

NORTH DAKOTA ADMINISTRATIVE CODE

Supplements 114 through 121

November 1988
December 1988
January 1989
March 1989
April 1989
May 1989
June 1989
July 1989

Prepared by the Legislative Council staff
for the
Administrative Rules Committee

TABLE OF CONTENTS

Agriculture, Commissioner of (June 89)	1
Attorney General (June 89, July 89)	5
Banking and Financial Institutions, Department of (April 89)	35
Credit Review Board (July 89)	41
Job Service North Dakota (December 88, July 89)	51
Health and Consolidated Laboratories, Department of (March 89, May 89)	57
Highway Department (December 88)	97
Highway Patrol (December 88)	103
Nursing, Board of (November 88)	123
State Personnel Board (May 89)	129
Public Service Commission (March 89)	133
Racing Commission, North Dakota (July 89)	139
Retirement Board (April 89)	287
Department of Human Services (January 89, July 89)	303
Tax Commissioner (January 89, July 89)	341
Water Commission (November 88, April 89)	379

TITLE 7

Agriculture, commissioner of

JUNE 1989

7-02-02-05. Pollination locations. Apiaries used for pollination service must be registered with the department of agriculture. Registration will not be granted until all fees required under North Dakota Century Code chapters 4-12.1 and 4-12.2 are paid. ~~This registration~~ Registration must include the following information: (1) crop to be pollinated and number of acres [hectares]; (2) number of colonies to be used for pollination; (3) name and telephone number of beekeeper or agent posted in apiary; and (4) legal description of apiary to the nearest quarter section. Bees may not be placed for pollination service except on the quarter sections described in the registration. Bees may be placed on a registered quarter section adjacent to the quarter section on which the crop to be pollinated is actually located only if the adjacent quarter section is also owned, leased, or rented by the applicant making application for pollination locations.

History: Effective July 1, 1983; amended effective June 1, 1989.
General Authority: NDCC 4-12.2-02
Law Implemented: NDCC 4-12.2-10

7-02-02-08. Notification of violation. Each beekeeper or beekeeper's agent will be notified by ~~letter~~ receiving a copy of the inspection report of any violation found in the apiary at the time of inspection. It shall be the beekeeper's responsibility to comply with the recommended procedures for correcting the violation.

History: Effective July 1, 1983; amended effective June 1, 1989.
General Authority: NDCC 4-12.2-02
Law Implemented: NDCC 4-12.2-16

7-02-02-09. Yards registered under North Dakota Century Code chapter 4-12. Registration of apiary locations pursuant to North Dakota Century Code section ~~4-12.2-07~~ shall take effect May 1, 1984; until such time, registration of apiary locations pursuant to North Dakota Century Code chapter 4-12 shall remain in effect unless canceled by the department of agriculture. Repealed effective June 1, 1989.

History: Effective July 1, 1983.
General Authority: NDCC ~~4-12.2-02~~
Law Implemented: NDCC ~~4-12.2-07~~

TITLE 10
Attorney General

JUNE 1989

10-03-02-12. Out-of-state private investigators.

1. Any person agency or individual who solicits or provides private investigative services within the boundaries of this state whose principal place of business is located outside this state must be licensed or registered or approved by the state or province of that person's principal place of business, or licensed or registered by the attorney general general's office of this state.
2. Notwithstanding subsection 1, any person whose principal place of business is outside this state who provides more than thirty days of private investigative services within the boundaries of this state in a calendar year must hold a private investigator's license issued by the attorney general of this state. Any ongoing investigation that originates outside of this state can be continued in this state providing it can be concluded within thirty calendar days. Under these conditions no license or registration will be required.

History: Effective July 1, 1985; amended effective June 1, 1989.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-05

10-03-02-07. Prohibitions.

1. No private investigator or employee of a detective agency may wear, carry, use, display, or possess any identification, badge, uniform, patch, insignia, or make or utter any statement that could or might reasonably lead any person to believe or assume that the private investigator or employee of a detective agency has any police power or is a member of any

- governmental law enforcement agency or is in any way associated with any governmental law enforcement agency.
2. No private investigator or employee of a detective agency may use, control, possess, or own any motor vehicle of any kind which is marked or identified by any sign, insignia, decal, equipment, device, or contrivance, that could or might reasonably lead the general public to believe or assume that the vehicle has some or any official designation or is a vehicle of or belonging to any governmental law enforcement agency.
 3. No private investigator or employee of any detective agency may wear, carry, display, or possess, any type of uniform, badge, patch, or insignia which includes the word "police", the great seal of the state of North Dakota, or the seal of any political subdivision.
 4. No private investigator or employee of any detective agency may wear, carry, use, display, or possess any identification, badge, uniform, patch, insignia, sign, decal, or other form of identification which indicates any type of common or customary military rank unless the identification of rank is used with and as an integral part of the uniform or identification as described in this section.
 5. No private investigator or employee of a detective agency, including the holder of a detective agency license, may be employed full or part time in any capacity wherein such person has any police type powers or access to any official law enforcement records.
 6. No private investigator or employee of any detective agency, may solicit or accept any commission or deputation that in any way involves the authority to use or employ, or the use or employment of, any police type powers, except that of a special deputy sheriff or special police officer, and then, only in the case of an emergency or disaster and only for the immediate time of the emergency or disaster.
 7. As used in this section, positions with police type powers do not include official volunteer civil defense positions or membership in the national guard, reserve, or regular armed forces of the United States, but include positions or membership in the military police, security police, or similar police functions of the regular armed forces of the United States.
 8. Expert witnesses, including law enforcement officials, are exempt from being licensed or registered when used to review or research information that has been gathered or a field review of the scene is conducted, so long as there is no personal contact, such as interviewing witnesses, suspects,

victims, or the use of confidential law enforcement information or records.

History: Effective July 1, 1985; amended effective June 1, 1989.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 12.1-13-04, 37-01-26

10-03-03-18. Out-of-state private security services.

1- Any person agency or individual who solicits or provides private security services within the boundaries of this state whose principal place of business is located outside this state must be licensed or registered or approved by the state or province of that person's principal place of business, or licensed or registered by the attorney general general's office of this state.

2- Notwithstanding subsection 1, any person whose principal place of business is outside this state who provides more than thirty days of private security services within the boundaries of this state in a calendar year must hold a private security license or private security agency license issued by the attorney general of this state.

History: Effective July 1, 1985; amended effective June 1, 1989.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-05

JULY 1989

10-06-01-01. Definitions. The terms used throughout this article have the same meaning as in ~~the~~ North Dakota Century Code title 12 except:

1. "Board" refers to those individuals who have been appointed by the attorney general to the peace officer standards and training board.
2. "Division" means the criminal justice training and statistics division of the office of the attorney general.
3. "Duty weapon" is the ~~pistol or revolver~~ weapon normally carried by an officer in the performance of ~~his~~ the officer's duties.
4. "Duty equipment" is the gun belt, holster, and shell holder or pouches or speed loaders normally carried by an officer in the performance of ~~his~~ the officer's duties.
5. "Peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
6. "Sidearm" is a pistol, semiautomatic, or revolver carried by a peace officer.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(6), 12-62-04, 12-63-04

Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-02. Sidearm authorization and certification qualification. No peace officer may be authorized to carry a sidearm in

the course of employment or in the performance of official duties unless the officer has ~~received certification from the division. Certification~~ completed the qualification requirements. Qualification will be based upon satisfactory completion of a ~~sidearms~~ weapons safety and proficiency test approved by the division board. Any peace officer from any other state, who has received professionally recognized peace officer training and is duly licensed or certified by the peace officer licensing or certification authority of the state in which the peace officer's appointing authority is located, who pursuant to an agreement from a governmental unit in North Dakota authorizing the exercise of peace officer powers in that North Dakota jurisdiction and when responding to particular and singular violations of law in that jurisdiction is waived from the requirements of this chapter.

History: Effective January 1, 1983; amended effective July 1, 1989.
General Authority: NDCC 12-62-02(6), 12-63-04
Law Implemented: NDCC 12-62-02(6)

10-06-01-03. Sidearm Weapons safety and proficiency test examination. A sidearm weapons safety and proficiency test shall be developed and administered by the division board or its representatives. The test shall be comprised of two parts:

1. A written test examination including, but not limited to, gun weapons safety, weapons handling, mechanical operations, ~~shoot don't shoot situations,~~ and liability, and North Dakota laws. Satisfactory completion of this section shall require a minimum score of seventy percent overall with one hundred percent required for the North Dakota law portion.
2. A combat certified shooting course using the duty weapon and, duty equipment, and duty ammunition. Satisfactory completion of the sidearm safety and proficiency test this portion shall be require a minimum score of seventy percent on each of the two parts and the demonstration of reasonable competence in sidearm weapon skills as determined by a certified weapons instructor.
3. The written examination and shooting course may be taken by an individual no more than three times in any twelve-month period. After the third unsuccessful attempt, the individual must wait one year before retaking the examination or shooting course again.

History: Effective January 1, 1983; amended effective July 1, 1989.
General Authority: NDCC 12-62-02(6), 12-62-04, 12-63-04
Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-04. Waiver. The division board may waive the completion of any part required by this article upon presentation of documentary evidence by a department or by staff that an officer has satisfactorily

completed equivalent training or experience ~~including, but not limited to, one of the following:~~

- ~~1. Completion of a basic course recognized by the division.~~
- ~~2. Completion of any recognized course sponsored or conducted by a law enforcement agency.~~
- ~~3. Full-time employment in law enforcement prior to October 1, 1978, and with subsequent employment in law enforcement.~~

Waivers will be considered by the division board on a case-by-case basis.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(6), 12-62-04, 12-63-04

Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-05. Recertification Requalification required annually. Every peace officer must renew qualify with the officer's sidearm certification duty weapon each year as a condition of licensing.

1. Recertification Requalification will be based upon satisfactory completion of a certified combat shooting course at least once during each year, fired between May fifteenth and October first January first and December thirty-first.
2. For those not required to carry a weapon, a waiver can be obtained upon request from the agency administrator.
3. Individuals who have not qualified in over two years will be required to successfully complete both the written examination and shooting course.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(6), 12-63-04

Law Implemented: NDCC 12-62-02(6)

10-06-01-07. Certified weapons instructors. The division board shall be responsible for maintaining a list of certified weapons instructors and certified shooting courses.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(6), 12-62-04, 12-63-04

Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-08. Requirements for weapons instructors' certification. To become a certified weapons instructor, a peace officer must attend an approved weapons instructors' course; or have equivalent training plus have attended an approved methods of instruction course or equivalent.

To be certified as a weapons instructor, an individual must successfully complete a method of instruction course and the weapons instructor course. If a person is only going to qualify individuals on the range, the instructor course is only required.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(6), 12-62-04, 12-63-04

Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-09. Weapons instructors must be recertified ~~biennially~~. Weapons instructors must apply for instructor recertification every ~~two~~ four years by the anniversary date of the instructor's original certification. Each instructor shall be required to conduct at least one certified combat shooting course annually.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(6), 12-62-04, 12-63-04

Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-10. Certified shooting course. All agencies that use their own combat shooting courses must apply to the ~~division~~ board for certification of that course. Scores obtained on a nonapproved course will not count toward ~~certification~~ qualification of that officer.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(6), 12-62-04, 12-63-04

Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-11. Criteria for a certified shooting course. To be certified, a shooting course must meet the following requirements:

1. The course must include a minimum of three firing positions, such as:
 - a. Prone.
 - b. Sitting.
 - c. Standing.
 - d. Kneeling.
 - e. Point shoulder.
 - f. Crouch.
 - g. Walking.
 - h. Barricade position.

2. The course must induce stress by the use of time, physical activity, or night/low light conditions or a combination of all three. A time limit for course completion must be stated.
3. The course must include firing from at least three different yardages:
 - a. These yardages to be not less than one yard [0.91 meter] nor more than twenty-five yards [22.86 meters].
 - b. The majority of firing to take place at seven yards [6.40 meters] or more.
4. The course must include the firing of at least eighteen but not more than sixty rounds of ammunition from start to finish.
5. The course must be fired completely double-action (revolvers) or semiautomatic mode (pistol) and include both strong and weak-hand shooting.
6. The ammunition used when firing for annual certification qualification will be the type same quality ammunition (brand, weight, velocity, etc.) normally carried on duty. Ammunition used for practice can be determined by the agency conducting the training.
7. The course must be fired using only the duty weapon and duty equipment.
8. The target used must be a silhouette-type similar to the B-27 or a "duelatron" type, no bull's-eye target may be used.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(6), 12-62-04, 12-63-04

Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-12. Issuance, denial, revocation, or certification of qualification. The division board shall review all requests for certification qualification and recertification requalification. Applications may be denied on the basis of failure to obtain the required score of seventy percent scores, upon a finding that the officer falsified any information required to obtain certification qualification, or upon the written recommendation of a certified instructor. The board may require any individual to requalify based upon the written recommendation of the agency administrator or certified weapons instructor or when the board deems it necessary.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(6), 12-62-04, 12-63-04

Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-13. Notice of denial or revocation - Hearing. The division board shall notify in writing any individual and the department head agency administrator when the division board believes there is a reasonable basis for revoking or denying certification qualification of the individual. The notice shall specify the basis of the revocation or denial. Every individual has the right to a hearing on the issue of denial or revocation. Hearings shall be conducted in accordance with and in the manner prescribed by North Dakota Century Code chapter 28-32.

History: Effective January 1, 1983; amended effective July 1, 1989.
General Authority: NDCC 12-62-02(6), 12-62-04, 12-62-10, 12-63-04
Law Implemented: NDCC 12-62-02(6), 12-62-04, 12-62-10

10-06-01-14. Appeals. Appeals of the division's board decisions will be heard by the board made in compliance with North Dakota Century Code chapter 28-32.

History: Effective January 1, 1983; amended effective July 1, 1989.
General Authority: NDCC 12-62-03, 12-63-04
Law Implemented: NDCC 12-62-03

10-06-02-01. Definitions. The terms used throughout this article have the same meaning as in the North Dakota Century Code except:

1. "Board" refers to those individuals who have been appointed by the attorney general to the peace officer standards and training board.
2. "Certification" refers to an officer or a course of training that has complied with the requirements of the division board and has been approved by the division.
3. "College credits" are credits earned for studies satisfactorily completed at an accredited institution of higher learning in a program leading to an academic degree.
4. "Department" is a law enforcement agency which is part of or administered by the state or any political subdivision thereof and which is responsible for the prevention and detection of crime and the enforcement of penal, traffic, or highway laws of North Dakota.
5. "Division" is the criminal justice training and statistics division of the office of the attorney general.
6. ~~"Education credits" are continuing education units awarded by various agencies, usually on the basis of ten training contact hours per unit awarded.~~
7. 6. "In-service" training refers to a certified training program conducted by and for the members of a department or agency and

of one hour or more in duration, the training time is cumulative, i.e., six sessions of ten minutes each.

7. "Instructor" means an instructor certified by the ~~division~~ board to instruct general law enforcement subjects.
8. "License requirement" means a person may not perform law enforcement duties without having a license issued by the board.
9. "Moral turpitude" means conduct contrary to justice, honesty, modesty, or good morals.
10. "Peace officer (full time)" means a public servant authorized by law or by a government agency or branch to enforce the law or to conduct or engage in investigations or prosecutions for violations of law who works twenty hours or more per week averaged over a one-year period.
11. "Peace officer (part time)" means a public servant authorized by law or by a government agency or branch to enforce the law or to conduct or engage in investigations or prosecutions for violations of law who works less than twenty hours per week averaged over a one-year period.
12. "Reserve officer" means any individual utilized by a municipal, county, or state law enforcement agency to provide service to that jurisdiction on a nonsalaried basis and who may be granted full arrest authority. Nothing in these rules precludes pecuniary remuneration to reserve officers for order maintenance and security functions such as traffic and crowd control at sporting events, parades, and other similar events. However, payment on a full-time or part-time basis for the performance of typical law enforcement duties involving the detection and apprehension of law violators and the investigation of crimes including routine criminal and traffic patrol operations would require that such officer comply with the training for peace officers (full-time and part-time) as provided in this article.
13. "Auxiliary personnel" means any individual utilized by a municipal, county, or state law enforcement agency to provide service to that jurisdiction on a nonsalaried basis. These individuals can be members of organized groups such as posse, search and rescue, security at dances, etc., which operate adjunct to a police or sheriff's department, and do not have arrest powers or peace officer authority delegated to them by the department. Nothing in these rules precludes pecuniary remuneration to auxiliary officers for order maintenance and security functions such as traffic and crowd control at sporting events, parades, and other similar events.

- 14. "School" is any school, college, university, academy, or local training program which offers law enforcement training and includes within its meaning the combination of course curriculum, instructors, and facilities.
- 12. "Supervision" means under the direction of, either in person or by communications, a senior officer who is certified and who will be responsible to guide the actions of the supervised person.
- 13. 15. "Training course" means any certified training program approved by the board.

History: Effective January 1, 1983; amended effective July 1, 1989.
 General Authority: NDCC 12-62-02(4), 12-62-04, 12-63-04
 Law Implemented: NDCC 12-62-02(4), 12-62-04, 12-63-02

10-06-02-02. Certified status. All peace officers as defined by the division shall satisfy the minimum qualifications on training requirements established by the division. Peace officers who meet all of the standards concerning qualifications, training requirements, have successfully completed one year of in-state law enforcement employment, and have successfully completed the probationary period of their current employer, shall be certified by the division and may be issued a certificate by the division. The following shall constitute the qualification and training standards of the division for certification:

- 1. Minimum qualifications. A peace officer applicant in North Dakota must satisfy the following requirements before the officer may be certified:
 - a. The applicant must be a citizen of the United States.
 - b. The applicant must possess a high school diploma or general educational development equivalency certificate.
 - c. The applicant must have undergone a complete background investigation which attests to the applicant's good moral character, conducted by either the parent agency, the sheriff's department in the county, or the division.
 - d. The applicant must not have been convicted of a felony or any offense that would be a felony if committed in this state, or convicted of an offense involving moral turpitude, absent extenuating circumstances, i.e., ten years or more good behavior, thirteen years old at time of commission, etc.
 - e. The applicant must provide a fingerprint card to be placed on file with the criminal identification section of the bureau of criminal investigation.

2. Law enforcement agency participation. When a person is employed or appointed as a peace officer the agency must submit acknowledgment that such officer meets the requirements of the division and must also forward a record of that individual's previous training and law enforcement experience, if any.
3. Minimum training. A peace officer in North Dakota must successfully complete the following training before the officer can be certified:
 - a. For the purpose of the training required pursuant to this section peace officers shall fall into four categories:
 - (1) Regular officer. Any commissioned member of a municipal police department, county sheriff's office, state law enforcement agency, or political subdivision thereof who is paid on a full-time or part-time basis and has authority, except where excluded by statute, to enforce the criminal laws of this state and who possesses the powers of arrest.
 - (2) Reserve officer. Any individual utilized by a municipal, county, or state law enforcement agency to provide service to that jurisdiction on a nonsalaried basis and who is granted full arrest authority.
 - (3) Limited reserve officer. Any individual utilized by a municipal, county, or state law enforcement agency to provide service to that jurisdiction on a nonsalaried basis who must be in the company and under direct control of a regular peace officer and whose duties are restricted to:
 - (a) Patrol operations performed for the purpose of detection, prevention, and suppression of crime or enforcement of the traffic or criminal laws of this state;
 - (b) Traffic direction or crowd control assistance with or without immediate supervision;
 - (c) Maintaining public order in the event of a riot, insurrection, or natural disaster; or
 - (d) Any other duties where general arrest powers are not required, such as clerical support, communications, desk duty, etc.
 - (4) Auxiliary personnel. Members of organized groups such as posse, search and rescue, security at dances, etc., which operate as an adjunct to a police or sheriff's department, and do not have arrest powers

or peace officer authority delegated to them by the department.

- b. Nothing in this section precludes pecuniary remuneration to reserve officers or limited reserve officers for order maintenance and security functions such as traffic and crowd control at sporting events, parades, and other similar events. However, payment on a full-time or part-time basis for the performance of typical law enforcement duties involving the detection and apprehension of law violators and the investigation of crimes including routine criminal and traffic patrol operations would require that such officer comply with the training for regular officers as provided in this article. Repealed effective July 1, 1989.

History: Effective January 1, 1983.

General Authority: ~~NDCC 12-62-02(4), 12-62-04, 12-62-08~~

Law Implemented: ~~NDCC 12-62-02(4), 12-62-04, 12-62-08~~

↓ This should be u/s not o/s.
↓ ~~10-06-02-02.1. Licensed status.~~

1. In addition to other requirements of law when a person is employed or appointed as a peace officer, the agency shall submit acknowledgment that such officer meets the requirements of the board and shall also forward a record of that individual's previous training and law enforcement experience, if any, to the board.
2. The holding of a current license by itself does not authorize the person to perform peace officer duties in this state unless that person is a peace officer as defined in subsection 4 of North Dakota Century Code section ~~12-63-01~~ or such person is within the exception of North Dakota Century Code section ~~12-63-03~~.

History: Effective July 1, 1989.

General Authority: NDCC 12-63-04

Law Implemented: NDCC 12-63-02

10-06-02-03. Compliance with minimum training standards.

1. Regular Peace officers (full time) must satisfactorily complete the first available basic course prescribed by the division within twelve months approved by the board from the date of appointment and successfully pass the licensing examination.
2. Peace officers (part time) shall satisfactorily complete a basic training course or part-time officer correspondence course approved by the board within one year of employment.

3. Reserve officers must satisfactorily complete an equivalent basic course within three years a course of instruction as approved by the board within one year from the date of appointment. The training will be conducted locally by the parent agency or other local another agency.
- ~~3. Limited reserve officers shall complete eighty hours of division approved training within the first year from the date of appointment.~~
4. Training for auxiliary personnel shall not be specified by the division board and shall be left up to the discretion of the individual agency.
5. Extensions of the time required for completion of required courses may be granted at the discretion of the division board after written request by the head of the requesting agency administrator in cases of extreme hardship.

History: Effective January 1, 1983; amended effective July 1, 1989.
 General Authority: NDCC 12-62-02(4), 12-62-04, 12-62-08, 12-63-04
 Law Implemented: NDCC 12-62-02(4), 12-62-04, 12-62-08, 12-63-02

10-06-02-04. Limitations of duties.

- ~~1. Limitation on duties of regular officers prior to completion of training: Provided the peace officer has been sidearm certified, a peace officer who has not yet completed or complied with the required basic training may perform peace officer duties but only if the peace officer is under the supervision of a regular officer having certified status and only prior to the time within which training must be completed pursuant to this article.~~
2. Limitations on duties of reserve officers: All nonsalaried officers shall serve as limited reserve officers until such time as they have undertaken and successfully completed or otherwise complied with the training required of reserve peace officers and are designated as reserve officers by the law enforcement agency on whose behalf the officer is providing services. However, where there exists a riot, an insurrection, or a natural disaster, or where a special event has exhausted the manpower resources of a law enforcement agency, a limited reserve officer shall have the authority to perform peace officer duties as commanded by the officer's law enforcement agency subject to that amount of supervisory control which is reasonable and available under the circumstances. Repealed effective July 1, 1989.

History: Effective January 1, 1983.
 General Authority: NDCC ~~12-62-02(4), 12-62-04~~
 Law Implemented: NDCC ~~12-62-02(4), 12-62-04~~

This should be a/s not o/s

~~10-06-02-04.1.~~ Limited license: Peace officers will be issued a limited license until the basic course has satisfactorily been completed and the licensing examination has been passed. Individuals shall take the examination within thirty days after completing the basic training program. Individuals will be permitted to take the examination a total of two times before remedial training and a waiting period is implemented. After the second unsuccessful attempt, and before retaking the examination again, the individual shall successfully complete a board-approved law enforcement basic training program and wait for one year before retaking the examination.

History: Effective July 1, 1989.

General Authority: NDCC 12-63-04

Law Implemented: NDCC 12-63-02, 12-63-09

10-06-02-05. Waiver of required training.

1. All peace officers with experience or training outside of or prior to the establishment of the division board may qualify for a waiver of any training requirement. Such an application should be submitted through the head administrator of the applying officer's department on the form provided by the division board. The division board shall review all such applications and shall have authority to grant a complete or partial waiver. A test or tests regarding material for which a waiver of training has been requested may be required by the division The individual must successfully complete the licensing examination, and upon its completion the board will determine whether the complete or partial waiver is granted.
 - a. Training received in states with laws governing or regulating police training must, if subject to such review, have been approved or certified in the state in which the training was received.
 - b. The division board may elect to prescribe as a condition of certification licensing supplementary or remedial training necessary to equate previous training with current standards.
 - c. The division board is authorized to enter into standing reciprocity compacts or agreements with those states which by law regulate and supervise the quality of peace officer training and which require a number of training hours comparable to the current requirements for basic training in North Dakota.
 - d. Military police basic training may result in a partial waiver of the required basic course.
2. Any individual who is a graduate of a certified college or university criminal justice program and possesses, at minimum,

an associate degree from that institution may be granted a partial waiver.

3. Any full-time regular officers who have completed the basic requirements or have been certified in North Dakota prior to September 30, 1982, will be granted certified status.
4. All part-time regular officers who have completed a minimum of five hundred hours of documented work experience prior to July 1, 1982, may be eligible for a waiver of the required basic course. For the purpose of subsection 2 of North Dakota Century Code section 12-63-08, a person may be certified as a peace officer before July 1, 1989, if that person has completed basic training, successfully completed one year of in-state law enforcement employment, and has successfully completed the probationary period of the person's current employer. However, for those persons who have commenced employment with a law enforcement agency after July 1, 1988, and who have successfully completed the basic training, and sidearm requirements, the board may grant a waiver of the written examination requirement upon application for such waiver.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(4), 12-62-04, 12-62-08, 12-63-04

Law Implemented: NDCC 12-62-02(4), 12-62-04, 12-62-08, 12-63-02

10-06-02-05.1. Licensing examinations.

1. Application. Licensing examinations will be administered by the division as required by the board. The applicant for any licensing examination shall submit a written application on a form provided by the board prior to the date of the examination. An application must be accompanied by the appropriate nonrefundable fee as set forth by the board.
2. Retaking examinations. An applicant who fails an examination will be allowed to retake that examination one time, upon furnishing to the board a renewed written application and required fee. After the second unsuccessful attempt, and before retaking the examination again, the individual must successfully complete a board-approved law enforcement basic training program and wait for one year before retaking the examination.

History: Effective July 1, 1989.

General Authority: NDCC 12-63-04

Law Implemented: NDCC 12-63-02, 12-63-07

10-06-02-05.2. Licensing of peace officers.

1. Appointees - Notification. The employing agency shall notify the board of the appointment of any person to the position of peace officer before the first day of the appointee's employment. Notification must be made on a form provided by the board, and it must include the appointee's full name, sex, date of birth, social security number, the effective date of the appointment, and an affirmation that the appointee has met all selection standards as prescribed by law.
2. Application procedures. If the appointee is not already a licensed peace officer, but is eligible to be licensed, the appointee shall apply to be licensed at the time of appointment. Application must be made on a form provided by the board, and both the applicant and the chief law enforcement officer shall affirm that the applicant is eligible to be licensed. The applicant shall also submit the required licensing fee.
3. License certificate. The executive secretary shall issue a license certificate to an applicant who has complied with the requirements of law, and whose affirmations are consistent with the division's records and payment of required fees. The period of the initial licensure must be determined according to the initial letter of the licensee's surname, and expires as provided by law.
4. Fees. The following fees are nonrefundable:
 - a. Application for examination fee - twelve dollars and fifty cents.
 - b. Out-of-state reciprocity application examination fee - twenty-five dollars.
 - c. License fee - the appropriate license fee is fifteen dollars if the licensee is to be licensed for thirty to thirty-six months; ten dollars if the licensee is to be licensed for at least eighteen months but less than thirty months; and five dollars if the licensee is to be licensed for less than eighteen months.
 - d. Renewal fee - fifteen dollars for a three-year period.
 - e. Late renewal fee - twenty-five dollars.
 - f. Reinstatement fee - thirty-five dollars.
5. Surrender of license certificate. Licenses remain the property of the board. The license certificate and any renewal certificates must be surrendered to the board if suspended or revoked.

History: Effective July 1, 1989.

General Authority: NDCC 12-63-04
Law Implemented: NDCC 12-63-02, 12-63-04, 12-63-05

10-06-02-06. Lapse of certification. The certification of any peace officer who does not perform duties as a peace officer or is no longer employed by a department for a period of time that exceeds six months shall be placed in an inactive status.

1. Any individual whose certification has been placed in an inactive status may apply to the division for recertification. The application shall contain information concerning the individual's employment or activities during the inactive period. Information concerning training or education should also be included as well as any other information the applicant feels is relevant.
2. The division will review each application for recertification and may approve, deny, or request further information relating to the application. The division may elect to prescribe relevant conditions of recertification including but not limited to supplementary or remedial training to equate previous training with current standards.
3. The division shall give the individual written notice of its findings. The notice must include the reasons for the division's action where the division denies recertification or prescribes any conditions of recertification. Repealed effective July 1, 1989.

History: Effective January 1, 1983.

General Authority: ~~NDCC 12-62-04~~

Law Implemented: ~~NDCC 12-62-04~~

↓ This should be u/s not o/s

~~10-06-02-06.1. Lapse of license.~~

1. Any peace officer who does not perform duties as a peace officer, is no longer employed by a department, and lets his or her license expire shall comply with the following conditions for reinstatement:
 - a. Any individual who has not been employed by a law enforcement agency for less than two years may reapply for a license. The individual will be required to pay the reinstatement fee and appropriate license fee. The individual must obtain sufficient makeup continuing education hours within three months of reinstatement.
 - b. Any individual who has not been employed by a law enforcement agency for two to five years may reapply for a license. The individual must pass the criminal and traffic law portions of the licensing examination and

obtain sufficient makeup continuing education hours within six months of reinstatement. The individual must pay the reinstatement fee, examination fee, and the appropriate license fee.

- c. Any individual who has not been employed by a law enforcement agency for five to seven years must pass a licensing examination, pay the reinstatement fee, the examination fee, and appropriate license fee. The individual must attain the sufficient makeup continuing education hours within six months of reinstatement. If the individual fails the licensing examination on the first attempt, the individual will be required to complete the process that is required for a new officer.
- d. Any individual who has not been employed by a law enforcement agency for over seven years is required to complete the process that is required for a new officer.
- e. The board shall give the individual written notice of its findings. The notice must include the reasons for the board's action where the board denies relicensure or prescribes the conditions of relicensure.

History: Effective July 1, 1989.
General Authority: NDCC 12-62-04
Law Implemented: NDCC 12-62-04

10-06-02-06.2. Inactive status. An individual that does not perform duties as a peace officer or is no longer employed by a department may request that his or her license be placed on inactive status. The individual licensee can remain on inactive status indefinitely if the continuing education requirements are maintained and the license is renewed as required.

History: Effective July 1, 1989.
General Authority: NDCC 12-63-04
Law Implemented: NDCC 12-63-02

10-06-02-07. Requirements to remain certified licensed or to obtain renewal or reinstatement of a license. In order for a part-time and full-time peace officer to remain certified licensed, the officer must continue to meet all the minimum requirements and must further receive a minimum of forty-eight hours of certified training every three years.

1. The training may consist of but is not limited to:
 - a. Forty-eight hours of certified in-service law enforcement training;

- b. Three semester hours of college credit in a criminal justice related justice-related or job-related topic;
 - c. Five quarter hours of college credit in a criminal justice related justice-related or job-related topic;
 - d. ~~Forty-eight hours of certified law enforcement training conducted by any agency;~~
 - e. ~~Five continuing education units in a criminal justice related topic; or~~
 - f. ~~Forty-eight hours of approved/certified criminal justice-related seminar.~~
2. The training may be attended in any hour grouping, as long as it totals a minimum of forty-eight hours within a three-year period, i.e., two eight-hour blocks of instruction every year, one forty-eight-hour block of instruction within the three-year period, etc.
 3. No surplus in training hours may be carried forth into the next three-year period.
 4. All officers shall meet the certification licensure requirements by the following dates:
 - a. If the surname begins with the letters A through G, they are due for renewal on July 1, 1984, with at least sixteen hours of certified training, and meeting the full requirements every third year thereafter. If the surname begins with the letters A through G, the officer must have met the continuing education requirement for the period of July 1, 1984, through July 1, 1987. The next continuing education requirement before renewal can be completed will be for the period of July 1, 1987, through July 1, 1990, and every third year thereafter.
 - b. If the surname begins with the letters H through M, they are due for renewal on July 1, 1985, with at least thirty two hours of certified training, and meeting the full requirements every third year thereafter. If the surname begins with the letters H through M, the officer must have met the continuing education requirement for the period of July 1, 1985, through July 1, 1988. The next continuing education requirement before renewal can be completed will be for the period of July 1, 1988, through July 1, 1991, and every third year thereafter.
 - c. If the surname begins with the letters N through Z, they are due for renewal on July 1, 1986, meeting the full requirements then and every third year thereafter. If the surname begins with the letters N through Z, the officer

must have met the continuing education requirement for the period of July 1, 1986, through July 1, 1989, and every third year thereafter.

- d. If an officer is newly hired during the three-year cycle, the officer will meet the prorated share of the requirements needed until the officer's renewal date arrives.
5. It shall be the duty of the employer agency or the officer to forward a record of the training attended to the division board prior to the officer's recertification date.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(4), 12-62-04, 12-63-04

Law Implemented: NDCC 12-62-02(4), 12-62-04, 12-63-02

10-06-02-07.1. License renewal.

1. Application. The board shall require a written application for renewal of licenses.
2. Certificate of renewal. The executive secretary shall issue a certificate of renewal, which is valid for three years, to each applicant who has submitted the appropriate fee on or before June thirtieth of the year when the license becomes due for renewal and also completed the required hours of continuing education.
3. Late renewal. Should a person fail to renew a license by June thirtieth, such person may be permitted to make application for renewal no later than July thirty-first of that same year upon payment of renewal fee plus the late renewal fee. If application for renewal is not made by July thirty-first, the license is deemed to be lapsed and no longer in effect.
4. Reinstatement of a lapsed license. After July thirty-first, a license may not be renewed but an application for reinstatement may be made by the applicant. The application for reinstatement must include payment of renewal fee plus reinstatement fee as prescribed to be paid by the board. The board may grant reinstatement once the applicant has conformed with section 10-06-02-06.1.

History: Effective July 1, 1989.

General Authority: NDCC 12-63-04

Law Implemented: NDCC 12-63-02, 12-63-11

10-06-02-08. Causes to revoke certification. Each of the following constitutes cause for the division to revoke, refuse, or suspend certified status:

1. ~~Willful falsification of any information to obtain certified status.~~
2. ~~Physical or mental disability affecting the employee's ability to perform the employee's duties.~~
3. ~~Abuse of or the unlawful use of narcotics or drugs, including alcohol.~~
4. ~~Conviction of a felony or any crime involving moral turpitude.~~
5. ~~Failure to meet the continuing education requirements.~~
Repealed effective July 1, 1989.

History: ~~Effective January 1, 1983.~~

General Authority: ~~NDCC 12-62-02(4), 12-62-04, 12-62-10~~

Law Implemented: ~~NDCC 12-62-02(4), 12-62-04, 12-62-10~~

10-06-02-09. Termination of a peace officer. Termination of a peace officer of a person's peace officer status as defined in subsection 4 of North Dakota Century Code section 12-63-01, whether voluntary or involuntary, shall not preclude revocation, suspension, or subsequent denial of peace officer certification licensure status by the division if such termination was for any of the reasons enumerated in section 10-06-02-08. Employment by another agency or reinstatement of a peace officer by the officer's parent agency after termination, whether such termination was voluntary or involuntary, shall not preclude revocation or subsequent denial of peace officer certification status by the division, if such termination was for any of the reasons enumerated in section ~~10-06-02-08~~ board.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(4), 12-62-04, 12-62-10, 12-63-04

Law Implemented: NDCC 12-62-02(4), 12-62-04, 12-62-10, 12-63-02, 12-63-12, 12-63-13

10-06-02-10. Notice of termination. Upon termination of a peace officer ~~for any of the reasons enumerated under section 10-06-02-08,~~ the agency ~~head~~ administrator shall within five days of the termination notify the ~~division in writing~~ board on the appropriate form, such notification to include the following information:

1. ~~A statement of the~~ The nature and cause of the termination.
2. The effective date of the termination.
3. A ~~written~~ statement from the agency ~~head~~ administrator indicating whether or not the agency head is recommending denial, suspension, or revocation of the peace officer status license to the division board.

History: Effective January 1, 1983; amended effective July 1, 1989.
General Authority: NDCC 12-62-02(4), 12-62-04, 12-62-10, 12-63-04
Law Implemented: NDCC 12-62-02(4), 12-62-04, 12-62-10, 12-63-02,
12-63-12, 12-63-13

10-06-02-11. Notice of denial, suspension, or revocation - Hearing. The division board shall notify in writing any individual and the department head when the division board believes there is a reasonable basis for revoking, suspending, or denying certification a license of the individual. The notice shall specify the basis of the revocation, suspension, or denial. Every individual has the right to a hearing on the issue of denial, suspension, or revocation. Hearings shall be conducted in accordance with and in the manner prescribed by North Dakota Century Code chapter 28-32.

History: Effective January 1, 1983; amended effective July 1, 1989.
General Authority: NDCC 12-62-02(4), 12-62-04, 12-62-10, 12-63-04
Law Implemented: NDCC 12-62-02(4), 12-62-04, 12-62-10, 12-63-02,
12-63-13

10-06-02-12. Appeals. Appeals of the division's board decisions will be heard by the board made in compliance with North Dakota Century Code chapter 28-32.

History: Effective January 1, 1983; amended effective July 1, 1989.
General Authority: NDCC 12-62-03, 12-63-04
Law Implemented: NDCC 12-62-03, 12-63-02, 12-63-12

10-06-02-13. Waiver. The division board may waive the completion of any part required by this article upon presentation of documentary evidence by a department or by staff that an officer has satisfactorily completed equivalent training or experience requirements of these rules upon a showing of good cause.

History: Effective January 1, 1983; amended effective July 1, 1989.
General Authority: NDCC 12-62-02(6), 12-62-04, 12-63-04
Law Implemented: NDCC 12-62-02(6), 12-62-04, 12-63-02

10-06-03-01. Certification of instructors. The division board shall certify instructors deemed qualified to teach in one or more subjects. The names of certified instructors and their area of expertise shall be published and distributed periodically by the division.

1. Instructors will be certified on the basis of minimum qualifications in the areas of education, training, and experience as described in the following sections. Such certification can never be expected to ensure quality instruction, and it should therefore be the continuing

responsibility of department heads agency administrators or training officers to see that instructors are supervised on a regular basis to ensure that instructional excellence is maintained.

2. Instructor certification may be revoked by the division board whenever it is determined that for purposes of seeking certification or renewal of certification, false information was knowingly submitted to the division board. Review of instructor certification may be initiated upon the request of a department head, training officer, or other reliable source. Such review may also be initiated by the division board in the absence of external requests or complaints.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(3), 12-62-02(4)

Law Implemented: NDCC 12-62-02(3), 12-62-02(4)

10-06-03-02. Requirements for certification of law enforcement instructors.

1. The division board will certify instructors considered qualified to teach in one or more subjects on the basis of the standards provided in this section.
2. Instructors are eligible for certification if they meet the following minimum qualifications in the areas of education, training, and experience:
 - a. A person applying for certification to teach peace officer subjects, including patrol, investigation, or the use of firearms must have:
 - (1) A high school diploma or its equivalent;
 - (2) Two years' experience as a certified peace officer or equivalent;
 - (3) Forty hours of verified training or documented experience in each subject to be taught;
 - (4) A course of instructor development training or its equivalent approved by the division board, including training in the areas of communication, psychology of learning, techniques of instruction, use of instructional aids, preparation and use of lesson plans, preparing and administering tests, teaching resources, and motivation; and
 - (5) A recommendation by the applicant's department head agency administrator or training officer.

