percentage by weight, reported to the nearest one-tenth of one percent of the following:

Mustard including all wild and domestic species, combined;
Other seeds - all seeds other than the mustard group.

Analysis of five grams - \$ 5.00

4. Percentage of Mustard Seed.

(Form - Seed Analysis Report)

Total mustard seed, reported to the nearest one-tenth of one percent by weight.

Analysis of five grams - \$ 5.00

5. Factor Analysis.

Per factor - \$ 2.00

| | |
|-------------------------|--------------------|
| Completely rimed seed | Infestation |
| Conspicuous admixture | Moisture |
| Distinctly green seed | Odor |
| Dockage | Sclerotina |
| Heat-damaged seed | Stones |
| Inconspicuous admixture | Total damaged seed |

History: Effective September 1, 1979; amended effective May 1, 1988.

General Authority: NDCC 4-09.1-03

Law Implemented: NDCC 4-09.1-03

74-06-01-08. Sample size. The minimum sample size is five hundred grams for grading rapeseed. Samples of less than five hundred grams will receive factor analysis on those factors which can be done with the submitted sample size, no grade will be reported.

History: Effective May 1, 1988.

General Authority: NDCC 4-09.1-02

Law Implemented: NDCC 4-09.1-02

74-06-02-02. Procedure. A representative portion of **five hundred or one thousand seven hundred fifty** grams is properly divided from the uncleaned sample and passed through the Carter dockage tester with settings as follows:

Slot 1. ~~Oilseed~~ Oil sunflower riddle
Slot 2. No top sieve
Slot 3. # 8 sieve 6/64 triangle

Slot 4. # 6 sieve 5/64 triangle

Set Feed on # 6

Air Control on # 6

History: Effective September 1, 1979; amended effective May 1, 1988.

General Authority: NDCC 4-09.1-02

Law Implemented: NDCC 4-09.1-02

74-06-02-03. Determination of dockage.

1. Determine dockage.

Dockage (Drop fraction or five-tenths percent).

Pan #1 Material over # 2 oil sunflower riddle. If any buckwheat is in this pan, remove and return to dockage free buckwheat.

Pan #2 Material over # 8 sieve. This is the dockage free buckwheat.

Pan #3 Material through # 8 sieve. If over fifty percent of dockage, add to dockage. If over fifty percent of cultivated buckwheat return all of this material to dockage free buckwheat.

Pan #4 Material through # 6 bottom sieve.

Dockage consists of air dockage plus contents of pan #4. Dockage is defined as all matter other than buckwheat which can be removed readily from a test portion of the original sample by use of an approved device in accordance with the procedures prescribed in the Federal Grain Inspection Manual. Dockage ranging from five-tenths percent to nine-tenths percent shall be expressed as five-tenths percent, dockage ranging from one percent to one and four-tenths percent shall be expressed as one percent, and dockage ranging from one and five-tenths percent to one and nine-tenths percent shall be expressed as one and five-tenths percent, etc.

2. Take test weight on dockage free portion (whole and half pounds only).

3. Check sixty gram dockage free portion for foreign material. Foreign material is defined as all other matter other than buckwheat which remains in the sample after the removal of dockage and shrunken and broken kernels.

4. Check sample for foreign odor.

5. Perform a moisture test (two hundred fifty grams sample as a whole).

History: Effective September 1, 1979; May 1, 1988.

General Authority: NDCC 4-09.1-02

Law Implemented: NDCC 4-09.1-02

74-06-02-05. Standards for buckwheat. For the purpose of the official grain standards of North Dakota for buckwheat:

| Grade | Maximum Limits of | |
|--------------------|--|------------------|
| | Moisture | Foreign Material |
| | Percent | Percent |
| No. 1 North Dakota | 16 | 2 |
| No. 2 North Dakota | 18 | 4 |
| No. 3 North Dakota | 20 | 6 |
| No. 4 North Dakota | Sample Grade - Buckwheat which has any commercially objectionable foreign odor, or is musty, sour, or is heating, hot, or otherwise unfit for the higher grades; shall be graded Sample Grade Buckwheat with the inspector's notation as to the quality and condition. | |

| Grade | Minimum | | Maximum Limits of Foreign Material |
|--------------------|-------------|-------|---------------------------------------|
| | Test Weight | | |
| | Large | Small | Percent |
| No. 1 North Dakota | 45 | 48 | 1 |
| No. 2 North Dakota | 43 | 46 | 2 |
| No. 3 North Dakota | 40 | 42 | 4 |

Sample Grade - Buckwheat which has any commercially objectionable foreign odor, or is musty, sour, or is heating, hot, or otherwise unfit for the higher grades; shall be graded Sample Grade Buckwheat with the inspector's notation as to the quality and condition.