- b. A person applying for certification to teach general subjects, including management, human relations, or administration, must have:
 - (1) At least a baccalaureate degree; and
 - (2) Three years' experience or college credits or both in the subject to be taught.
3. The ~~division~~ board may, in its discretion, waive any part of the requirements of subsection 2 if it finds that a person, although not meeting all of the eligibility requirements, is otherwise qualified to be an instructor.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(3), 12-62-02(4)

Law Implemented: NDCC 12-62-02(3), 12-62-02(4)

10-06-03-03. Certification duration. Instructional certification, ~~both peace officer and general,~~ will be issued for periods of ~~twenty-four~~ forty-eight months. At the end of a ~~twenty-four-month~~ forty-eight-month period, certificates may be renewed provided that:

1. The instructor has instructed in the instructor's certified topic at least once during the life of the certificate;
2. The instructor is recommended by the ~~department head~~ agency administrator or training officer under whose supervision the instructor last instructed; and
3. The instructor has refreshed the instructor's knowledge of the topic; e.g., has attended further training or has read the latest materials available on the topic area.

Instructors who have not utilized their certificate during its normal life will apply for original certification.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(3), 12-62-02(4)

Law Implemented: NDCC 12-62-02(3), 12-62-02(4)

10-06-03-04. Application for instructor certification. The following procedures will be applicable for all persons wishing to be certified as instructors:

1. Applications for instructional certification, ~~both general and professional,~~ will be made on a ~~division-approved~~ board-approved form.

2. Each application must be accompanied by a resume of the applicant and a copy of documentation of training and academic achievement.
3. The division board will review all applications for instructional certification. The division board has the option of certifying, denying certification, or certifying with stipulated conditions.
4. 3. An instructor's certificate will be forwarded to the applicant upon approval of an application by the division board.
5. 4. Denial of certification will result when it is determined that the individual fails to meet the requirements set forth in this section or that for the purpose of seeking certification, false information was knowingly submitted to the division board.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(3), 12-62-02(4)

Law Implemented: NDCC 12-62-02(3), 12-62-02(4)

10-06-03-05. Certification of courses. The division board shall certify those schools deemed adequate to effectively teach one or more law enforcement-related subjects. ~~The identity of each course so certified shall be published and distributed periodically by the division.~~ Two types of course certification shall be issued:

1. Temporary certification shall be made for schools offering training courses programs on a one-time or infrequent basis. Temporary certification shall be for a specific course program and shall be issued for a definite period of time not to exceed one year. Inservice training conducted within an agency on an unscheduled or infrequent basis for less than an hour per session or by an uncertified instructor will not be eligible for certification.
2. Continuing certification shall be granted for schools offering police training on a regular basis and will continue in effect until surrendered or revoked, but not to exceed a four-year period.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(3), 12-62-02(4)

Law Implemented: NDCC 12-62-02(3), 12-62-02(4)

10-06-03-06. Application for course certification. The following procedures will be applicable to all training courses applying for certification:

1. The individual responsible for planning and coordinating a training program must prepare a letter of application for program certification. This letter should be sent to the division thirty days or as soon as possible in advance of the date the training program is to commence.
2. The application must state or be accompanied by:
 - a. A course outline showing the date and location of the course, the hours of instruction, group to be taught (size, experience, etc.), method of evaluation, lesson plan (if available); and
 - b. Resumes of Information concerning the instructors' education and experience if the instructors have not been certified by the division.
3. Within seven days after the completion of a training program, the coordinator of the program shall forward to the division a completed student roster, showing each student's name, social security number, and agency, hours attended, course name, and training location and date.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(3), 12-62-02(4)

Law Implemented: NDCC 12-62-02(3), 12-62-02(4)

10-06-03-07. Notice of revocation or denial - Hearings. The division board shall notify in writing any individual or school when ~~the division~~ it believes there is a reasonable basis for revoking or denying certification of the individual or school. The notice shall specify the basis of the revocation or denial. Every individual and school has the right to a hearing on the issue or denial or revocation. Hearings shall be conducted in accordance with and in the manner prescribed by North Dakota Century Code chapter 28-32.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-02(3), 12-62-02(4), 12-62-10

Law Implemented: NDCC 12-62-02(3), 12-62-02(4), 12-62-10

10-06-03-08. Appeals. Appeals of ~~the division's~~ board decisions will be ~~heard by the board~~ made in compliance with North Dakota Century Code chapter 28-32.

History: Effective January 1, 1983; amended effective July 1, 1989.

General Authority: NDCC 12-62-03

Law Implemented: NDCC 12-62-03

TITLE 13

Banking and Financial Institutions, Department of

APRIL 1989

STAFF COMMENT: Chapter 13-02-11 contains all new material but is not underscored so as to improve readability.

CHAPTER 13-02-11
MINIMUM GUIDELINES FOR REPORT OF EXAMINING COMMITTEE

Section

13-02-11-01	Purpose
13-02-11-02	Report of Examining Committee

13-02-11-01. Purpose. This chapter is intended to establish minimum guidelines for the report of examining committee or examination by the board of directors, annual independent certified public accountant audit, or auditors of the bank holding company, or examination by internal audit control system for report of examining committee pursuant to section 6-03-69. While the guidelines set forth in this chapter are deemed to be minimum procedures, additional procedures may be deemed prudent as determined to meet the individual needs of the bank by its directors. This chapter is further intended to safeguard the depositors of state banking associations by the establishment of procedures and provide accurate evaluations of the assets and liabilities of the bank.

History: Effective April 1, 1989.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-03-69

13-02-11-02. Report of examining committee. Examinations conducted by the board of directors, its examining committee, or auditors of the bank holding company, or examination by an internal

audit control system for its annual report, may include the following minimum procedures to comply with the report requirement of section 6-03-69. An independent certified public accountant or accounting firm retained by the bank to perform the annual report of examining committee examination requirement, may review bank internal procedures or controls covering the following minimum procedures. In the absence of any internal procedures or controls, the determination or review of the following minimum procedures may be performed by the board of directors or its examining committee, auditors of the bank holding company, or internal audit control system:

1. Bank operations and asset accounts:
 - a. Determine if bank reconciliations of all general ledger accounts are performed on a timely basis and are accurate for all major accounts.
 - b. Determine if the bank has written policies and procedures that are periodically reviewed and are being followed concerning major areas of bank operations. Also determine if internal controls are adequate and are being following.
 - c. Balance nonledger assets and review files.
 - d. Determine if other real estate owned (OREO) was written to its value at the time title of property was taken, and is currently carried at an amount not in excess of the value of the property. Review all transactions to ensure they are proper.
2. Loans, leases and discounts, and allowance for loan and lease losses:
 - a. Determine if the bank has written policies that are being reviewed and approved at least annually and are being adhered to.
 - b. Determine that an internal "watch list" is accurate and loans that are not "bankable" are eliminated by charge-off in a timely manner. In the absence of an internal "watch list", review and determine the value of collateral and other credit information existing to support the carrying amount of the loan.
 - c. Review the portfolio to ensure that applicable rules and regulations are being adhered to, inclusive of loans to directors, officers, and other insiders.
 - d. Determine if the allowance for loan and lease losses is reviewed by management or the board of directors, or both, at least quarterly to coincide with the call reporting requirements and accurately reflects the risk in the loan portfolio.

3. Security investments and trading accounts:
 - a. Determine that investment policies are adequate for the needs of the bank and are being adhered to.
 - b. Review the portfolio to ensure that all applicable rules and regulations are being adhered to.
 - c. Determine if any investments exist that are carried in excess of the net value.
4. Liquidity capital accounts and income and expenses:
 - a. Review all capital account entries to determine appropriateness and compliance with rules and regulations, if applicable.
 - b. Review income and expense items to ensure they are appropriate and properly recorded.
5. Trust department (if applicable): review internal controls and procedures to determine that such controls and procedures are in place and are being adhered to.
6. Bank subsidiaries (if applicable): determine that the value of the subsidiary supports the value that the bank is carrying as its investment in the subsidiary.

History: Effective April 1, 1989.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-03-69

TITLE 18.5
Credit Review Board

JULY 1989

18.5-02-01-01.5. Eligibility for assistance of a negotiator. The board may require that an applicant, for assistance of a negotiator, make written application on such a form as required by the board. An applicant for the assistance of a negotiator must be a farmer as defined in subsection 3 of North Dakota Century Code section ~~6-09-10-01~~ and rules adopted pursuant to it. Repealed effective January 13, 1989.

History: Effective January 1, 1988.

General Authority: NDCC ~~6-09-10-09~~

Law Implemented: NDCC ~~6-09-10-03~~, ~~6-09-10-04~~

18.5-02-01-03. Negotiations.

1. The administrator shall assign a negotiator to each person upon acceptance of the application or request and the determination that the person is eligible for assistance. Where necessary to conserve resources, the administrator may waive the assignment of a negotiator where another person can fulfill that role. In all other cases, the negotiator will be assigned to determine the facts and position of the parties involved.
2. The role of the negotiator is to represent the farmer in the workout arrangement of obtaining a settlement that will allow the farmer to reside in the farm residence and allow the farmer to continue to produce agriculture commodities, as well as to provide advice and counseling regarding farm credit problems and to disseminate information to farmers concerning farm credit problems. If the negotiator is unable to mediate a settlement in the negotiation of the farmer's debt or other resolution of the farmer's farm credit problems, the negotiator may, upon written application by the farmer to the board, work with the lender and the farmer to negotiate a

~~purchase, repurchase, refinancing, or redemption of the farmer's home-quarter.~~

- ~~3. The negotiator is an authorized agent of the program and the board who shall report to and be responsible to the administrator and the board in the negotiation process. The negotiator shall only enter into financial negotiations with a lender or its agents on behalf of the farmer. At the conclusion of negotiations, the negotiator shall report to the administrator and the board the outcome of the negotiations and any settlement that may have been accomplished.~~
- ~~4. Because each applicant's situation is fact specific, the negotiator shall have broad discretion to work out a financial settlement as appropriate, and as approved by the lender and the farmer.~~
- ~~5. If foreclosure or other legal issues are involved, the negotiator shall clearly disclose to the farmer that there are legal issues involved, that legal counsel is both necessary and advisable, and that the negotiator will not function in the capacity of an attorney nor be responsible for legal issues, defenses, or counterclaims. Repealed effective January 13, 1989.~~

History: ~~Effective September 17, 1985; amended effective January 1, 1988.~~

General Authority: ~~NDEC 6-09.10-09~~

Law Implemented: ~~NDEC 6-09.10-03, 6-09.10-04, 6-09.10-05~~

STAFF COMMENT: Chapters 18.5-02-02 and 18.5-02-03 contain all new material but are not underscored so as to improve readability.

CHAPTER 18.5-02-02 INFORMAL MEDIATION

Section

18.5-02-02-01	Eligibility for Informal Mediation
18.5-02-02-02	Informal Mediation Proceedings
18.5-02-02-03	Duties of a Negotiator

18.5-02-02-01. Eligibility for informal mediation. The board may require that an applicant for the assistance of a negotiator in informal mediation make written application on such a form as may be required by the board. An applicant for the assistance of a negotiator must be a farmer as defined in subsection 3 of North Dakota Century Code section 6-09.10-01 and rules adopted pursuant to it.

History: Effective January 13, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-01, 6-09.10-03, 6-09.10-04, 57-02-08

18.5-02-02-02. Informal mediation proceedings.

1. Upon receipt of the application or request and a determination that the person is eligible for assistance, the administrator shall assign a negotiator to assist in the informal mediation of a settlement between the farmer and the creditors of the farmer that accomplishes the objectives of the informal mediation process.
2. The objectives of the informal mediation process are to assist the farmer in obtaining a settlement that will permit the farmer to reside in the farm residence and to continue to produce agricultural commodities, as well as to provide advice, counseling, and information regarding farm credit problems. If the negotiator is unable to mediate a settlement of the farmer's debt or other resolution of the farmer's credit problems, the negotiator may, upon written application by the farmer to the board, work with the lender and the farmer to negotiate a purchase, repurchase, refinancing, or redemption of the farmer's home quarter.
3. The negotiator is an authorized agent of the program and the board who shall report to and be responsible to the administrator and the board in the informal mediation process. At the conclusion of the informal mediation, the negotiator shall report to the administrator and the board the outcome of the negotiations and any settlement that may have been accomplished.
4. Because each farmer's situation is fact specific, the negotiator shall have broad discretion to work out a financial settlement as appropriate and as approved by the lender and the farmer.

History: Effective January 13, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-02-03. Duties of a negotiator. During the informal mediation process, the negotiator shall:

1. Assist the farmer in compiling information about the farm operation and its financing and organizing that information into a useful format.
2. Assist the farmer in mediating a settlement with creditors of the farmer so as to achieve the objectives of the informal mediation process.

3. Advise the farmer of the various alternatives that may be open to the farmer in negotiating a settlement or other resolution with the farmer's creditors.
4. Where legal or tax issues are involved, advise the farmer of the necessity of seeking competent legal and tax advice from qualified professionals before entering into any binding agreement regarding the settlement or other resolution of the farmer's credit problems. The negotiator should make it clear to the farmer that the negotiator is not qualified to give legal or tax advice and cannot be held responsible for decisions regarding legal or tax issues, defenses, or counterclaims.

History: Effective January 13, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

CHAPTER 18.5-02-03 FORMAL MEDIATION

Section

18.5-02-03-01	Request For Formal Mediation
18.5-02-03-02	Formal Mediation Proceedings
18.5-02-03-03	Mediation Report
18.5-02-03-04	Duties of the Mediator
18.5-02-03-05	Confidentiality of Mediation Proceedings
18.5-02-03-06	Good Faith Participation

18.5-02-03-01. Request for formal mediation. A farmer may request formal mediation by filing a request for formal mediation with the administrator. The request for formal mediation must be in writing and on forms provided by the administrator. The request for formal mediation may be filed by mailing, by first-class mail, or by delivering to:

Administrator
Farm Credit Counseling Program
Department of Agriculture
State Capitol
Bismarck, ND 58505

The request for formal mediation must be deemed filed on the date it is received by the administrator. A farmer may request formal mediation proceedings even though the farmer has previously participated in informal mediation proceedings.

History: Effective January 13, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03

18.5-02-03-02. Formal mediation proceedings.

1. Upon receipt of a request for formal mediation, the administrator shall assign a mediator to conduct formal mediation proceedings. The mediator shall contact the farmer and obtain the farmer's signed statement consenting to formal mediation.
2. If the farmer refuses to consent to formal mediation, the mediator shall dismiss the formal mediation and give notice of the dismissal to all known creditors of the farmer. After dismissal of the formal mediation, the creditors may proceed to enforce any debts owed by the farmer. After a farmer has refused to consent to a request for formal mediation by any creditor, the farmer may not thereafter request formal mediation.
3. If the farmer consents to formal mediation, the mediator shall obtain from the farmer a list of all of the creditors of the farmer. Upon consent of the farmer to formal mediation, the administrator shall send a meeting notice to the farmer and all known creditors of the farmer. The notice must set forth the time and place for an initial mediation meeting among the farmer, the creditors of the farmer, and the mediator. The initial mediation meeting must be held within twenty days after the filing of the request for mediation.
4. The mediator may call additional meetings among the farmer and all creditors or between the farmer and individual creditors, as the mediator deems appropriate, during the fifty days following the filing of the request for formal mediation. Additional meetings between some or all of the parties may be held after that time only with the express consent of the farmer and the participating creditors.

History: Effective January 13, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-03-03. Mediation report. Within fifty days after the filing of the request for formal mediation, the mediator shall prepare a mediation report summarizing the outcome of the formal mediation. If any parties consent to additional mediation meetings after the fifty-day period following the filing of the request for formal mediation, the mediator shall prepare a supplemental report at the conclusion of those additional mediation meetings.

The mediator shall file the mediation report and supplemental reports with the administrator. The administrator shall send a copy of

the mediation report and supplemental reports to the farmer and the participating creditors.

History: Effective January 13, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-03-04. Duties of the mediator. During the mediation process, the mediator shall:

1. Listen to the farmer and the creditors desiring to be heard.
2. Attempt to mediate between the farmer and the creditors.
3. Advise the farmer and the creditors as to the existence of available assistance programs.
4. Encourage the parties to adjust, refinance, or provide for payment of the debts.
5. Advise, counsel, and assist the farmer and the creditors in attempting to arrive at an agreement for the future conduct of financial relations among them.

History: Effective January 13, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-03-05. Confidentiality of mediation proceedings. As a condition for participation in mediation and except as otherwise provided in this section, all parties shall agree to keep confidential (1) the financial information and records of the debtor and the creditors presented in the mediation proceedings and (2) the substance of all discussions conducted during the course of mediation. The parties may disclose confidential information only when necessary in the course of litigation involving matters that were the subject of the mediation proceeding.

History: Effective January 13, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-03-06. Good faith participation. Any party to formal mediation may request a declaration from the mediator that another party is not participating in good faith. A mediator shall issue such a declaration when the mediator determines that the party against whom the declaration is sought:

1. Has failed to attend any meeting called by the mediator without good cause;

2. Has, after January 10, 1989, and before completion of formal mediation proceedings, taken steps to initiate legal action against a participating party or to enforce the obligation of a party, including the sending of any notices required to be sent as a necessary prerequisite for commencing legal action, foreclosure, or repossession;
3. Has failed to produce, within a reasonable time after requested, any relevant information within the party's possession;
4. Has failed to respond within three business days to any proposal made by the farmer or any creditor; or
5. Has engaged in other behavior that evidences an intention not to honestly and sincerely participate in the effort to resolve the farmer's credit problems.

No declaration from a mediator that a party is not participating in good faith may be based upon any actions of the party prior to January 10, 1989.

History: Effective January 13, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

TITLE 27
Job Service North Dakota

DECEMBER 1988

27-03-04-08. Claimant reporting requirement - Periodic eligibility interviews. A claimant who fails, without good cause, to report to a job service office as directed is not entitled to benefits for the week in which such failure occurs and for every subsequent week until such time as the claimant does report as directed. A claimant may be directed to report to a job service office for the purpose of participating in periodic eligibility interviews. Job service shall establish a reasonable frequency of periodic eligibility interviews giving consideration to the claimant's potential for being recalled to work by the claimant's former employer and the claimant's prospects for obtaining work.

History: Effective December 1, 1988.

General Authority: NDCC 52-02-02

Law Implemented: NDCC 52-06-01(2)

27-03-08-04. Approval of training or retraining programs. An individual's application for enrollment in a training or retraining program, unless other relevant factors dictate otherwise, shall must be approved by the bureau for an otherwise eligible unemployed individual if the bureau finds that the training or retraining program meets all of the following requirements:

1. Reasonable and suitable work opportunities for which the individual is fitted by training, experience, and physical capabilities do not exist in the individual's locality.
2. The training course is commensurate with the individual's abilities and is designed to prepare the individual for available employment.
3. The training is conducted by an agency, educational institution, or employing unit which has been approved for

such training by the bureau in consultation with the state department of vocational education, when necessary, to conduct training programs.

4. The training is vocational in nature or short-term academic training vocationally directed to an occupation or skill for which there are, or are expected to be, reasonable work opportunities available to the individual.
- ~~5. The training program consists of at least twenty-five hours per week of supervised activity.~~

History: Amended effective December 1, 1988.

General Authority: NDCC 52-02-02

Law Implemented: NDCC 52-06-01, 52-06-02(6)

JULY 1989

27-03-02-01. Separation information required from employers involving possible disqualification or ineligibility.

1. Separation information from employer. When a claimant has been determined to have insured status, the division shall promptly notify the worker's last employer on form nduc 211(a), notice of valid claim for unemployment insurance. In the event the separating employer has reason to believe the worker should be disqualified or is ineligible for benefits because of the circumstances surrounding the worker's separation from work, the employer shall so notify the division by completing form nduc 211(a), or its equivalent, setting forth in detail the reasons for the employer's protest.
2. Failure of employer to file separation or eligibility information. If reply on form nduc 211(a), or an equivalent, is not mailed or delivered to the division within ~~seven~~ ten days after the date appearing on the notice, the determination of the division shall be final.

History: Amended effective July 1, 1989.

General Authority: NDCC 52-02-02

Law Implemented: NDCC 52-06-10, 52-06-12

TITLE 33

Health and Consolidated Laboratories, Department of

MARCH 1989

OBJECTION

THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO THAT PORTION OF SECTION 33-33-06-04 RELATING TO PROHIBITING IN BED AND BREAKFAST FACILITIES THE USE OF FOOD IN HERMETICALLY SEALED CONTAINERS WHICH WAS NOT PREPARED IN A FOOD PROCESSING ESTABLISHMENT.

Section 28-32-03.3 provides that after the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs.

History: Effective October 20, 1988.

General Authority: NDCC 28-32-03.3

33-11-01-09. Other requirements.

1. Personnel must be able to identify and locate all equipment items required to be carried in an ambulance.
2. All licensed ambulance services shall keep the ambulance vehicle interior and exterior and other equipment clean and in proper working order.
3. All linens, airways, oxygen masks, nasal cannulas, and other equipment coming in direct contact with the patient, must be either a single-use disposable type, or cleaned, laundered, or disinfected after each use.

4. When a vehicle has been utilized to transport a patient known to have a communicable disease other than a common cold, the vehicle and all exposed equipment shall be disinfected before the transport of another patient.
5. Each ambulance run must be reported to the department in the manner and in the form determined by the department.

History: Effective September 25, 1979; amended effective March 1, 1985; February 1, 1989.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-02-03. Minimum equipment requirements.

1. ~~Ambulance~~ Mounted ambulance cot with retaining straps.
2. Stretchers with retaining straps. Vehicle design dictates quantity.
3. Piped oxygen system - with appropriate regulator and flow meter, or two "E" size bottles for minimum oxygen supply with regulator and flow meter.
4. Portable oxygen unit with carrying case. To include one "D" size bottle with another "D" bottle in reserve.
5. Nasal Three nasal cannulas and, three oxygen masks with tubing - transparent and in assorted sizes, and three sets of oxygen supply tubing.
6. Suction - portable.
7. Bag mask type resuscitation unit with child and adult size face masks or pocket masks with oxygen inlet in pediatric and adult sizes.
8. Spine boards - one full-size and one half-size, with retaining straps.
9. Fracture Commercial fracture splints - operator's option: inflatable, ladder, frac kit, board, or cardboard usable for open and closed fractures, or padded boards.
10. Two or more padded boards one-half inch by three and one-half inches wide by four and one-half feet long [11.27 centimeters by 8.89 centimeters wide by 11.43 centimeters long]; and two or more padded boards one-half inch by three and one-half inches wide by three feet long [11.27 centimeters by 8.89 centimeters wide by .91 meters long].

- ~~11.~~ Cold packs - four minimum.
- ~~12.~~ 11. Fire extinguisher - dry chemical, mounted, five pound [2.27 kilogram] minimum.
- ~~13.~~ 12. ~~Sandbags - two or more~~ Head-to-board immobilization device or two sandbags.
- ~~14.~~ 13. Obstetrical kit - disposable.
- ~~15.~~ 14. Poison kit or syrup of ipecac.
- ~~16.~~ 15. Two sterile burn sheets.
- ~~17.~~ 16. ~~Triangular~~ Three triangular bandages.
- ~~18.~~ 17. ~~Universal~~ Two trauma dressings - approximately ten inches [25.4 centimeters] by thirty-six inches [91.44 centimeters].
- ~~19.~~ 18. ~~Sterile~~ Twenty-five sterile gauze pads - four inches [10.16 centimeters] by four inches [10.16 centimeters].
- ~~20.~~ 19. ~~Soft~~ Twelve soft roller self-adhering type bandages - ~~six inches [15.24 centimeters]~~ by five yards [4.57 meters] long. ~~Also two inch [5.08 centimeters] roller bandage.~~
- ~~21.~~ 20. Bite sticks.
- ~~22.~~ 21. ~~Oropharyngeal~~ One set of oropharyngeal airways in adult, child, and infant sizes.
- ~~23.~~ 22. ~~Mouth to mouth artificial ventilation airways for adults and children.~~
- ~~24.~~ 22. Roll of aluminum foil - eighteen inches [45.72 centimeters] by twenty-five feet [7.62 meters] - sterilized and wrapped.
- ~~25.~~ 23. ~~Adhesive~~ Four rolls of adhesive tape - assorted sizes.
- ~~26.~~ 24. Shears - blunt - two minimum.
- ~~27.~~ 24. ~~Large size safety pins.~~
- ~~28.~~ 25. Bedpan, emesis basin, urinal.
- ~~29.~~ 26. ~~Distilled~~ One gallon of distilled water or saline solution.
- ~~30.~~ 27. Intravenous ~~bottleholder~~ fluid holder - cot mounted or ceiling hooks.
- ~~31.~~ 28. Flashlights - two minimum.
- ~~32.~~ 29. Sanitary napkins.

- ~~33.~~ 30. Cotton tip applicators.
- ~~34.~~ 31. ~~Cervical collar~~ Small, medium, and large cervical collars, headband, chin straps.
- ~~35.~~ 32. ~~Adequate~~ Two blankets, four sheets, two pillows, four towels, et cetera.
- ~~36.~~ 33. Sterilization agent to clean equipment - local option.
- ~~37.~~ 34. Reflectorized flares for securing scene - set of three minimum.
- ~~38.~~ 35. One set socket wrenches, crowbar, heavy hammer, screwdriver, hacksaw, pliers, et cetera.
- ~~39.~~ 36. Blood pressure monometer, cuff, and stethoscope.
- ~~40.~~ 37. Lower extremity traction splint.
- ~~41.~~ 38. VHF radio with ~~eight channel~~ the capability of meeting state emergency medical services standards as determined by the department.
- 39. Glucose or glucose - one dose for oral use.
- 40. Disposable gloves - four pair.

History: 33-11-01-11; redesignated effective March 1, 1985; amended effective February 1, 1989.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

MAY 1989

33-23-01-01. Scope and purpose. This chapter is applicable to all ~~public health laboratory~~ consolidated laboratories analyses, and shall be applied in conjunction with subsection 6 of North Dakota Century Code section 23-01-09 to promote the public health, safety, and welfare and to enhance the environment for the people of the state.

History: Effective March 1, 1979; amended effective May 1, 1989.

General Authority: NDCC 23-01-03.3, 28-32-02

Law Implemented: NDCC 23-01-09(6)

33-23-01-02. Fees charged for laboratory ~~microbiological~~ analyses.

- | | | |
|----|-------------------------------|------------------------------------|
| 1. | 1 -Unit Procedures | \$3.00 |
| | a. | Febrile agglutination panel |
| | b. | Tularemia tube agglutination |
| | c. | Proteus agglutination panel |
| | d. | RPR test for syphilis |
| | e. | Rubella screen |
| | f. | Throat culture |
| 2. | 2 -Unit Procedures | \$6.00 |
| | a. | Ox -cell hemolysin test |
| | b. | Routine cultures |

- c. FTA-ABS
- 3. ~~3~~-Unit Procedures \$9.00
 - a. Viral CF and HAI tests A/C, one antigen
 - b. Rickettsial CF and HI tests A/C, one antigen
 - c. Culture and susceptibility
 - d. Anaerobic culture
 - e. Parasite examination
- 4. ~~4~~-Unit Procedures \$12.00
 - a. Viral IFA-IgM and IgG, one antigen
 - b. Rickettsial IFA-IgM and IgG, one antigen
- 5. ~~5~~-Unit Procedures \$15.00
 - Rota Virus (EA)
- 6. ~~6~~-Unit Procedures \$18.00
 - a. Viral CF and HAI - A/C - multiple antigen
 - b. Rickettsial CF and HI - A/C - multiple antigen
 - c. Fungal serology A/C - battery
 - d. Parasitic serology A/C - battery
 - e. Legionnaires disease A/C
 - f. Virus tissue culture (isolation only)
- 7. ~~7~~-Unit Procedures \$21.00
- 8. ~~8~~-Unit Procedures \$24.00
 - Viral IFA-IgG and IgM/multiple antigen
- 9. ~~9~~-Unit Procedures \$27.00
- 10. ~~10~~-Unit Procedures \$30.00
 - Virus isolation and identification (when available)
- 11. Fees pertaining to bacteriological tests, effective July 1, 1981, are as follows:

- a. Water - private supply \$ 4.00
 - b. Water - public - contract optional,
reduced fee depending on number of
samples 4.00
- †2. Dairy products fees by contract, effective July †, 198†, are as follows:
- a. Abnormal milk test (WMT) \$ 1.00
 - b. Coliform count 1.00
 - c. Inhibitory substance (penicillin, etc.) 2.00
 - d. Manufacturing grade milk
(includes c and h) 3.50
 - e. Pasteurized milk sample, grade A
(includes b, c, f, and h) 6.50
 - f. Phosphatase test 2.00
 - g. Raw milk, grade A, standard test
(includes a, c, and h) 4.50
 - h. Standard plate count (SPC) 1.50
- †3. Handling costs for CDC referrals—\$3.00 - \$6.00 - \$9.00 depending upon amount of handling required, i.e., dry ice, repackaging, method of shipping, etc.

Charges are based on reagent cost, testing time, personnel salaries, and overhead costs.

History: Effective March 1, 1979; amended effective July 1, 1981; February 1, 1984; May 1, 1989.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-01-09(6)

33-23-01-03. Fees charged for laboratory mineral analyses. Repealed effective May 1, 1989.

- †. The fee regarding partial analysis is ten dollars and includes:
 - a. Calcium
 - b. Conductivity
 - c. Iron

- d. Magnesium
- e. Nitrate
- f. Sodium
- g. Total dissolved solids
- h. Total hardness

Five dollars will be charged for additional parameter analysis.

2. The fee concerning complete mineral analysis is twenty-five dollars and includes:

- a. Bicarbonate
- b. Calcium
- c. Carbonate
- d. Chloride
- e. Conductivity
- f. Copper
- g. Fluoride
- h. Iron
- i. Manganese
- j. Magnesium
- k. Nitrate
- l. pH
- m. Potassium
- n. Sodium
- o. Sulfate
- p. Total alkalinity
- q. Total dissolved solids
- r. Total hardness
- s. Zinc

3- The fee which pertains to analysis of inorganics required by the Safe Drinking Water Act is one hundred dollars and includes:

- a- Arsenic
- b- Barium
- c- Cadmium
- d- Chromium
- e- Fluoride
- f- Lead
- g- Mercury
- h- Nitrate
- i- Selenium
- j- Silver

4- Fees charged for analysis of organics required by the Safe Drinking Water Act are as follows:

- | | |
|------------------------------|----------|
| a- Pesticides and herbicides | \$100.00 |
| b- Tri-halomethanes | 80.00 |

5- Fees regarding radiation chemistry are as follows:

- | | |
|-----------------------|----------|
| a- Gross alpha | \$ 15.00 |
| b- Radium separations | 100.00 |

6- The fee concerning biochemical oxygen demand analysis is twenty dollars.

7- The fee charged for analysis of trace elements in water used in the preparation of dialysate is sixty dollars and includes:

- a- Aluminum
- b- Arsenic
- c- Barium
- d- Cadmium
- e- Chromium
- f- Copper

- g. Cyanide
 - h. Iron
 - i. Lead
 - j. Mercury
 - k. Selenium
 - l. Silver
8. Fees charged for analysis of special parameters are available upon request and are dependent upon complexity of testing procedure or procedures.
9. Fees charged for analysis required by the environmental protection agency will be adjusted as agency requirements are modified.

History: Effective March 1, 1979.
 General Authority: NDCE 23-01-03, 28-32-02
 Law Implemented: NDCE 23-01-09(6)

33-33-06-04. Food supplies. Food must be in sound condition, free from spoilage, filth, or other contamination and must be safe for human consumption. Food shall be obtained from or be equal to food from sources that comply with all laws relating to food and food labeling. Before serving any food to the public, the bed and breakfast facility shall comply with all applicable inspections of food required by law. ~~The use of food in hermetically sealed containers that was not prepared in a food processing establishment is prohibited.~~ Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the grade A quality standards established by law.

History: Effective August 1, 1988; amended effective May 1, 1989.
 General Authority: NDCC 23-01-03(3), 23-09.1-02
 Law Implemented: NDCC 23-09.1-02

OBJECTION

THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO THAT PORTION OF SECTION 33-33-06-04 RELATING TO PROHIBITING IN BED AND BREAKFAST FACILITIES THE USE OF FOOD IN HERMETICALLY SEALED CONTAINERS WHICH WAS NOT PREPARED IN A FOOD PROCESSING ESTABLISHMENT.

Section 28-32-03.3 provides that after the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and

substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs.

History: Effective October 20, 1988.

General Authority: NDEC 28-32-03.3

33-16-02-01. Declaration of Antidegradation policy. The state of North Dakota, in accordance with the 1972 Federal Water Pollution Control Act, as amended, declares that state and public policy is to maintain or improve, or both, standards of the quality and purity of the waters of this state. These standards are established for the protection of public health and enjoyment of these waters, to ensure the propagation and well-being of fish, wildlife, and all biota associated or dependent upon said waters, and to safeguard social, economical, and industrial development associated with this resource. The waters of the state include those waters within the state all surface and ground waters of the state as defined in North Dakota Century Code section ~~61-01-01~~ 61-28-01 and those rivers, streams, and lakes forming boundaries between this state and other states or Canada. All known and reasonable methods to control and prevent pollution of the waters of this state are required, including improvement in water quality, when feasible.

The portion of the statement of policy contained in North Dakota Century Code section 61-28-01 which reads as follows, is a part of this chapter:

It is hereby declared to be the policy of the state of North Dakota to act in the public interest to protect, maintain, and improve the quality of the waters in the state for continued use as public and private water supplies, propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational, and other legitimate beneficial uses, to require necessary and reasonable treatment of sewage, industrial, or other wastes.

It is the purpose of this chapter to maintain and improve the quality of waters in the state and to maintain and protect existing water uses. The "quality of the waters" shall be the quality of record existing at the time the first standards were established in 1967, or later records if these indicate an improved quality in certain waters. Waters whose existing quality is higher than the established standards will be maintained at the higher quality unless it can be affirmatively demonstrated that a change in quality is justifiable to provide necessary economic or social development and will not adversely affect the stated beneficial uses of the water, after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing planning process, that a change in quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing the lowering of water

quality, the department shall assure existing uses are fully protected and that the highest statutory and regulatory requirements for all point sources and all cost effective and reasonable best management practices for nonpoint sources are achieved.

Waters of unique or high quality characteristics that may constitute an outstanding national resource must be maintained and protected.

Any industrial, public, or private project or development other than municipal which constitutes a source of pollution shall provide the best degree of treatment as designated by the department in the North Dakota pollutant discharge elimination system. Municipal wastes are required to meet the effluent requirements as noted in subsection 3 of section 33-16-02-04. The environmental protection agency will be kept advised and provided with the information needed to perform its responsibilities under the Federal Water Pollution Control Act, as amended.

History: Amended effective March 1, 1985; May 1, 1989.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-02-02. Definitions.

1. "Acute standard" means the one-hour average concentration does not exceed the listed concentration more than once every three years on the average.
2. "Best management practices (BMPs)" are methods, measures, or procedures selected by the department to control nonpoint source pollution. Best management practices include, but are not limited to, structural and nonstructural measures and operation and maintenance procedures.
3. "Chronic standard" means the four-day average concentration does not exceed the listed concentration more than once every three years on the average.
- ~~4.~~ 4. "Consecutive thirty-day average" is the average of samples taken during any consecutive thirty-day period, but not a requirement for thirty consecutive daily samples.
5. "Department" means the North Dakota state department of health and consolidated laboratories.
- ~~2.~~ 6. A standard defined as "dissolved" means the total quantity of a given material present in a filtered water sample, regardless of the form or nature of its occurrence.
- ~~3.~~ 7. "Pollution" means such contamination; or other alteration of the physical, chemical, or biological properties, of any

waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic biota.

8. "Site specific standard" means water quality criteria developed to reflect local environmental conditions to protect the uses of a specific water body.

~~4~~ 9. A standard defined as "total" means the total quantity of a given material present in an unfiltered water sample regardless of the form or nature of its occurrence. This includes both dissolved and suspended forms of a substance, including the total amount of the substance present as a constituent of the particulate material.

~~5~~ 10. "Water usage". The best usage for the waters shall be those uses determined to be the most consistent with present and potential uses in accordance with the economic and social development of the area. Present principal best uses are those defined in subdivisions a, b, c, and d, but are not to be construed to be the only possible usages permitted.

a. Agricultural uses. Water suitable for irrigation, stock watering, and other agricultural uses, but not suitable for use as a source of domestic supply for the farm unless satisfactory treatment is provided.

b. Industrial water. Waters that are suitable for industrial purposes, including food processing, after treatment. Treatment may include that necessary for prevention of boiler scale and corrosion.

c. Municipal and domestic water. Waters that are suitable for use as a source of water supply for drinking and culinary purposes after treatment to a level approved by the state department of health and consolidated laboratories.

d. Recreation, fishing, and wildlife. Waters that are suitable for the propagation or support of fish and other aquatic biota; that will not adversely affect wildlife in the area; and are suitable for boating and swimming. (Natural high turbidities in some waters and physical characteristics of banks and streambeds of many streams are factors that limit their value for bathing. Low flows or natural physical and chemical conditions in some waters

may limit their value for fish propagation or aquatic biota.)

History: Amended effective March 1, 1985; May 1, 1989.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-02-03. Variances. Where, upon written application by the responsible discharger, the department finds that by reason of substantial and widespread economic and social impacts the strict enforcement of state water quality criteria is not feasible, the department can permit a variance. The department can set conditions and time limitations with the intent that progress toward improvements in water quality will be made. The United States environmental protection agency will be advised of such variances and informed as to the need. A variance will be granted only after public notification and comment and environmental protection agency approval. The provisions set forth in section 33-16-02-04 will apply to all permitted discharges. A variance will not preclude an existing or designated beneficial use.

History: Amended effective March 1, 1985; May 1, 1989.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-02-04. General requirements. The following are general requirements for all waste discharges:

1. No untreated domestic sewage shall be discharged into the surface waters of North Dakota the state.
2. No untreated industrial wastes or other wastes which contain substances or organisms which may endanger public health or degrade the receiving water body's quality or water usage shall be discharged into the waters of North Dakota the state.
3. The degree of treatment for municipal wastes shall be that required by the department and shall be based on the following:
 - a. Municipal wastes are to receive a minimum of secondary treatment or equivalent which shall be equal to at least an eighty-five percent removal of five-day biochemical oxygen demand, or shall meet the effluent standards noted in subdivision c. The more restrictive requirements shall apply.
 - b. Wastes shall be effectively disinfected before discharge into state waters if such discharges cause violation of the fecal coliform criteria as set forth in these standards.

c. No municipal waste discharge shall be permitted unless the effluent meets the following criteria:

- (1) Five-day biochemical oxygen demand: Twenty-five milligrams per liter consecutive thirty-day average.
- (2) Suspended solids: Thirty milligrams per liter consecutive thirty-day average.
- (3) Fecal coliform: Fecal coliform not to exceed two hundred per one hundred milliliters consecutive thirty-day average.

In certain instances, external circumstances or specific uses of the receiving waters make either attainment or application of the suspended solids or fecal coliform limitations an ineffective means of controlling water quality. For this reason, the department reserves the right to evaluate the application of these limitations on a case-by-case basis.

- (4) pH: Six through nine point zero.

Natural ground water and surface waters in some parts of the state, presently used for water supplies with or without treatment, are basic and the stabilization process of wastewater treatment in lagoon systems can result in more alkaline (increased pH) water. Discharges from waste treatment facilities may exceed the upper pH limit due to these uncontrollable properties. Approval to discharge may be granted providing the pH of the receiving water is not violated.

- d. The department may require additional treatment than that listed in this section if such waste discharges, made during low stream flows, cause violations of stream water quality standards, or have a detrimental effect on the beneficial uses of the receiving waters.
4. Industrial waste effluents shall meet all parameters of quality as set forth under the North Dakota pollutant discharge elimination system and shall not violate North Dakota water quality standards.
5. This department must be notified at least twenty days prior to the application of any herbicide or pesticide to surface waters of the state for control of aquatic pests.

The notification must include the following information:

- a. Chemical name and composition.

- b. Map which identifies the area of application and number of square feet.
 - c. A list of target species of aquatic biota the applicant desires to control.
 - d. The calculated concentration of active ingredient in surface waters immediately after application.
 - e. Name, address, and phone number of the certified applicator.
6. Any spill or discharge of waste which causes or is likely to cause pollution of waters of the state must be reported immediately. The owner, operator, or person responsible for a spill or discharge must notify the department as soon as possible (701-224-2354) or the North Dakota hazardous materials emergency assistance and spill reporting number (1-800-472-2121) and provide all relevant information about the spill. Depending on the severity of the spill or accidental discharge, the department may require the owner or operator to:
- a. Take immediate remedial measures;
 - b. Determine the extent of pollution to waters of the state;
 - c. Provide alternate water sources to water users impacted by the spill or accidental discharge; or
 - d. Any other actions necessary to comply with this chapter.

History: Amended effective March 1, 1985; May 1, 1989.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-02-05. General conditions. The following minimum conditions are applicable to all ~~water in North Dakota, at all places and at all times.~~ These waters shall include both classified and unclassified waters of the state except for class II ground waters.

All waters of the state shall be:

1. Free from substances attributable to municipal, industrial, or other discharges or agricultural practices that will cause the formation of putrescent or otherwise objectionable sludge deposits.
2. Free from floating debris, oil, scum, and other floating materials attributable to municipal, industrial, or other discharges or agricultural practices in sufficient amount to be unsightly or deleterious.

3. Free from materials attributable to municipal, industrial, or other discharges or agricultural practices producing color, odor, or other conditions in such a degree as to create a nuisance or render any undesirable taste to fish flesh, or in any way, make fish inedible.
4. Free from substances attributable to municipal, industrial, or other discharges or agricultural practices in concentrations or combinations which are toxic or harmful to human, animal, plant, or resident aquatic biota. This standard will be enforced by use of the procedures referenced in subsection 3 of section 33-16-02-07.
5. Free from oil or grease residue attributable to wastewater, which causes a visible film or sheen upon the waters or any discoloration of the surface of adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines or prevents classified uses of such waters.
6. There shall be no materials such as garbage, rubbish, offal, trash, cans, bottles, or any unwanted or discarded material disposed of into the waters of the state.

History: Amended effective March 1, 1985; May 1, 1989.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-02-06. Specific standards of quality for designated classes of surface waters of the state. The following standards are prescribed as specific water quality for designated classes of surface waters to protect beneficial water uses as set forth in the following water use descriptions and classifications.

It is recognized that during certain periods of the year, some waters may contain certain natural chemical, physical, and biological characteristics or properties equaling or exceeding the limits set forth in these standards. The department may use the natural background level as the standard for any particular parameters and as a base for controlling the addition of wastes from controllable sources. When the flow in the stream is less than the ten-year, seven-day low flow level, the department reserves the right to make a case-by-case evaluation of application of these standards. However, no substances shall be present in concentrations or combinations that materially interfere with, or that prove hazardous to, the intended water usage.

The magnitude of any specific parameter violation or the intrinsic nature and potential damage caused by any specific parameter violation will be considered by the department in evaluating whether a single parameter violation shall result in administrative action.

1. Class I streams. The quality of waters in this class shall be such as to permit the propagation or life, or both, of resident fish species and other aquatic biota and shall be suitable for boating, swimming, and other water recreation. The quality shall be such that after treatment consisting of coagulation, settling, filtration, and chlorination, or equivalent treatment processes, the treated water shall meet the bacteriological, physical, and chemical requirements of the state department of health for municipal use. The quality of water shall be such as to permit its use for irrigation, stock watering, and wildlife use without injurious effects.

The following substances, unless stated otherwise, are maximum limits not to be exceeded. The requirements of this class of water shall be as follows:

Storet Code	Substance or Characteristic	Limitation
00608	Ammonia (un-ionized) as (N) (Diss.)	
	No more than 5 days per 30-day period after acclimation ***	1 mg/l
	No more than 20 days per 30-day period	0.05 mg/l
	For any discharge continuing beyond 20 days	0.02 mg/l
01002	Arsenic (Total)	0.05 mg/l
01005	Barium (Diss.)	1.0 mg/l
01020	Boron (Diss.)	0.75 mg/l
01027	Cadmium (Total)	0.01 mg/l
00940	Chlorides (Total)	100 mg/l
01034	Chromium (Total)	0.05 mg/l
01042	Copper (Total) **	0.05 mg/l
00720	Cyanides (Total)	0.005 mg/l
01049	Lead (Diss.) **	0.05 mg/l
00618	Nitrates (N) (Diss.) *	1.0 mg/l
00666	Phosphates (P) (Diss.) *	0.1 mg/l
01092	Zinc (Total) **	1.0 mg/l

01147	Selenium (Total)	.01 mg/l
39516	Polychlorinated Biphenyls (Total)	.15 ug/l
00300	Dissolved oxygen	not less than 5.0 mg/l
00403	pH	7.0-8.5
00010	Temperature	Eighty five degrees Fahrenheit {29.44 degrees Celsius} The maximum increase shall not be greater than five degrees Fahrenheit {2.78 degrees Celsius} above natural background conditions.
31616	Fecal coliform	200 fecal coliforms per 100 ml This standard shall apply only during the recreation season, May 1, to September 30.
00929	Sodium	50 percent of total cations as mEq/l.
32730	Phenols	.01 mg/l
00945	Sulfates (Diss.)	250 mg/l
50060	Total chlorine residual	.2 mg/l
71900	Mercury (Total)	.002 mg/l
	Combined radium 226 and radium 228	5 pCi/L
	Gross alpha particle activity, including radium 226, but excluding radon and uranium	15 pCi/L

(STAFF COMMENT: In order to improve readability, new language in this chart is not underscored.)

<u>Storet Code</u>	<u>Substance or Characteristic</u>	<u>Maximum Limit</u>
39330	Aldrin (Total)	Acute 3.0 ug/l

00612 Ammonia (un-ionized)
as (N) (Diss.) **

The NH₃-N in mg/l concentration resulting from intermittent waste discharges cannot exceed the numerical value given by .427/FT/FPH/2 where:

$$FT = 10^{0.03(20-TCAP)}; TCAP \leq T \leq 30$$

$$10^{0.03(20-T)}; 0 \leq T \leq TCAP$$

$$FPH = 1; 8 \leq pH \leq 9$$

$$\frac{1 + 10^{7.4-pH}}{1.25}; 6.5 \leq pH \leq 8$$

TCAP = 20 C; salmonids or other sensitive cold water species present

= 25 C; salmonids and other sensitive cold water species absent

The NH₃-N in mg/l concentration from a continuous waste discharge cannot exceed the numerical value given by .658/FT/FPH/Ratio where:

$$Ratio = 16; 7.7 \leq pH \leq 9$$

$$= 24 \cdot \frac{10^{7.7-pH}}{1+10^{7.4-pH}}; 6.5 \leq pH \leq 7.7$$

TCAP = 15 C; salmonids or other sensitive cold water species present

= 20 C; salmonids and other sensitive cold water species absent

01002 Arsenic (Total) .05 mg/l

01007 Barium (Total) 1.0 mg/l

01022 Boron (Total) .75 mg/l

01027 Cadmium (Total) ** The one-hour average concentration in ug/l cannot exceed the numerical value given by $e^{(1.128[\ln(\text{hardness as mg/l})] - 3.828)}$ more than once every 3 years on the average.

The four-day average concentration in ug/l cannot exceed the numerical value

		given by $e^{(.7852[\ln(\text{hardness as mg/l})] - 3.490)}$ more than once every 3 years on the average.
00940	Chlorides (Total)	100 mg/l
39350	Chlordane (Total)	Acute 2.4 ug/l Chronic .0043 ug/l
01034	Chromium (Total) **	.05 mg/l
01042	Copper (Total) **	The one-hour average concentration in ug/l cannot exceed the numerical value given by $e^{(.9422[\ln(\text{hardness as mg/l})] - 1.464)}$ more than once every 3 years on the average. The four-day average concentration in ug/l cannot exceed the numerical value given by $e^{(.8545[\ln(\text{hardness as mg/l})] - 1.465)}$ more than once every 3 years on the average.
00720	Cyanides (Total)	.005 mg/l
00300	Dissolved Oxygen	not less than 5 mg/l
39380	Dieldrin (Total)	Acute 2.5 ug/l Chronic .002 ug/l
39388	Endosulfan (Total)	Acute .22 ug/l Chronic .06 ug/l
39390	Endrin (Total)	Acute .18 ug/l Chronic .0023 ug/l
31616	Fecal Coliform	200 fecal coliforms per 100 ml. This standard shall apply only during the recreation season May 1 to September 30.
39410	Heptachlor (Total)	Acute .52 ug/l Chronic .004 ug/l
01051	Lead (Total) **	The one-hour average concentration in ug/l cannot exceed the numerical value given by $e^{(1.266[\ln(\text{hardness as mg/l})] - 1.416)}$ more than once every 3 years on the average. The four-day average concentration in ug/l cannot exceed the numerical value given by $e^{(1.266[\ln(\text{hardness as mg/l})] - 4.661)}$ more than once every 3 years

		on the average.
39782	Lindane (Hexachloro-cyclohexane)	Acute 2.0 ug/l Chronic .06 ug/l
71900	Mercury (Total)	Acute 2.4 ug/l Chronic .012 ug/l
00618	Nitrates (N) (Diss.) *	1.0 mg/l
39032	Pentachlorophenol ***	Acute 20.0 ug/l Chronic 13.0 ug/l
00400	pH	7.0-9.0
32730	Phenols (Total)	.01 mg/l
00665	Phosphorus (P) (Total) *	0.1 mg/l
39516	Polychlorinated Biphenyls (Total)	Acute 2.0 ug/l Chronic .014 ug/l
01147	Selenium (Total)	.01 mg/l
01077	Silver (Total) **	The one-hour average concentration in ug/l cannot exceed the numerical value given by $e^{(1.72[\ln(\text{hardness as mg/l})] - 6.52)}$ more than once every 3 years on the average.
00932	Sodium	50 percent of total cations as mEq/l
00945	Sulfates (Total) as SO ₄	250 mg/l
00010	Temperature	Eighty-five degrees Fahrenheit [29.44 degrees Celsius]. The maximum increase shall not be greater than five degrees Fahrenheit [2.78 degrees Celsius] above natural background conditions.
50060	Total Chlorine Residual	Acute .019 mg/l Chronic .011 mg/l
39400	Toxaphene (Total)	Acute .73 ug/l Chronic .0002 ug/l
01092	Zinc (Total) **	The one-hour average concentration in ug/l cannot exceed the numerical value given by $e^{(.8473[\ln(\text{hardness as mg/l})] + .8604)}$ more than once every 3 years

on the average.

The four-day average concentration in ug/l cannot exceed the numerical value given by $e^{(.8473[\ln(\text{hardness as mg/l}) + .7614])}$ more than once every 3 years on the average.

11503	Combined radium 226 and radium 228 (Total)	5 pCi/L
01519	Gross alpha particle activity including radium 226 but excluding radon and uranium	15 pCi/L

* The standards for nitrates (N) and phosphorus (P) are intended as interim guideline limits. Since each stream or lake has unique characteristics which determine the levels of these constituents that will cause excessive plant growth (eutrophication), the department reserves the right to review these standards after additional study and to set specific limitations on any waters of the state. However, in no case shall the standard for nitrates (N) exceed ten milligrams per liter for any waters used as a municipal or domestic drinking water supply.

** More restrictive criteria than specified may be necessary to protect fish and aquatic biota. These criteria will be developed according to the procedures in subdivision b of subsection 2 of section 33-16-02-07.

*** No concentrations greater than .02 mg/l will be permitted until the department has monitored chemical and physical parameters in the receiving water and its aquatic biota to ensure sensitive aquatic species are allowed to acclimate to increased un-ionized ammonia concentrations. Limitation is a pH dependent calculated value using the formula $e^{[1.005(\text{pH})-5.29]}$; pH = 7.8 was used for listed value as an example. For exact limitation, receiving water pH value must be used.

2. Class IA streams. The quality of this class of waters shall be such that its uses shall be the same as those identified for class I, except that treatment for municipal use may also require softening to meet the chemical requirements of the ~~state~~ department of health. The physical and chemical criteria shall be those for class I, with the following exceptions:

Storet Code	Substance or Characteristic	Limitation
00940	Chlorides (Diss.)	175 mg/l
00929	Sodium	60% of total cations as mEq/l.
00945	Sulfates (Diss.)	450 mg/l

Storet Code	Substance or Characteristic	Maximum Limit
00940	Chlorides (Total)	175 mg/l
00932	Sodium	60% of total cations as mEq/l.
00945	Sulfates (Total)	450 mg/l

3. Class II streams. The quality of this class of waters shall be such that its uses shall be the same as those identified for class I, except that additional treatment may be required over that noted in class IA to meet the drinking water requirements of the ~~state~~ department of health.

Streams in this classification may be intermittent in nature which would make some of these waters of questionable value for beneficial uses, such as irrigation, municipal water supplies, or fish life. The physical and chemical criteria shall be those for class IA, with the following exceptions:

Storet Code	Substance or Characteristic	Limitation
00940	Chlorides (Diss.)	250 mg/l
01042	Copper (Total) ***	0.1 mg/l
00403	pH	6.0 - 9.0

Storet Code	Substance or Characteristic	Maximum Limit
00940	Chlorides (Total)	250 mg/l
00400	pH	6.0-9.0

*** More restrictive criteria than specified may be necessary to protect fish and aquatic biota. These criteria will be developed according to the procedures in subdivision b of subsection 2 of section 33-16-02-07.

4. Class III streams. The quality of this class of waters shall be suitable for industrial and agricultural uses, i.e. cooling, washing, irrigation, and stock watering. These streams all have low average flows, and generally, prolonged

periods of no flow and are of marginal or seasonal value for immersion recreation and fish aquatic biota. The quality of the water must be maintained to protect recreation, fish, and aquatic biota. The physical and chemical criteria shall be those for class II, with the following exceptions:

Storet Code	Substance or Characteristic	Limitation
00608	Ammonia (Un-ionized) as (N) ***	0.10 mg/l
01002	Arsenic (Total) ***	0.1 mg/l
00720	Cyanides (Total) ***	0.1 mg/l
00945	Sulfate (Diss.)	750 mg/l

Storet Code	Substance or Characteristic	Maximum Limit
00945	Sulfate (Total)	750 mg/l

*** More restrictive criteria than specified may be necessary to protect fish and aquatic biota. These criteria will be developed according to the procedures in subdivision b of subsection 2 of section 33-16-02-07.

5. Wetlands. These water bodies are to be considered waters of the state and will be protected under section 33-16-02-05.

History: Amended effective March 1, 1985; May 1, 1989.
 General Authority: NDCC 61-28-04, 61-28-05
 Law Implemented: NDCC 61-28-04

33-16-02-07. Miscellaneous provisions.

1. Mixing zones. The general conditions in section 33-16-02-05 apply in the mixing zone. The size and configurations of a mixing zone cannot be uniformly prescribed for all streams due to the particular characteristics of each stream. However, the following considerations are to be taken into account when mixing zones are determined:
 - a. The water quality standards must be met at every point outside of the mixing zone. The department may require a means of expediting mixing and dispersion of wastes, if found necessary.
 - b. The total mixing zone (or zones) at any cross-sectional area of the stream should not be larger than twenty-five percent of the cross-sectional area or volume of flow and shall not extend more than fifty percent of the width.

Mixing zones shall provide an acceptable passageway for movement of fish and other aquatic organisms.

- c. The ninety-six hour LC 50 for indigenous or resident fish and fish food organisms shall not be exceeded at any point in the mixing zone. No acute toxicity resulting in mortality of aquatic biota will be allowed within a mixing zone.
- d. Mixing zones shall be as small as possible and shall not intersect spawning or nursery areas, migratory routes, or municipal water intakes. Overlapping of mixing zones should be avoided or minimized to prevent adverse synergistic effects.

2. Sampling and testing.

- a. All methods of sample collection, preservation, and analyses used in applying any of the provisions of this chapter shall be in accord with those prescribed in the latest edition of "Standard Methods for the Examination of Water and Wastewater", published by the American public health association, or in accordance with tests or analytical procedures that have been found to be equal or more applicable by the department or the environmental protection agency.
- b. Bioassay tests shall be performed in accordance with procedures outlined in the latest edition of "Standard Methods for the Examination of Water and Wastewater" published by the American public health association, or in accordance with tests or analytical procedures that have been found to be equal or more applicable by the department or the environmental protection agency. Bioassay studies shall be made using a sensitive resident species.
- c. ~~When specific application factors are not available, the application factor should be determined by using methods listed in the latest edition of "Quality Criteria for Water", published by the environmental protection agency or by using other methods accepted as equal or applicable by the environmental protection agency.~~

- 3. Site specific criteria. If the department determines more restrictive or site specific, or both, numeric criteria are necessary for a point source discharge to protect aquatic biota, the procedures outlined in the 1983 United States environmental protection agency publication "Water Quality Standards Handbook, Chapter 4, Guidelines for Deriving Site Specific Water Quality Criteria" or the United States environmental protection agency publication "Quality Criteria

for Water 1986" (the gold book) will be utilized to determine maximum limits.

History: Amended effective March 1, 1985; May 1, 1989.
General Authority: NDCC 61-28-04, 61-28-05
Law Implemented: NDCC 61-28-04

33-16-02-08. Stream classification. The following intrastate and interstate streams are classified as the class of water quality which is to be maintained in the specified stream or segments noted. There are a number of minor or intermittently flowing watercourses, unnamed creeks, or draws, etc., which are not listed. All waters not specifically listed shall be governed in accordance with section 33-16-02-05. All tributaries not specifically mentioned are classified as class III streams.

<u>River Basins, Subbasins, and Tributaries</u>	<u>Classification</u>
Missouri River, including Lake Sakakawea and Oahe Reservoir	I
Yellowstone	I
Little Muddy Creek near Williston	II
White Earth River	II
Little Missouri River	II
Knife River	II
Spring Creek	± A <u>IA</u>
Square Butte Creek below Nelson Lake	± A <u>IA</u>
Heart River	± A <u>IA</u>
Green River	± A <u>IA</u>
Antelope Creek	<u>II</u>
Muddy Creek	II
Apple Creek	II
Cannonball River	II
Cedar Creek	II
Beaver Creek near Linton	II
Grand River	± A <u>IA</u>
Spring Creek	II
Souris River	± A <u>IA</u>
Des Lacs River	II
Willow Creek	II
Deep River	III

Mauvais Coulee		I
James River	± A	<u>IA</u>
Pipestem	± A	<u>IA</u>
Cottonwood Creek		<u>II</u>
Beaver Creek		II
Elm River		II
Maple River		II
Bois de Sioux		I
Red River		I
Wild Rice River		II
Antelope Creek		III
Sheyenne River	± A	<u>IA</u>
Baldhill Creek		II
Maple River		II
Rush River		III
Elm River		II
Goose River	± A	<u>IA</u>
Turtle River		<u>II</u>
Forest River		II
North Branch		III
Park River		II
North Branch		III
South Branch		II
Middle Branch		III
Cart Creek		III
Pembina River	± A	<u>IA</u>
Tongue River		II

History: Amended effective May 1, 1989.
 General Authority: NDCC 61-28-04, 61-28-05
 Law Implemented: NDCC 61-28-04

33-16-02-09. Lake classification. The following lakes are classified according to the water characteristics which are to be maintained in the specified lakes. ~~Generally, the~~ The beneficial water uses and parameter limitations designated for class I streams shall apply to all classified lakes. However, specific background studies and information may require that the department apply revise a standard for any specific parameter which may diverge from those listed for class I

streams. Lake standard revisions are subject to the same process as stream standard revisions.

In addition, it is intended that these nutrient parameter guidelines be used as a goal in any lake improvement or maintenance program:

<u>Parameter</u>	<u>Limit</u>
NO ₃ as N	.375 mg/l
PO ₄ as P	.025 mg/l
<u>Parameter</u>	<u>Limit</u>
NO ₃ as N	.25 mg/l
PO ₄ as P	.02 mg/l

The temperature standard for class I streams does not apply to Nelson Lake in Oliver County. The temperature of any discharge to Nelson Lake shall not have an adverse effect on fish, aquatic life, and wildlife, or Nelson Lake itself.

1. Numerical classification. The numerical classification refers to the type of fishery a lake may be capable of supporting based on the lake's geophysical characteristics. However, the capability of the lake to support a fishery may be affected by seasonal variations or other natural occurrences which may alter the lake characteristics.

<u>CLASS</u>	<u>CHARACTERISTICS</u>
1	Cold water fishery. Waters capable of supporting growth of salmonid fishes and associated aquatic biota.
2	Cool water fishery. Waters capable of supporting growth and propagation of nonsalmonid fishes and marginal growth of salmonid fishes and associated aquatic biota.
3	Warm water fishery. Waters capable of supporting growth and propagation of nonsalmonid fishes and associated aquatic biota.
4	Marginal fishery. Water <u>Waters</u> capable of supporting a fishery on a seasonal basis.
5	Not capable of supporting a fishery

due to high salinity.

2. Alphabetical classification. The alphabetical classification refers to the present value of the lake for fishery and recreation, coupled with the trophic state of the lake.

CLASS	CHARACTERISTICS
A	Lakes which are presently of satisfactory quality for fisheries and recreation.
B	Lakes which are presently somewhat degraded but have long-term potential for fisheries and recreation.
C	Lakes which are presently somewhat degraded and progressing toward further degradation.
D	Lakes which have a restricted capability to support a fishery due to major degradation or physical limitations, or both.
E	Saline lakes with recreational value but no fishery potential.

3. 2. Individual classification.

<u>County</u>	<u>Lake</u>	<u>Classification</u>
Adams	Mirror	3B <u>3</u>
Adams	N. Lemmon	1B <u>1</u>
Barnes	Ashtabula	3C <u>3</u>
Barnes	Heinze	3C <u>3</u>
Barnes	Moon	2A <u>2</u>
Barnes	Clausen Spring	1A <u>1</u>
Benson	Wood Lake	2B <u>2</u>
Benson	Graves	3C <u>3</u>
Benson	Reeves	3C <u>3</u>
Bottineau	Metigoshe	2C <u>2</u>

Bottineau	Long Lake	26 <u>2</u>
Bottineau	Pelican	36 <u>3</u>
Bottineau	Carbury	2B <u>2</u>
Bottineau	Cassidy	36 <u>3</u>
Bottineau	Strawberry	2B <u>2</u>
Bowman	Bowman-Haley	36 <u>3</u>
Bowman	Gascoyne	36 <u>3</u>
Bowman	Kalina	36 <u>3</u>
Bowman	Spring Lake	36 <u>3</u>
Burke	Powers Lake	36 <u>3</u>
Burke	Short Creek	2B <u>2</u>
Burke	Smishek	2B <u>2</u>
Burke	Traux Mine	1A <u>1</u>
Burke	Northgate	26 <u>2</u>
Burke	Bowbells Mine	1A <u>1</u>
Burleigh	McDowell Dam	36 <u>3</u>
Burleigh	New John's Lake	2B <u>2</u>
Cass	Casselton Reservoir	36 <u>3</u>
Cass	Hunter Dam	3B <u>3</u>
Cass	Brewer Lake	26 <u>2</u>
Cavalier	Mt. Carmel	26 <u>2</u>
Dickey	Moores Lake	1A <u>1</u>
Dickey	Pheasant	36 <u>3</u>
Dickey	Wilson Dam	36 <u>3</u>
Divide	Skjermo	26 <u>2</u>
Dunn	Lake Ilo	36 <u>3</u>
Eddy	Warsing Dam	26 <u>2</u>

Emmons	Braddock Dam	36 <u>3</u>
Emmons	Nieuwsma Dam	26 <u>2</u>
Emmons	Rice Lake	46 <u>4</u>
Emmons	Welk Dam	36 <u>3</u>
Foster	Juanita	38 <u>3</u>
Golden Valley	Camel Hump	18 <u>1</u>
Golden Valley	Odland Dam	36 <u>3</u>
Golden Valley	Williams Creek	48 <u>4</u>
Grand Forks	Fordville	26 <u>2</u>
Grand Forks	Larimore	28 <u>2</u>
Grand Forks	Kolding	26 <u>2</u>
Grant	Tschida	28 <u>2</u>
Grant	Raleigh Reservoir	48 <u>4</u>
Grant	Sheep Creek	28 <u>2</u>
Griggs	Red Willow	36 <u>3</u>
Griggs	Carlson-Tande	36 <u>3</u>
Hettinger	Larson Lake	36 <u>3</u>
Hettinger	Kilzer	36 <u>3</u>
Hettinger	Castle Rock	16 <u>1</u>
Hettinger	Indian Creek	36 <u>3</u>
Hettinger	Mott Dam	26 <u>2</u>
Hettinger	Blickensderfer	28 <u>2</u>
Kidder	Cherry Lake	28 <u>2</u>
Kidder	Crystal Springs	36 <u>3</u>
Kidder	Fretum Lake	26 <u>2</u>
Kidder	Round Lake	28 <u>2</u>

Kidder	Lake Williams	2A <u>2</u>
Kidder	Lake Isabel	3E <u>3</u>
Kidder	George Lake	5E <u>5</u>
LaMoure	Schlect-Weix.	3E <u>3</u>
LaMoure	Hein.-Martin	2B <u>2</u>
LaMoure	Kulm-Edgeley	2E <u>2</u>
LaMoure	Cottonwood	4B <u>4</u>
LaMoure	Kalmbach	4B <u>4</u>
LaMoure	Schlect-Thom	2B <u>2</u>
LaMoure	Lake LaMoure	2B <u>2</u>
Logan	Beaver Lake	3E <u>3</u>
Logan	Mundt Lake	2B <u>2</u>
Logan	Rudolph Lake	4B <u>4</u>
McHenry	Cottonwood	3B <u>3</u>
McHenry	George Lake	2B <u>2</u>
McHenry	Round Lake	3E <u>3</u>
McHenry	Buffalo Lodge	3E <u>3</u>
McIntosh	Blumhardt	1A <u>1</u>
McIntosh	Coldwater	2A <u>2</u>
McIntosh	Green Lake	2B <u>2</u>
McIntosh	Lake Hoskins	2B <u>2</u>
McIntosh	Clear Lake	2B <u>2</u>
McKenzie	Arnegard Dam	4B <u>4</u>
McKenzie	Sather Dam	2B <u>2</u>
McLean	Brush Lake	3E <u>3</u>
McLean	W. Park Lake	2B <u>2</u>
McLean	E. Park Lake	2B <u>2</u>

McLean	Brekken	2B <u>2</u>
McLean	Holmes	2B <u>2</u>
McLean	Lightning	2B <u>2</u>
McLean	Crooked Lake	2C <u>2</u>
McLean	Custer Mine	1A <u>1</u>
McLean	Audubon	2B <u>2</u>
McLean	Strawberry	3B <u>3</u>
McLean	Long Lake	4B <u>4</u>
McLean	Riv. Spillway	1A <u>1</u>
Morton	Crown Butte	3C <u>3</u>
Morton	Fish Creek	1B <u>1</u>
Morton	Sweetbriar	3C <u>3</u>
Morton	Nygren	3B <u>3</u>
Morton	Danzig	3B <u>3</u>
Mountrail	Clearwater	3C <u>3</u>
Mountrail	White Earth	2B <u>2</u>
Mountrail	Stanley Reservoir	3C <u>3</u>
Nelson	McVillie Dam	1B <u>1</u>
Nelson	Whitman Dam	1B <u>1</u>
Nelson	Tolna Dam	2C <u>2</u>
Oliver	Nelson Lake	3B <u>3</u>
Oliver	Van Oosting	3C <u>3</u>
Oliver	M. Mosbrucker	2C <u>2</u>
Oliver	A. Mosbrucker	1C <u>1</u>
Oliver	E. Arroda Lake	1C <u>1</u>
Oliver	W. Arroda Lake	1C <u>1</u>

Pembina	Renwick Dam	26 <u>2</u>
Pierce	Balta Dam	26 <u>2</u>
Pierce	Buffalo Lake	26 <u>2</u>
Ramsey	Devils Lake	36 <u>3</u>
Ramsey	Cavanaugh	36 <u>3</u>
Ransom	Dead Colt Creek	3B <u>3</u>
Renville	Lake Darling	26 <u>2</u>
Richland	Lake Elsie	2B <u>2</u>
Richland	Mooreton Pond	2B <u>2</u>
Rolette	Carpenter	26 <u>2</u>
Rolette	Dion Lake	2B <u>2</u>
Rolette	Gravel Lake	1B <u>1</u>
Rolette	Gordon	2B <u>2</u>
Rolette	Hooker Lake	1B <u>1</u>
Rolette	Belcourt	2B <u>2</u>
Rolette	School Section	2B <u>2</u>
Rolette	Upsilon	36 <u>3</u>
Rolette	Shutte Lake	26 <u>2</u>
Sargent	Alkali Lake	36 <u>3</u>
Sargent	Silver Lake	26 <u>2</u>
Sargent	Tewaukon	36 <u>3</u>
Sargent	Buffalo Lake	4B <u>4</u>
Sargent	Sprague Lake	3B <u>3</u>
Sheridan	Hecker	2B <u>2</u>
Sheridan	S. McClusky	2B <u>2</u>
Sioux	Froelich	2B <u>2</u>
Slope	Cedar Lake	3B <u>3</u>

Slope	Davis Dam	1B <u>1</u>
Slope	Hamann Dam	1A <u>1</u>
Slope	Stewart Lake	3D <u>3</u>
Stark	Patterson	3C <u>3</u>
Stark	Dickinson Dike	2C <u>2</u>
Stark	Belfield Pond	3C <u>3</u>
Steele	N. Tobiason	3B <u>3</u>
Steele	S- Golden Lake	3C <u>3</u>
Steele	N. Golden Lake	3C <u>3</u>
Stutsman	Jamestown Reservoir	2B <u>2</u>
Stutsman	Clark Lake	3C <u>3</u>
Stutsman	Jim Lake	3D <u>3</u>
Stutsman	Spiritwood	2B <u>2</u>
Stutsman	Arrowwood	4D <u>4</u>
Stutsman	Krapp Dam	2C <u>2</u>
Stutsman	Barnes Lake	3C <u>3</u>
Stutsman	Pipestem Reservoir	3C <u>3</u>
Towner	Armourdale	2C <u>2</u>
Walsh	Matejcek	1A <u>1</u>
Walsh	Bylin Dam	2B <u>2</u>
Walsh	Homme Dam	2B <u>2</u>
Ward	North Carlson	2C <u>2</u>
Ward	Rice Lake	2C <u>2</u>
Ward	Velva Sptsm.	1B <u>1</u>
Wells	Harvey Dam	3C <u>3</u>
Wells	Lake Hiawatha	4D <u>4</u>

Williams	Blacktail	3B <u>3</u>
Williams	Epp.-Springbrook	2E <u>2</u>
Williams	Iverson	2B <u>2</u>
Williams	Kota-Ra	1A <u>1</u>
Williams	McCloud	3E <u>3</u>
Williams	McGregor	1B <u>1</u>
Williams	Tioga Reservoir	2B <u>2</u>
Williams	Williston Park	4D <u>4</u>
Williams	Cottonwood	3D <u>3</u>
	Oahe	1A <u>1</u>
	Sakakawea	1A <u>1</u>

History: Amended effective March 1, 1985; May 1, 1989.
 General Authority: NDCC 61-28-04, 61-28-05
 Law Implemented: NDCC 61-28-04

33-16-02-10. Specific standards of quality for designated classes of ground waters of the state. The following standards are prescribed as specific water quality for designated classes of ground waters in order to protect present and future beneficial uses.

1. Classification of ground water.

- a. Class I ground water. Class I ground waters are ground waters with a total dissolved solids concentration of less than ten thousand milligrams per liter and which are not exempt under the North Dakota underground injection control program in section 33-25-01-05.
- b. Class II ground water. Class II ground waters are ground waters with a total dissolved solids concentration of ten thousand milligrams per liter or greater or are exempt under the North Dakota underground injection control program in section 33-25-01-05.

2. Ground water quality standards.

- a. Class I. Discharges into class I ground waters shall not cause concentrations of dissolved or suspended substances to exceed the criteria set forth in North Dakota Century Code chapter 61-28.1, which sets the maximum allowable

chemical, radiological, and microbiological contaminant levels for drinking water.

- b. Class II. Discharges into class II ground waters shall not cause concentrations of dissolved or suspended substances to exceed levels which allow the waters to be harmful or detrimental to human health or adversely affect existing or future beneficial uses.

History: Effective May 1, 1989.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

TITLE 37
Highway Department

DECEMBER 1988

STAFF COMMENT: Chapter 37-08-01 contains all new material but is not underscored so as to improve readability.

ARTICLE 37-08

VISUAL REQUIREMENTS FOR OPERATORS LICENSES OR PERMITS

Chapter
37-08-01 Visual Requirements

CHAPTER 37-08-01
VISUAL REQUIREMENTS

Section	
37-08-01-01	Definitions
37-08-01-02	Correction Only by Corrective or Special Visual Devices
37-08-01-03	Visual Activity Requiring Road Test
37-08-01-04	Medical Advisory Board Review
37-08-01-05	Minimum Vision Requirements and Restrictions

37-08-01-01. Definitions. The definitions provided in North Dakota Century Code title 39 shall apply to this article, except:

1. "Corrective visual device" means glasses or contact lenses with or without field expander.
2. "Field of view report" means a report measuring peripheral view (free from scotomas) arrived at by use of an accepted

device in the ophthalmologic or optometric profession which checks peripheral and central view, excluding tangent screen and confrontation devices.

3. "Glare recovery" means the ability to resume normal vision within seconds after having been "blinded" by headlamps or other bright lights shining in the eyes.
4. "Glare resistance" means the ability to retain normal vision despite glare from headlamps or other bright lights shining in the eyes.
5. "Medical advisory board" means driver license medical advisory board consisting of North Dakota licensed physicians or optometrists appointed by the commissioner for the purpose of advising the commissioner concerning the medical aspects of licensing.
6. "Outside mirrors" means one unobstructed mirror attached to each side of the vehicle within easy view of the driver.
7. "Road test" means a driving demonstration.
8. "Special visual devices" means use of telescopic bioptic resulting in a vision acuity of 20/130 in the carrier lens and 20/40 in the bioptic lens and having a full field peripheral view free from scotomas.
9. "Vision specialist" means a North Dakota licensed physician or optometrist.

History: Effective December 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 39-06-03(7)

37-08-01-02. Correction only by corrective or special visual device. When correction is needed, only the use of a corrective or special visual device is permitted.

History: Effective December 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 39-06-03(7)

37-08-01-03. Visual acuity requiring road test. Visual acuity of 20/60 or less requires a road test regardless of the corrective or special visual device being used.

History: Effective December 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 39-06-03(7)

37-08-01-04. Medical advisory board review. Whenever the visual acuity is less than 20/80, as stated by the applicant or operator's vision specialist, the medical advisory board may, upon request of the drivers license and traffic safety division, review the case and make their recommendations to the highway commissioner or the commissioner's agent.

History: Effective December 1, 1988.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 39-06-03(7)

37-08-01-05. Minimum vision requirements and restrictions. Applicants and operators requesting or maintaining a North Dakota license or permit and who meet the following minimum vision standards, as established by the drivers license and traffic safety division, shall comply with the associated requirements and restrictions (which are nonexclusive):

Minimum visual acuity	Requirements and restrictions with or without corrective or special device.
1. 20/30 one-eyed individual	(a, h, j).
2. 20/40 each eye	(a).
3. 20/50 each eye	(b, c, d).
4. 20/50 better eye 20/60 or less other eye	(b, c, d, f).
5. 20/60 better eye 20/60 or less other eye	(b, c, d, f, g).
6. 20/60 better eye 20/70 or less other eye	(b, c, d, e, g).
7. Less than 20/60 better eye	(b, c, d, e, g, h, i).
8. 20/70 better eye 20/80 - 20/100 other eye	(b, c, d, e, g, h, i, k, l).
9. 20/80 better eye 20/80 - 20/100 other eye	(b, c, d, e, g, h, i, k, l).
10. Requirements and restriction code:	
a. Minimum vision without corrective lenses.	

- b. Corrective or special visual device (when required).
- c. Daylight driving only.
- d. Vision specialist recommendations.
- e. Vision recheck within one year.
- f. Vision recheck within two years.
- g. Road test.
- h. Field of view report:
 - (1) If the binocular horizontal visual field 140 degrees or better - no operator's license restrictions.
 - (2) If the binocular horizontal visual field less than 140 degrees - operator's license restrictions.
 - (3) If the binocular horizontal visual field less than 120 degrees - no operator's license.
 - (4) If one-eyed applicant:
 - (a) A minimum horizontal visual field of 120 degrees:
Nasal - 50 degrees,
Temporal - 70 degrees.
 - (b) A minimum vertical field of:
Inferior - 50 degrees,
Superior - 25 degrees.
 - (c) If the applicant's superior or inferior visual field is impaired, the applicant's better eye must meet the one-eyed vertical field criteria.
- i. Report any eye disease or injury.
- j. Outside mirror.
- k. Class III noncommercial vehicles only.
- l. Glare resistance and glare recovery (for daylight only).

History: Effective December 1, 1988.
 General Authority: NDCC 28-32-02
 Law Implemented: NDCC 39-06-03(7)

TITLE 38
Highway Patrol

DECEMBER 1988

STAFF COMMENT: Articles 38-07 and 38-08 contain all new material but are not underscored so as to improve readability.

ARTICLE 38-07

COMMERCIAL DRIVER TRAINING SCHOOL REQUIREMENTS

Chapter	
38-07-01	Definitions
38-07-02	Commercial Driver Training School Requirements
38-07-03	Driver Training Vehicle Requirements
38-07-04	Commercial Driver Training Instructor Requirements
38-07-05	Driver Training Instruction Requirements
38-07-06	Refusal, Suspension, or Revocation of License

CHAPTER 38-07-01
DEFINITIONS

Section	
38-07-01-01	Definitions

38-07-01-01. Definitions. In this article, unless the context or other subject matter requires:

1. "Contract" means a written agreement between the commercial driver training school and a student for classroom instruction or behind-the-wheel training, or both.
2. "Lesson" means a continuous period of time during which instruction is given for the purpose of operating a motor vehicle whether by classroom instruction or practice driving. A one-hour lesson means one hour of actual instruction.
3. "Location" means a designated site at which the business of a commercial driver training school is transacted and its records are kept.
4. "Superintendent" means the superintendent of the North Dakota highway patrol.

History: Effective December 1, 1988.

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-01

CHAPTER 38-07-02 COMMERCIAL DRIVER TRAINING SCHOOL REQUIREMENTS

Section

38-07-02-01	License Requirements
38-07-02-02	Location of School
38-07-02-03	Business Records
38-07-02-04	Advertising
38-07-02-05	Agreements and Contracts
38-07-02-06	Insurance and Safety
38-07-02-07	License Displayed
38-07-02-08	Schedule of Fees and Charges
38-07-02-09	Application and Renewal of School License - Fee

38-07-02-01. License requirements. No commercial driver training school may be established or operated unless such school shall apply for and obtain a license on the form prescribed by the superintendent.

History: Effective December 1, 1988.

General Authority: NDCC 39-25-03

Law Implemented: NDCC 39-25-03

38-07-02-02. Location of school.

1. No license may be issued for conducting a driver training school from a temporary stand, temporary address, or a room or rooms in a hotel or motel, or through the exclusive facilities of a telephone answering service.

2. The location of the school's principal place of business and branch offices must have adequate facilities, equipment, and available space to meet the approval of the superintendent, and must also be in compliance with all city and municipal ordinances.
3. Each commercial driving school license application or renewal application must be accompanied by a rental or lease agreement covering the time period corresponding to the license year. In case of ownership, a statement verifying ownership of the premises must be attached to the application.

History: Effective December 1, 1988.

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-03

38-07-02-03. Business records.

1. A permanent record of every person given lessons or services of any kind relating to classroom or behind-the-wheel instruction in the operation of a motor vehicle must list the following information:
 - a. Name of student.
 - b. Address of student.
 - c. Date of birth of student.
 - d. Contract number.
 - e. Date and type of lesson.
 - f. Initials or name of instructor.
 - g. Social security or identification number.
2. The contract file must contain the original, subsequent, or renewal contract agreements entered into between the school and the person receiving the lesson or other services relating to the operation of a motor vehicle. Each original, subsequent, and renewal contract must be maintained for a period of not less than three years following instruction.
3. The vehicle file must contain a current list of all vehicles used by the school for driver training purposes showing date and location of the most recent inspection and must include a copy of vehicle lease agreements if applicable.
4. All records must be maintained in a businesslike manner and are subject to the inspection of the superintendent or the superintendent's authorized representative at any time during

reasonable business hours. The loss, mutilation, or destruction of records which the school is required to maintain must be reported immediately to the superintendent and must state:

- a. The date such records were lost, destroyed, or mutilated.
- b. The circumstances involving such loss, destruction, or mutilation.
- c. The name of the law enforcement office or fire department officials to whom such loss was reported and the date of such report.