1. Dockage is all matter other than buckwheat which can be removed readily from a test portion of the original sample by use of an approved device in accordance with the procedures prescribed in the Federal Grain Inspection Manual. Dockage ranging from five-tenths percent to nine-tenths percent shall be expressed as five-tenths percent, dockage ranging from one percent to one and four-tenths percent shall be expressed as

one percent, and dockage ranging from one and five-tenths percent to one and nine-tenths percent shall be expressed as one and five-tenths percent, etc.

2. Percentages, except in the case of moisture, shall be percentages ascertained by weight.
3. Percentage of moisture shall be that ascertained by the air oven or ascertained by any device and method which give equivalent results in the determination of moisture. Moisture will be shown on certificate (recommended safe storage level is sixteen percent or less).
4. Test weight per bushel [35.24 liters] shall be the weight per Winchester bushel or as determined by any device and method which give equivalent results in the determination of test weight per bushel [35.24 liters] when free from dockage.
5. Foreign material includes all other matter other than buckwheat, which remains in the sample after removal of dockage, and shrunken and broken kernels.
6. All grades may contain three stones per five hundred grams; in excess of three stones per five hundred grams up to two and five-tenths percent grade buckwheat, rejected "grade" account stones; in excess of two and five-tenths percent grade buckwheat, sample salvage.

History: Effective September 1, 1979; amended effective May 1, 1988.

General Authority: NDCC 4-09.1-02

Law Implemented: NDCC 4-09.1-02

74-06-02-06. Inspection fees and types of analysis on buckwheat.

1. Grade determination for official samples.

(Form CI-1) samples taken by North Dakota state seed department authorized inspectors or samplers licensed by the federal grain inspection service.

Grading - not including sampling - \$ 8.00

2. Grade determination for submitted samples.

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

Grading - \$ 8.00

History: Effective September 1, 1979; amended effective May 1, 1988.

General Authority: NDCC 4-09.1-03
 Law Implemented: NDCC 4-09.1-03

74-06-02-07. Sample size. The minimum sample size is seven hundred fifty grams for grading buckwheat. Samples of less than seven hundred fifty grams will receive factor analysis on those factors which can be done with the submitted sample size, no grade will be reported.

History: Effective May 1, 1988.
 General Authority: NDCC 4-09.1-02
 Law Implemented: NDCC 4-09.1-02

74-06-03-06. Numerical grading factors. All percentages are determined on weight basis except crushing tests to determine part of damage factor.

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

+All percentages are maximum tolerances.

*Not applicable to North Dakota mixed mustard.

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

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

History: Effective May 1, 1980; amended effective May 1, 1988.

General Authority: NDCC 4-09.1-02

Law Implemented: NDCC 4-09.1-02

74-06-03-09. Grading and factor analysis fees.

1. Grade determination for official samples.

(Form CI-1) samples taken by North Dakota state seed department authorized inspectors or samplers licensed by the federal grain inspection service.

Grading not including sampling - \$10.00

2. Grade determination for submitted samples.

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

Grading - \$10.00

3. Factor analysis.

Per factor - \$ 2.00

| | |
|-----------------------|--------------------|
| Dockage | Heat damaged seed |
| Distinctly green seed | Total damaged seed |
| Moisture | Foreign material |

History: Effective May 1, 1980; amended effective May 1, 1988.

General Authority: NDCC 4-09.1-03

Law Implemented: NDCC 4-09.1-03

74-06-03-10. Sample size. The minimum sample size is one thousand grams for grading mustard. Samples of less than one thousand grams will receive factor analysis on those factors which can be done with the submitted sample size, no grade will be reported.

History: Effective May 1, 1988.
General Authority: NDCC 4-09.1-02
Law Implemented: NDCC 4-09.1-02

TITLE 75
Department of Human Services

10

JUNE 1988

AGENCY SYNOPSIS: Section 75-02-06-12(1), Income to offset cost: The word "restricted" is deleted so as to permit interest or investment income to be earned on noncommingled gifts without any offsetting of those earnings against nursing home costs.