History: Effective December 1, 1988.

General Authority: NDCC 39-25-03

Law Implemented: NDCC 39-25-03

38-07-02-04. Advertising. Commercial driver training schools may not:

1. Publish, advertise, or intimate that a driver license is guaranteed or assured.
2. Duplicate or reproduce (in whole or part) for use in advertising or instruction any forms used by the North Dakota highway patrol in the driver licensing function without specific approval of the superintendent.
3. Advertise or intimate that a commercial driver or instructor's license encompasses certification by the North Dakota department of public instruction.
4. Advertise the address of any location other than the authorized principal place of business or licensed branch office.

History: Effective December 1, 1988.

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-03

38-07-02-05. Agreements and contracts.

1. All contracts between schools and students must be on a form approved by the superintendent.
2. A contract may not exceed a maximum of ten hours of behind-the-wheel training without execution of a new contract. The contract must include:
 - a. The name, date of birth, and address of the student.

- b. The kind of training provided.
 - c. Approved vehicles to be used for instruction.
 - d. The number of hours of instruction and the rate per hour.
 - e. The signature of the student or other authorized person, or both.
 - f. The date of the contract.
3. A person may not be given lessons or any other service relating to instruction of motor vehicle operation unless and until a written contract has been executed between the school and the student.
 4. Each school shall file and maintain with the superintendent a list of those persons authorized on behalf of the school to execute contracts or renewal agreements and certificates of enrollment and completion. A complete signature record form must be filed with the superintendent for each person authorized to sign the above-listed documents for the school.
 5. No school may represent or agree orally or in writing to give instruction until a driver license is obtained, to give free lessons, or to offer premiums or provide discounts if a driver license is not obtained.
 6. No owner, operator, instructor, or other employee of a commercial driver training school may:
 - a. Attempt to influence any decision of an examining officer with respect to the licensing of any student of the school or any other person.
 - b. Imply to the student or other person for any purpose their ability to influence in any manner the driver license examiners.

History: Effective December 1, 1988.

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-03

38-07-02-06. Insurance and safety.

1. The licensee shall file with the superintendent evidence of liability insurance obtained from a company authorized to do business in the state of North Dakota. Proof of insurance is required for each vehicle used for driver training in the amount of:

- a. At least one hundred thousand dollars because of bodily injury to or death of any one person in any one accident.
 - b. At least three hundred thousand dollars because of bodily injury to or death of two or more persons in any one accident.
 - c. At least twenty-five thousand dollars because of damage to or destruction of property of others in any one accident.
 - d. At least thirty thousand dollars for medical expenses regardless of liability.
2. The licensee shall furnish evidence of such coverage to the superintendent stipulating that such insurance will not be canceled or terminated except upon ten days' prior written notice to the superintendent.
 3. In the event such insurance is canceled or terminated, the school license certificate shall terminate automatically. All vehicles used in the operation of the school may not thereafter be used for driver training school purposes until such school obtains adequate insurance coverage and said license is reenacted. School certificates terminated under the provision of this section must be surrendered to the superintendent within a period of ten days.
 4. The commercial driver training school owner or operator shall secure and submit with the application for license a continuous surety company bond in the principal sum of two thousand five hundred dollars for the protection of the contractual rights of students, undertaken by a company authorized to do business in the state of North Dakota. The concerned surety company may cancel said bond upon giving thirty days' written notice thereof to the superintendent. The surety company must be released of all liability for any breach of any condition of the bond occurring after the effective date of the cancellation.

History: Effective December 1, 1988.

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-03

38-07-02-07. License displayed. The license to operate a commercial driver training school must be displayed in a conspicuous location in the licensee's principal place of business and each branch office.

History: Effective December 1, 1988.

General Authority: NDCC 39-25-03

Law Implemented: NDCC 39-25-03

38-07-02-08. Schedule of fees and charges. Commercial driver training applications must be accompanied by a schedule of maximum fees and charges. The schedule of fees and charges may be amended at any time by the licensee provided that such changes in the fee schedule are filed with the superintendent not less than ten days before they become effective. A fee designated and set forth in a contract must be adhered to for the duration of that contract.

History: Effective December 1, 1988.

General Authority: NDCC 39-25-03

Law Implemented: NDCC 39-25-03

38-07-02-09. Application and renewal of school license - Fee. All licenses expire on the last day of the calendar year and may be renewed upon application to the superintendent as prescribed. Each application for an original or renewal school license must be accompanied by a fee of twenty-five dollars. No license fees may be refunded in the event any license is rejected, suspended, or revoked. All renewal applications that are not on file and approved prior to January first of each year will be rejected for the remainder of that calendar year.

History: Effective December 1, 1988.

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-05

CHAPTER 38-07-03 DRIVER TRAINING VEHICLE REQUIREMENTS

Section

38-07-03-01	Vehicle Safety Standards
38-07-03-02	Year of Vehicle
38-07-03-03	List of Vehicles
38-07-03-04	Signing of Vehicles
38-07-03-05	Vehicle Inspection

38-07-03-01. Vehicle safety standards. Each vehicle used for driver training instruction must comply with all federal and state motor vehicle safety standards for the model year of the vehicle and must have the following equipment:

1. Dual control brakes.
2. Dual control clutch pedal, when applicable.
3. External rearview mirrors on left and right sides of the vehicle.
4. Padded dashboard and sun visors.

5. Seatbelts for each occupant of the vehicle.
6. Shoulder harnesses for front seat occupants.

History: Effective December 1, 1988.
General Authority: NDCC 39-25-02
Law Implemented: NDCC 39-25-03

38-07-03-02. Year of vehicle. Vehicles may not be used for driver training purposes which are more than six model years old, unless prior approval of the superintendent is granted.

History: Effective December 1, 1988.
General Authority: NDCC 39-25-02
Law Implemented: NDCC 39-25-02

38-07-03-03. List of vehicles. A list of vehicles used for driver training must be maintained and filed with the superintendent.

History: Effective December 1, 1988.
General Authority: NDCC 39-25-02
Law Implemented: NDCC 39-25-02

38-07-03-04. Signing of vehicles. Vehicles, while being used for driving instruction, may have displayed conspicuously thereon signs on front and rear, with background and letters of contrasting colors stating "Student Driver" with lettering at least two inches [50.80 millimeters] but not more than five inches [127 millimeters] in height. No other signs or advertising may be displayed without the approval of the superintendent.

History: Effective December 1, 1988.
General Authority: NDCC 39-25-02
Law Implemented: NDCC 39-25-02

38-07-03-05. Vehicle inspection. All vehicles used for driver training purposes must pass a vehicle inspection immediately after installation of dual control devices and periodically thereafter as may be designated by the superintendent. The license of a commercial driver training school or instructor may be suspended at any time if a vehicle used for driver training purposes is not maintained in a safe operating condition.

History: Effective December 1, 1988.
General Authority: NDCC 39-25-02
Law Implemented: NDCC 39-25-02

CHAPTER 38-07-04
COMMERCIAL DRIVER TRAINING INSTRUCTOR REQUIREMENTS

Section	
38-07-04-01	Instructor Requirements
38-07-04-02	Instructor License
38-07-04-03	Driver License Requirement
38-07-04-04	Expiration and Renewal of Instructor License

38-07-04-01. Instructor requirements. An applicant for a commercial driver training instructor license shall:

1. Be a resident of the state of North Dakota.
2. Be at least twenty-one years of age.
3. Read, write, and speak the English language.
4. Have normal peripheral vision, depth perception, and color vision. Visual acuity of at least 20/40 in each eye, with or without corrective lenses.
5. Have been a licensed driver for three years, holding a valid North Dakota driver license, free from requirement to show proof of financial responsibility, and have a satisfactory driving record free from any conviction that would constitute the basis for suspension or revocation of the instructor license.
6. Submit with the application a certified copy of the applicant's driving record dated not earlier than thirty days prior to the receipt of application by the superintendent.
7. Not have been convicted of a crime involving moral turpitude.
8. Furnish the superintendent with two sets of fingerprints and photographs and authorize investigation to determine if the applicant has a criminal record.
9. Pass a written and driver training road test for each class of license for which driver training is to be offered. The test must have been developed and administered by the highway department drivers license division. The superintendent may periodically require a licensed instructor to submit to a written examination consisting of all or any part of the test specified in this section. The test must include:
 - a. The operation of a motor vehicle.
 - b. Traffic laws.

- c. Road signs, laws and regulations, and other material pertaining to and affecting the driver, traffic, and motor vehicle.
10. Be in good physical and mental health, and having no illness or condition that would render the applicant unable to safely perform the duties as an instructor. The applicant shall submit to a physical examination by a licensed physician and a certificate must accompany the application.
 11. Instructor preparation:
 - a. Hold a valid North Dakota driver education certificate issued by the department of public instruction; or
 - b. Have successfully completed an approved preparation course for commercial driver education instructors.

History: Effective December 1, 1988.

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-04

38-07-04-02. Instructor license. The application for an instructor license will indicate the commercial driver training school, when applicable, by whom employed or to be employed. When employment of an instructor is terminated with a commercial driver training school, the school administrator shall return the terminated instructor's commercial instruction license to the superintendent within ten days of the termination date.

History: Effective December 1, 1988.

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-04

38-07-04-03. Driver license requirement. Instructors must at all times, while giving behind-the-wheel or "on-street on-cycle" instruction, carry a valid North Dakota driver license applicable to the type of vehicle for which instruction is being conducted.

History: Effective December 1, 1988.

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-04

38-07-04-04. Expiration and renewal of instructor license. All instructor licenses expire on the last day of the calendar year and may be renewed upon application to the superintendent as prescribed. Each application for an original or renewal license must be accompanied by a fee of ten dollars. No license fees may be refunded in the event any application is rejected or a license suspended or revoked.

History: Effective December 1, 1988.
General Authority: NDCC 39-25-02
Law Implemented: NDCC 39-25-04

CHAPTER 38-07-05
DRIVER TRAINING INSTRUCTION REQUIREMENTS

Section	
38-07-05-01	Training Curriculum
38-07-05-02	Behind-the-Wheel Instruction Certificate
38-07-05-03	Motorcycle Completion Certificate
38-07-05-04	Behind-the-Wheel and On-Cycle Instruction

38-07-05-01. Training curriculum. A complete and up-to-date copy of the classroom and behind-the-wheel or on-cycle training curriculum for each class of license for which instruction is offered must be submitted to and approved by the superintendent. Instruction must meet the minimum requirements of any federal or state standards that are or may be established regarding the length of lesson and methods of instruction.

History: Effective December 1, 1988.
General Authority: NDCC 39-25-02
Law Implemented: NDCC 39-25-03, 39-25-04

38-07-05-02. Behind-the-wheel instruction certificate. North Dakota Century Code section 39-06-17 requires an applicant under the age of sixteen years, when presenting himself for a driver examination, to exhibit for verification a properly endorsed behind-the-wheel instruction certificate. Such certificate must indicate the child has completed at least six hours of behind-the-wheel instruction. Schools or instructors shall inform driver training students under sixteen years of age that a minimum of six hours of actual behind-the-wheel instruction is required before the child is eligible to take the driver examination.

History: Effective December 1, 1988.
General Authority: NDCC 39-25-02
Law Implemented: NDCC 39-25-02

38-07-05-03. Motorcycle completion certificate. North Dakota Century Code section 39-06-14 states that applicants fourteen or fifteen years of age may be issued a motorcycle learner's permit if the applicant is enrolled in or has completed an approved motorcycle safety course. The completion certificate must indicate that the applicant has

completed a motorcycle safety course which meets the minimum requirements of the motorcycle safety foundation.

History: Effective December 1, 1988.

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-02

38-07-05-04. Behind-the-wheel and on-cycle instruction.

1. Instruction may be provided on machines which simulate driving conditions only when the use of such machines has been specifically approved as a part of the curriculum of behind-the-wheel training by the superintendent.
2. Instructors shall ensure that seatbelts are in use at all times while instruction is being given behind the wheel of a motor vehicle.
3. Instructors shall ascertain that the student is in possession of a valid North Dakota driver instruction permit or driver license prior to giving behind-the-wheel instruction.
4. Instruction for class I and class II type vehicles may be given only when specifically approved by the superintendent.
5. Instructors must at all times, while giving behind-the-wheel or "on-street on-cycle" instruction, ensure that students do not violate any traffic law, rule, regulation, sign, or street marking governing the operation of a motor vehicle.
6. When the student has satisfactorily completed six hours of behind-the-wheel instruction, the authorized school operator or instructor shall furnish the student a certificate of completion to that effect.
7. Instruction may not be given on routes used for the North Dakota state driver license road test.

History: Effective December 1, 1988.

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-03, 39-25-04

CHAPTER 38-07-06
REFUSAL, SUSPENSION, OR REVOCATION OF LICENSE

Section

38-07-06-01

Refusal, Suspension, or Revocation of
License

38-07-06-01. Refusal, suspension, or revocation of license. The superintendent may refuse to issue or may suspend or revoke a license in any case where the superintendent finds the applicant or licensee has violated any one of the provisions of chapter 39-25 or the regulations herein prescribed. A suspended or revoked license must be returned to the superintendent by the licensee. The license of a commercial driver training school or instructor may be revoked, suspended, issuance refused, or a renewal refused under any of the following conditions:

1. Whenever the person commits fraud or engages in fraudulent practice with reference to the person's license application.
2. Whenever the commercial driver training school or instructor induces or countenances fraud or fraudulent practice on the part of any applicant for a driver license or instruction permit.
3. When a commercial driver training school or an instructor advertises or implies that a driver license is guaranteed upon completion of the course of instruction.
4. When instruction is given to a person who does not have a valid North Dakota learner or instruction permit or driver license in their possession.
5. When a certificate of enrollment or completion is signed by an authorized school operator or instructor and information on the certificate is false.
6. When the person is convicted of a violation of a criminal law or traffic law, or both, including, but not limited to, driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs, leaving the scene of an accident, careless driving, or reckless driving.
7. When there is evidence that intoxicating beverages were present or consumed on the school premises or in its training vehicles.
8. When a student is overcharged or encouraged to continue indefinite instructions beyond the point where the student is capable of passing the driver license examination, or both.
9. Any licensed school operator or instructor whose license is subject to suspension or revocation may be required to appear before the superintendent or the superintendent's designated agent to show cause why such license should not be suspended or revoked. Any person who has been refused issuance or renewal of a license or whose license is subject to suspension or revocation is entitled to a hearing before the superintendent as provided in North Dakota Century Code chapter 28-32.

History: Effective December 1, 1988.
General Authority: NDCC 39-25-02
Law Implemented: NDCC 39-25-06

ARTICLE 38-08

PREMIUM REDUCTION FOR ACCIDENT PREVENTION COURSE COMPLETION

Chapter	
38-08-01	Sponsoring Agency Approval
38-08-02	Course Approval
38-08-03	Withdrawal of Approval
38-08-04	Sponsoring Agency Course Administration

CHAPTER 38-08-01 SPONSORING AGENCY APPROVAL

Section	
38-08-01-01	Application for Course Approval
38-08-01-02	Course and Instructors
38-08-01-03	Renewal of Course Approval

38-08-01-01. Application for course approval. A sponsoring agency which proposes to offer a motor vehicle accident prevention course to the public qualifying for an insurance premium reduction shall submit a completed application to the superintendent of the North Dakota highway patrol on a form prescribed by the department.

History: Effective December 1, 1988.
General Authority: NDCC 26.1-25-04.1
Law Implemented: NDCC 26.1-25-04.1

38-08-01-02. Course and instructors. In addition to the information required to be entered upon the application, the application must be accompanied by the following:

1. Copy of the proposed motor vehicle accident prevention course, which if approved, must be maintained on file at patrol headquarters.
2. Names, addresses, and North Dakota driver license numbers of all instructors. Instructors must be formally certified to

teach the courses. Documentation attesting to instructor certification must be submitted to the superintendent.

History: Effective December 1, 1988.
General Authority: NDCC 26.1-25-04.1
Law Implemented: NDCC 26.1-25-04.1

38-08-01-03. Renewal of course approval. Course approval will be valid for a period of two years from the date of such approval. Renewal of course approval must be obtained every two years.

History: Effective December 1, 1988.
General Authority: NDCC 26.1-25-04.1
Law Implemented: NDCC 26.1-25-04.1

CHAPTER 38-08-02 COURSE APPROVAL

Section	
38-08-02-01	Hours of Classroom Instruction
38-08-02-02	Course Curriculum

38-08-02-01. Hours of classroom instruction. The curriculum for a course in motor vehicle accident prevention must consist of a minimum of four hours of classroom instruction and must be designed consistent with the following subject matter and be structured to prepare a student for satisfactory completion.

History: Effective December 1, 1988.
General Authority: NDCC 26.1-25-04.1
Law Implemented: NDCC 26.1-25-04.1

38-08-02-02. Course curriculum. The curriculum must include, but not be limited to, the following subject matter:

1. The concept of accident preventability, including a discussion of the magnitude of traffic accident problems.
2. Techniques for defensive driving and coping with critical situations including:
 - a. Interpret critical events that require evasive action;
 - b. Appropriate response to situations caused by vehicle failure (blowout, brake failure, etc.); and

- c. The risk factors created by a variety of psychological, social, and physical factors that can facilitate or inhibit function required in driving including:
 - (1) Effects and compensatory measures concerning the relationships between alcohol or any other drugs or medication, or both, and driving performance.
 - (2) Negative stresses and compensatory measures associated with physical, mental, and social conditions as they relate to driver performance.
 - (3) Age-related physical changes of drivers fifty-five years of age and older.
3. North Dakota traffic laws and regulations, vehicle dynamics, capabilities and limitations, and highway environmental factors including:
- a. Traffic laws and regulations:
 - (1) Signs, signals, and markings.
 - (2) Right-of-way requirements.
 - (3) Speed.
 - b. Vehicle capabilities:
 - (1) Stopping distance.
 - (2) Passing.
 - c. Highway setting or operating environment and adverse conditions:
 - (1) Conditions limited by illumination, obstructions, and weather.
 - (2) Conditions limited by snow, ice, and rain.

History: Effective December 1, 1988.
 General Authority: NDCC 26.1-25-04.1
 Law Implemented: NDCC 26.1-25-04.1

CHAPTER 38-08-03
 WITHDRAWAL OF APPROVAL

Section
 38-08-03-01 Withdrawal of Approval

38-08-03-01. Withdrawal of approval. The superintendent may withdraw approval of a sponsoring agency of a motor vehicle accident prevention course for any of the following reasons:

1. Unapproved deletions or additions have been made to the curriculum previously approved.
2. The course is not administered in a satisfactory manner and after evaluation proves ineffective.
3. The sponsoring agency failed to maintain compliance with any of the provisions of this article.

History: Effective December 1, 1988.

General Authority: NDCC 26.1-25-04.1

Law Implemented: NDCC 26.1-25-04.1

CHAPTER 38-08-04 SPONSORING AGENCY COURSE ADMINISTRATION

Section
38-08-04-01 Sponsoring Agency Requirements

38-08-04-01. Sponsoring agency requirements. An approved sponsoring agency shall:

1. Make application to the administration for approval if there are any proposed additions or deletions to an approved course.
2. Perform all administrative functions in connection with the course.
3. Upon satisfactory completion of the course, provide each participant with a certificate of course completion approved by the superintendent. Completion records must be maintained for a period of three years from completion date.
4. Provide or train, or both, instructors to conduct courses qualifying for insurance premium reduction.
5. Conduct the course in accordance with the description represented to the superintendent.
6. Provide each participant at the time of enrollment an approved printed statement that indicates an insurer may provide a reduction in rates for motor vehicle personal injury and property damage to an insured who is at least fifty-five years of age and within the last two years has completed

successfully a course in accident prevention approved by the superintendent.

7. Provide the superintendent, upon request, with a schedule of class dates, times, and locations.
8. Authorize the superintendent to audit the records of the approved course and to monitor and evaluate any and all portions of the course including the classroom facility, use of instructional material, and the presentation of the course.

History: Effective December 1, 1988.

General Authority: NDCC 26.1-25-04.1

Law Implemented: NDCC 26.1-25-04.1

TITLE 54
Nursing, Board of

NOVEMBER 1988

STAFF COMMENT: Chapter 54-03.1-07.1 contains all new material but is not underscored so as to improve readability.

CHAPTER 54-03.1-07.1
MASTER'S DEGREE IN NURSING PROGRAM REQUIREMENTS

Section

54-03.1-07.1-01	Exemption
54-03.1-07.1-02	Accreditation
54-03.1-07.1-03	Competencies
54-03.1-07.1-04	Curriculum Requirements
54-03.1-07.1-05	Faculty Qualifications
54-03.1-07.1-06	Unqualified Faculty

54-03.1-07.1-01. Exemption. Master's programs in nursing that submit evidence of having national league for nursing accreditation are accepted by the board as having met the rules for board approval.

History: Effective November 1, 1988.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.1-07.1-02. Accreditation. Any school offering an advanced degree program in nursing must be approved by the regional accrediting agency.

History: Effective November 1, 1988.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.1-07.1-03. Competencies. The registered nurse with a master's degree is prepared to practice in a variety of settings, provide leadership in specialty areas, and initiate collaborative and consultative relationships with others for the purpose of improving nursing and health care and influencing health policy.

The following competencies are expected at the time of completion of a master's degree program in nursing. The graduate will:

1. Incorporate theories and advanced knowledge into nursing practice.
2. Demonstrate competence in selected roles.
3. Identify researchable nursing problems and participate in research studies in advanced nursing practice.
4. Use leadership, management, and teaching knowledge and competencies to influence nursing practice.
5. Assume responsibility for contributing to improvement in the delivery of health care and influencing health policy.
6. Assume responsibility for contributing to the advancement of the nursing profession.

History: Effective November 1, 1988.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(15)

54-03.1-07.1-04. Curriculum requirements. The curriculum must include courses from nursing and related academic disciplines that will provide the student with:

1. Advanced theory and research in nursing.
2. Advanced role and clinical preparation.
3. A basis for doctoral study and continuing professional development.

History: Effective November 1, 1988.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.1-07.1-05. Faculty requirements. The faculty for a master's degree program in nursing includes:

1. A registered nurse administrator who holds a master's degree and a doctoral degree, one of which is in nursing, with a minimum of two years of experience in each of the following:

- a. Clinical nursing practice.
 - b. Teaching in a nursing program.
 - c. Administration.
2. Nurse faculty members who hold a minimum of a master's degree in nursing with a major in their area of responsibility and two years of experience in the following:
 - a. Clinical nursing practice.
 - b. Teaching in a nursing program.
 3. A majority of nurse faculty who hold a doctoral degree and provide expertise in curriculum development, research, and evaluation.
 4. Nonnurse faculty members who hold a doctoral degree or the minimum of a master's degree in their respective disciplines to teach supportive courses. A majority of the nonnurse faculty, who teach supportive courses in the master's degree program, must hold a doctoral degree in their respective discipline.

History: Effective November 1, 1988.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.1-07.1-06. Unqualified faculty. Faculty members who do not meet the requirements of section 54-03.1-07.1-05 shall provide the board with evidence of progression toward achievement of the required degree. All nurse faculty members teaching in the master's degree program in nursing as of September 1, 1995, must meet the requirements of section 54-03.1-07.1-05.

History: Effective November 1, 1988.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

TITLE 59.5
State Personnel Board

MAY 1989

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

1. "Cause" includes conduct related to the employee's job duties, job performance, or working relationships which is detrimental to the discipline and efficiency of the service in which the employee is or was engaged.
2. "Demotion" includes an involuntary reduction for disciplinary reasons in the status of an employee from a position in one class to a position in a lower class resulting in a decrease in base salary.
3. "Dismissal" includes an involuntary termination of employment of an employee for cause.
4. "Forced relocation" includes the involuntary transfer or reassignment of a classified employee from one work location in the state to another work location in the state when an employee is likely to need to relocate the employee's place of residence.
5. "Reduction-in-force" includes the loss of employment by layoff of an employee from the employee's present position as a result of the elimination of a program, a reduction in the number of full-time equivalent positions by the legislative assembly, lack of work, curtailment of work, lack of funds, expiration of grants, or reorganization.
6. "Reprisal action" includes unfavorable adverse employment-related actions taken against an employee by an appointing authority for ~~either~~ appealing to the state personnel board ~~or~~, for exercising the employee's rights under

the State and Political Subdivision Employees Relations Act of 1985, for testifying before a legislative committee, or for requesting timely assistance under the employee assistance program.

7. "Suspension without pay" includes an enforced unpaid leave of absence for cause or pending an investigation.
8. "Waiver" includes a written agreement between an employee and the appointing authority not to proceed with the internal agency grievance procedure and to permit an appeal to be made directly to the state personnel board when the employee has been dismissed from employment.

History: Effective December 1, 1985; amended effective May 1, 1987; May 1, 1989.

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

Law Implemented: NDCC 54-44.3

TITLE 69
Public Service Commission

MARCH 1989

69-09-05-04. Rules for resale of telecommunications services.

1. Definitions.

- a. "End user" means a person who uses telecommunications service for his own use.
- b. "Premise cable" means telecommunications cable or channels on the reseller's side of the point of connection to the local exchange company (demarcation point).
- c. "Prepayment" means payments made by customers of a reseller in advance of receiving service.
- d. "Resale" means the subscription to local or long distance telecommunications services and facilities by one entity, and reoffered for profit or with markup to others with or without enhancements. Where reoffered service is part of a package, and the package is offered for profit or markup, it is resale.
- e. "Reseller" means a person reselling local or long distance telecommunications services. The definition does not include coin-operated telephone providers, but does include cellular services.
- f. "Same continuous property" is contiguous real estate owned by the same individual, group of individuals, or other legal entity having title to the property. The property may be traversed by streets, ditches, or other similar manmade or natural terrain features provided that, but for terrain features, the property would be contiguous and provided that such terrain features are of a nature and

dimension that it is reasonable to treat the property as contiguous.

g. "Shared tenant service provider" means a person reselling telecommunications services to the tenants of a building complex on the same continuous property or to parties with a community of interest.

2. Resellers shall:

a. Obtain a certificate of registration from the commission authorizing the provision of local resale or long-distance resale services in the state of North Dakota.

b. If they require prepayment for service:

(1) Submit a performance bond in an amount specified by the commission; or

(2) Establish an escrow account in a North Dakota bank containing an amount equal to the prepayments collected at any given time, and file monthly reports showing escrow account activities and call completion data.

c. File annual reports.

3. Resale of local exchange service, except cellular service, is restricted to provision of service to a building complex on the same continuous property, or to other parties having a community of interest with the reseller.

4. The commission will analyze each local exchange reseller's application to determine if the reseller serves parties having a community of interest.

5. Except for residents of dormitories or residence halls of schools, colleges, or universities, the end user has the unrestricted right to choose service from the local exchange.

6. Shared tenant service providers shall allow the tenant to use the shared tenant service providers premise cable and wire in the event an end user wants to receive service from the local exchange company.

7. The reseller is responsible for the charges incurred for telecommunications services to which it subscribes for serving its end users.

History: Effective March 1, 1989.

General Authority: NDCC 28-32-04, 49-02-11

Law Implemented: NDCC 49-02-11, 49-21

69-09-05-05. Rules for the provision of operator services.

1. Definitions.

- a. "End user" means the person to whom operator service is provided.
- b. "Operator service" means service provided to assist in the completion or billing of telephone calls through the use of a live operator or automated equipment.
- c. "Operator service provider" means the person providing operator service.

2. Operator service providers shall:

- a. Obtain a certificate of registration from the commission authorizing the provision of operator services in the state of North Dakota.
- b. File tariffs containing rates, charges, and rules for operator services, as well as for any associated intrastate long-distance resale services, with the commission. This filing is for informational purposes.
- c. File service quality standards relating to operator response and call processing time with the commission for informational purposes.
- d. Provide written material for use in disclosing to the end user the name and toll free telephone number of the operator service provider. This material must be provided to all coin telephone operators, motels, hospitals, and any other locations where end users may use telephone service not billable to their home or business phones without operator service.
- e. Require operators to clearly identify the operator service provider to all end users and when requested, provide rate information.
- f. Provide emergency call service that is equal to that provided by the local exchange telephone company and, if unable to meet this requirement, provide emergency call service by immediate transfer of such calls to the local exchange company.
- g. For billing purposes, itemize, identify, and rate calls from the point of origination to the point of termination. No call may be transferred to another carrier by an operator service provider which cannot or will not complete the call, unless the call can be billed in accordance with this subsection.

h. Not charge for incompletd calls.

i. Bill for its services only and at the rates contained in its filed tariffs.

j. Disclose its name on any bill which includes charges for services it has provided.

History: Effective March 1, 1989.

General Authority: NDCC 28-32-04, 49-02-11

Law Implemented: NDCC 49-02-11, 49-21

TITLE 69.5

Racing Commission, North Dakota

JULY 1989

STAFF COMMENT: Title 69.5 contains all new material but is not underscored so as to improve readability.

ARTICLE 69.5-01

NORTH DAKOTA RACING COMMISSION RULES

Chapter	
69.5-01-01	Definitions
69.5-01-02	The Commission
69.5-01-03	Racing Officials
69.5-01-04	Permits and Requirements
69.5-01-05	Licensees
69.5-01-06	Patrons
69.5-01-07	Conduct of Races
69.5-01-08	Parimutuel Wagering Systems

CHAPTER 69.5-01-01
DEFINITIONS

Section	
69.5-01-01-01	Definitions

69.5-01-01-01. Definitions. The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 53-06.2, except:

1. "Age" means the age of a horse and shall be reckoned from the first day of January of the year of foaling.
2. "Appaloosa" means a horse registered with the appaloosa horse club.
3. "Applicable horsemen's organization" means the jockey club with respect to thoroughbred horses, the American quarter horse association with respect to quarter horses, the United States trotting association with respect to standard bred horses, the appaloosa horse club with respect to appaloosa horses and the American paint horse association with respect to pinto and paint horses.
4. "Arabian" means a horse registered with the international Arabian horse association, the Arabian horse registry of America, inc., or the Anglo-Arabian horse registry.
5. "Arrears" means all moneys owed by a licensee, including subscriptions, jockey fees, forfeitures, and any default incident to these rules.
6. "Association" means an individual or business entity holding a permit from the commission to conduct racing and parimutuel wagering, and an annual license authorizing the specific dates of the annual racing meeting.
7. "Association grounds" means all real property utilized by an association in the conduct of its race meeting, including the track, concessions, stands, offices, barns, stables, employee housing, and parking.
8. "Authorized agent" means a person licensed by the commission as an agent for a horse owner or principal by virtue of a notarized appointment of agent on a form approved by the commission filed by the owner or principal with the horsemen's bookkeeper authorizing the agent to handle matters pertaining to racing and stabling.
9. "Bleeder" means a horse which hemorrhages from within the respiratory tract during a race or within one hour postrace, or during exercise or within one hour of such exercise.
10. "Bleeder list" means a tabulation of all bleeders to be maintained by the commission.
11. "Chemist" means any official racing chemist designated by the commission.
12. "Claiming race" means one which includes a condition that any horse starting the race may be claimed and purchased by any licensed owner who has started a horse at the current meeting

for an amount specified in the conditions for that race by the racing secretary.

13. "Commission" means the North Dakota racing commission.
14. "Contractual concessionaire" means any business or individual dealing in the furnishing, sale, or distribution of materials, supplies, or services to an association.
15. "Day" means a twenty-four-hour period beginning at one minute after twelve a.m. and ending at twelve midnight. Also referred to as a race day.
16. "Dead heat" means the finish of a race by two horses or more at the same time.
17. "Declaration" means the act of withdrawing an entered horse from a race.
18. "Entry" means:
 - a. A horse entered for a race; or
 - b. Two or more horses entered and joined for the same race for parimutuel wagering purposes because of common ties of ownership, lease, or training.
19. "Field or mutuel field" means a group of two or more horses upon which a single bet may be placed. A mutuel field is required when the number of horses starting in a race exceeds the capacity of the track totalisator. The highest numbered horse with the totalisator capacity and all the higher-numbered horses following are then grouped together in the mutuel field.
20. "Foreign substances" means all substances except those which exist naturally in the untreated horse at normal physiological concentration.
21. "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or penalty imposed by order of the stewards or the commission.
22. "Furosemide" means 4 Chloro-N-(2 furylmethyl)-5-sulfamoylanthanic acid.
23. "Handicap" means a race in which the weights to be carried by the horses are assigned by the racing secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.
24. "Horse" means any horse (including and designated as a male, filly, stallion, colt, ridgling, or gelding) registered for

racing under the jurisdiction of the commission and which requires a jockey to race.

25. "Hypodermic injection" means any injection into or under the skin or mucosa, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection, intra-arterial injection, intra-articular injection, intrabursal injection, intraocular (intraconjunctival) injection.
26. "Jockey" means a rider licensed to ride in races as a jockey.
27. "Licensee" means any person or entity holding a license from the commission to engage in racing or related regulated activity.
28. "Maiden" means a horse, which at the time of starting, has never won a race on the flat in a state or country where racing is supervised by a lawfully established racing commission or board and where the races are covered by the racing form, American quarter horse chart books, the appaloosa horse club chart books, the paint horse chart books, and the Arabian horse chart book. A maiden that has been disqualified after finishing first is still a maiden.
29. "Match race" means a race between two horses, the property of two owners, on terms agreed upon by them. The match is void if either of the horses or if either owner dies prior to the running of the race. It remains a match even if money or other award is added to the stakes.
30. "Meeting" means the specified period and dates each year during which an association is authorized to conduct racing by approval of the commission.
31. "Minor" means any person under the age of eighteen.
32. "Month" means a calendar month.
33. "Nominator" means the person in whose name a horse is entered for a race.
34. "Official time" means the official time for a race shall be the period from the time the first horse crosses the timing beam until the first horse crosses the finish line.
35. "Overnight race" means a race for which entries close seventy-two hours, or less, before the time set for the first race of the day on which the race is to be run.
36. "Owner" means:

- a. A person who holds any title, right, or interest, whole or partial, in a horse; or
- b. A lessee of a horse holding an owner's license.

An interest only in the winnings of a horse does not constitute partial ownership.

- 37. "Patron" means a member of the public present on the grounds of a parimutuel association during a meeting for the purpose of wagering or to observe racing.
- 38. "Performance" means a schedule of eight races or more per day unless otherwise authorized by the commission.
- 39. "Permit" means an authorization by the commission to an association to conduct horse racing and parimutuel wagering at a specified place.
- 40. "Permitholder" means an association holding a commission permit to conduct racing meetings and parimutuel wagering.
- 41. "Place":
 - a. In general, to place means to finish a race in either first, second, or third place.
 - b. In particular, to place means to finish second in a race.
Example: Win - to place first in the finish.
Place - to place second in the finish.
Show - to place third in the finish.
- 42. "Post position" means the position assigned to the horse in the starting gate of a race.
- 43. "Post time" means the time set for the arrival of all horses in a race at the starting gate.
- 44. "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.
- 45. "Purse" means the gross cash portion of the prize for which a race is run.
- 46. "Purse race" means a race for money or other prize to which the owners of horses entered do not contribute money toward its purse and for which entries close less than seventy-two hours prior to its running.

47. "Quarter horse" means a horse registered with the American quarter horse association.
48. "Race" means a running contest between horses ridden or driven by jockeys for a purse, prize, or other reward run at a licensed association in the presence of the stewards of the meeting or such other horse racing contests as may from time to time be authorized by the commission. This includes purse races, overnight races, and stakes races.
49. "Recognized meeting" means any meeting with regularly scheduled races for horses on the flat in a jurisdiction having reciprocal relations with this state and a commission for the mutual enforcement of rulings relating to horse racing.
50. "Rules" means the rules adopted by the commission to regulate the conduct of horse racing.
51. "Schooling" means practice races held using actual racing conditions, but in which no wagering is allowed.
52. "Scratch" means the act of withdrawing an entered horse from the race after the closing of overnight entries.
53. "Scratch time" means the time set by the association for the closing of applications to withdraw from races of that day.
54. "Security area" means the area surrounding the security stall delineated by the commission and controlled by it.
55. "Security stall" means the stall within the security barn assigned by the commission to a horse on the bleeder list, or occupancy as a prerequisite for receiving bleeder medication.
56. "Specimen" means any bodily substance including, but not limited to, blood or urine taken from a horse under the supervision of the commission veterinarian or such veterinarian's authorized designee and in such manner prescribed by the commission for the purpose of analysis.
57. "Stable name" means a name used by an owner or lessee and registered with the commission.
58. "Stakes race" means one in which nominators of the entries contribute to a purse for the winners. A stakes race shall close for entries more than seventy-two hours in advance of its running. A stakes race includes a race for which horses are invited by an association to run for a guaranteed purse of five thousand dollars or more, without payment of stakes.

59. "Starter" means a horse in a race when the starting gate doors open in front of it at the moment the official starter dispatches the horses for a race.
60. "Stewards" means the duly appointed racing officials or their deputies serving at a licensed horse racing meeting.
61. "Subscription" means moneys paid for nomination, entry, eligibility, or starting of a horse in a stakes race.
62. "Test level" means the concentration of a foreign substance found in the test sample.
63. "Test sample" means any bodily substance including, but not limited to, blood or urine taken from a horse under the supervision of the commission veterinarian or such veterinarian's authorized designee and in such manner as prescribed by the commission for the purpose of analysis.
64. "Thoroughbred" means a horse registered with the New York jockey club.
65. "Veterinarian" means a veterinarian currently licensed by the state board of veterinary medical examiners and the commission.
66. "Weigh in" means presentation of a jockey to the clerk of scales for weighing prior to a race.
67. "Weigh out" means presentation of a jockey to the clerk of scales for weighing after a race.
68. "Year" means a calendar year.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-02 THE COMMISSION

Section	
69.5-01-02-01	General Authority
69.5-01-02-02	Suspensions
69.5-01-02-03	Racing Dates and Permit
69.5-01-02-04	Commission Stewards
69.5-01-02-05	Search and Inspection
69.5-01-02-06	Exclusion of Patrons
69.5-01-02-07	Commission Veterinarian

69.5-01-02-01. General authority.

1. The commission has the authority, upon its own action or upon referral from the stewards, to charge any licensee or permittee for a violation of these rules or of the parimutuel horse racing laws of this state; to conduct hearings and to impose fines and other penalties as provided by law and these rules; and to suspend, revoke, or encumber through conditions of probation licenses or permits. The commission will include in its rulings against licensees the licensee's full name, social security number, and date of birth.
2. The commission, upon application therefore and for good cause shown, may temporarily waive or modify any rule or permit any activity otherwise lawful but not specifically authorized by these rules when, in the opinion of the commission, such circumstances exist that without such waiver, modification, or activity the health or safety of any person or horse is adversely affected or the due conduct or best interest of parimutuel horse racing of North Dakota is adversely impaired.
3. Whenever a situation arises in connection with a quarter horse meeting which is not covered by these rules, the American quarter horse association rules shall govern.

Where a conflict exists between the rules of the commission and the American quarter horse association, the commission's rules shall govern. Any rule covered by both a commission and American quarter horse association rule must be interpreted so that the commission rule modifies or supersedes the American quarter horse association rule.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-02-02. Suspensions.

1. When any license is suspended by the commission or is suspended by the racing regulatory agency of another state recognized by the commission, then the suspended licensee is prohibited from participating in any parimutuel activity regulated by the commission.
2. The suspension shall, in addition, render ineligible for entry or starting, every horse in which the suspended licensee has any ownership interest or trainer responsibility. Eligibility for affected horses in such cases may be restored by transfer of the suspended licensee's interest or responsibilities to another licensed person, if approved by the stewards of the meeting.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-02-03. Racing dates and permit.

1. Racing dates must be granted by the commission. The application for racing dates and the application for a license to conduct a race meeting must be filed with the commission over the signature of an executive officer of each association and on a form approved and provided by the commission. All applications must be filed within the time frame established by the commission and associations shall post bonds as required by the commission before a racing license may be issued.
2. The commission, after receiving an application, may request further information in writing from the applicant or may request a representative or representatives of an association to appear in person before the commission to supply any additional information that the commission may require. Licenses must be granted by the commission after the permittee has complied with all legal requirements.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-02-04. Commission stewards. The commission shall appoint one of the three stewards at each horse racing meeting. The steward appointed by the commission must be the chief steward.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-02-05. Search and inspection. The commission, through its employees or agents, or through employees of the association, so authorized by the commission, may search and inspect for prohibited medication, drugs, drug paraphernalia, or any electrical or mechanical equipment usable to affect the condition or racing condition of a horse or any item prohibited by these rules, at any time without notice. Such search and inspection may be made of the following:

1. Association stables, receiving barns, the paddock, jockeys' room, supply rooms, blacksmith, and similar service shops or areas, including living quarters or private vehicles located within enclosure of the association grounds; and

2. The person, employee, or agent of any licensee while upon the association grounds in the prescribed areas described in subsection 1.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-02-06. Exclusion of patrons.

1. **Offenses.** The commission may exclude from the licensed premises a patron who has been convicted of any of the offenses listed in this subsection, if the commission determines that the circumstances of the offense giving rise to the conviction make the patron's presence a hazard to the reputation and conduct of racing and parimutuel wagering, or may reasonably undermine the public confidence in the integrity of racing:
 - a. Offenses related to drugs or controlled substances;
 - b. Offenses related to arranging the outcome of a race, or to any fraud or deception while participating in racing or parimutuel wagering activities;
 - c. Offenses related to representations made about any horse, ownership interest in a horse, or lease or sale of any horse;
 - d. Any felony of which the patron has been convicted; or
 - e. Any offense related to gaming or gambling.
2. **Notification.** In all cases where the commission excludes a person from any or all parimutuel facilities in this state, the commission will attempt to notify said person of the facts or conduct which warrant exclusion and provide said person with a postexclusion hearing.
3. **Ejection.** Nothing in this rule precludes an association from exercising its right to eject persons from the premises.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-02-07. Commission veterinarian.

1. The commission may employ or contract with a veterinarian or veterinarians who are authorized to:

- a. Maintain and operate a barn for the detention and testing of horses after each race;
 - b. Collect specimens for analysis to determine the presence of prohibited substances in any entered horse;
 - c. Examine any horse entered in any race and, upon a determination of unfitness to run, may recommend to the stewards that they scratch the horse; and
 - d. Delegate the veterinarian's duties to the veterinarian appointed by the licensed association subject to the supervision of the commission veterinarian and the approval of the commission.
2. Every horse entered to race must be subjected to a veterinary examination for racing soundness and health on a race day, not later than two hours prior to official post time for the first race.
3. Testing of horses entering a race will occur as follows:
- a. After each race, the winner of each race and any other horse designated by the stewards must be taken directly to the enclosure for such testing as the commission representative may require. Blood samples may be taken only by a veterinarian. All other body fluid samples must be taken by a veterinarian or under his or her supervision.
 - b. Each horse to be tested must be accompanied by its owner, trainer, or the representative of either who shall remain during the testing and sign as a witness on the sample marking tag which will be detached and safeguarded by the commission representative before the sample is forwarded to the laboratory.
 - c. Samples taken must be marked for identification by a two-part tag initialed by the commission representative that includes on both parts an identical number, and the date of the sample, and on the commission part the name of the horse and its owners or trainer. The numbered part must be delivered under the seal of the commission to the testing laboratory. The identified part must be retained by the commission veterinarian until the results are obtained from the lab at which time the sample tag must be filed with the commission.
 - d. The laboratory shall ensure the integrity of samples and sample containers.

- e. The commission has the authority to direct the official laboratory to retain and preserve by freezing, samples for future analysis.
- f. Every horse which suffers a breakdown on the racetrack, in training, or in competition, and is destroyed, and every other horse which expires while stabled on association grounds under the jurisdiction of the commission, shall undergo a postmortem examination at a time and place acceptable to the commission veterinarian to determine the injury or sickness which resulted in euthanasia or natural death.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-03 RACING OFFICIALS

Section

69.5-01-03-01	General Description
69.5-01-03-02	Eligibility for Officials
69.5-01-03-03	Official's Prohibited Activities
69.5-01-03-04	Report of Violations
69.5-01-03-05	Single Official Appointment
69.5-01-03-06	Stewards - General Authority
69.5-01-03-07	Stewards - Enforcement Authority
69.5-01-03-08	Stewards' Summary Hearings
69.5-01-03-09	Appeals From Stewards' Hearings
69.5-01-03-10	Steward Investigations and Decisions
69.5-01-03-11	Racing Secretary
69.5-01-03-12	Paddock Judge
69.5-01-03-13	Horse Identifier
69.5-01-03-14	Clerk of the Scales
69.5-01-03-15	Starter
69.5-01-03-16	Timer
69.5-01-03-17	Patrol Judges
69.5-01-03-18	Stewards Serve as Placing Judges
69.5-01-03-19	Association Veterinarian
69.5-01-03-20	Jockey Room Custodian and Valet Attendants

69.5-01-03-01. General description. Every association conducting a race meeting shall appoint at least the following officials:

1. Two of the members of a three-member board of stewards.
2. The racing secretary.

3. The paddock judge.
4. The horse identifier.
5. The clerk of the scales.
6. The starter.
7. Timers, if needed.
8. Three or more patrol judges.
9. The association veterinarian who shall assist and be responsible to the commission veterinarian and whose appointment must be from a list approved by the commission veterinarian.
10. Jockey room custodian, valets, and attendants.
11. Such other officials as the commission may from time to time require.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-02. Eligibility for officials. To qualify as a racing official the appointee must be licensed by the commission after a determination that the proposed racing official:

1. Is of good moral character and reputation;
2. Is experienced in horse racing;
3. Is familiar with the duties to which the racing official is appointed and with the commission's rules of horse racing;
4. Possesses the mental and physical capacity to perform the duties which the racing official is appointed to perform;
5. Possesses natural or correctable eyesight sufficient to perform the racing official's duties; and
6. Has not been convicted of a crime which the commission may determine has a direct bearing upon the racing official's ability to serve in the appointed capacity or if so convicted, that the official has not been sufficiently rehabilitated.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-03. Official's prohibited activities. A racing official or the racing official's assistants listed in subsections 1 through 11 of section 69.5-01-03-01, while serving during any meeting in such capacity, may not engage in any of the following:

1. Participate in the sale, or purchase, or ownership of any horse racing at the meeting;
2. Be involved in any way in the purchase or sale of any contract on any jockey racing at the meeting;
3. Sell or solicit horse insurance on any horse racing at the meeting or participate in any other business sales or solicitation not a part of the official's duties;
4. Wager on the outcome of any race; or
5. Accept or receive money or anything of value for such official's assistance in connection with such official's duties.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-04. Report of violations. Every racing official and such official's assistants are responsible to report immediately to the stewards of the meeting every observed violation of these rules and of the laws of this state which occur within such official's or assistant's jurisdiction.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-05. Single official appointment. An official appointed to any meeting may not hold more than one official position listed in section 69.5-01-03-01 unless, in the determination of the stewards or the commission, the holding of more than one appointment would not subject the official to a conflict of the official's interests and duties to the two appointments.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-06. Stewards - General authority.

1. The stewards for each racing meeting are responsible to the commission for the conduct of the race meeting in accordance

with the laws of this state and the rules adopted by the commission. The stewards only have authority to resolve conflicts or disputes between all other racing officials or licensees where the disputes are reasonably related to the conduct of each race, or races, and to punish violators of these rules in accordance with the provisions of these rules.

2. Should any steward be absent at race time, the other two stewards shall agree on the appointment of a deputy for the absent steward or if they are unable to agree on a deputy, then the racing secretary shall appoint a deputy for that race. If any deputy steward is appointed, the commission must be notified immediately by the stewards.
3. All three stewards must be present in the stands during the running of each race.
4. The period of authority for the association stewards commences upon issuance of their license by the commission and terminates thirty days after the end of each racing meet.
5. Stewards, from their own observations, may take notice of misconduct or rule violations and institute investigations and compliance of possible rules' violations.
6. Stewards may inspect at any time a license document or paper related to horse racing including, without limitation, partnership papers, jockey employment contracts, appointments of authorized agents or jockey agents, jockey agents' engagement records, and the adoption of colors.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-07. Stewards - Enforcement authority.

1. Stewards shall enforce these rules and the racing laws of this state and have authority to charge any licensee for a violation of these rules and the laws of this state, to conduct hearings, and to recommend to the commission the imposition of administrative fees or suspensions within the limits and procedures of this section. The decision of the stewards as to the extent of a disqualification of any horse in any race is final for purposes of distribution of the parimutuel pool.
2. Stewards may impose administrative fees of up to one thousand dollars for each offense or suspend occupational licenses for up to six months for each offense, or both such fee and suspension. Such action by the stewards does not bar the commission from imposing a more severe penalty if so required

in the determination of the commission. However, the commission shall initiate no action increasing any steward's penalty after sixty days from the date of the stewards' action. The stewards, instead of taking action against a licensee, may refer any alleged violation to the commission for hearing and decision, but such referral to the commission by the stewards is not necessary as a condition to commission action against a licensee. In cases where fines or penalties alter the results of a race, the stewards may re-award purses, prizes, awards, and trophies.

3. All fines imposed by the stewards upon a licensee must be paid by the licensee to the commission within forty-eight hours after imposition.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-08. Stewards' summary hearings.

1. Violations. The stewards may take summary and immediate action when violations constitute an immediate danger to public health, safety, and welfare. If such action is taken prior to the summary hearing procedure in subsection 2, the affected licensee is entitled to a postsuspension hearing pursuant to such subdivision. The stewards may conduct summary proceedings for violations involving the following:
 - a. Horse riding.
 - b. The use of drugs and medication.
 - c. Possessing a device for the injection of prohibited substances in horses.
 - d. Suspensions under reciprocity agreements with other states.
 - e. Acts prohibited by any of the provisions of North Dakota Century Code chapter 12.1 and any other criminal offenses prohibited by state law when by a preponderance of evidence, the stewards believe such offenses to have occurred.
 - f. Prearranging or attempting to prearrange the outcome of a race.
2. Summary hearing procedure. Stewards' hearings in respect to matters exempted from notice and hearing provisions, unless waived by the licensee, nevertheless shall provide at least the following:

- a. Written notice to the licensee, delivered at least three days prior to the hearing, informing the licensee of the charges against the licensee and the possible penalties which may be imposed as well as the right to counsel; the right to present a defense, including witnesses for that purpose; and the right to cross-examine the stewards' witnesses.
- b. The stewards may grant a continuance of any hearing set under the summary procedures authorized for good cause shown.
- c. Failure of a licensee to appear at any scheduled hearing shall constitute a violation of these rules.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-09. Appeals from stewards' hearings.

1. Any licensee aggrieved by the imposition by the stewards of any fee or suspension may appeal to the commission. Appeals must be in writing, filed with the commission within fourteen days of the stewards' order. The stewards shall, in that event, forward to the commission their charges and evidence for an administrative hearing (de novo) by the commission upon all of the evidence pursuant to North Dakota Century Code chapter 28-32. No appeal from a stewards' order to the commission shall stay or supersede the penalty imposed by the stewards unless the commission shall order, in writing, a stay of the penalty.
2. The stewards shall possess and may exercise emergency authority, as follows:
 - a. Substitute officials. When in an emergency any official is unable to discharge the official's duties, the stewards may approve the appointment of a substitute. The stewards shall report such appointment immediately to the commission.
 - b. Substitute jockeys. The stewards have the authority in an emergency to place a substitute jockey on any horse in the event the trainer does not do so. Before using such authority, the stewards shall attempt, in good faith, to contact the trainer to inform the trainer of the emergency and to afford the trainer the opportunity to appoint a substitute jockey. If the trainer cannot be contacted, or if the trainer is contacted but fails to appoint a substitute jockey and to inform the stewards by thirty

minutes prior to post time, then the stewards may appoint under this rule.

- c. Substitute trainer. The stewards have the authority, in an emergency, to designate a substitute trainer for any horse.
- d. Excuse horse. In case of accident or injury to a horse or any other emergency deemed to exist by the stewards before the start of any race, the stewards may excuse the horse from starting.
- e. Exercise authority. No licensee may exercise a horse on the track between races unless upon the approval of the stewards.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-10. Steward investigations and decisions.

1. Investigations. The stewards, upon direction of the commission, shall conduct inquiries and shall recommend to the commission the issuance of subpoenas to compel the attendance of witnesses and the production of reports, books, papers, and documents for any inquiry. The commission stewards have the power to administer oaths and examine witnesses and shall submit to the commission a written report of every such inquiry made by them.
2. Cancel trifecta. The stewards have the authority to cancel trifecta wagering at any time they determine an irregular pattern of wagering may occur or has occurred at any time they determine that the conduct of the race would not be in the interest of the regulation of the parimutuel wagering industry or in the public confidence in racing. The stewards shall cancel trifecta wagering any time there are fewer than eight betting interests unless there is a late scratch in which there shall be a cancellation if there are fewer than seven betting interests.
3. Form reversal. The stewards shall take notice of any marked reversal of form by any horse and shall conduct an inquiry of the horse's owner, trainer, or other persons connected with said horse including any person found to have contributed to the deliberate restraint or impediment of a horse in order to cause it not to win, be likely to cause it not to win, finish as near as possible to first, or be likely to finish as near as possible to first.
4. Fouls.

- a. Extent of disqualification. Upon any claim of foul submitted to them, the stewards shall determine the extent of any disqualification and shall place any horse found to be disqualified behind the others in the race with which it interfered or may place the offending horse last in the race.
 - b. Coupled entry. When a horse is disqualified under this section and where that horse was a part of a coupled entry and, where, in the opinion of the stewards, the act which lead to the disqualification served to unduly benefit the other part of the coupled entry, the stewards may, at their discretion, disqualify the other part of the entry.
5. Protests and complaints. The stewards shall investigate promptly and render a decision in every protest and complaint made to them. They shall keep a record of all protests and complaints and any rulings made by the stewards and file such reports daily with the commission.
- a. Protests involving fraud. Protests involving fraud may be made by any person at any time to the stewards.
 - b. Protests not involving fraud. Protests, except those involving fraud, may be filed only by the owner of a horse or the owner's authorized agent, the trainer, or the jockey of the horse in the race over which the protest is made. The protest must be made to the clerk of the scales or to the stewards before the race is declared official. If the placement of the starting gate is in error, no protest may be made thereon, unless the protest is entered prior to the time the first horse enters the gate.
 - c. Protest to clerk of scales. A jockey who intends to enter a protest to the clerk of scales following the running of any race, and before the race is declared official, shall notify the clerk of scales of this intention immediately upon the arrival of the jockey at the scales.
 - d. Prize money of a protested horse. During the time of determination of a protest, any money or prize won by a horse protested or otherwise affected by the outcome of the race must be paid to and held by the horseman's accountant until the protest is decided.
 - e. Protest in writing. A protest, other than one arising out of the actual running of a race, must be in writing, signed by the complainant, and filed with the stewards one hour before post time of the race out of which the protest arises.

- f. Frivolous protests. No person or licensee shall make a frivolous protest nor may any person withdraw a protest without the permission of the stewards.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-11. Racing secretary.

1. General authority. The racing secretary is responsible for setting the conditions for each race of the meeting, regulating the nomination of entries, determining the amounts of purses and to whom they are due, and the recording of racing results.
2. Conditions. The racing secretary shall establish the conditions and eligibility for entering the races of the meeting and cause them to be published to owners, trainers, and the commission. Unless otherwise provided by the conditions, the winner of a certain sum means the winner of a single race of that sum. Corrections to the conditions must be made within twenty-four hours of publication.
3. Posting of entries. Upon the closing of entries each day, the racing secretary shall post a list of entries in a conspicuous location in the racing secretaries' office and furnish that list to local newspapers and radio and television stations.
4. Stakes and entrance money records. The secretary is caretaker of the permanent records of all stakes, entrance moneys, and arrears paid or due in a race meeting and shall keep permanent records of the results of each race of the meeting.
5. Record of racing. The racing secretary, no later than the day following each race, shall attach or endorse on the registration certificate of each horse winning in any race the fact of that winning performance and the distance, the date of the race, and the type of conditions of the race.
6. Record of jockeys. Upon entry of a horse in a race, the owner or trainer shall furnish to the racing secretary the name of the jockey who will ride the entry no later than scratch time of the date of the race unless unusual circumstances prevail and the stewards grant contrary permission, but in no event not later than forty-five minutes before post time.
7. Handicapping. The racing secretary, or a handicapper assigned by the racing secretary, shall assign the weight to be carried by each horse in a handicap, according to the following table, when weights are not stated in the condition of the race:

a. Scale of weights for age:

Distance	Age	Jan./	Mar./	May	June	July	Aug.	Sept.	Oct.	Nov./
		Feb.	Apr.							Dec.
One-half Mile	2						105	108	111	114
	3	117	119	121	123	125	126	127	128	129
	4	130	130	130	130	130	130	130	130	130
	5 & up	130	130	130	130	130	130	130	130	130
Six Furlongs	2						102	105	108	111
	3	114	117	119	121	123	125	126	127	128
	4	129	130	130	130	130	130	130	130	130
	5 & up	130	130	130	130	130	130	130	130	130
One Mile	2							96	99	102
	3	107	111	113	115	117	119	121	122	123
	4	127	128	127	126	126	126	126	126	126
	5 & up	128	128	127	126	126	126	126	126	126
One Mile and a Quarter	2									
	3	101	107	111	113	116	118	120	121	122
	4	125	127	127	126	126	126	126	126	126
	5 & up	127	127	127	126	126	126	126	126	126
One Mile and a Half	2									
	3	98	104	108	111	114	117	119	121	122
	4	124	126	126	126	126	126	126	126	126
	5 & up	126	126	126	126	126	126	126	126	126
Two Miles	3	96	102	106	109	112	114	117	119	120
	4	124	126	126	126	126	125	125	124	124
	5 & up	126	126	126	126	126	125	125	124	124

b. Sex allowances. In all races except handicaps and races where the conditions expressly state to the contrary, two-year-old fillies are allowed three pounds [1.36 kilograms]; mares three-years old and upward are allowed five pounds [2.27 kilograms] before September first and three pounds [1.36 kilograms] thereafter.

8. Penalties not cumulative. Penalties and weight allowances are not cumulative unless so declared in the conditions of a race by the racing secretary.

9. Winnings.

a. All inclusive. For the purpose of the setting of conditions by the racing secretary, winnings must be considered to include all moneys and prizes won up to the time of the start of a race, including those races outside the United States. Foreign winnings must be determined on

the basis of the normal rate of exchange prevailing on the day of the win.

- b. Winnings considered from January first. Winnings during the year must be reckoned by the racing secretary from the preceding January first.
 - c. Winner of a certain sum. Winner of a certain sum means the winner of a single race of that sum, unless otherwise expressed in the condition book by the racing secretary. In determining the net value to the winner of any race, the sums contributed by its owner or nominator must be deducted from the amount won. In all stakes races, the winnings must be computed on the value of the gross earnings.
 - d. Winner's award. Unless the conditions of a race provide otherwise the entrance money, starting and subscription fees, and other contributions, shall go to the winner of the race. If for any reason a race is not run, those entrance, and starting and subscription fees must be returned to the nominators.
10. Cancellation of a race. The racing secretary has the authority to withdraw, cancel, or change any race which has not been closed. In the event the canceled race is a stakes race, all subscriptions and fees paid in connection with the race must be refunded.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-12. Paddock judge.

1. The paddock judge is in charge of the paddock and has general responsibility for the saddling and mounting of horses and for the equipment used.
2. The paddock judge shall attempt to maintain consistency in the use of equipment on individual mounts. Duties of the paddock judge include:
 - a. Requiring that a plater be in the paddock prior to each race to ensure that all horses are properly shod.
 - b. Excluding from the paddock all those persons who have no immediate business with the horses entered in a race and report rule violations in the paddock area to the stewards.

- c. Permitting horses competing in a race to be shod in special training shoes only with the express permission of the stewards.
- d. Permitting bar plates to be used or disconnected only with the consent of the stewards.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-13. Horse identifier. The horse identifier must be present for each race and shall inspect each horse prior to its departure from the paddock to the post to confirm the horses' proper identity. The horse identifier shall report to the stewards any horse not properly identified or whose foal papers are not in conformity with these rules.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-14. Clerk of the scales. The clerk of the scales (clerk) is responsible to weigh out jockeys and their equipment before each race and to weigh in jockeys and equipment after each race. The clerk shall record and publish any weight over or under the weight appearing on the official program. The clerk upon determination that there has been a change in weight, jockey, or racing colors from those given in the official program shall note the change immediately to officials of the association for immediate dissemination to the public. The clerk shall report immediately to the stewards any violation of these rules respecting weight, weighing, or riding equipment. After each race the clerk shall advise the stewards of any underweight or overweight carried by any jockey. The clerk shall report to the stewards any other information they may require.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-15. Starter. The starter is responsible to provide a fair start for each race. The starter shall have the following duties:

1. The starter may appoint assistants, but assistants may not handle or take charge of a horse in the starting gate except by the express permission of the starter.
2. The starter shall report violations of these rules occurring in the starting of a race to the stewards.

3. When a door of the starting gate fails to open as the starter dispatches the field, it shall be reported immediately to the stewards by the starter. The stewards shall post the inquiry sign and have the announcer alert the public to hold all mutuel tickets. The stewards shall then decide if the gate or gates failed to open when the starter dispatched the field and rule accordingly.
4. The starter shall supervise the schooling of horses for the starting gate. The starter may require schooling for any horse the starter determines not to be sufficiently trained in starting gate procedures to ensure a fair start. The starter shall maintain a schooling list of horses designated for training, a copy of which must be accessibly posted in the office of the racing secretary.
5. The starter shall maintain a list of every horse ineligible to start because of a determination by the starter that the horse is not sufficiently schooled for starting or is otherwise unable or unfit to start a race.
6. The starter and the starter's assistants are prohibited from striking a horse or using abusive language to a jockey.
7. The starter shall ensure that the horses take their positions in the starting gate in order of post position from the inside rail out.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-16. Timer. Each association shall provide where necessary for each race an official timer who shall occupy the timers' stand or other appropriate place to observe the running of each race. The timer shall record permanently the time elapsed between the start and finish of each race.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-17. Patrol judges. At least three patrol judges shall observe the running of the race and report information concerning the running of the race to the stewards. Each patrol judge shall have a duty station assigned by the stewards.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-18. Stewards serve as placing judges. It is the duty of the stewards to determine the winner of each race and the order of finish for each of the remaining horses in the race. In case of a difference of opinion among the stewards, the majority opinion shall govern. In determining places at the finish of a race, the stewards shall consider only the noses of the placing horses. The stewards may correct errors in their determination of the placing of horses at the finish before the display of the official sign, or if the official sign has been displayed in error, after that display. If the display is in error, no person is entitled to any proceeds of the parimutuel pool on account of such error. At the conclusion of each racing day, the stewards shall file with the commission a copy of the official placement of horses with the names of the first four horses finishing in each race of that day. The stewards shall provide other racing information within their observation or records upon the request of any official of the association or the commission. The stewards' decision on the race is final.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-19. Association veterinarian. The association veterinarian or the association veterinarian's assistants shall give every horse entered in a race an examination on the day of the race to determine the horse's general fitness. During the examination all bandages must be removed by the groom and the horse may be exercised outside its stall to permit the examiner to determine the condition of the horse's legs and feet. The examining veterinarian shall report any unsoundness in a horse to the stewards. The association veterinarian shall inspect all of the horses in a race at the starting gate and after the finish of a race shall observe the horses upon their leaving the track. The association veterinarian is responsible to the commission veterinarian.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-20. Jockey room custodian and valet attendants.

1. The jockey room custodian has the following duties:
 - a. Maintain order, decorum, and cleanliness in the jockey and scale rooms.
 - b. Assist the clerk of the scales as required.
 - c. Ensure that no person other than representatives of the commission, association, news media, jockey's guild, and jockey room attendants are admitted to the jockey room on

a racing day except by permission of the stewards and ensure that no unauthorized personnel is permitted in the jockey room after the final race on racing day.

- d. Supervise the care and storage of racing colors.
- e. Supervise the jockey attendants and arrange their rotation among jockeys for the weighing out.
- f. Ensure that jockeys are neat in appearance and properly attired when they leave the jockey room to ride in a race.
- g. Report any rule violation within the jockey room to the stewards.
- h. Assign to each jockey a locker capable of being locked for the use of the jockey in storing clothing, equipment, and personal effects.

2. Valet attendants have the following duties and restrictions:

- a. No person or licensee except a valet-attendant provided by the association may assist jockeys in weighing out and weighing in.
- b. No jockey room attendant or jockey valet on duty may make a bet on any race nor place a bet for another person.
- c. No attendant or valet may mingle with the public or loiter in public areas of the association premises during racing hours.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-04 PERMITS AND REQUIREMENTS

Section

69.5-01-04-01	General Requirements
69.5-01-04-02	Commission Offices
69.5-01-04-03	Ejections
69.5-01-04-04	Racing Surfaces
69.5-01-04-05	Racing Times
69.5-01-04-06	Number of Races Per Performance
69.5-01-04-07	First Race Time Approval
69.5-01-04-08	Appointment of Racing Officials and Department Heads
69.5-01-04-09	Horsemen's Bookkeeper

69.5-01-04-10	Condition Book
69.5-01-04-11	Photofinish Equipment
69.5-01-04-12	VTR and VCR Equipment
69.5-01-04-13	Photograph Posted
69.5-01-04-14	Starting Gate
69.5-01-04-15	Distance Poles
69.5-01-04-16	Detention Enclosure
69.5-01-04-17	Grounds' Facilities, Water, and Sewage
69.5-01-04-18	Safety and Medical Aid
69.5-01-04-19	Helmets
69.5-01-04-20	Fire Protection
69.5-01-04-21	Stable and Ground Security
69.5-01-04-22	Electric Timing Device
69.5-01-04-23	Judge's Communication

69.5-01-04-01. General requirements. Every license to hold a meeting is granted upon the condition that the licensee shall accept, observe, and enforce these rules. Furthermore, it is the duty of each officer, director, and every official and employee of said licensee to observe and enforce these rules.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-02. Commission offices. Each association shall furnish for the commission's use on the association grounds reasonable office space for the commission's use. The office is accessible to the public.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-03. Ejections. Associations are obligated to honor commission exclusions and to eject immediately any person found on association grounds who is under exclusion status by the commission and to report same to the commission. Whenever any association ejects any person from the premises, it shall report the ejection to the commission.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-04. Racing surfaces. Each racing association shall attempt to provide the following:

1. Training and racing surfaces whose construction, elevation, and surfaces have received commission approval as safe and human; provided, however, that upon proof of economic hardship and a bona fide effort to comply, exemptions to this section may be granted by the commission. Application for exemption must be in writing with notice to all interested parties;
2. Adequate and proper equipment to maintain said surfaces;
3. Sufficient trained personnel to properly operate said equipment; and
4. Daily records on the condition of each training and racing surface which must be open for public inspection.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-05. Racing times. A permitted association shall conduct horse racing between the hours of nine a.m. and twelve midnight, unless otherwise authorized by the commission.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-06. Number of races per performance. Unless otherwise permitted by the commission, no association may offer more than twelve races per performance on any one day.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-07. First race time approval. The association shall notify the commission of the post time of the first race of each performance.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-08. Appointment of racing officials and department heads. Each association shall submit to the commission at least thirty days prior to the opening day of a meeting, a complete list of the association racing officials set forth in chapter 69.5-01-03 and department heads appointed for the meeting. No person may hold any appointment for a race meeting unless approved by the commission after a

determination that the appointee is qualified to perform the appointee's assigned duties, and is not prohibited by any law or rule of this state from participating in racing.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-09. Horsemen's bookkeeper.

1. Each association shall maintain a separate bank account, to be known as the "horsemen's account", with at all times sufficient funds in such account to pay all money owing to horsemen in regard to purses, stakes, rewards, claims, and deposits. Deposits and withdrawals from this account are at all times subject to audit by the commission, and the horsemen's bookkeeper in charge of such account must be bonded in an amount determined by the commission.
2. All portions of purse money must be made available to earners thereof within forty-eight hours, Sundays excluded, after the result of the race in which such money was earned has been declared official; except, however, when the stewards or commission shall order money withheld until final adjudication of a dispute determining which persons are entitled to such money in dispute.
3. No portion of purse money other than jockey fees may be deducted by the association for itself or for another, unless so requested in writing by the person to whom such purse moneys are payable, or such person's duly authorized representative. Irrespective of whether requested, the horsemen's bookkeeper shall mail to each owner a duplicate of each record of a deposit, withdrawal, or transfer of funds affecting such owner's racing account at the close of each race meeting.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-10. Condition book. The association, at least one week prior to the opening of each meeting, shall furnish to the commission a copy of its first condition book. Additional condition books or sheets must be furnished to the commission as soon as published.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-11. Photofinish equipment. Each association shall utilize photofinish equipment to assist the stewards in determining the order of finish of every race.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-12. VTR and VCR equipment. Every association shall furnish for each race a complete video tape recording of the race. The equipment and tape must be of a reliability and quality approved by the commission and capable of replay within one minute after the end of any race. The association shall safeguard the tapes of any race in which were lodged objections, inquiries, or reports of accidents for one year from the date of the tape and make such tapes available for inspection by officials of the association and the commission.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-13. Photograph posted. At least one photograph or television picture of the finish of each race must be posted conspicuously and promptly after each race.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-14. Starting gate. A starting gate approved by the commission must be used in starting all races. Each association shall maintain at least one operable starting gate during racing hours. The association shall also make at least one starting gate, along with adequate personnel, available for schooling for two hours each day during training hours, exclusive of nonrace days.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-15. Distance poles. Each association shall maintain distance poles as follows:

- | | |
|------------|-----------------|
| 1/4 poles | Red and white |
| 1/8 poles | Green and white |
| 1/16 poles | Black and white |

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-16. Detention enclosure. Each association shall maintain a designated detention area or enclosure for use by the commission in securing from horses that have run a race, samples of urine, saliva, blood, or other bodily substances or tissues for chemical analysis. The enclosure must include a wash rack, commission veterinarian office, a walking ring, and at least eight stalls each equipped with a window sufficiently large to allow the taking of the samples to be witnessed from outside the stall.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-17. Grounds' facilities, water, and sewage.

1. Each association shall provide and maintain adequate and sanitary drinking water and toilets for all licensees, patrons, and other persons invited to the track.
2. When a race meeting is in progress, or scheduled for opening, the association shall provide systematic and effective insect control against flies, mosquitos, and other insects at all times.
3. Each association shall ensure that horses are stabled in individual box stalls with separate feeding and watering facilities; that the stables and immediate surrounding area are maintained in approved sanitary condition at all times; that satisfactory drainage is provided; and that manure and other refuse is kept in separate boxes or containers at locations distant from living quarters and promptly and properly removed.
4. Management is responsible that paddocks, starting gates, and other equipment subjected to contact by different animals be kept in a clean condition and free of dangerous surfaces.
5. Management shall provide isolation facilities for horses ordered isolated by the association or commission veterinarian. Approved sanitary measures must be instituted in cooperation with the state livestock sanitary board, and the commission must be kept informed.
6. Each association shall provide a conveniently located receiving area for the use of arriving horses during the meeting. The area may have adequate stable room and facilities, hot and cold water, and stall bedding. The

association shall employ attendants to operate and maintain, in clean and healthy condition, the receiving area.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-18. Safety and medical aid. Each association shall maintain on the grounds during every day that its track is open for racing or exercising, an ambulance for humans, equipped according to prevailing standards and manned by medical doctors, paramedics, or other personnel trained to operate them.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-19. Helmets. The association may not allow any person to exercise any horse on association grounds unless that person is wearing a protective helmet of a type approved by the commission.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-20. Fire protection. The association, in accordance with applicable state fire codes, shall prohibit, for the protection of persons and property from fire damage, the following:

1. Smoking in horse stalls, feedrooms, and under the sheds.
2. Sleeping in feedrooms or stalls.
3. Open fires and oil or gasoline burning lanterns or lamps in the stable area.
4. Leaving electrical appliances unattended or in unsafe proximity to walls, beds, or furnishings.
5. Keeping inflammable materials, including cleaning fluids or solvents, in the stable area.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-21. Stable and ground security. Each association shall secure the peaceful use of its grounds and stable areas to licensees and prohibit the use of the grounds to persons not authorized

by license or invitation of the association. In this regard, the following rules apply:

1. The stable area must be properly fenced as defined by the commission and admission to the stables permitted only in accord with the rules of the commission. No person may be admitted to the stable area except:
 - a. Licensees whose duties require them to be in the area and who are wearing a photographic identity badge issued by the commission and recorded in a permanent record maintained by the commission.
 - b. Temporary passholders.
 - (1) A temporary written pass will be issued by the chief of security or the chief of security's designee for the stable area, for a maximum period of forty-eight hours and a copy of the pass will be retained by the chief of track security. The form of the temporary pass must be approved by the commission.
 - (2) A temporary pass is available only to guests of the association or the commission. The term "guests" does not include any person brought to the stable area for the purpose of working in any capacity requiring a commission license except for the individuals who deliver and accompany horses to association premises on nights and weekends when the commission offices for regular licensing are closed.
 - (3) A temporary pass to enter the stable area is not an occupational license and does not permit the holder to enter a horse in a race or in any other way participate in racing.
 - (4) A temporary pass must contain at least:
 - (a) The bearer's name, address, and employer;
 - (b) The bearer's signature;
 - (c) The date and time of issuance;
 - (d) The date and time of expiration;
 - (e) The reason for issuing the pass;
 - (f) The signature of the chief of security or the chief of security's designee; and
 - (g) A pass number showing the sequence in which the pass was issued.

2. The association through its own employees or persons retained by the association shall maintain twenty-four-hour-a-day security service throughout the stable enclosure during the time horses occupy the grounds, employing such electronic, telephonic, television, and human guard personnel as are required to adequately police the grounds. Upon request, the association shall furnish to the commission a list of personnel employed in security services, giving for each such person, the person's address, employer, employer address, duties, duty station, and areas supervised.
3. The director of security of each association shall submit to the stewards a written report describing every arrest or completed incident of security investigation or real or suspected rule violation including with each such person mentioned as charged in the report, their name, the charges against such person, and such person's present whereabouts.
4. Each association shall maintain current records relating to security in permanent form available for commission inspection for a period of two years from the completion of the record and shall provide at the commission's request such additional information related to track security as the commission may require. All such records must be governed by open record provisions of state law.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-22. Electric timing device. Any electric timing device used by the association must be approved by the commission.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-23. Judge's communication. The association shall provide adequate communication between the stewards and each judge's station and necessary track officials.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-05 LICENSEES

Section	
69.5-01-05-01	Licenses Required
69.5-01-05-02	License Fees
69.5-01-05-03	License Acceptance
69.5-01-05-04	Recommendation by Stewards
69.5-01-05-05	Unlicensed Employees
69.5-01-05-06	Application Endorsement
69.5-01-05-07	Applications Recommended by Track Security
69.5-01-05-08	Temporary License Certificate
69.5-01-05-09	Ineligible License Applicants
69.5-01-05-10	Duration of License
69.5-01-05-11	Workers' Compensation
69.5-01-05-12	Best Effort
69.5-01-05-13	Prohibited Practices
69.5-01-05-14	Alcohol and Drug Testing
69.5-01-05-15	Veterinarians
69.5-01-05-16	Owners - Business Corporations
69.5-01-05-17	Owners - General Partnership
69.5-01-05-18	Owners - Limited Partnership
69.5-01-05-19	Applicable Horsemen's Organization
69.5-01-05-20	Stable Names
69.5-01-05-21	Leases
69.5-01-05-22	Racing Colors
69.5-01-05-23	Registration of Horses
69.5-01-05-24	Transfer of Horses
69.5-01-05-25	Change of Trainer
69.5-01-05-26	Prohibited Acts
69.5-01-05-27	Trainers
69.5-01-05-28	Authorized Agent
69.5-01-05-29	Jockeys and Apprentice Jockeys
69.5-01-05-30	Jockey Agent

69.5-01-05-01. Licenses required. Every person participating in horse racing, whether as permitholder, holder of any interest in a permit, association employee, concessionaire and contractholder and the owner or general manager of same, parimutuel, or racing official, and all other persons, except concessionaire employees, whose duties require them to be present on association premises during racing hours, or to regularly visit such premises during racing hours, are required to have an occupational license from the commission authorizing them to be employed on the licensed premises and to practice their business, profession, or skill. License applicants may be required to furnish to the commission a set of fingerprints and a recent photograph and may be

required to be refingerprinted or rephotographed periodically as the commission may require.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-02. License fees. Each application for a license required by this chapter, or its renewal, must be accompanied by the payment of an annual fee according to the following schedule:

1. Association license \$100.00 + \$10.00 per day of racing.
2. Trainer \$25.00 + \$5.00 for each horse owned over 3 horses in number.
3. Owner, individual \$25.00 + \$5.00 for each horse owned over 3 horses in number.
4. Owner-trainer (combined) \$50.00 + \$5.00 for each horse owned over 3 horses in number.
5. Multiple owner \$50.00 + \$5.00 for each horse owned over 3 horses in number.
6. Owner (partnership, corporation) ... \$50.00
7. Jockey/driver \$100.00
8. Jockey apprentice \$25.00
9. Jockey agent \$25.00
10. Authorized agent \$10.00
11. Stable name \$10.00
12. Parimutuel manager \$10.00
13. Auditor \$10.00
14. Calculator operator \$10.00
15. Totalizer operator \$10.00
16. Track tote fee \$10.00
17. Parimutuel employee \$10.00
18. Racing secretary \$25.00
19. Association veterinarian \$100.00
20. Assistant veterinarian \$25.00

21. Chief of security	\$10.00
22. Director of racing/speed	\$10.00
23. Horse identifier	\$10.00
24. Paddock judge	\$10.00
25. Patrol judge	\$10.00
26. Racing secretary assist	\$10.00
27. Steward	\$25.00
28. Starter	\$10.00
29. Track superintendent	\$10.00
30. Custodian jockey room	\$10.00
31. Clerk of scales	\$10.00
32. Handicapper	\$10.00
33. Placing judge	\$10.00
34. Patrol judge	\$10.00
35. Timer	\$10.00
36. Announcer	\$10.00
37. Exercise person	\$10.00
38. Groom	\$10.00
39. Valet	\$10.00
40. Attendant	\$10.00
41. Photo manager	\$10.00
42. Outrider	\$10.00
43. Pony person	\$10.00
44. Tip sheet seller	\$10.00
45. Gate admission seller	\$10.00
46. Gate attendant	\$10.00
47. Hot walker	\$10.00

- 48. Office personnel \$10.00
- 49. Photo employee \$10.00
- 50. Security staff \$10.00
- 51. Stable foreman \$10.00
- 52. Others not listed (e.g. track \$10.00
 maintenance)
- 53. Duplicate license issued to \$10.00
 same person or entity during
 same year

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-03. License acceptance. Acceptance of the license or permit from the commission by any permittee or licensee is deemed a consent to search and inspection by the commission pursuant to these rules, and to the seizure of any prohibited medication, drugs, paraphernalia, or devices.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-04. Recommendation by stewards. The commission may not issue licenses to applicants previously not licensed in this state for the following occupations listed herein, except upon prior recommendation by the stewards at the meeting: owners, trainers, jockeys, jockey agents, blacksmiths, apprentice blacksmiths, veterinarians, veterinarian assistants, horse dentists, exercise persons, stable agents, and authorized agents. The stewards, for the purpose of determining recommendation under this section, may add to their membership a representative of the association, of the horsemen, of the blacksmiths, or of the jockeys, or the commission veterinarian. The stewards may require any applicant to support such application by endorsers who may be called to testify as to the applicant's qualifications for license. The commission may renew licenses without approval of the stewards.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-05. Unlicensed employees. The employment at any association premises of any unlicensed person by an association, owner, trainer, or other licensee is prohibited. Upon discharge of any licensed person by any other licensee or permit holder for violation of rules or laws within the jurisdiction of the commission, the employer must report that fact in writing to the commission, including the name and occupation of the discharged licensee and the reasons for the discharge.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-06. Application endorsement. The commission may not issue any license to any association employee or to any concessionaire employee unless the application includes the prior endorsement of the employee's department head.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-07. Applications recommended by track security. All applicants for licenses not described in the foregoing sections, and including stable and track facility employees, must submit with their application to the commission the prior recommendation of the supervisor of track security.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-08. Temporary license certificate.