75-02-06-12. Adjustment to cost and cost limitation. Reasonable patient-related costs will be determined in accordance with health care financing administration manual 15 (HCFA-15) and instructions issued by the department. Any conflict between the provision of HCFA-15 and instructions issued by the department will be controlled by the instructions issued by the department.

1. Income to offset cost.

- a. Several items of income to the home will be considered as offsets against various costs as recorded in the books of the facility. Any income which is received by the home for reimbursements of cost, with the exception of the basic daily rate, income from payments made under the Job Training Partnership Act, and income from charges to private pay patients for care items which are included in the title XIX rate, will be offset against costs. Any reimbursement not listed below, which may be classified as an offset, must be shown as such on the cost report and costs reduced accordingly. Items of income, whether in cash or in any other form, to offset cost include, but are not limited to, the following and, in the event that income exceeds costs, must be offset to all costs on the basis of percentage of total remaining nonoffset costs:

- (1) "Activities income". Income from the activities department and the gift shop.

- (2) "Confections income". All income from the sale of pop, candy, or other items.
 - (3) "Dietary income". Amounts received from or on behalf of employees, guests, or other nonpatients for lunches, meals, or snacks.
 - (4) "Drugs or supplies income". Amounts received from employees, doctors, or others not admitted as patients.
 - (5) "Insurance recoveries income". Any amount received from insurance for a loss incurred shall be offset against costs reported in the current year if the facility did not adjust the basis for depreciable assets.
 - (6) "Interest or investment income". Interest received on investment except amounts allowable as funded depreciation or from earnings on noncommingled ~~restricted~~ gifts.
 - (7) "Laundry income". All amounts received for services rendered to or on behalf of employees, doctors, or others.
 - (8) "Private duty nurse reimbursement". All reimbursement received for the providing of a private duty nurse.
 - (9) "Purchase discounts". All discounts received from vendors on purchases included in costs.
 - (10) "Rebates and refunds income". Amounts received on expense or cost items must be offset against the appropriate cost.
 - (11) "Rentals of nursing home space income". Any revenues received from outside sources for the use of nursing home space and equipment.
 - (12) "Telegraph and telephone income". All revenues received from patients, guests, or employees.
 - (13) All therapy and other professional services revenue unless services rendered to medical assistance program eligible patients and outpatients are identified and revenue from those services offset to the related cost.
- b. Payments to a provider by its vendor will be considered as discounts, refunds, or rebates in determining allowable costs under the program even though these payments may be

treated as "contributions" or "unrestricted grants" by the provider and the vendor. However, such payments may represent a true donation or grant. Examples include, but are not limited to, when: (1) they are made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited; (2) they are in addition to discounts, refunds, or rebates, which have been customarily allowed under arrangements between the provider and the vendor; (3) the volume or value of purchases is so nominal that no relationship to the contribution can be inferred; (4) the contributor is not engaged in business with the provider or a facility related to the provider.

- c. Where an owner or other official of a provider directly receives from a vendor monetary payments or goods, or services for the owner's or official's own personal use as a result of the provider's purchases from the vendor, the value of such payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's costs for goods or services purchased from the vendor.
- d. Where the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates must be credited to the costs of the provider in accordance with the instructions above. These should not be treated as income of the central purchasing function or used to reduce the administrative costs of that function. Such administrative costs are, however, properly allocable to the facilities serviced by the central purchasing function.
- e. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased.
 - (1) "Purchase discounts" include cash discounts, trade, and quantity discounts. "Cash discount" is for prepaying or paying within a certain time of receipt of invoice. "Trade discount" is a reduction of cost granted certain customers. "Quantity discounts" are reductions of price because of the size of the order.
 - (2) Allowances are reductions granted or accepted by the creditor for damage, delay, shortage, imperfection, or other cause, excluding discounts and refunds.
 - (3) Refunds are amounts paid back by the vendor generally in recognition of damaged shipments, overpayments, or returned purchases.