1. A temporary horse owner's license certificate may be issued in emergency situations (i.e., owner out of country or seriously ill).
2. Upon submission to the commission of an affidavit setting forth the emergency by the owner's trainer, the stewards may approve the issuance of a temporary license certificate to an owner. Such temporary license certificate will be valid for a maximum of thirty calendar days from the date of issue.
3. Failure to obtain a permanent license within the designated time may result in the automatic revocation of the owner's license eligibility, and may result in a fine or suspension or both for the affiant that has failed to comply.

4. Purses may not be paid to the owner of any horse holding a temporary license certificate pursuant to the provisions of this section. Such payments are only permitted after the individual has obtained a permanent license.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-09. Ineligible license applicants. The commission may deny or revoke the license of any applicant or holder who:

1. Has been convicted of any of the offenses listed in this subsection, which the commission hereby determines have a direct bearing upon the applicant's or holder's ability to serve the public and present a hazard to the reputation and conduct of racing and parimutuel wagering, or may reasonably undermine the public confidence in the integrity of racing:
 - a. Offenses related to drugs, including, without limitation, controlled substances;
 - b. Offenses related to gambling or gaming, including bookmaking;
 - c. Offenses related to arranging the outcome of a race, or to any fraud or deception while participating in racing or parimutuel wagering activities;
 - d. Offenses related to representations made about any horse, ownership interest in a horse, or lease or sale of any horse;
 - e. Any felony; or
 - f. Any other offense declared by the commission to have a direct bearing upon the applicant's or holder's ability to serve the public in any specified occupation, trade, or profession which is the subject of the commission's jurisdiction.
2. Is not eighteen years of age except that persons at least sixteen years of age may be employed on association premises in stables, parking lots, kitchens, and in maintenance and administrative offices, but may never be allowed in the betting areas where betting is being conducted;
3. Has demonstrated a lack of financial responsibility in transactions related to racing or parimutuel wagering;

4. Is ineligible to participate in racing in another state or racing jurisdiction whose racing regulatory agency is recognized by and reciprocates in the actions of this state;
5. Seeks application for more than one occupational license, if in the determination of the stewards, the holding of the two licenses would subject the applicant to a conflict of interest in those two licensed activities;
6. Is employed in any part-time or full-time employment with a government or private employer in any work in which a conflict exists with the interests and objectives of a licensed employment;
7. Has been denied patron privileges by order of the commission and has not been reinstated;
8. Supplies false information in the application; or
9. Is not of good moral character.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-10. Duration of license.

1. Licenses issued by the commission must be for a period of one year or such other period of time greater than one year as permitted by the commission.
2. The commission may also issue a license good for one racing season at a parimutuel facility.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-11. Workers' compensation. All owners and trainers shall carry workers' compensation insurance covering all their employees. This paragraph is intended to include all individuals employed by owners and trainers involved in the training and racing of horses.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-12. Best effort. All licensed personnel are expected to give their best efforts to win in all races in which they participate, and any instructions or advice to the jockey, or any riding or handling of their mounts other than for the purpose of winning are forbidden.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-13. Prohibited practices. The following practices by licensees are prohibited:

1. Giving or offering, directly or indirectly, a bribe in any form to any person licensed by the commission to violate these rules or the laws of this state related to racing.
2. Soliciting or offering to accept, directly or indirectly, a bribe in any form by a person licensed by the commission to violate these rules or the laws of this state related to racing.
3. Failing as a licensee to report any bribe or solicitation as in subsections 1 and 2.
4. Soliciting by any licensee except the association of bets by the public.
5. Improperly influencing or attempting to improperly influence the results of a race or combining with any person or conspiring to combine with any person to improperly influence or attempt to improperly influence the results of a race.
6. Entering or starting a horse known or believed to be ineligible or disqualified.
7. Offering or receiving money or other benefit for withdrawing a horse from a race.
8. Making a wager for a jockey by any person except the jockey's owner or trainer.
9. An owner or trainer making a wager for a jockey on a horse other than that ridden by the jockey. This may not be construed to include bets on another horse in combination with such owner's or trainers own in multiple wagering bets.
10. Offering or giving a jockey money or other benefit concerning a race, except by the owner or trainer of the horse to be ridden.

11. Possessing any electrical or mechanical device designed to increase or decrease the speed of a horse during a race, other than an ordinary riding whip.
12. Bookmaking, which is the taking or receiving of a wager upon the result of any horse race of which betting is being conducted by any association licensed by the commission, except through the regular betting windows and facilities provided by the association.
13. Purchasing any ticket or share of a parimutuel pool for another, for hire or anything of value.
14. The giving under oath of any false statement or the refusing to testify after proper notice to the commission about any matter regulated by the commission, except in the exercise of a lawful privilege.
15. Subjecting an animal to cruel and inhumane treatment by failing to supply it with adequate food, water, medical treatment, exercise or shelter, or by neglect or intentional act cause a horse to suffer unnecessary pain.
16. Permitting a horse to start a race unless the horse has been officially tattooed for identification under the upper lip.
17. Giving false, misleading, or inaccurate information about a horse's performance for publication in a printed program or racing publication.
18. In addition to any of the foregoing prohibited practices, any person who commits an act on the grounds of any parimutuel facility which is patently contrary to the best interest of racing or which is in violation of a criminal statute of the United States or of this state and classified as a felony, is subject to administrative action including license revocation, suspension, fine, or deprivation of patron privileges.
19. Disorderly or offensive conduct that breaches the public peace or use of profane, obscene, or indecent language so as to be heard by another or offer such prohibited conduct to any representative of the commission or the association.
20. Possession, carrying or exhibiting a deadly weapon, or otherwise disturbing the peace on the premises of any permittee. This rule does not prohibit the carrying of a weapon by any duly authorized law enforcement officer or licensed security personnel engaged in their duties.
21. Possessing in any parimutuel wagering area of any association any alcoholic beverage unless the beverage is purchased on the premises.

22. Possessing any equipment for hypodermic injection, any substance for hypodermic administration or any foreign substance which can be administered internally to a horse by any route, except for an existing condition and as prescribed by a veterinarian. The supply of such prescribed foreign substances shall be limited by ethical practice consistent with the purposes of this section. Notwithstanding the provisions of this subsection, any person may possess within a racetrack enclosure any chemical or biological substance for such person's own use, provided that if such chemical substance is prohibited from being dispensed by any federal law or the law of this state without a prescription, such person is in possession of documentary evidence that a valid prescription for such chemical or biological substance has been issued to that person. Notwithstanding the provisions of this subsection, any person may possess within any racetrack enclosure any hypodermic syringe or needle for the purpose of administering a chemical or biological substance to such person, provided that such person has notified the state steward:
- a. Of such person's possession of such device;
 - b. Of the size of such device; and
 - c. Of the chemical substance to be administered by such device, and has obtained written permission for possession and use from the state steward.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-14. Alcohol and drug testing.

1. Alcohol prohibition or breathalyzer test.

- a. No licensee or employee of any entity associated with the conduct of racing, while on the grounds of a licensed premises or racetrack may have a blood alcohol concentration of five one-hundredths of one percent by weight, nor may such persons be in any manner impaired by or under the influence of alcoholic beverages.
- b. Acting with reasonable cause, the stewards or a designated racing commission representative may direct any such licensee or employee to submit to a breathalyzer or intoxolizer test or of a test of such person's blood. Such licensee or employee shall, when so directed, submit to such examination. If the results thereof show a reading of five one-hundredths of one percent alcohol content or more by weight, such licensee or employee may

not be permitted to continue such licensee's or employee's duties for that day. Such licensee or employee shall also be subject to fine, or suspension, or other discipline by the stewards or the commission.

- c. For a subsequent violation such licensee or employee may be subject to procedures following positive chemical analysis, as set out in subsection 3.
- d. Any licensee who refuses to submit to such test when duly requested to submit to such blood test as set out in this section may be subject to discipline by the stewards and by the commission.

2. Drug prohibition or body fluid test.

- a. No licensee or employee of any entity associated with the conduct of racing while on the grounds of a licensed or franchised racetrack shall have present within the licensee's or employee's system any controlled substance as defined in North Dakota Century Code chapter 19-03.1 or any prescription legend drug unless such prescription legend drug was obtained directly or pursuant to valid prescription or order from a duly licensed physician who is acting in the course of such physician's professional practice.
- b. Acting with reasonable cause, the stewards or a designated commission representative may direct any such licensee or employee to deliver a specimen of urine in the presence of the track physician or subject the licensee or employee to the taking of a blood sample or other body fluids by the track physician or other duly licensed physician appointed by the commission.
- c. In such cases, the stewards or the designated commission representative may prohibit such licensee or employee from participating in the day's racing or until such time as such licensee or employee evidences a negative test result.
- d. Sufficient sample should be collected to ensure a quantity for a split sample when possible.
- e. Refusal by such a licensee or employee to provide the samples described in this section, as so directed, is a violation of these rules and shall subject such licensee or employee to sanction by the stewards or the commission.
- f. All testing must be at the expense of the commission.

3. Procedures following positive chemical analysis.

- a. For a licensee's or employee's first violation such licensee or employee may not be allowed to participate in racing until such time as a licensee's or employee's condition has been professionally evaluated by an appropriate health care professional.
 - (1) After such professional evaluation, if such licensee's or employee's condition is found by the evaluator or the commission to be nonaddictive and not detrimental to the best interest of racing, such licensee or employee will be allowed to participate in racing provided such person can produce a negative test result and agrees to further testing at the discretion of the stewards or designated commission representative to ensure unimpairment.
 - (2) After such professional evaluation, should such licensee's or employee's condition be found by the evaluator or the commission to be addictive or detrimental to the best interest of racing, such licensee or employee will not be allowed to participate in racing until such time as such person can produce a negative test result and show documented proof that such person has successfully completed a certified alcohol or drug rehabilitation program approved by the racing commission. The licensee or employee must agree to further testing at the discretion of the stewards or racing commission representative to ensure the licensee's or employee's unimpairment.
- b. For a licensee's or an employee's second violation, a licensee or an employee must be suspended and allowed to enroll in a certified alcohol or drug rehabilitation program approved by the commission, and may apply for reinstatement only at the discretion of the commission.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2.05, 53-06.2-10

69.5-01-05-15. Veterinarians.

1. Every veterinarian practicing on association premises must be:
 - a. Currently licensed by the state board of veterinary medical examiners; and
 - b. Licensed by the commission.
2. The following restrictions and duties apply to veterinarian's licensed by the commission:

- a. A licensed veterinarian practicing at any meeting is prohibited from possessing any ownership, directly or indirectly, in any horse racing during the meeting.
 - b. Veterinarians licensed by the commission as veterinarians are prohibited from placing any wager of money or other things of value, directly or indirectly, on the outcome of any race conducted at the meeting at which such veterinarians are furnishing professional service.
 - c. No veterinarian, within the association grounds, may deliver, furnish, sell, or loan any hypodermic syringe, needle, or other injection device, or without limitation, any drug, narcotic, controlled substance, or other prohibited substance, to any other person within the grounds of an association where racehorses are stabled unless with written permission of the stewards.
 - d. The use of other than single use disposable syringes and infusion tubes on association premises is prohibited. Whenever a veterinarian has used a hypodermic needle or syringe, such veterinarian shall destroy the needle and syringe and remove it from the association premises.
3. A licensed veterinarian who prescribes or administers any medication or treatment to a horse which the veterinarian considers could affect the racing condition of the horse shall furnish immediately to the horse's trainer and to the stewards a written statement setting forth the name of the horse, its owners, the type of drug or medication prescribed or administered, and the date of the administration or prescription.
 4. Every licensed veterinarian practicing on association premises shall maintain records showing all medications purchased or otherwise obtained, and for each horse treated, the name of the horse and its owner, the medication, its method of administration, and its date of administration. Veterinarians shall retain duplicate copies of bills or statements to trainers or owners which must be retained for at least three years and made available to the commission upon request.
 5. Each veterinarian shall report immediately to the stewards and the commission veterinarian any illness in a horse entrusted into the veterinarian's care presenting unusual or unknown symptoms.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.1-05, 53-06.1-10

69.5-01-05-16. Owners - Business corporations. The following duties and restrictions apply to profit corporations owning or having any interest in a horse governed by the commission:

1. The corporation must be duly licensed and authorized to do business with this state. A copy of the certificate of incorporation must be attached to the corporation's application to the commission. The fee for each corporation licensed hereunder is one hundred dollars.
2. In a corporation the following individuals must be licensed by the commission:
 - a. The chief executive officer and all other corporation officers.
 - b. All members of the board of directors.
 - c. All stockholders owning a beneficial interest of five percent or more. For purposes of all sections in this title, beneficial interest includes all direct and indirect forms of ownership or control, voting power, or investment power, held through any contract, lien, lease, partnership, stockholding syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.
3. Any and all changes in either the corporation structure or the respective interest of stockholders, as described in subdivision c of subsection 2, must be notarized, promptly filed with the commission, and a copy sent to the applicable horsemen's organization.
4. A corporation, in lieu of the chief executive officer, shall appoint a racing manager or an authorized agent, or both, for purposes of entry, scratches, and the signing of claims slips among other obligations.
5. The commission may deny, suspend, or revoke the licenses of a corporation in which a beneficial interest includes or involves any person or entity which would be, or is, ineligible in any respect, such as through character, moral fitness, or any other criteria employed by the commission to be licensed as an owner or to participate in racing, regardless of the percentage of ownership interest involved.
6. A corporation must have on file with the commission a copy of the articles of incorporation. A corporation must also have on file with the commission, and must provide a copy of same to the racing secretary's office attached to the registration papers, or eligibility certificate, and a copy to the applicable horsemen's organization a notarized statement

signed by the chief executive officer of the corporation agreeing to represent the entire ownership and be responsible for the corporation's horses. Such responsibility does not include the responsibility of the trainer imposed by subsection 2 of section 69.5-01-05-26 in connection with the condition of the horse unless such chief executive officer is also the trainer.

7. Any stockholder holding a beneficial interest of five percent or more of a corporation shall, in addition to being licensed, list any interest in all racing horses in which such stockholder owns any beneficial interest.
8. All horses owned by a corporation must race in the name of the corporation or in the name of the chief executive officer with a designation "(C)" following the name.
9. The commission or the stewards shall review the ownership of each horse entered to race and ensure that each registration certificate or eligibility certificate is properly endorsed by the transfer or to the present owners. The commission or stewards, or both, may determine the validity for racing purposes of all liens, transfers, and agreements pertaining to ownership of a horse, and may call for adequate evidence of ownership at any time. The commission or stewards, or both, may declare ineligible to race any horse, the ownership of control of which is in question.
10. For purposes of this section only, "ownership" means any individual person or entity required to be licensed as an owner pursuant to these rules and, in the instance of corporations, individuals, or entities possessing an aggregate commonality of ownership of twenty-five percent interest in any of the respective horses provided, however, that when a trainer enters two or more horses in a stakes, handicap, futurity, or other special event under beneficial separate ownerships, the horse, at the request of the association, and with the approval of the commission or stewards, may be permitted to race as a separate wagering entity.
11. If the race is split in two or more divisions, horses in an "entry" must be seeded in separate divisions insofar as possible, but the divisions in which they compete, and post position, must be determined by lot.
12. The corporation stockholders owning less than five percent of the stock of a corporation need not be licensed, however, a list of all such stockholders must be supplied to the commission and the applicable horsemen's organization by the corporation annually. Without limitation, such list must include the stockholder's name, percentages owned, addresses, social security number, date of birth, and such other information as the commission may require. Such stockholders

need not be licensed and will not have access to the backstretch, to the paddock area, or to the winner's circle. Such stockholders may be required to submit additional information as requested by the commission, which may include a release for confidential information and submission of fingerprint cards, and the commission may assess costs, as required for criminal history checks. Such information must be supplied to the commission within thirty days of the date of the request. Copies of all such requests and responses must be furnished to the applicable horsemen's organization.

13. The full nature and extent of all beneficial interest must be disclosed. The list must include the names of all such individuals and entities, the nature of their relationships, and the exact nature of their beneficial interests.
14. Disclosure of ownership must be made when registering each horse with the racing secretary upon arrival on the grounds of any permit holder, but no less than forty-eight hours prior to entry and must be revised immediately upon any subsequent change in such ownership.
15. Such disclosure, together with all written agreements and affidavits setting out oral agreements, pertaining to the ownership of or rights in and to a horse, must be attached to the registration certificate for such horse and filed with the racing secretary, who is responsible for the care and security of such papers while such horses pertaining thereto are located on the permittee's grounds.
16. Such disclosure is made for the benefit of the public and all documents pertaining to the ownership or lease of a horse filed with the commission shall be available for public inspection, as provided by law.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-17. Owners - General partnership. The following duties and restrictions apply to general partnerships owning or having an interest in a horse governed by the commission and these rules:

1. A copy of a certificate of authority must be attached to the application filed with the commission. Each partner in a general partnership shall obtain a license. The license fee for each partner is one hundred dollars. The commission will deny, suspend, or revoke the license of any partnership in which a member whose interest is qualified or limited by rights or interests held or controlled by any individual or entity which would be ineligible to be licensed as an owner or to participate.

2. A partnership must have on file with the commission, and must have a copy of same attached to the registration certificate on file in the racing secretary's office, an agreement whereby one member of the partnership shall be designated to be responsible for each horse. Such responsibility does not include the responsibility of the trainer imposed by subsection 2 of section 69.5-01-05-26 in connection with the condition of the horse, unless the responsible person under the agreement is also the trainer. This agreement must be notarized, and must be signed by all partners, and a copy sent to the jockey club.
3. An authorized agent must be appointed to represent the partnership in all matters and be responsible for all stakes, forfeits, powers of entry, scratches, signing of claims slips, and other obligations. The authorized agent may also be a partner.
4. The commission or the stewards, or both, shall review the ownership of each horse entered to race and ensure that each registration certificate or eligibility certificate is properly endorsed by the transferor to the present owners. The commission or stewards, or both, may determine the validity for racing purposes of all liens, transfers, and agreements pertaining to ownership of a horse and may call for adequate evidence of ownership at any time. The commission or stewards, or both, may declare ineligible to race any horse, the ownership or control of which is in question.
5. Any alteration in a partnership structure or percentages must be reported promptly in writing and notarized, and signed by all members of the partnership and filed with the commission and sent to the applicable horsemen's organization.
6. Any owner who is a member of a partnership shall list all horses in which such owner owns an interest whether whole or part.
7. All horses owned by a partnership must race in the same name with a designation "(P)" following the name.
8. For the purpose of this section only, "ownership" must be construed to mean any individual person or other entity required to be licensed as an owner pursuant to these rules and in the instance of a partnership, individual persons, or other entities possessing a commonality of interest in each of the respective horses; provided, however, that when a trainer enters two or more horses in a stakes, handicap, futurity, or other special event under beneficial separate ownerships, the horses, at the request of the racetrack operator and with the approval of the commission or stewards, may be permitted to race as separate wagering entities. If the race is split in two or more divisions, horses in an "entry" must be seeded in

separate divisions insofar as possible, but the divisions in which they compete and the post positions must be determined by lot.

9. A licensed member of a partnership may not have an interest in more than one horse in any race unless that horse is coupled, except by permission of the stewards.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-18. Owners - Limited partnership. The following duties and restrictions apply to limited partnerships owning or having any interest in a horse governed by the commission and these rules:

1. A copy of the partnership certificate of authority must be attached to the application filed with the commission. A limited partnership must supply to the commission and the jockey club certified copies of their proof of compliance with filing and registration requirements as required by law.
2. a. The general partners in a limited partnership must be licensed by the commission and so must any member of the limited partnership with a beneficial interest of five percent or more of the limited partnership. It is the responsibility of the limited partnership to ensure that every member of the limited partnership is eligible to be licensed by the commission.
b. A limited partnership must have on file with the commission, and a copy of which is attached to the registration certificate of each horse in the limited partnership, a notarized designation of the general partner to represent the entire ownership of and be responsible for each horse in the limited partnership. Such responsibility does not include the responsibility of the trainer imposed by subsection 2 of section 69.5-01-05-26 in connection with the condition of the horse, unless the general partner is also the trainer.
3. An authorized agent must be appointed to represent the limited partnership in all matters and be responsible for all stakes, powers of entry, scratches, signing of claims slips, among other obligations. The general partner, or other member, may be the authorized agent.
4. a. The alteration in the structure or percentages of the limited partnership must be promptly reported in writing to the commission, and to the jockey club.

- b. The general partner will be responsible for reporting to the commission any interest in all racing horses in which a licensed member owns an interest.
5. The commission may deny, suspend, or revoke the license of a limited partnership in which a member whose interest is qualified or limited by rights or interests held or controlled by an individual or entity which would be ineligible to be licensed as an owner or to participate regardless of percentage of interest.
6. All members of a limited partnership owning less than five percent must be listed with the commission and the applicable horsemen's organization. All beneficial interests must be listed. Such list must include names, addresses, portion owned, social security number, date of birth, and such other information as the commission may require. Such list must be supplied to the commission by the limited partnership as required by the commission, and a copy sent to the jockey club. Any limited partner owning less than five percent, need not be licensed and will not have access to the backstretch, paddock area, or to the winner's circle, and may be required to submit additional information as requested by the commission which may assess additional fees for the purpose of criminal history checks or other investigative purposes.
7.
 - a. Licensed owners and licensed trainers must be held jointly and severally responsible for making a full disclosure of the entire ownership of each horse in their care.
 - b. Such disclosure must identify in writing all individuals or entities who, directly or indirectly, through a contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise hold any interest in and to such horse, and those individuals or entities who by virtue of any form of such interest might exercise control over such horse or can benefit from the racing of such horse. The degree and type of such ownership held by each individual person must be designated.
 - c. Such disclosure must be made when registering each horse with the racing secretary upon arrival on association grounds, or at time of entry, whichever event occurs first, and must be revised immediately upon any subsequent change in such ownership.
 - d. Such disclosure together with all written agreements and affidavits setting out oral agreements, pertaining to the ownership of or rights in and to a horse, must be attached to the registration certificate for such horse and filed with the racing secretary, who is responsible for the care

and security of such papers while such horses pertaining thereto are located on association grounds.

- e. Such disclosure is made for the benefit of the public and all documents pertaining to the ownership or lease of a horse filed with the racing secretary must be available for public inspection as provided by law.
8. The commission or stewards, or both, shall review the ownership of each horse entered to race and ensure that each registration certificate or eligibility certificate is properly endorsed by the transferor to the present owners. The commission or stewards may determine the validity for racing purposes of all liens, transfers, and agreements pertaining to ownership of a horse, and may call for adequate evidence of ownership at any time. The commission or stewards may declare ineligible to race any horse, the ownership or control of which is in question.
9. A member of a limited partnership may not have an interest in more than one uncoupled horse in any race except by permission of the stewards. For purposes of this section only, "ownership" must be construed to mean any individual person or entity required to be licensed as an owner pursuant to these rules and, in the instance of a limited partnership, any individual person or other entity possessing at least a five percent beneficial interest provided, however, that when a trainer enters two or more horses in a stakes, handicap, futurity, or other special event under beneficial separate ownerships, the horses, at the request of the association and with the approval of the commission or stewards, may be permitted to race as separate wagering entities.
10. If the race is split in two or more divisions, horses in an "entry" must be seeded in separate divisions insofar as possible but the divisions in which they compete and the post positions must be determined by lot.
11. The horses owned by a limited partnership must run in the name of the general partner with a designated "(LP)" following the name.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-19. Applicable horsemen's organization. Each owner must be licensed by the applicable horsemen's organization.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-20. Stable names.

1. Licensed owners and lessees may adopt stable farm, racing, or corporate names, if registered with the applicable horsemen's organization and the commission.
2. Applications must include the identity or identities of all persons interested in the ownership of the name. After registration by the commission, changes in identities of owners of the stable name must be reported immediately to and approved by the commission.
3. A trainer who is a licensed owner or a part owner may use a stable name in his capacity as owner or part owner but a trainer may be licensed as a trainer only in the trainer's legal name.
4. Any person registered under a stable name may cancel the stable name by giving written notice to the commission. A stable name may be changed by registering the new name with the commission.
5. No person may register as the person's stable name one which has already been registered by another person with any other racing authority, which is the real name of another owner or owners of racehorses, which is the real or stable name of any prominent person who does not own racehorses, which is not plainly distinguishable from that of another registered stable name, or which the stewards determine is being used to advertise any product or service.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-21. Leases.

1. No licensee may lease a horse for the purpose of racing at tracks in this state without prior approval of the stewards.
2. Both lessor and lessee entering into such a lease must be licensed by the commission prior to engaging in any activity related to horse racing.
3. Each licensee who leases a horse at any meeting shall submit a copy of that lease to the stewards. The lease must contain at least all of the conditions of the lease arrangement and the names of all parties and horses related to the lease. The failure to submit accurate and complete information under this rule is a violation of these rules. The stewards shall immediately forward a copy of the lease to the commission.

4. An eligibility certificate must be issued by the applicable horsemen's organization for each lessee before any horse under lease is permitted to race.
5. When any lessor of a horse is a corporation, syndicate, partnership, or other entity of multiple interests, it shall furnish to the commission, under oath, the identification of its stockholders, members, partners, or other interested persons and such other information as the commission may require.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-22. Racing colors. Colors, provided by the owners and approved by the stewards of the meeting, must be utilized during racing competition.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-23. Registration of horses. No owner may participate in racing nor stable any horse on association premises unless each horse in the owner's charge is registered with the racing secretary of the association showing for each horse the name, color, sex, age, breeding, and ownership. At registration, the applicable horsemen's organization eligibility certificate for each horse must be presented and evidence of registration of each horse with the applicable horsemen's organization.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-24. Transfer of horses. Each transfer of horse ownership must be recorded with the applicable horsemen's organization and promptly reported to the racing secretary and the commission.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-25. Change of trainer. No owner may change the trainer of the owner's horse unless by written notice to the stewards of the meeting. The stewards will advise the racing secretary of the change and the racing secretary shall require the new trainer to sign the trainer's name on the owner's registration.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-26. Prohibited acts.

1. No owner may employ in this state a veterinarian who is not licensed by both the state board of veterinary medicine examiners and the commission.
2. No owner may enter or start a horse in any race if the horse is ineligible under these rules or the laws of this state related to racing.
3. A trainer may represent the owner of a horse in making entry of a horse in a race, or declaring the horse out of a race.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-27. Trainers. The following restrictions and duties apply to trainers.

1. No person may hold a trainer's license unless the trainer:
 - a. Is at least eighteen years old;
 - b. Is qualified, in the opinion of the stewards, by reason of experience, background, and knowledge of racing as manifested by:
 - (1) Passing a written examination administered by the stewards; and
 - (2) Passing of a "barn test" administered by a horsemen's representative under the supervision of the stewards.
 - c. Has complied with the provisions of the state workers' compensation law and has secured compensation for the trainer's employees in accordance with that law; and
 - d. Has applied for a trainer's license in the trainer's legal name, and not under any fictitious or stable name.
2. The commission in considering whether to license a trainer in this state may consider the licensure of the trainer currently licensed or registered in another state that is a member of the national association of state racing commissioners.

3. The trainer is responsible for and is the absolute insurer of the condition of the horses in the trainer's care and custody and for the conditions and contents of stalls, tack rooms, feedrooms, sleeping rooms, and other areas which have been assigned by the association to the trainer. The trainer is the absolute insurer of the condition of the horses in the trainer's care and custody during the race and is liable for the presence in the trainer's horse during the race of any drug, medication, or any other prohibited substance. A trainer whose horse has been claimed remains responsible for the horse under this section until after the collection of urine or blood specimens as may be required.
4. Each trainer shall report immediately to the stewards and the commission veterinarian any illness in the horse entrusted into the trainer's care presenting unusual or unknown symptoms. Any alteration in the sex of a horse must be reported and noted by the trainer to the racing secretary or horse identification office immediately, and that office must note the same on the foal certificate.
5. A trainer or the trainer's assistant must be present with the trainer's horse in the paddock and shall supervise the saddling of the horse unless the stewards permit a substitute trainer to perform those duties. Every trainer who brings a horse to the paddock warrants that the horse is qualified for the race, ready to run and in physical condition to exert its best efforts, and entered with the intention to win.
6. A trainer shall present the trainer's horse in the paddock at least twenty minutes before post time of the race in which the horse is entered.
7. The following prohibited acts apply to trainers:
 - a. No trainer may enter or start a horse in any race if the horse is ineligible under these rules or the laws of this state related to racing.
 - b. No trainer may employ a veterinarian who is not licensed by both the state board of veterinary medicine examiners and the commission.
 - c. No trainer may employ any person under the age of sixteen.
 - d. No trainer may employ a jockey for the purpose of preventing the jockey from riding in any race.
 - e. No trainer may train or be responsible for any horse which is wholly or partly owned by a person under suspension by the stewards or the commission.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10
Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-28. Authorized agent.

1. Authorized licenses and their appointments by the owner expire at the end of the license year unless earlier revoked by the owner, the stewards, or the commission. An owner may appoint only one person at a time to act as the owner's authorized agent. After the appointment, the acts of the agent must be deemed the acts of the owner.
2. The stewards shall approve the appointment of authorized agents by endorsing that fact on the authorized agent appointment documents submitted to them and shall verify the validity of the agent's license before approving the appointment. If the authorized agent appointment is for a partnership or stable name, each of the owners of the partnership or stable name shall execute the appointment of agent written authority.

History: Effective July 1, 1989.
General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10
Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-29. Jockeys and apprentice jockeys.

1. Eligibility.
 - a. Jockeys.
 - (1) No person under sixteen years of age will be licensed by the commission as a jockey.
 - (2) All jockeys must pass physical examinations once a year by a physician approved by the commission. The stewards may require that any jockey be reexamined and may refuse to allow any jockey to ride until such jockey successful completes such examination.
 - (3) A jockey may not be an owner or trainer of any racehorse.
 - (4) A license will not be granted until the applicant has successfully completed two rides under a provisional license of the commission and has been approved by the starter.
 - (5) Whenever a jockey from a foreign country, excluding Mexico and Canada, rides in the United States, such jockey must declare that he or she is a holder of a

valid license and currently not under suspension. To facilitate this process, the jockey shall present a declaration sheet to the commission. The sheet must state:

- (a) That the jockey is the holder of a valid license to ride;
- (b) That the jockey is not currently under suspension; and
- (c) That the jockey agrees to be bound by the rules of the commission.

This sheet must be retained by the commission and at the conclusion of the jockey's participation in racing, it must be returned to the jockey, properly endorsed by the commission, stating that the jockey has not incurred any penalty or had a fall. If a penalty has been assessed against the jockey, the appropriate racing official shall notify the racing authority issuing the original license to extend the penalty for the same period of time.

b. Apprentice jockeys.

- (1) A contract with a horse owner to provide apprentice jockey services, or an apprentice certificate from the stewards must be presented to the commission to be licensed.
- (2) The conditions in subdivision a of subsection 1 with regard to jockeys also apply to apprentice jockeys.

2. Jockeys' fees.

a. Schedule. The fee to jockeys, in the absence of special agreement, must be in all races as follows:

Purse	Win	2nd	3rd	Unplaced
\$400 and under	\$27	\$19	\$17	\$16
\$ 500	30	20	17	16
\$ 600	36	22	17	16
\$ 700 - \$900	10%	25	22	20
\$ 1,000 - \$1,400	10%	30	25	22
\$ 1,500 - \$1,900	10%	35	30	28

\$ 2,000 - \$3,400	10%	45	35	33
\$ 3,500 - \$4,900	10%	55	45	35
\$ 5,000 - \$9,900	10%	65	50	40
\$10,000 - \$14,900	10%	5%	5%	45
\$15,000 - \$24,900	10%	5%	5%	50
\$25,000 - \$49,900	10%	5%	5%	60
\$50,000 - \$99,900	10%	5%	5%	75
\$100,000 and up	10%	5%	5%	100

- b. Entitlement. Any apprentice or contract jockey is entitled to the regular jockey fees, except when riding a horse owned in part or solely by such jockey's contractholder. An interest in the winnings only (such as trainer's percent) does not constitute ownership.
 - c. Fee earned. A jockey's fee must be considered earned when the jockey is weighed out by the clerk of scales. The fee may not be considered earned if the jockey, of the jockey's own free will, takes himself or herself off of the jockey's mount, where injury to the horse or rider is not involved. Any conditions or considerations not covered by the above ruling must be at the discretion of the stewards.
 - d. Multiple engagements. If any owner or trainer engages two or more jockeys for the same race, the owner or trainer is required to pay each of the jockeys whether the jockey rides in the race or not.
 - e. Dead heats. Jockeys finishing a race in a dead heat shall divide equally the totals they individually would have received had one jockey won the race alone. The owners of the horses finishing in the dead heat shall pay equal shares of the jockey fees.
3. Apprentice subject to jockey rules. Unless excepted under these rules, apprentice jockeys are subject to all commission rules governing the conduct of jockeys and racing.
 4. Apprentice allowances.
 - a. An apprentice jockey shall ride with a five-pound weight allowance beginning with the apprentice jockey's first mount and for one full year from the date of the apprentice jockey's fifth winning mount.

- b. If after riding one full year from the date of the apprentice jockey's fifth winning mount, the apprentice jockey has failed to ride a total of forty winners from the date of the apprentice jockey's first winning mount, the apprentice jockey shall continue to ride with a five-pound weight allowance for one more year from the date of the apprentice jockey's fifth winning mount or until the apprentice jockey has ridden a total of forty winners, whichever comes first.
- c. If an apprentice jockey is unable to ride for a period of fourteen consecutive days or more after the date of the apprentice jockey's fifth winning mount because of service in the armed forces of the United States of America, or because of physical disablement, the commission may extend the time during which such apprentice weight allowance may be claimed for a period not to exceed the period such apprentice jockey was unable to ride.

5. Conduct.

- a. Clothing and appearance. A jockey shall wear the standard colors for the post position of the horse the jockey is riding, except as otherwise ordered or permitted by the commission or stewards, and shall also wear the number of the saddlecloth corresponding to the number given in the racing program. A jockey shall maintain a neat and clear appearance while engaged in the jockey's duties on association premises and shall wear a clean jockey costume, cap, helmet (as approved by commission), a jacket, breeches, and top boots.
- b. Competing against contractor. No jockey may ride in any race against a starting horse belonging to the jockey's contract employer unless the jockey's mount and the contract employer's horse are both trained by the same trainer.
- c. Competing against spouse. No jockey may compete in any race against any horse which is owned or trained by the jockey's spouse.
- d. Confined to jockey room. A jockey who is engaged to ride a race shall report to the scaleroom on the day of the race at the time designated by association officials. The jockey shall then report the jockey's engagements and any overweight to the clerk of scales. Thereafter, the jockey may not leave the jockey room except by permission of the stewards, until all of the jockey's riding engagements of the day have been fulfilled. Once a jockey has fulfilled the jockey's riding assignments for the day and has left the jockey's quarters, the jockey may not be readmitted to the jockey's quarters until after the entire racing

program for that day has been completed, except upon permission of the stewards. A jockey is not allowed to communicate with anyone but the trainer or the jockey's agent while the jockey is in the room during the performance except with approval of stewards. On these occasions, the jockey should be accompanied by a security guard.

- e. Jockey betting. A jockey may only be allowed to wager on a race in which the jockey is riding if:
 - (1) The jockey's owner or trainer makes the wager for the jockey; and
 - (2) The jockey only wagers on his or her own mount to win or in combination with other horses in multiple bets.
 - f. Whip prohibited. No jockey may use a whip on a two-year old horse before April first of each year.
 - g. Spurs prohibited. No jockey may use spurs.
 - h. Possessing drugs or devices. No jockey may have in the jockey's care, control, or custody any drugs or prohibited substances or any electrical or mechanical device that could affect a horse's racing performance.
6. Jockey effort. A jockey shall exert every effort to ride the jockey's horse to the finish in the best and fastest run of which the horse is capable. No jockey may ease up or coast to a finish, without adequate cause, even if the horse has no apparent chance to win prize money.
7. Duty to fulfill engagements. Every jockey shall fulfill such jockey's duly scheduled riding engagements, unless excused by the stewards. No jockey may be forced to ride a horse the jockey believes to be unsound, nor over a racing strip the jockey believes to be unsafe, but if the stewards find a jockey's refusal to fulfill a riding engagement is based on personal belief unwarranted by the facts and circumstances, such jockey may be subject to disciplinary action. The jockey is responsible to the jockey's agent for any engagements previously secured by said agent.
8. Riding interference.
- a. Interference. When the way is clear in a race, a horse may be ridden to any part of the course, but may not weave nor cross in front of other contenders so as to interfere with their course or threaten their safety.
 - b. Jostling. No jockey may jostle another horse or jockey. No jockey may strike another horse or jockey or ride so

carelessly as to cause injury or possible injury to another horse in the race.

- c. Partial fault - Third party interference. If a horse or jockey interferes with or jostles another horse, the aggressor may be disqualified, unless the interfered or jostled horse or jockey was partly at fault or the infraction was wholly caused by the fault of some other horse or jockey.

9. Jockey weighed out.

- a. Each jockey must be weighed for his or her assigned horse not more than thirty minutes before the time fixed for the race.
- b. A jockey's weight must include his or her clothing, saddle, girth, pad, and saddle cloth.
- c. A jockey's weight does not include the number cloth, whip, head number, bridle, bit or reins, blinkers, helmet, tongue strap, tongue tie, muzzle, hood, noseband, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

10. Overweight limited. No jockey may weigh more than two pounds [0.91 kilograms] over the weight the jockey's horse is assigned to carry unless with consent of the owner or trainer and unless the jockey has declared the amount of overweight to the clerk of the scales at least forty-five minutes before the start of the race. However, under no circumstances may a horse carry more than five pounds [2.27 kilograms] overweight. The overweight must be publicly announced and posted in a conspicuous place both prior to the first race of the day and before the running of the race.

11. Weigh in - Unsaddling. Upon completion of a race, each jockey shall ride promptly to the winners circle and dismount. The jockey shall then present himself or herself to the clerk of scales to be weighed in. If a jockey is prevented from riding his or her mount to the winner's circle because of accident or illness either to the jockey or to the jockey's horse, the jockey may walk or be carried to the scales unless excused by the stewards.

- b. Unsaddling. Each jockey upon completion of a race shall return to the winner's circle and shall unsaddle his or her horse, unless excused by the stewards.
- c. Removing horse's equipment. No person except the valet-attendant for each mount is permitted to assist the jockey in removing the horse's equipment that is included in the jockey's weight, unless the stewards permit

otherwise. To weigh in, each jockey shall carry to the scales all pieces of equipment with which the jockey weighed out. Thereafter, the jockey may hand the equipment to the valet-attendant.

- d. Underweight. When any horse places first, second, or third in a race, or is coupled in any form of multiple exotic wagering, and thereafter the horse's jockey is weighed in short by more than two pounds [0.91 kilograms] of the weight of which the jockey was weighed out, the jockey's mount may be disqualified and all purse moneys forfeited.
- e. Overweight. No jockey may be weighed in more than two pounds [0.91 kilograms] over the jockey's declared weight, but consideration must be given for excess weight caused by rain or mud. If the jockey is overweight, the jockey's mount may be disqualified and all purse moneys forfeited.

12. Contracts.

- a. Jockey contracts. A jockey may contract with an owner or trainer to furnish jockey services whenever the owner shall require, and in that event a jockey may not ride or agree to ride in any race for any other person without the consent of the owner or trainer to whom the jockey is under contract.
- b. Apprentice contracts and transfers.
 - (1) Owners or trainers and apprentices who are parties to contracts for apprentice jockey services shall file a copy of the contract with the commission, upon forms approved by the commission, and shall, upon any transfer, assignment, or amendment of the contract, immediately furnish a copy thereof to the commission.
 - (2) No apprentice jockey may ride for a licensed owner or agent unless with the consent of the apprentice's contract employer.
- c. Contract condition. No person other than an owner, trainer, jockey agent, or authorized agent of an owner in good standing may make engagements for an apprentice jockey or jockey. However, a jockey not represented by an agent may make his or her own engagements.

- 13. Jockey fines and forfeitures. A jockey shall pay any fine or forfeiture from the jockey's own funds within forty-eight hours of the imposition of the fine or forfeiture. No other person may pay jockey fines or forfeitures for the jockey.

14. Competing claims. Whenever two or more licensees claim the services of one jockey for a race, first call shall have priority and any dispute must be resolved by the stewards.
15. Jockey suspension.
 - a. Offenses involving fraud. Suspension of a licensee for an offense involving fraud or deception of the public or another participant in racing shall begin immediately after the ruling unless otherwise ordered by the stewards or commission.
 - b. Offenses not involving fraud. Suspension for an offense not involving fraud or deception of the public or another participant in racing shall begin on the third day after the ruling.
 - c. Withdrawal of appeal. Withdrawal by the appellant of a notice of appeal filed with the commission whenever imposition of the disciplinary action has been stayed or enjoined pending a final decision by the commission must be deemed a frivolous appeal and referred to the commission for further disciplinary action in the event the appellant fails to show good cause to the stewards why such withdrawal should not be deemed frivolous.
16. Association valet-attendant. No jockey may have a valet-attendant except one provided and paid for by the association.
17. Jockey agent.
 - a. No jockey may have more than one agent.
 - b. All engagements to ride other than those for the jockey's contract employer must be made by the agent.
 - c. No revocation of a jockey's agent authority is effective until the jockey notifies the stewards in writing of the revocation of the agent's authority.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-30. Jockey agent.

1. Eligibility. No person may act as a jockey's agent unless such person has first demonstrated to the stewards that such person has a contract for agency with at least one jockey and has been licensed by the commission.

2. **Limit on contract.** No jockey agent may serve as agent for more than two jockeys. No jockey agent may make or assist in making any riding engagement for a jockey with whom the agent has no contract.
3. **Agent's record.**
 - a. All jockey agents must have in their possession at all times engagement books approved by the stewards, and all engagements made for jockeys by agents must be recorded in said books. Books are subject to examination by the stewards at all times.
 - b. When an owner or trainer engages the services of a jockey through a jockey agent, he or she shall obtain a card from the jockey agent specifying thereon whether or not he or she has first or second call on the services of the jockey. Such calls must be declared at the time of entry.
 - c. Before each day's entries are taken, jockey agents are required to file their first, second, and third calls in each race in the racing secretary's office with a person designated by the stewards. If during the time the entries are being taken, a jockey agent should lose or pick up a call, the jockey agent shall immediately add these calls to the ones previously filed.
 - d. No jockey agent may falsify the jockey agent's records.
4. **Agent withdrawal.** When any jockey agent withdraws from the jockey agent's representation of a jockey, the jockey agent shall immediately notify the stewards and shall submit to the stewards a list of any unfilled engagements the jockey agent has made for the jockey. No jockey agent may be permitted to withdraw from the representation of any jockey unless advance written notice to the stewards has been provided.
5. **Agent's contract filed.** No jockey agent's contract with a jockey or apprentice jockey, nor any assignment of that contract, is effective unless filed with the stewards.
6. **Prohibited areas.** A jockey agent is prohibited during racing hours from being present in the paddock, the winner's circle, or the saddling enclosure, unless permitted by the stewards.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-06
PATRONS

Section
69.5-01-06-01 Ejections From Track

69.5-01-06-01. Ejections from track. Any person ejected from the grounds of a racetrack must be denied readmittance to said track unless and until permission for readmittance has been obtained from track management. Notwithstanding the foregoing, the commission may exclude any person ejected from a parimutuel facility in this state from any or all parimutuel facilities upon a finding that the attendance of said person at any or all parimutuel facilities would be adverse to the public interest. In addition, the commission may exclude any person as set forth in section 69.5-01-02-06.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-07
CONDUCT OF RACES

Section	
69.5-01-07-01	Horses Ineligible
69.5-01-07-02	Entries
69.5-01-07-03	Sweepstakes Entries
69.5-01-07-04	Closing of Entries
69.5-01-07-05	Prohibited Entries
69.5-01-07-06	Preference and Eligibles
69.5-01-07-07	Post Positions
69.5-01-07-08	Scratch - Declaring Out
69.5-01-07-09	Workouts
69.5-01-07-10	Equipment
69.5-01-07-11	Racing Numbers
69.5-01-07-12	Valuation of Purse Money
69.5-01-07-13	Dead Heats
69.5-01-07-14	Purse Money Presumption
69.5-01-07-15	Coggins Test
69.5-01-07-16	Race Procedures
69.5-01-07-17	Claiming Races
69.5-01-07-18	Medication

69.5-01-07-01. Horses ineligible. A horse is ineligible to start a race when:

1. The horse is not stabled on the grounds of the licensed association or facilities approved by the association at least forty-eight hours prior to the race;

2. The horse's applicable horsemen's organization registration certificate is not on file with the racing secretary, or horse identifier;
3. The horse is not fully identified by an official tattoo on the inside of the upper lip;
4. With respect to a horse who is entered for the first time, the nominator has failed to identify the horse by name, color, sex, age, and the names of his sire and dam as registered;
5. A horse is brought to the paddock and is not in the care of and saddled by a trainer or assistant trainer;
6. A horse has been knowingly entered or raced in any jurisdiction under a different name, with an altered registration certificate or altered lip tattoo by a person having lawful custody or control of the horse for the purpose of deceiving any association or regulatory agency;
7. A horse has been allowed to enter or start by a person having lawful custody or control of the horse who participated in or assisted in the entry of racing of some other horse under the name of the horse in question;
8. A horse is wholly or partially owned by a disqualified person or a horse is under the direct or indirect management of a disqualified person;
9. A horse is wholly or partially owned by the spouse of a disqualified person or a horse is under the direct or indirect management of the spouse of a disqualified person, in such cases, it being presumed that the disqualified person and spouse constitute a single financial entity with respect to the horse, which presumption may be rebutted;
10. A horse has no current negative coggins test certificate attached to the registration certificate;
11. The stakes or entrance money for the horse has not been paid;
12. A horse appears on the starter's list, stewards' list, or veterinarian's list;
13. A horse is a first-time starter and not approved by the starter;
14. A horse is owned in whole or in part by an undisclosed person or interest;
15. A horse which has started in a race within the past calendar year which race has not been reported in a nationally published monthly chart book, unless at least forty-eight

hours prior to entry, the owner of the horse provides to the racing secretary under oath performance records which show the place and date of the race, the distance, the weight carried, the amount carried, and the horse's finishing position and time;

16. In a stakes race, a horse has been transferred with its engagements, unless, prior to the start, the fact of transfer of the horse and its engagements has been filed with the racing secretary;
17. A horse is subject to a lien which has not been approved by the stewards and filed with the horseman's accountant;
18. A horse is five years of age or older and still a maiden, except for Arabian horses, in which case such horse is eight years of age or older and still a maiden;
19. A horse is subject to a lease not filed with the stewards;
20. A horse is not in sound racing condition;
21. A horse has been nerved by surgical neurectomy except in the case of heel nerves upon veterinarian approval, or cryosurgery;
22. A horse has been trachea-tubed to artificially assist its breathing;
23. A horse has been blocked with alcohol or otherwise drugged to desensitize the nerves above the ankle; or
24. A horse has impaired eyesight in both eyes.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-02. Entries.

1. Filing. The association shall provide forms for making entries and declarations with the racing secretary. Entries and declarations shall be in writing, or by telephone or telegraph subsequently confirmed in writing by the owner, trainer, or authorized agent. When any entrant or nominator claims failure or error in the receipt by an association of any entry or declaration, such entrant or nominator may be required to submit evidence within a reasonable time of the filing of the entry or the declaration.

2. Posting. Upon the closing of entries, the racing secretary shall promptly compile a list of entries and cause it to be conspicuously posted.
3. Coupling.
 - a. Entry coupling. When one or more horses entered in a race have a common owner and trainer, the horses must be coupled as an entry. Horses must be regarded as having a common owner where an owner of one horse, either as an individual or as a licensed member of a partnership or as a licensed shareholder of a corporation, shall have an ownership interest in another horse, either as an individual or as a licensed member of a partnership or as a licensed shareholder of a corporation.
 - b. Coupled entries prohibited. Coupled entries may not be permitted to race on any program in a race which is part of a daily double or trifecta wager.
 - c. Coupled entry limitation on owner. No more than two horses coupled by a common ownership or trainer may be entered in an overnight race. When any licensee shall nominate and enter two horses coupled by common ownership or trainer, the nominator shall express a preference for which horse will start in the event that only one horse can be run by virtue of the rules of eligibility related to trifecta, daily double, or other exotic betting.
 - d. Coupling of entries by stewards. The stewards shall couple as a single entry any horses which, in the determination of the stewards are connected by common ownership or by a common trainer or when the stewards determine that coupling is necessary in the interest of the regulation of the parimutuel racing industry or necessary to the public confidence in racing.
 - e. Coupled entry excluding others. A coupled entry may not be permitted to enter or start if the effect of the entry is to deprive an uncoupled single entry horse from starting.
4. Splitting of a race. If a race is canceled and declared off for insufficient entries, the association may split the list of entries for any other overnight race to provide an additional race to replace the one canceled. The racing secretary shall by lot divide the entries of the race so split into two different races.
5. Entry weight. Owners, trainers, or any person duly authorized by either who enter a horse for a race shall ensure that the entry is correct and accurate as to the weight allowances available and claimed for the horse under the conditions set

for the race. After a horse is entered and has been assigned a weight to carry in the race, the assignment of weight may not be changed except in the case of error.

6. Horses run once daily. No horse may be entered for more than one race on the same day on which parimutuel wagering is conducted.
7. Foreign entries. For the purposes of determining eligibility, weight assignments, or allowances for horses imported from a foreign nation, the racing secretary shall take into account the "Pattern Race Book" published jointly by the Irish turf club, the jockey club of Great Britain, and the societe encouragement.
8. Weight conversions. For the purposes of determining eligibility, weight assignments, or allowances for horses imported from a foreign nation, the racing secretary shall

convert metric distances to English measures by reference to the following scale:

110 yards	=	100 meters
1 furlong	=	200 meters
1 mile	=	1,600 meters

9. Name. The "name" of a horse means the name reflected on the certificate of registration or racing permit or temporary racing permit issued by the applicable horsemen's organization. Imported horses shall have a suffix, enclosed by brackets, added to their registered names showing the country of foaling. This suffix is derived from the International Code of Suffixes and constitutes part of the horse's registered name. The registered names and suffixes, where applicable, must be printed in the official program.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-03. Sweepstakes entries.

1. Entry and withdrawal. The entry of a horse in a sweepstakes is a subscription to the sweepstakes. Before the time of closing, any entry or subscription may be altered or withdrawn.
2. Entrance money. Entrance money must be paid by the nominator to a race. In the event of the death of the horse or a mistake made in the entry of an otherwise eligible horse, the nominator subscriber shall continue to be obligated for any stakes, and the entrance money may not be returned.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-04. Closing of entries.

1. Overnight entries. Entries for overnight racing must be closed at ten a.m. by the racing secretary, unless a later closing is established by the racing secretary or unless approved by the stewards.
 - a. Sweepstakes entries. If an hour for closing is designated, entries and declarations for sweepstakes cannot be received thereafter. However, if a time for closing is not designated, entries and declarations may be mailed or telegraphed until midnight of the day of closing, if they are received in time to comply with all other conditions of the race. In the absence of notice to the contrary, entries and declarations for sweepstakes which close during or on the day preceding a race meeting shall close at the office of the racing secretary in accordance with any requirement the racing secretary shall make. Closing for sweepstakes not during race meetings must be at the office of the association.
 - b. Nominations for stakes races do not close nor is any eligibility payment due on a day in which the United States postal service is not operating.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-05. Prohibited entries.

1. Entry by disqualified person. An entry by a disqualified person or the entry of a disqualified horse is void. Any money paid for such entry must be returned if the disqualification is disclosed at least forty-five minutes before post time for the race. Otherwise the entry money must be paid to the winner.
2. Limited partner entry prohibited. No person other than a managing partner of a limited partnership or a person authorized by the managing partner may enter a horse owned by that partnership.
3. Altering entries prohibited. No alteration may be made in any entry after the closing of entries, but the stewards may permit the correction of an error in an entry.

4. **Limitation on overnight entries.** If the number of entries to any purse or overnight race is in excess of the number of horses that may be accommodated due to the size of the track, the starters for the race and their post positions must be determined by lot conducted in public by the racing secretary.
5. **Stake race entry limit.** In a stake race, the number of horses who may compete may be limited only by the number of horses nominated and entered. In any case, the association's lawful race conditions govern.
6. **Steward's denial of entry.** The stewards, after notice to the entrant, subscriber, or nominator, may deny entry of any horse to a race if the stewards determine the entry to be in violation of these rules or the laws of this state or to be contrary to the interests of the commission in the regulation of parimutuel wagering or to public confidence in racing.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-06. Preference and eligibles.

1. **Eligible-to-start list.** A list of not more than eight names may be drawn from entries filed in excess of positions available in the race. These names must be listed as eligible-to-start as originally entered horses are withdrawn. The order in which these are listed shall become eligible-to-start and their post positions must be determined by the racing secretary. Any owner, trainer, or authorized agent who has entered a horse listed as an eligible-to-start and who does not wish to start shall file a scratch card with the secretary not later than the scratch time designated for that race.
2. **Preference for excluded horses.** Horses which have been excluded from races must be given preference in the next race in which they are entered, providing the next race is one of similar conditions. Horses whose names appear in the entries and have an opportunity to start will be given no preference if they are entered for a race to be held on the day following entry and the race overfills.
3. **Preferred list entrants.** In making an entry of a horse on the preferred list, a claim of preference must be made at the time of entry and noted on the entry form or the preference will be lost. The preferred list must be posted in a place readily available to all horsemen.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10
Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-07. Post positions. Post positions must be determined by the racing secretary publicly and by lot. Post positions must be drawn from also-eligible entries at scratch time. In all races, horses drawn into the race from the also-eligible list shall take the outside post positions.

History: Effective July 1, 1989.
General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10
Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-08. Scratch - Declaring out.

1. Notification to the secretary. No horse may be considered scratched, declared out, or withdrawn from a race until the owner, agent, or other authorized person has given notice in writing to the racing secretary before the time set by the association as scratch time. All scratches must be approved by the stewards.
2. Declaration irrevocable. Scratching, or the declaration of a horse out of an engagement for a race, is irrevocable.
3. Limitation on scratches. No horse may be permitted to be scratched from a race if the horses remaining in the race number less than eight, unless the stewards permit a lesser number. Where there are more requests to scratch that, if granted, would leave a field less than eight, the stewards shall determine by lot which entrants may be scratched and permitted to withdraw from the race. In the case of scratches from races involving daily doubles or trifecta wagering, eight entries must remain in the race to enable an entrant to voluntarily scratch.
4. Scratch time. Unless otherwise set by the racing secretary, scratch time, with regard to stake races, must be at least forty-five minutes before post time, and with regard to other races may be no later than eight a.m. of the day of the race.

History: Effective July 1, 1989.
General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10
Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-09. Workouts.

1. When required. No horse may be started unless the horse has raced or has an approved timed workout satisfactory to the stewards. Such workout must have occurred on the grounds of a

licensed parimutuel facility within the previous thirty days. A horse which has not started for a period of sixty days or more is ineligible to race until it has completed a timed workout satisfactory to the stewards prior to the day of the race in which he is entered. No horse may be taken onto the track for training or a workout except during hours designated by the association.

2. Identification. The timer or the stewards may require any licensee to identify a horse in the licensee's care being worked. The owner, trainer, or jockey may be required to identify the distance the horse is to be worked and the point on the track where the workout will start.
3. Information dissemination. If the stewards approve such timed workout so as to permit the horse to run in a race, they shall make it mandatory that this information is furnished to the public in advance of the race including, but not limited to, the following means:
 - a. Announcement over the track's public address system;
 - b. Transmission on the track's message board;
 - c. Posting in designated conspicuous places in the racing enclosure; and
 - d. Exhibit on track television monitors at certain intervals if the track has closed circuit television.

If the workout is published prior to the race in either the daily racing form or the track program, then it is not necessary to make the announcements set forth in this subsection.

4. Restrictions. No horse may be taken onto the track for training or a workout except during hours designated by the association.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-10. Equipment.

1. Whip and bridle limitations. Unless permitted by the stewards, no whip or substitute for whip may exceed one pound [0.45 kilograms] or thirty inches [762.00 millimeters] and no bridle may exceed two pounds [0.91 kilograms].
2. Equipment change. No licensee may change the equipment used on a horse from that used in the horse's last race, unless

with permission of the paddock judge. No licensee may add blinkers to a horse's equipment or discontinue their use without the prior approval of the starter, the paddock judge, and the stewards. In the paddock prior to a race, a horse's tongue may be tied down with clean bandages, clean gauze, or with a tongue strap.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-11. Racing numbers.

1. Number display. Each horse in a race shall carry a conspicuous saddle cloth number corresponding to the official number given that horse on the official program.
2. Coupled entries. In the case of a coupled or other entry that includes more than one horse, each horse in the entry shall carry the same number, with a different distinguishing letter following the number. As an example, two horses in the same entry must be entered as 1 and 1-A.
3. Field horses. In a combined field of horses, each horse in the field shall carry a separate number.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-12. Valuation of purse money. The amount of purse money earned is credited in United States currency and there may be no appeal for any loss on the exchange rate at the time of transfer from the United States currency to that of another country.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-13. Dead heats.

1. In the event of a dead heat, the prize money will be distributed in equal shares to the owners of the horses so finishing. In a dead heat finish for first place, each horse must be considered a winner of the amount of the purse or prize.
2. If a prize includes a cup, plate, or other indivisible prize, owners shall draw lots for the prize in the presence of at least two stewards.

3. In the event of a dead heat finish for second place [and thereafter], and an objection to the winner of the race is sustained, the horses in the dead heat must be considered to have run a dead heat for first place.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-14. Purse money presumption. The fact that purse money has been distributed prior to the issuance of a laboratory report may not be deemed a finding that no chemical substance has been administered, in violation of these rules, to the horse earning such purse money.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-15. Coggins test.

1. Certified required. No horse may be allowed to enter, start, or be stabled on the grounds of the racing establishment unless a valid negative coggins test certificate is presented.
2. Trainer responsibility. In the event of claims, sales, or transfers, it is the responsibility of the new trainer to ascertain the validity of the certificate for the horse within twenty-four hours. If the certificate is either unavailable or invalid, the previous trainer is responsible for any reasonable cost associated with obtaining a coggins certificate.
3. Positive test reports. Whenever any owner or trainer is furnished a coggins test positive result that his horse has equine infectious anemia (EIA), the horse must be removed by the owner or trainer from association premises or approved farms within twenty-four hours of actual notice of the infection to the owner or trainer.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-16. Race procedures.

1. Full weight. Each horse shall carry the full weight assigned for that race from the paddock to the starting point, and shall parade past the stewards' stand, unless excused by the stewards.

2. **Touching and dismounting prohibited.** After the horses enter the track, no jockey may dismount nor entrust the jockey's horse to the care of an attendant unless, because of an accident occurring to the jockey, the horse, or the equipment, and then only with the prior consent of the starter. During any delay during which a jockey is permitted to dismount, all other jockeys may dismount and their horse may be attended by others. After the horses enter the track, only the hands of the jockey or the assistant starter or an outrider on a lead pony may touch the horse before the start of the race.
3. **Jockey injury.** If a jockey is seriously injured on the way to the post, the jockey's horse must be returned to the paddock and a replacement jockey obtained. In such an event both the injured jockey and the replacement jockey will be paid by the owner.
4. **Twelve-minute-parade limit.** After entering the track, all horses shall proceed to the starting post in not more than twelve minutes unless approved by the stewards. After passing the stewards' stand in parade, the horses may break formation and proceed to the post in any manner. Once at the post, the horses must be started without unnecessary delay. All horses shall participate in the parade carrying their weight and equipment from the paddock to the starting post and any horse failing to do so may be disqualified by the stewards. No lead pony leading a horse in the parade shall obstruct the public's view of the horse entered in the race that the lead pony is leading except with permission of the stewards.
5. **Striking a horse prohibited.** In assisting the start of a race, no person other than the jockey, the starter, the assistant starter, or the veterinarian shall strike a horse or use any other means to assist the start.
6. **Loading of horses.** Horses shall take their position at the post (in the starting gate) in post position order (the order in which their names have been drawn, beginning from the inside rail).
7. **Delays prohibited.** No person may obstruct or delay the movement of a horse to the starting post.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-17. Claiming races.

1. General requirements.

- a. Starting requirements. No person may file a claim for any horse unless such person is present at the race meet at which the claim is filed and holds an owner's license.
 - b. One stable claim. No stable which consists of horses owned by more than one person and which has a single trainer may submit more than one claim in any race and an authorized agent may submit only one claim in any race regardless of the number of owners represented.
 - c. Procedure for claiming. To make a claim for a horse, an eligible person shall:
 - (1) Deposit to such person's account with the horsemen's bookkeeper the full claiming price and applicable taxes as established by the racing secretary's conditions.
 - (2) File the claim filled out completely and with sufficient accuracy to identify the claim in writing on forms provided by the association at least fifteen minutes before the time of the race in a locked claim box maintained for that purpose by the stewards.
2. Claim box.
- a. The claim box must be approved by the commission and kept locked until fifteen minutes prior to the start of the race, when it must be presented to the stewards or their designee for opening and publication of the claims.
 - b. The claim box must also include a time clock which automatically stamps the time on the claim envelope prior to being dropped in the box.
 - c. No official of said association may give any information as to the filing of claims therein after the race has been run.
3. Claim irrevocable. After a claim has been filed in the racing office, it may not be withdrawn.
4. Multiple claims on single horses. If more than one claim is filed on a horse, the successful claim must be determined by lot conducted by the stewards or their representatives.
5. Successful claims - Later races.
- a. Sale or transfer. No successful claimant may sell or transfer a horse, except in a claiming race, for a period of thirty days from the date of claim.

- b. Eligibility price. A claimed horse may not start in a race in which the claiming price is less than the price in which it was claimed for a period of thirty days. If a horse is claimed, no right, title, or interest therein may be sold or transferred except in a claiming race for a period of thirty days following the date of claiming. The day claimed does not count but the following calendar day must be the first day. The horse is entitled to enter whenever necessary so the horse may start on the thirty-first calendar day following the claim for any claiming price. The horse is required to continue to race at the track where claimed for a period of thirty days or the balance of the current race meeting whichever comes first.
- c. Racing elsewhere. A horse which was claimed under these rules may not participate at a race meeting other than that at which it was claimed until the end of the meeting, except with written permission of the stewards. This limitation does not apply to stakes races.
- d. Same management. A claimed horse may not remain in the same stable or under the control or management of its former owner.
- e. When a horse is claimed out of a claiming race, the horse's engagements are included.

6. Transfer after claim.

- a. Forms. Upon a successful claim, the stewards shall issue in triplicate, upon forms approved by the commission, an authorization of transfer of the horse from the original owner to the claimant. Copies of the transfer authorization must be forwarded to and maintained by the commission, the stewards, and the racing secretary for the benefit of the horse identifier. No claimed horse may be delivered by the original owner to the successful claimant until authorized by the stewards. Every horse claimed shall race for the account of the original owner, but title to the horse must be transferred to the claimant from the time the horse becomes a starter. The successful claimant shall become the owner of the horse at the time of starting, regardless of whether it is alive or dead, sound or unsound, or injured during the race or after it.
- b. Other jurisdiction rules. The commission will recognize and be governed by the rules of any other jurisdiction regulating title and claiming races when ownership of a horse is transferred or affected by a claiming race conducted in that other jurisdiction.

- c. Determination of sex and age. The claimant is responsible for determining the age and sex of the horse claimed notwithstanding any designation of sex and age appearing in the program or in any publication. In the event of a spayed mare, the (s) for spayed should appear next to the mare's name on the program. If it does not and the claimant finds that the mare is in fact spayed, claimant may then return the mare for full refund of the claiming price.
 - d. Affidavit by claimant. The stewards may, if they determine it necessary, require any claimant to execute a sworn statement that the claimant is claiming the horse for the claimant's account or as an authorized agent for the claimant's principal and not for any other person.
 - e. Delivery required. No person may refuse to deliver a properly claimed horse to the successful claimant and the claimed horse is disqualified from entering any race until delivery is made to the claimant.
 - f. Obstructing rules of claiming. No person or licensee may obstruct or interfere with another person or licensee in claiming any horse nor enter any agreement with another to subvert or defeat the object and procedures of a claiming race, or attempt to prevent any horse entered from being claimed.
7. Elimination of stable. An owner whose stable has been eliminated by claiming may claim for the remainder of the meeting at which such owner was eliminated or for thirty racing days, whichever is longer. If the thirty-day period extends into a succeeding meeting, the owner shall obtain a certificate from the stewards of the meeting at which the owner's last horse was claimed to attach to any claim the owner makes at the succeeding meeting. With the permission of the stewards, stables eliminated by fire or other casualty may claim under this rule.
8. Deceptive claim. The stewards may cancel and disallow any claim within twenty-four hours after a race if they determine that a claim was made upon the basis of a lease, sale, or entry of a horse made for the purpose of fraudulently obtaining the privilege of making a claim. In the event of such a disallowance, the stewards may further order the return of a horse to its original owner and the return of all claim moneys.
9. Protest of claim. A protest to any claim must be filed with the stewards before noon of the day following the date of the race in which the horse was claimed. Nonracing days are excluded from this rule.

History: Effective July 1, 1989.
General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10
Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-18. Medication.

1. No horse participating in a race shall carry in its body any substance foreign to the natural horses except as hereinafter provided.
2. No foreign substance may be administered to a horse entered to race by injection, oral administration, rectal infusion or suppository, or by inhalation within twenty-four hours prior to the scheduled post time for the first race, except as hereinafter provided.
3. Foreign substances prohibited. No horse participating in a race may carry in its body any foreign substance.

History: Effective July 1, 1989.
General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10
Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-08
PARIMUTUEL WAGERING SYSTEMS

Section	
69.5-01-08-01	General
69.5-01-08-02	Totalisator System
69.5-01-08-03	Records
69.5-01-08-04	Calculation and Distribution of Pools
69.5-01-08-05	Minimum Wager and Payoff
69.5-01-08-06	Minors Prohibited from Wagering
69.5-01-08-07	Odds or Payoffs Posted
69.5-01-08-08	Betting Explanation
69.5-01-08-09	Prior Approval Required for Betting Pools
69.5-01-08-10	Pools Dependent Upon Entries
69.5-01-08-11	Parimutuel Ticket Sales
69.5-01-08-12	Meeting Interests Involving More Than One Horse
69.5-01-08-13	Emergency Situations
69.5-01-08-14	Totalisator Employees
69.5-01-08-15	Breakage and Outs

69.5-01-08-01. General. Each association may permit wagering only on races conducted by each association on the grounds of such association except as otherwise permitted by the commission and state

law. All such permitted wagering must be under the parimutuel system employing a totalisator system approved by the commission. All other systems of wagering other than parimutuel are prohibited.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-02. Totalisator system. Each association shall install and operate during its meeting a totalisator system approved by the commission and such system must be tested prior to and during the meeting as required by the commission.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-03. Records. The parimutuel (mutuels) manager shall maintain complete records of all wagering so the commission may review such records for any race including the opening line, subsequent odds fluctuation, the amount and at which window wagers were placed on any betting interest, and such other information as the commission may require. Such wagering records must be retained by each association and safeguarded for a period of time specified by the commission.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-04. Calculation and distribution of pools.

1. General. The only parimutuel wagering pools permitted are for win, place, show, daily double, exacta, quinella, and trifecta, each with separate and independent calculation and distribution. From each pool there must be deducted by each association the commissions as provided by state law. Odd cents over any multiple of ten cents of winning per dollar wagered are deducted and retained by the licensee as breaks as the outs set forth in subsection 4 of section 69.5-01-08-11. The remainder of the moneys in the pool constitute the net pool for distribution as payoff to ticketholders as set out in subsections 2 through 11.
2. Win pool. The amount wagered on the horse or betting interest which finished first is deducted from the net pool, the balance remaining being the profit; the profit is divided by the amount wagered on the horse or betting interest finishing first, such quotient being the profit per dollar wagered to win; payoff includes return of amount wagered and profit thereon.

- a. In the event of a dead heat for first involving horses of two different betting interests, the win pool is distributed as if a place pool; if involving horses of three different betting interests, the win pool is distributed as if a show pool.
 - b. In the event no win ticket is sold on the horse which finishes first, the net win pool is distributed to holders of win tickets on the horse finishing second.
3. Place pool. The amounts wagered to place on the first two horses to finish are deducted from the net pool to determine the profit; the profit is divided into two equal amounts; one-half of the profit is divided by the amount wagered to place on the first finisher, such quotient being the profit per dollar wagered to place on the first finisher; and one-half of the profit is divided by the amount wagered to place on the second finisher, such quotient being the profit per dollar wagered to place on such second finisher; payoffs include return of amount wagered and profit thereon as to each of the first two finishers.
- a. In the event of a dead heat for first between horses representing the same betting interests, the place pool is distributed as if a win pool; if between horses representing two different betting interests, the place pools distributed as if one betting interest finished first and the other finished second; if between horses representing three different betting interests, the place pool is distributed as if a show pool.
 - b. In the event of a dead heat for second between horses representing the same betting interest, the place pool is distributed as if no dead heat occurred; if between horses representing two or more different betting interests, the profit is divided in half, with one-half allocated for wagers to place on the horse which finished first, and other half divided equally so as to allocate one-fourth of the profit on the net place pool for wagers to place on each of the two horses finishing in a dead heat for second, or one-sixth of the profit for wagers to place on each of three horses finishing in a dead heat for second.
 - c. In the event the first and second finishers comprise a single betting interest, the place pool is distributed as if a win pool.
 - d. In the event no place ticket is sold on a horse which finishes first or second, then the horse which finished third shall replace the horse in the distribution of wagers in the place pool.

4. Show pool. The amounts wagered to show on the first three horses to finish are deducted from the net pool to determine the profit. The profit is divided into three equal amounts; one-third of the profit is divided by the amount wagered to win on the first finisher, such quotient being the profit per dollar wagered to show on such first finisher; one-third of the profit is divided by the amount wagered to show on the second finisher, such quotient being the profit per dollar wagered to show on such second finisher; and one-third of the profit is divided by the amount wagered to show on the third finisher, such quotient being the profit per dollar wagered to show on such third finisher. Payoffs include return of amount wagered and profits thereon as to each of the first three finishers.
- a. In the event of a dead heat for first: between two horses involving different betting interests, or three horses involving three different betting interests, the show pool is distributed as if no dead heat occurred; if between two horses involving the same betting interest, two-thirds of the profit is allocated to wagers to show on the coupled betting interest, and one-third allocated to wagers to show on the other horse among the first three finishers; if between three horses involving one betting interest, the show pool is distributed as if a win pool.
 - b. In the event of a dead heat for second: between two horses involving two different betting interests, the show pool is distributed as if no dead heat occurred; if between horses involving the same betting interest, two-thirds of the profit is allocated to wagers to show on the coupled betting interest, and one-third allocated to wagers to show on the horse finishing first; if between three horses involving one, two, or three betting interests, one-third of the profit is allocated to wagers to show on the horse finishing first, and the remaining two-thirds of the profit is divided equally by the number of betting interests finishing in a dead heat for second for proportionate distribution on wagers to show for each such betting interest finishing in a dead heat for second.
 - c. In the event of a dead heat the third: between horses involving the same betting interests, the show pool is distributed as if no dead heat occurred; if between horses involving two or more betting interests, two-thirds of the profit shall be allocated to wagers to show on the first two finishers, and the remaining one-third is divided equally by the number of betting interests finishing in a dead heat for third for proportionate distribution on wagers to show for each such betting interest finishing in a dead heat for third.

- d. In the event the first three horses to finish comprise one betting interest; the show pool must be distributed as a win pool. In the event two horses coupled as a single betting interest finish first and second, or first and third, or second and third, two-thirds of the profit must be allocated to wagers to show on the other horse among the first three finishers.
 - e. In the event one horse coupled in the betting by reason of being in the mutuel field or part of a mutuel entry finishes first or second and another horse included in the same betting interest finishes in a dead heat for third: one-half of the profit in the show pool must be allocated to wagers on such field or entry, one-third of the profit in the show pool must be allocated to wagers on the horse finishing first or second, and the remaining one-sixth of such profit must be allocated to wagers on the horse finishing in a dead heat for third with such field or entry.
 - f. In the event only two horses finish, the show pool, if any, must be distributed as if a place pool; if only one horse finishes, the place and show pools, if any, must be distributed as if a pool; if no horse finishes, all money wagered on such race must be refunded upon presentation and surrender of parimutuel tickets sold thereon. In the event no show ticket is sold on a horse which finishes first, or second, or third, then, the horse which finished fourth shall replace that horse in the distribution of wager in the show pool.
5. Daily double pool. The amount wagered on the winning combination, such being the horse or betting interest which finishes first in the first daily double race, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning daily double combination; payoff includes the amount wagered and profit thereon.
- a. In the event of a dead heat for first involving two different betting interests, in one of the two daily double races, the daily double pool is distributed as if a place pool, with half the profit allocated to wagers combining the single winner of one daily double race and of the betting interests involved in the dead heat in the other daily double race, with the other half of the profit allocated to wagers combining the single winner of one daily double race and the other betting interest involved in the dead heat in the other daily double race.
 - b. In the event of dead heats for first involving different betting interests in each of the daily double races,

resulting in four, or six, or nine, winning combinations for proportionate allocation for each such winning daily double wager.

- c. In the event no daily double ticket is sold combining the horse or betting interest which finishes first in one of the daily double races, the daily double pool is distributed as if a win pool with the profit allocated to the wagering combination which includes the horse or betting interest which finished first in one of the daily double races.
- d. In the event no daily double ticket is sold combining the horses or betting interest which finished first in both the first and second race of the daily double, then the winning combination for distribution of the daily double profit must be that combining the horses or betting interests which finished second in each of the daily double races.
- e. If after daily double wagering has commenced and a horse not coupled with another as a betting interest in the first race of the daily double is excused by the stewards or is prevented from racing because of failure of the starting gate to open properly, then daily double wagers combining such horse must be deducted from the daily double pool and refunded upon presentation and surrender of daily double tickets thereon.
- f. If, prior, to closing of the daily double wagering, a scheduled starter in the second half on the daily double which is not coupled in the betting with another horse is excused by the stewards, then daily double wagers combining such horse must be deducted from the daily double pool and refunded upon presentation and surrender of daily double tickets thereon.
- g. If after the first race of the daily double has been run, and a horse not coupled with another as a betting interest in the second race of the daily double is excused by the stewards or prevented from racing because of failure of the starting gate door to open properly, then daily double wagers combining the winner of the first daily double race with such horses prevented from racing in the second daily double race must be allocated consolation payoffs.
- h. Consolation daily double payoffs must be determined by dividing the net daily double pool by the amount wagered combining the winner of the first daily double race with every horse or betting interest scheduled to start in the second daily double race, such quotient being the consolation payoff per dollar wagered combining the winner of the first daily double with such horse prevented from

riding in the second daily double race. Such consolation payoffs must be deducted from the net daily double pool before calculation and allocation of wagers on the winning daily double combination.

- i. If for any reason the first daily double race is canceled or declared "no race" by the stewards, then the entire daily double pool must be refunded upon presentation and surrender of daily double tickets thereon. If for any reason the second daily double race is canceled or declared "no race" by the stewards after the first daily double race is declared official, then the net daily double pool must be distributed to wagering combinations which include the horse or betting interest which finished first in the first daily double race.
 - j. If no daily double ticket is sold requiring distribution, then the entire daily double pool must be refunded upon presentation and surrender of daily double tickets thereon.
6. Quinella pool. The amount wagered on the winning combination, such being the first two finishers irrespective of which horse finishes first and which horse finishes second, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning quinella combination; payoff includes the amount wagered and profit thereon.
- a. In the event of a dead heat for first: between horses involving two different betting interests, the net quinella pool is distributed as if no dead heat occurred; if between horses involving three different betting interests, the net quinella pool is distributed as if a show pool and is allocated to wagers combining any of the three horses finishing in a dead heat for first.
 - b. In the event of a dead heat for second: between horse involving two different betting interests, the net quinella pool is distributed as if a place pool and is allocated to wagers combining the first finisher with either horse finishing in a dead heat for second; if between horses involving three different betting interests, the net quinella pool is distributed as if a show pool, and allocated to wagers combining the first horse with each of the three horses finishing in a dead head for second.
 - c. In the event horses representing a single betting interest finish first and second, the net quinella pool must be allocated to wagers combining such single betting interest with the horse or betting interest which finishes third.

- d. In the event no quinella ticket is sold combining:
- (1) The first finisher with one of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the first finisher with the other horse finishing in a dead heat for second.
 - (2) The second finisher with either of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the two horses which finished in the dead heat for second.
 - (3) The first finisher with either of the horses finishing in a dead heat for second or combining the two horses which finished in a dead heat for second, then the net quinella pool is distributed as if a show pool and is allocated to wagers combining any of the first three finishers with any other horses.
 - (4) The first two finishers, then the net quinella pool must be distributed as if a place pool and is allocated to wagers combining the first finisher with any other horses, and wagers combining the second finisher with any other horse.
 - (5) Horses or betting interest as would require distribution, then the entire quinella pool must be refunded upon presentation and surrender of quinella tickets thereon.
7. Exacta pool. The exacta pool is a contract by the purchaser of a ticket combining two horses in a single race, selecting the two horses that will subsequently finish first and second in that race. Payment of the ticket may be made only to the purchaser who has selected the same order of finish as officially posted.
- a. The exacta is not a "parlay" and has no connection with or relation to the win, place, and show betting and will be calculated as an entirely separate pool.
 - b. If no ticket is sold on the winning combination of an exacta pool, the net pool must be distributed equally between holders of tickets selecting the winning horse to finish first or holders of tickets selecting the second place horse to finish second or both.
 - c. If no ticket is sold that would require distribution of an exacta pool to winners as above defined, the association shall make a complete and full refund of exacta pool.

- d. In case of a dead heat between two horses for first place, the net exacta pool must be calculated and distributed as a place pool to holders of tickets of the winning combinations. In case of a dead heat between two horses for second place, the exacta pool must be figured as a place pool, the holders of tickets combining the winning horse and the two horses finishing second participating in the payoff.
 - e. In the event of a dead heat for second place, if no ticket is sold on one of the two winning combinations, the entire net pool must be calculated as a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the exacta pool must be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.
 - f. In the event of an entry finishing first and second, the net exacta pool must be distributed to holders of tickets selecting the entry to win combined with the horse finishing third.
8. Trifecta pool. The trifecta pool is a contract by the purchaser of a ticket combining three horses in a single race that will subsequently finish first, second, and third in that race. Payment of the ticket may be made only to the purchaser who has selected the same order of finish as officially posted.
- a. The trifecta is not a parlay and has no connection with the relation to the win, place, and show betting and will be calculated as an entire separate pool.
 - b. If no ticket is sold on the winning combination of the trifecta pool, the net pool must be distributed in that order. If no ticket is sold combining the win and place finish then that pool must be distributed to the holders of tickets selecting the winner. If less than three horses finish the payoff will be made to holders of tickets selecting the finishing horses in order, ignoring the balance of the selection.
 - c. If no ticket is sold that would require distribution of the net trifecta pool to a winner as above defined, the association shall make a full refund of the trifecta pool.
 - d. In the event of a dead heat or dead heats all trifecta tickets selecting the correct order of finish counting a horse in a dead heat as finishing in either position dead heated must be winning tickets. The payoff will be calculated as a place pool.

- e. In the event of a scratch in the trifecta, no exchanges will be made. All tickets which include the scratched horse are eliminated from further participation of the trifecta pool and will be refunded.
 - f. Coupled entries in fields are prohibited in trifecta races.
9. Refunds. After wagering has commenced, if a horse not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting gate door to open properly, the wagers on such horse must be deducted from the pools, and refunded upon presentation and surrender thereof. If more than one horse represents a single betting interest by reason of coupling as a mutuel entry or mutuel field, such single betting interest being the sole subject of a wager or part of a combination then there may be no refund unless all of the horses representing such single betting interest are excused by the stewards or are prevented from racing because of failure of the starting gate doors to open properly, or both.
10. Race canceled. If for any reason a race is canceled or declared "no race" by the stewards after wagering has commenced on such race, then all wagering thereon must be refunded upon presentation and surrender of parimutuel tickets thereon; except as to daily double wagers upon cancellation of the second daily double race, which must be distributed as provided under subsection 5.
11. Totalisator breakdown. In the event of an irreparable breakdown of the totalisator during the wagering on a race, the wagering on that race must be declared closed and the payoff must be computed on the sums wagered in each pool up to the time of the breakdown.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-05. Minimum wager and payoff. The minimum wager to be accepted by any licensed association is one dollar. The minimum payoff on a two dollar wager must be two dollars and twenty cents.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-06. Minors prohibited from wagering. No minor may be permitted by any licensed association to purchase a parimutuel ticket or be present in the immediate wagering areas.