- (4) Rebates represent refunds of a part of the cost of goods or services.
 - (5) "Other cost-related income" includes amounts generated through the sale of a previously expensed item, e.g., supplies or equipment.
2. Costs not related to patient care are costs which are not appropriate or necessary and proper in developing and maintaining the operation of patient care facilities and activities. Such costs are not allowable in computing reimbursable costs. They include, but are not limited to, the following:
- a. Costs which are unallowable when incurred by a facility are also unallowable for a home office and cannot be allocated to facilities in a chain organization.
 - b. Certain corporate costs, such as stockholder servicing costs, organization costs, or reorganization costs are not related to patient care and are not allowable.
 - c. Costs, in excess of forty-five dollars per bed per year, incurred in the form of dues, contributions, and advertising exclusive of personnel procurement.
 - d. The full cost of items or services such as telephone, television, and radio which are located in patient accommodations and which are furnished solely for the personal comfort of the patients are not includable in allowable costs.
 - e. Fundraising costs, including salaries, advertising, promotional or publicity costs incurred for such a purpose are not includable in allowable costs.
 - f. The cost of any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates, to the satisfaction of the department, that any particular use of equipment was related to patient care.
 - g. Costs, including, by way of illustration and not by way of limitation, legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to any hospital or facility.
 - h. Costs which are incurred by the provider's subcontractors, or by the lessor of property which the provider leases, and which become an element in the subcontractor's or

lessor's charge to the provider, if such costs would not have been allowable had they been incurred by a provider directly furnishing the subcontracted services, or owning the leased property, provided, however, that no facility shall have a particular item of cost disallowed under this subdivision if that cost arises out of a transaction which was completed before July 18, 1984.

- i. The cost of providing meals and lodging to nursing home personnel living on premises in excess of charges.
 - j. Depreciation expense for facility assets which are not related to patient care.
 - k. Expense or liabilities established through or under threat of litigation against the state of North Dakota or any of its agencies; provided that reasonable insurance expense shall not be limited by this subdivision.
 - l. Non-long-term care operations and associated administrative costs.
 - m. Medicare utilization review costs.
3. All costs for services reimbursed by the department directly to the provider, e.g., pharmacy and therapies, must be excluded from the rate calculation.
4. Travel costs involving the use of vehicles not exclusively used by the facility are allowable within the limits of this subsection.
- a. Vehicle travel costs may not exceed the amount authorized by North Dakota Century Code section 54-06-09 for mileage.
 - b. The facility must support vehicle travel costs with sufficient documentation to establish that the purpose of the travel is related to patient care.
 - c. The facility must document any payment made to service or support the use of a vehicle not exclusively used by the facility.
5. Travel costs other than vehicle-related costs are allowable provided the items of cost do not exceed the maximum allowed pursuant to North Dakota Century Code section 44-08-04 and the facility supports the travel costs with sufficient documentation to establish that the purpose of the travel is related to patient care.
6. The fees paid to members of a board of directors for meetings attended shall be allowed in an amount not to exceed the compensation paid, per day, to members of the legislative

council, pursuant to North Dakota Century Code section 54-35-10, plus travel at a rate not to exceed the maximum allowed pursuant to North Dakota Century Code sections 44-08-04 and 54-06-09. Normally, no more than twelve meetings per fiscal year will be considered reasonable. No additional compensation will be allowed for service of employees on the board of directors.

7. All plans within the definition of deferred compensation and pension plans set forth in HCFA-15 sections 2140.1 and 2142.1, respectively, shall be considered in the determination of allowable costs. No provisions of these plans may discriminate in favor of certain employees, such as employees who are officers, stockholders, supervisors, or highly paid personnel. In order to be considered an allowable cost, the payment reported must benefit all eligible employees and be based on the same payment structure. A plan approved by the United States department of labor as nondiscriminatory will be treated as acceptable under this subsection.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; June 1, 1988.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(13); 42 CFR Part 447, Subpart C

AGENCY SYNOPSIS: Section 75-02-06-18, Application: Removes language which the North Dakota Hospital Association complained would permit the Department to amend rules without using the rulemaking process. While the rule could not have the legal effect suspected by the Hospital Association, the language is deleted to assuage suspicion.

75-02-06-18. Application. This chapter shall be applied, in rate periods beginning on and after October 1, 1987, in the establishment and determination of reimbursement rates for all nursing facilities participating as providers of intermediate care or skilled nursing care through the medicaid program ~~unless a different method or standard for establishing rates of reimbursement for different categories or classes of institutions is created by an express written statement of general policy by the department.~~

History: Effective September 1, 1987; amended effective June 1, 1988.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(13); 42 CFR 447, Subpart C