History: Effective July 1, 1989.
General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10
Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-07. Odds or payoffs posted. Approximate odds, based on win pool betting for finishing first for each betting interest, must be posted on one or more boards or television screens within view of the wagering public, at intervals of not more than ninety seconds. If daily double wagering is conducted before off time of the second daily double race, the possible payoff for each two dollar daily double wager combining the winner of the first daily double race with every horse or betting interest in the second daily double race; excepting that, in the event of a dead heat for first in the first daily double race, or a scheduled start in the second daily double race, is excused so as to cause a consolation daily double pool, then posting of all possible payoffs is not mandatory, but the association shall make every effort to compute such daily double prices and advise the public of the same by posting or public address announcement as soon as possible and prior to the running of the second daily double race.

History: Effective July 1, 1989.
General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10
Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-08. Betting explanation. Each association shall cause to be published in the daily race program a general explanation of parimutuel betting and an explanation of each type of betting pool offered; such explanation also must be posted in conspicuous places about the association grounds so as to adequately inform the public. Such explanation must be submitted to the commission prior to publication so as to ensure an absence of conflict with these rules.

History: Effective July 1, 1989.
General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10
Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-09. Prior approval required for betting pools. Each association desiring to conduct other than ten betting races in a single day, or desiring to offer daily double, trifecta, exacta, or quinella wagering, shall first apply therefore in writing to the commission and obtain specific approval as to number of betting races and type of wagering to be offered on a single day.

History: Effective July 1, 1989.
General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10
Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-10. Pools dependent upon entries.

1. Unless the commission approves a prior written request from the association to alter wagering opportunities for a specific race, each association shall offer win, place, and show wagering on all programmed races involving six or more betting interests.
2. If horses representing five or fewer betting interests qualify to start in a race, then the association may prohibit show wagering on that race; if horses representing four or fewer betting interests qualify to start in a race, then the association may prohibit both place and show wagering on that race.
3. If, by reason of a horse being excused by the stewards after wagering has commenced or a horse is prevented from racing because of failure of a starting gate door to open properly, the number of actual starters representing different betting interests is:
 - a. Reduced to five, then the association may cancel show wagering on that race and the entire show pool must be refunded upon presentation and surrender of show tickets thereon.
 - b. Reduced to four or fewer, then the association may cancel both place and show wagering on that race and the entire place and show pools must be refunded upon presentation and surrender of such place and show tickets thereon.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-11. Parimutuel ticket sales.

1. No parimutuel tickets may be sold except by the association conducting the races on which such wagers are made, and the same must be sold only at regular "seller" windows properly designated by signs showing the type and denomination of tickets to be sold at such windows if there are restrictions of any kind. No parimutuel tickets may be sold after the totalisator has been locked and no association is responsible for ticket sales entered into but not completed by issuance of a ticket before the totalisator has been locked.
2. Any claim by a person that the person has been issued a ticket other than that which the person requested must be made before such person leaves the seller window and before the totalisator is locked.
3. After purchasing a ticket and after leaving a ticket window, a person is not entitled to enter for issuance of an incorrect

ticket, or claim refund or payment for tickets discarded, lost, destroyed, or mutilated beyond identification.

4. Payment on valid parimutuel tickets may be made only upon presentation and surrender thereof to the association where such wager was made within ninety days following the running of the race on which such wager was made. Failure to present any such ticket within ninety days constitutes a waiver of the right to receive payment thereon. The balance of funds not paid out constitutes the outs.
5. Payment of valid parimutuel tickets must be made on the basis of the order of finishes purposely posted on the infield results board and declared "official" by the stewards; any subsequent change in such order of finish or award of purse money as may result from a subsequent ruling by the stewards or commission in no way affects the parimutuel payoff. Cashiers' windows must remain open a reasonable length of time after the last race.
6. The association is responsible for the correctness of all payoff prices posted as "official" on the infield results board. If an error is made in posting the payoff figures on the public board, and ascertained before any tickets are cashed thereon, then such posting error may be corrected accompanied by a public address announcement, and only the correct amounts may be used in the payoff, irrespective of the initial error on the public board.
7. Prior to posting payoffs, the parimutuel manager shall require each of the computer printout sheets of such race to be proven and the winners verified. Such proof must show the amounts for commissions, breakage, and payoffs, which added together must equal the total pool. All pay slips are to be checked with computer printout sheets as to winner and prices before being issued to cashiers, and all board prices are to be rechecked before released to the public.
8. Whenever the recapitulation of the sales registered by each ticket issuing machine subsequently proves that the actual amount in the pool, or pools, is less than the amount used in calculating the payoff, such deficiency must be deposited in the pool or pools by the association. Should the recapitulation of sales prove that the actual amount in the pool or pools is greater than the amount used in calculating the payoff due to an error of the totalisator, such error resulting in underpayment to the public, then the aggregate of such underpayments must be paid into the corresponding pool of the next race or races in such amounts as may be determined by the state steward and the parimutuel manager. If any such error should occur in computing the daily double pool, the underpayment must be added to the daily double pool of the following day. Overpayments and underpayments subsequently

discovered upon recapitulation after the close of a meeting may be adjusted, and any underpayment resulting from such final adjustment must be paid to the commission.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-12. Meeting interests involving more than one horse. When two or more horses entered for the same race are determined by the stewards to have common ties through ownership or training and are joined by the stewards as a "mutuel entry", such mutuel entry becomes a single betting interest and a wager on one horse in a mutuel entry is a wager on all horses in the same mutuel entry. When the number of horses competing in a race exceeds the numbering capacity of the totalisator, the racing secretary shall assign the highest parimutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalisator, together with horses of higher numbers, is shown in the "mutuel field" as a single betting interest, and a wager on one horse in the mutuel field is a wager on all horses in the same mutuel field.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-13. Emergency situations. In the event any emergency arises in connection with the operation of the parimutuel department not provided for by these rules, then the parimutuel manager shall make an immediate decision and render a full report to the commission.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-14. Totalisator employees. Any employee of a totalisator company shall report any irregularities or wrongdoings by any person involving parimutuel wagering immediately to the commission.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-15. Breakage and outs.

1. Each licensee conducting a race meeting shall report to the commission the full amount of all breakage and funds due the state treasurer as prescribed by law and these rules, and shall remit such breakage and funds to the state treasurer

within thirty days after the race day on which such breakage and funds shall occur or accrue.

2. Each licensee conducting a race meeting shall report to the commission and remit to the state treasurer the full amount of all outs (unclaimed winning tickets) within fifteen days after the ninety day waiting period as described in subsection 4 of section 69.5-01-08-11.

ARTICLE 69.5-02

NORTH DAKOTA HARNESS RACING RULES

Chapter
69.5-02-01 Definitions

CHAPTER 69.5-02-01 DEFINITIONS

Section	
69.5-02-01-01	Definitions
69.5-02-01-02	Duties of Racing Officials
69.5-02-01-03	Duties of Judges
69.5-02-01-04	Starter Duties
69.5-02-01-05	Paddock Judge Duties
69.5-02-01-06	General Licensing Provisions
69.5-02-01-07	License Provisions for Owners, Partnerships
69.5-02-01-08	Stable Names Provisions
69.5-02-01-09	Stake Races Provisions
69.5-02-01-10	Qualifying Races
69.5-02-01-11	General Provisions Types of Races Permitted, Declarations, and Drawing of Post Positions
69.5-02-01-12	Scratches
69.5-02-01-13	Postponement and Cancellation
69.5-02-01-14	Paddock Provisions
69.5-02-01-15	Claiming Provisions
69.5-02-01-16	Provisions for Winners, Dead Heats, Walkovers, and Not Betting Races
69.5-02-01-17	Placing and Money Distribution
69.5-02-01-18	Racing Provisions
69.5-02-01-19	Time and Records
69.5-02-01-20	Protests
69.5-02-01-21	General Rules - Others
69.5-02-01-22	Breath Analysis
69.5-02-01-23	Offenses
69.5-02-01-24	Penalties, Hearings, and Appeals

69.5-02-01-01. Definitions.

1. "Act" means North Dakota Century Code chapter 53-06.2.
2. "Added money" means money offered for an event by an association.
3. "Age" of a horse must be reckoned from the first day of January of the year of foaling.
4. "Association" means a person, association, society, or body corporate conducting a race meeting.
5. "Bred" means the place of foaling of a horse.
6. "Breeder" means the owner of the dam of a horse at the time of foaling.
7. "Claiming race" means a race in which every horse racing therein may be claimed in conformity with this regulation.
8. "Day" means twenty-four hours ending at midnight.
9. "Declaration" means an indication in the prescribed form of an intention to start a horse in a race.
10. "Entry" means two or more horses starting in a race when owned in whole or in part, directly or indirectly, by the same person, or trained in the same stable or by the same management.
11. "Extended meeting" means a meeting of ten days or more.
12. "Fair meeting" means a meeting of less than ten days.
13. "Futurity" is a stake race in which the in foal dam of the competing animal, or the animal itself is nominated during the year of the foaling.
14. "Horse" means a horse, mare, colt, filly, or gelding.
15. "Judges' list" means a list of horses that are refused declaration.
16. "Maiden" means a horse that:
 - a. Has never won a heat or race at the gate at which it is entered to start and for which a purse is offered, excluding schooling races;

- b. Has been awarded a race or purse money after the "official sign" was posted but is not considered as a winning performance; or
 - c. Although having finished first in a race for which a purse was or is offered was or is subsequently disqualified.
- 17. "Meeting" means the period of time during which races are run consecutively at one racetrack.
 - 18. "Owner" includes a part owner or lessee but does not include a person who has an interest in only the winnings of a horse.
 - 19. "Person" includes a racing association.
 - 20. "Post position" means the position assigned to a horse for the start of the race.
 - 21. "Post time" means the time set for the arrival at the starting point of the horses in a race.
 - 22. "Qualifying list" is a list of horses that are required to go a qualifying race.
 - 23. "Qualifying race" means a race in which a horse must establish its ability to participate at a race meeting consistent with the qualifying standards established for a class of horse.
 - 24. "Racing season" means the period during which races are conducted in North Dakota in any calendar year and includes any meeting commencing in one calendar year and concluding in the next ensuing calendar year.
 - 25. "Rules" means the rules of racing covering harness racing prescribed in this article as amended from time to time, and includes those directives and rulings that may from time to time be made by the commission of horse racing, the executive director for the commission, or the judges with respect to conducting harness horse racing.
 - 26. "Stake" means a race open to all horses, complying with its conditions and in which the nominators of the horses entered contribute to the purse.
 - 27. "Starter" means:
 - a. The person who dispatches a field of horses at a race.
 - b. A horse that has passed the fair start pole when the starter dispatches the horses with the word "go".
 - 28. "Sustaining fees" includes interim, declaration, and starting fees or payments.

29. "Turf authority" means the official regulatory body of racing in a jurisdiction.
30. "Walkover" is an event in which the only competitor is one horse or one entry.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-02. Duties of racing officials.

1. No person may officiate or be employed as a judge, racing secretary, assistant race secretary, starter, placing judge, clerk of the course, paddock judge, patrol judge, timer, equipment inspector, identifier, horsemen's bookkeeper, program director, or as any other official or employee of an association as the commission may from time to time direct, until the appointment or employment of that official is approved in writing by the commission.
2. An association approved to conduct a race meeting shall submit to the commission a list of officials thirty days prior to the commencement of a race meeting.
3. No racing official, without the consent of the commission, may occupy or serve in more than one official position and then only if the combined duties can be performed efficiently and adequately and without conflict of responsibility.
4. No racing official may engage in any employment or activities at a racetrack during the conduct of an approved race meeting other than the employment and activities for which the racing official has been approved by the commission.
5. No person having an interest in the result of a race by reason of ownership in a participating horse, wagering or otherwise, may act in any official capacity in connection with the running of a race.
6. No official of the commission, racing official, or security personnel may wager on the outcome of a race.
7. No employee or licensee of the commission or employee of an association may give to anyone, directly or indirectly, for reward or for any other consideration, any information or advice that would tend to influence any person in the making of a wager on a horse in a race. This subsection does not apply to an association employee making a selection that appears in the official program, an association publication, or a newspaper or is broadcast over the radio or television.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-03. Duties of judges.

1. The commission shall appoint or approve the appointment of judges to be called the "board of judges", who shall enforce the carrying out and observance of this regulation, and any rules or conditions established under the act.
2. In the performance of their duties, the judges shall exercise reasonable control over and have unrestricted access to all buildings, stables, rooms, and all other places within the grounds of an association.
3. The board of judges shall interpret the rules and decide all questions according to the usages of the turf and in the best interests of racing whether specifically covered by the rules or not.
4. The board of judges, subject to final confirmation by the board, shall approve or deny all applications for licenses under the rules.
5. At any meeting or hearing of the board of judges a majority of the board of judges constitutes a quorum, and a majority of the judges present determines any questions.
6. If the judges are an even number, the supervisor, or an assistant supervisor of racing, may participate and cast a deciding vote.
7. The board of judges shall supervise all declarations and scratches and at least one judge must be present at the race secretary's office at the closing and during the drawing of declarations.
8. The judges' may conduct an investigation into any matter within the judges' jurisdiction and may demand a statutory declaration or other form of proof from any person under the judges' jurisdiction and having knowledge of the matter under investigation, and at any time order a veterinarian's examination of any horse.
9. The board of judges may refuse the declaration of a horse for any reasons they consider proper, and a horse so refused:
 - a. Must be posted on the judge's list; and
 - b. May subsequently be reinstated by removal from that list by the judges.

10. The board of judges may place a horse in the temporary charge of a trainer they select.
11. The board of judges may excuse a horse from starting for any reason they consider proper whether before or after it has been accepted by the paddock judge.
12. The association, with the approval of the board of judges, may fill any casual or emergency vacancy of an official position subject to subsequent approval of the commission.
13. Except where the circumstances require the board of judges to render an immediate decision without a hearing under the rules or in the best interests of racing, the judges shall, whenever they suspect that there has been a violation of this article, or any rules or directives of the commission, or of any proper order or direction of a judge or judges.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-04. Starter duties.

1. An association conducting a race meeting shall appoint a starter who shall have the authority to give orders necessary to ensure a fair start.
2. The starter's decision as to the validity of a start is final except when otherwise ordered by the board of judges.
3. The starter shall maintain a starter's list and horses must be schooled in starting if and when required by the starter or a judge, and must be denied declaration until removed from that list.
4. A horse that is unmanageable at the starting gate or refuses to start properly may be refused declaration until the starter is satisfied that the horse's conduct has been corrected.
5. The starter shall have control over the horses and drivers from the formation of the parade until the word "go" is given and shall notify the judges of any violation of the rules.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-05. Paddock judge duties.

1. An association conducting a race meeting shall appoint one or more paddock judges.
2. The paddock judge shall:
 - a. Keep a record, as specified by the judges, of equipment required to be carried by each horse in each race and may not permit any change in that equipment unless authorized by a judge.
 - b. Require all horses be checked and properly identified in each race.
 - c. Immediately report to the board of judges the absence or ineligibility of, or any other irregularity with respect to, a horse, its equipment, or the judge's inability to make a positive identification of a horse.
 - d. Immediately report to the board of horse racing veterinarian any unsoundness of any horse.
 - e. Notify the board of judges of the reason for any horse returning to the paddock after having entered the track for the postparade and before the start of the race.
 - f. Report any violation of the rules.
3. The paddock judge may authorize any person to be admitted to the paddock in addition to the members of the commission, racing officials, owners, trainers, drivers, and grooms having horses in the paddock.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-06. General licensing provisions.

1. No person may act as an owner, a trainer, driver, veterinarian, veterinarian assistant, authorized agent, stable employee, farrier or plater, parade marshal, or such other racing trade or calling as the commission may designate unless the person is the holder of an existing license issued by the commission.
2. In dealing with an application for license, the personal character and ability of the applicant must be considered by the commission, but in no case may a person be licensed who is currently under suspension by any turf authority.
3. The commission by directive, may require that any persons employed or engaged in the conduct of a race meeting who are

designated by the commission must be registered with the association conducting the race meeting in lieu of being licensed by the commission, and those persons so registered must be deemed to be licensed by the commission and subject to the rules of the commission covering such licensed persons.

4. No person who is the holder of an existing license issued by the commission may have in the person's employ, or offer to employ at the racetrack, a person who is required to be licensed but is not the holder of an existing license issued by the commission.
5. An employer is required to submit to the commission and keep current, an employee roster with the name of each employee and the employee's license number and shall promptly inform the commission of the name and license number of any employee leaving the employer's employ, and of any new employee.
6. The license fee payable by an association must be the sum for each day upon which racing is to be conducted by the association that the commission may from time to time prescribe.
7. Licensees other than an association shall pay the fees that the commission may from time to time fix by directive.
8. The commission may grant a duplicate license on receipt of satisfactory proof of loss of an original license and on payment of a fee determined by the commission from time to time.
9. A license becomes invalid if the licensee ceases to be employed or to act in the capacity named in the license and that license must be surrendered to and retained by the commission.
10. No applicant may be granted a license until the applicant has been identified and photographed by the commission staff, unless that requirement is waived by the commission.
11. A licensed trainer may apply for a license on behalf of any owner that the trainer represents by signing the application for the owner's license and permission to race may be granted for fourteen calendar days.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-07. License provisions for owners, partnerships.

1. An applicant for an owner's license may be required to satisfy the commission of financial responsibility.
2. Upon the suspension or revocation of the license of an owner, all horses of the owner become ineligible to race.
3. All declarations of joint ownership or partnership or changes therein must be registered with the racing association concerned.
4. A declaration of partnership, syndicate, joint venture, or other group must contain the following information:
 - a. Name and address of every person having an interest in the horses provided.
 - b. The relative portion of each person's interest.
 - c. To whom the winnings are payable.
 - d. In whose name the horse shall race.
 - e. With whom the power of declaration rests.
 - f. The terms of any contingency, lease, or other similar arrangement.
 - g. If a company is a joint owner or partner, the names, permanent address, and occupations of:
 - (1) All officers, directors, and persons having at any time and from time to time, any interest in the shares of the company, reported in the manner prescribed by the commission from time to time and containing the information in a format acceptable to the commission; and
 - (2) The company's appointed authorized agent who has been licensed by the commission.
5. A lease of the racing properties of a horse must be filed with the racing association and must state to whom the winnings are payable.
6. The terms of a lease must be bona fide, specific, and substantial, and must be approved by the commission of judges.
7. An owner, other than a company, may appoint an authorized agent who must be licensed by the commission to act on the owner's behalf.
8. A shareholder of a company licensed as an owner, upon application, may be licensed as an owner.

9. If there are more than four owners, a stable name must be registered.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-08. Stable names provisions.

1. No person may use a stable name unless that name and any changes in that name are registered with:
 - a. The United States trotting association.
 - b. The board of horse racing; and
 - c. The association.
2. No person may use, directly or indirectly, more than one stable name at the same time.
3. A person may disassociate himself from a stable name by giving notice to the commission and the United States trotting association.
4. When a company holds a license, its corporate name is deemed to be the stable name of the company and of each of its shareholders.
5. When a partnership, syndicate, joint venture, or other group holds a license, the name in which the license is issued is deemed to be the stable name of the group and of each member of the group.
6. A member of a licensed corporation or a licensed group may apply for a member's license permitting the holder access to the barn area and paddock of a racetrack if the president of the corporation or manager of the group:
 - a. Cosigns the application;
 - b. Certifies that the applicant is a member; and
 - c. Personally undertakes to be responsible for all the acts of the applicant in the barn and paddock area as though they were his own.
7. The commission may not, under subsection 6, issue more than ten member's licenses per corporation or group per year.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-09. Stake races provisions.

1. Conditions for stakes that conflict with the rules, are vague, or inconsistent may not be published and, if published, are of no effect insofar as they so conflict.
2. Conditions for stakes must be approved by the commission prior to publication and must include the following information:
 - a. The categories of horses that are eligible to be nominated;
 - b. The amount to be added to the purse by the association;
 - c. The dates and amounts of nomination and sustaining payments;
 - d. Whether the event will be:
 - (1) Raced in divisions; or
 - (2) Conducted in elimination heats if more horses than the maximum allowed to compete in one division are declared; and
 - e. The percentage distribution of the purse to the money winners in each heat or dash, and the formula for calculating the distribution if the number of starters is less than the number of premiums advertised.
3. The date and place where stakes will be raced must be announced as soon as that information is determined.
4. Conditions may not be changed after nominations have been received except with the approval of the commission.
5. All nominations to stakes must:
 - a. Be made in writing.
 - b. Be signed by the owner, trainer, or his authorized agent.
 - c. State the name and address of the bona fide owner or lessee, or both, as the case may be.
 - d. Identify by age, name, color, sex, sire, and dam each horse nominated.
 - e. Name the event or events for which the horse is being nominated.

- f. Be made at least five days prior to the race for which the nomination is made.
6. No deductions may be made for clerical or any other expenses from nomination or sustaining payments or from added money.
7. The dates for the closing of nominations must be:
 - a. For stakes nominating yearlings, not later than May fifteenth.
 - b. For stakes nominating other than yearlings, the fifteenth day of the month.
 - c. For futurities, not later than July fifteenth of the year of foaling.
8. Nominations for stakes on races for two-year-olds may not be taken prior to February fifteenth.
9. Sustaining payments for stakes are payable on the fifteenth day of a month, but no stake sustaining fee becomes due prior to February fifteenth of the year in which the horses nominated become two years of age.
10. If the day of closing of nomination or sustaining payment falls on a Sunday or legal holiday, the day of closing must be the next business day.
11. Declaration fees become due and payable when a horse is properly declared.
12. When a horse has been properly declared its declaration fee may not be refunded.
13. Unless otherwise specified by the association or sponsor of a race, conditions are invalid that have the effect of eliminating horses nominated to an event or adding horses that have not been nominated to an event because of the performance of those horses after the closing of nomination.
14. The eligibility of the horse nominated is not affected by the sale of the horse after its nomination has been accepted unless the contrary is specified in the conditions.
15. An association shall provide a list of nominations to each nominator and to the commission in all stakes within a month after the date on which payments were due, including a resume indicating the current financial status of the event by listing the number of horses remaining eligible and the amounts of nomination and sustaining payments received.
16. Nomination fees to futurities are not refundable.

17. No deductions are permitted from the purse for any event that is allotted to "consolation" races.
18. An association has the right to require at least five separate interests to start in all stakes but if less horses than required are declared to start, the race may be declared off and in that case the total of nomination and sustaining payments received must be divided equally in respect to the horses declared to start without being credited as purse winning.
19. Futurities must be contested if one or more horses are declared to start.
20. If no declarations are made, the total of nomination and sustaining payments must be divided equally and awarded in respect to the horses remaining eligible after payment of the last sustaining payment, without being credited as purse winnings.
21. When a stake is split into divisions:
 - a. The added money, nomination, and interim fees must be divided equally among the divisions; and
 - b. The declaration and starting fees must be divided in proportion to the number of horses starting in each division.
22. Unless otherwise specified in the conditions, if more horses than are allowed in one field are declared, the race must be conducted in divisions or eliminations and in accordance with the following provisions:
 - a. For stakes conducted in divisions:
 - (1) Starts must be divided by lot;
 - (2) All divisions must be raced on the same day; and
 - (3) The association shall contribute to each division additional added money so that portion of the purse equals at least seventy-five percent of the original amount.
 - b. For stakes conducted in elimination:
 - (1) Starters must be divided by lot with sixty percent of the total purse to be divided equally among the elimination heats, and the final heat to be contested for forty percent of the total purse;

- (2) Eliminating heats and the final heat must be raced on the same day, unless conditions provide otherwise, and in that case elimination heats must be contested not more than ten days prior to the date of the final heat;
 - (3) The winner of the final heat must be the winner of the stake;
 - (4) If there are two elimination heats, the first four finishers in each heat shall qualify for the final heat and if there are three or more elimination heats, not more than three horses from each elimination heat shall qualify for the final heat; and
 - (5) Judges shall draw by lot the post positions for the final heat to determine which of the two elimination heat winners shall have the pole and the second position and which of the two horses that were second shall start in the third and fourth positions, and shall in that manner determine all of the positions for the final heat.
23. In all cases, the number of horses allowed to start in the final heat may not exceed the maximum number permitted to start.
24. A horse that is on the qualifying, veterinarian, starter, or judges' list may be nominated but is not eligible to declare or start in a stake unless it is removed from those lists before the time of declaration or starting.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-10. Qualifying races.

1. Declarations at an extended race meeting must be governed by the following:
 - a. A horse that has not raced previously at the gait chosen shall perform in a qualifying race under the supervision of a judge, but no horse may be permitted to race at an extended race meeting if it does not have at least one satisfactory charted line at the gait chosen and in order to provide complete and accurate chart information on time and beaten lengths, a standard photofinish must be in use.
 - b. A horse that does not show a charted line within the last six starts shall perform in a qualifying race, and for

that purpose an uncharted race contested in heats of more than one dash and consolidated must be considered to be a start.

- c. A horse that has not raced within thirty days before or during an extended race meeting shall perform in a qualifying race, except that a horse that raced in North Dakota during the current calendar year may start during the first thirty days of the next season without qualifying, and a horse entered and in to go in a race that is programmed and postponed but after postponement is reinstated and subsequently raced must be considered to be eligible.
- d. If a horse has raced at meetings at which races are not charted, the information from the uncharted races must be summarized, including each start, and consolidated in favor of charted lines that must carry date, place, time, driver, finish, track conditions, and, if the race is not at one mile [1.61 kilometers], distance.
- e. A horse that is on a qualifying list must be required to perform in a satisfactory qualifying race or races before being removed from that list.
- f. A horse that chokes or bleeds during a warmup or a race must be required to perform in a satisfactory qualifying race before it can be declared to an overnight event.
- g. The judges may permit a preferred or invitational horse to qualify by means of a timed workout consistent with the time of the races in which it will compete.
- h. The judges may institute standards or guidelines relating to an individual horse's performance to establish if the horse will qualify.
- i. A horse:
 - (1) Habitually wearing hobbles in a race other than a qualifying race may qualify without them.
 - (2) Habitually racing without hobbles may qualify with them.
 - (3) That is not on a qualifying list and is habitually wearing hobbles, or habitually not wearing hobbles, and may make one start in a qualifying race with or without hobbles, and its performance at that race shall not affect its eligibility to race with or without hobbles in a subsequent event to which it is declared.

- j. If a race is conducted for the purpose of qualifying drivers and not horses, the race need not be charted, timed, or recorded, but this clause does not apply to races qualifying both horses and drivers.
 - k. A horse that has made breaks in two immediately preceding consecutive races entered on fast tracks shall perform a qualifying race.
 - l. A horse distanced once on a fast track may be required to perform in a qualifying race.
 - m. The placing of a horse on a "qualifying list" may not be recorded on its eligibility certificate.
 - n. No horse may be permitted to obtain a win race record in a qualifying race unless an approved urine or blood test has been taken in respect to it either immediately before or after the race.
2. General qualifying standards must be established by the race secretary and those standards and any changes to them must be approved by the judges and posted so that they are available for inspection by participants at all times.
 3. Owners and trainers or owners or trainers of horses placed on a qualifying list must be advised by the judges of the placement by written notice posted in an area of the race office.
 4. Qualifying races must be held at least one full week prior to the opening of any racing season and must be scheduled at least twice a week during the period set aside for them.
 5. Qualifying races must be scheduled twice a week during meetings having four or more racing days per week, and once a week during meetings having less than four racing days per week.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-11. General provisions types of races permitted, declarations, and drawing of post positions.

1. The racing secretary, exclusively, shall schedule the following types of races:
 - a. Overnight events, including:
 - (1) Conditioned races.

- (2) Claiming races.
 - (3) Preferred, invitational, handicap, open, or free-for-all races.
 - (4) Schooling races.
 - (5) Matinee races.
- b. Stakes.
- c. Match races.
2. Substitute races may be provided for each race program and must be so designated in condition sheets and may be used when a regularly scheduled race is not run because of lack of entries.
 3. Regularly scheduled races or substitute races may, if necessary, be divided.
 4. When a race is divided, starting horses must, unless otherwise specified in the conditions of the race, be determined by lot after preference has been applied.
 5. Conditions may not be written in such a way that a horse is deprived of an opportunity to race in a normal preference cycle.
 6. Not more than three also eligible conditions may be used in writing conditions for overnight events.
 7. For the purpose of eligibility, a racing season or racing year must be the calendar year.
 8. When recording winnings, gross dollar winnings must be used and cents must be disregarded.
 9. No time records or bars may be used as an element of eligibility.
 10. Horses eligible at the time of declaration shall remain eligible for that race regardless of winnings accrued after such declaration.
 11. To participate in mixed races, trotting, and pacing, a horse must be eligible under the conditions for the gait stated for it in its declaration.
 12. The word "start" in a condition includes only those performances in a purse race and each dash or heat must be considered as a separate "start" for the purpose of condition races.

13. Preferred, invitation, junior invitation, handicap, open, and free-for-all races are those limited to the fastest horses competing at the meeting and with respect to those races:
 - a. Horses must be posted in the office of the race secretary and listed with the board of judges, prior to closing declarations;
 - b. Horses so posted are not eligible to conditioned races unless the conditions specifically include horses posted to any or all such races;
 - c. A horse must be removed from the lists not later than the day following the start that caused it to be removed; and
 - d. No two-year-old horse is eligible to be placed on the lists to race against older horses until it has won seven races, unless requested by the owner or authorized agent, but the owner or authorized agent may withdraw a request after the owner or agent has made it.
14. The maximum size of fields for all races must be determined by allowing eight feet [2.44 meters] per horse to the starters in the front tier and not more than two trailers.
15. No horse may be permitted to be declared to race unless:
 - a. A valid eligibility certificate has been granted or validated for that horse by the United States trotting association.
 - b. The registration papers and a valid eligibility certificate have been filed with the association.
 - c. If leased:
 - (1) A copy of the lease is on file with the board of judges and the associations; and
 - (2) The horse races in the name of the lessee.
 - d. The horse has qualified.
 - e. The horse has been lip tattooed.
 - f. The horse is at least two years of age to race at any meeting but not older than:
 - (1) Fourteen years of age to race at extended meetings; or
 - (2) Seventeen years of age to race at nonextended, matinee, or fair meetings.

- g. A negative "coggins test" certificate issued by a laboratory approved by the United States department of agriculture or the North Dakota board of veterinary medicine has been presented to the race secretary properly identifying the horse and certifying that within the current racing season in North Dakota the horse has been tested negative.
 - h. If it is a spayed mare, that fact is noted on the program, registration certificate, eligibility certificate, and the list of such horses on the horsemen's bulletin board, and if part of an entry, that fact has been disclosed on the declaration.
16. An association shall publish the time for closing of declaration on the condition sheets.
 17. A declaration received after the specified time of closing may not be accepted, except if it was omitted in error or because of negligence by an official or employee of the association.
 18. An association shall provide a box into which declarations must be deposited.
 19. The same horse may not be declared to compete in races scheduled for the same day at different tracks.
 20. A horse that is on the qualifying list, starter's schooling list, judges' list, or veterinarian's list and not removed from the appropriate list may not be declared.
 21. A declaration made by mail, telegraph, or telephone is acceptable, if:
 - a. The mail, telegraphic, or telephone declaration states the name of the horse, the event it is to be declared to, and is signed by the person who received and deposited it; and
 - b. Evidence of the declaration is deposited, in the declaration box before the time specified by the race secretary or the race secretary's licensed delegate for declarations to close, and adequate program information is furnished by the declarer.
 22. In the case of telephone declaration, a properly signed declaration must also be deposited with the race secretary at least twenty-four hours prior to post time of the race concerned.
 23. Before opening the declaration box for the draw, the race secretary or the race secretary's licensed delegate shall take control of the declaration box and the race secretary or delegate may open the box prior to the time of closing to

provide an opportunity to process declarations but no information as to the names of horses declared may be given by any person to any other person prior to the drawing of declarations.

24. No owner of a horse or the owner's agent may be denied the privilege of being present at the closing and drawing of declarations.
25. Declarations must be listed, the eligibility verified, preference ascertained, starters selected, and post position drawn at such times as are determined by the association.
26. If it is necessary to reopen any race, a public announcement must be made at least twice and the declaration box reopened at a specified time.
27. Starting horses and also eligible horses for overnight events must be drawn by lot from horses properly declared to start, and preference must be given according to a horse's last previous start at the gait declared for it in a purse race.
28. Preference dates are not applicable to horses racing in schooling races.
29. Preference must be governed by the following:
 - a. If more than the required number of horses are declared in to a race with same preference date, the previous preference dates apply.
 - b. When a horse is racing for the first time at the gait declared for it, it shall have preference over other horses regardless of their preference dates.
 - c. If a declaration is made for a horse that has already been drawn to start in a race that has not yet been contested, the date of that uncontested race must be its preference date.
 - d. If a horse has been scratched, the date of the race from which it was scratched must be its preference date.
 - e. If a race has been reopened for additional declarations, preference must be given those horses eligible and declared at the time declarations closed originally.
 - f. If conditions so specify, preference can be given to two-year-olds, regardless of preference date.
30. Not more than two horses may be drawn as "also eligibles" in accordance with the following provisions:

- a. Also eligibles must be drawn from horses having the best preference.
 - b. No horse may be added to the race as an also eligible unless it was drawn as an also eligible at the time declarations closed for that race.
 - c. No horse may be barred from another race to which it is eligible and has preference because it has been drawn as an also eligible.
 - d. Also eligibles moved into races must be posted in the office of the race secretary and their owners or trainers must immediately be so notified by the race secretary.
 - e. Also eligibles not moved into a race by 10:00 a.m. of the day of the race must be released.
 - f. If an also eligible is moved into a race it must be scratched from any subsequent race for which it has been drawn, unless preference otherwise allows.
31. Horses must be coupled as an entry, if:
- a. One person is the owner of two or more horses in a race;
 - b. The spouse of a person who is the owner of one horse in a race is the owner of another horse in that race;
 - c. The spouse of the driver of one of the horses in a race is the owner or trainer of another horse in that race; or
 - d. The trainer of one of the horses in a race is the owner, trainer, or driver of another horse in that race.
32. Any horse may be coupled as an entry by the board of judges when the board considers it in the public interest to do so.
33. If a race is split into divisions or elimination heats, horses coupled as an entry must be seeded in separate divisions or elimination heats insofar as possible:
- a. By owners;
 - b. By trainers; and
 - c. By stables, but the divisions or elimination heats in which they are to compete and their post positions shall be determined by lot.
34. When there is conclusive evidence that a horse was properly declared to an overnight event, but omitted from a program due to error or negligence by an official or employee of the

association, the horse so omitted may be added to the race and given the last post position, if the error is found prior to the printing of the official program and its addition does not result in more than the maximum number of starters allowed in a single field, but if the program has been printed, the horse may not be permitted to start.

35. If a horse omitted as described in subsection 34 was nominated or declared to a stake, it must be added to the race and given the last post position, and in that case, if its addition results in more than the maximum number of starters allowed in a single field the event must be divided and the starters in each division and their post positions must be redrawn by lot.
36. If one or more horses are excused from a race by the judges, the also eligible replacement horse or horses shall race and take the post position drawn for the replaced horse or horses except in a handicap race in which case the also eligible replacement horse or horses shall take the place of the replaced horse or horses so long as the handicap is the same, but if the handicap is different:
 - a. The also eligible replacement horse or horses shall take the position on the outside of horses with a similar handicap; or
 - b. When a trailing horse is scratched, the also eligible horse shall take the trailing position, regardless of the handicap scratched.
37. A horse properly declared may not be withdrawn or scratched from the race without permission of the judges.
38. After having been drawn to start, or as an also eligible horse in a race, the horse may not be sold prior to the particular race and trainers may only be changed with the permission of the judges.
39. Drivers must be named not later than the time to permit their names to be published in the official track race program.
40. The deadline for naming of drivers must be set by the association, and no driver may be changed after that deadline without the permission of the judges.
41. The race secretary, with the approval of the board of judges, may reject the declaration to an overnight event of any horse that has a past performance that indicates that it would be below the competitive level of other horses declared to the particular event.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-12. Scratches.

1. A horse that is scratched from a race cannot be reinstated to participate in that race.
2. A horse scratched by the commission or association veterinarian may not be allowed to declare for a minimum of seventy-two hours from the time it was scratched and then only if it has been approved for entry by the commission or association veterinarian.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-13. Postponement and cancellation.

1. An association or board of judges, after consultation with the horsemen's representatives, may for just cause postpone or cancel races.
2. In stakes that have not been started before being canceled, all nomination and sustaining fees must be divided equally among the owners of horses remaining eligible at the time of cancellation.
3. In stakes that have been started but remain unfinished before being canceled, the allotted shares of the remaining nomination, sustaining, and starting fees must be distributed equally to the owners of all horses remaining eligible at the time of cancellation.
4. Unless otherwise provided in the conditions, stakes may only be transferred to another meeting with the unanimous consent from an association and all owners having eligible horses in the event.
5. Overnight events that are not raced within two days of being postponed must be canceled.
6. If track conditions are questionable, the board of judges shall meet with a representative of the association and the duly elected representatives of the horsemen to consider the matter and the following shall apply:
 - a. If the meeting results in a unanimous decision that track conditions are safe for racing, no withdrawals will be allowed.

- b. If the meeting results in a decision other than a unanimous decision that track conditions are safe for racing, an owner or trainer may scratch a horse after depositing an amount equal to ten percent of the total purse to be raced for with the board of judges.
 - c. The board of judges shall direct that money deposited under subsection b must be retained by the board or returned to the owner or trainer.
 - d. If the number of withdrawals reduces the field to less than five, the association may postpone a stake or cancel an overnight event.
7. If the board of judges is unable to judge the running or finish of a race because of insufficient lighting, adverse weather conditions, or any other circumstances, they may declare the race "no contest".
 8. If a decision is made by the board of judges that races are postponed or canceled, an appropriate announcement must be made by the board of judges to the horsemen as soon as that decision is made.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-14. Paddock provisions.

1. An association conducting a race meeting shall;
 - a. Provide and maintain a paddock or receiving barn that must be policed;
 - b. Maintain records of all person entering a paddock or receiving barn clearly showing the name of each person who entered and the time of entering; and
 - c. Provide and maintain in the paddock or receiving barn, washroom facilities, hot and cold running water, and proper lighting in accordance with the standards approved by the commission.
2. Horses must be in paddock at least one hour prior to post time of the race in which they are to compete.
3. Except for warmup trips, no horse may leave the paddock until called to post.
4. Drivers shall report to the paddock judge and sign the drivers' register at least one hour before post time of any

race in which they are programmed to drive, unless excused by the judges.

5. When programmed to drive in any race that is part of a feature pool, drivers must be in the paddock at least one hour before post time of the race which comprises the first part of the feature pool, unless excused by the judges.
6. Drivers programmed to drive in races where advanced wagering takes place on any feature betting race shall make their presence known to the paddock judge prior to commencement of the advanced wagering.
7. Persons entitled to admission to the paddock are:
 - a. Owners, trainers, drivers, and grooms of horses that:
 - (1) Are competing on the date of the race; and
 - (2) Are in the paddock;
 - b. Members of the commission and race officials; and
 - c. Any other person authorized by the paddock judge.
8. No person except an official or an owner, who has another horse racing in a later race, may return to the paddock until all races of that program have been completed.
9. No more than two members of a registered stable, except with the permission of the judges, are entitled to be in the paddock on any racing day.
10. An association, during racing hours, shall provide the services of a blacksmith within the paddock.
11. An association, during racing hours, shall provide to the equipment inspector any suitable extra equipment in the paddock that may be necessary in emergencies to prevent unnecessary delay during the conduct of racing.
12. The paddock and licensees in the paddock must be under the supervision of the paddock judge.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-15. Claiming provisions.

1. In claiming races, any horse may be claimed for its declared claiming price, plus allowances, by:

- a. A licensed owner who has a horse on the grounds registered to race at the meeting where the claim is to be made;
 - b. A licensed owner:
 - (1) Who does not, at the time actually own a horse registered to race because of fire, other misfortune or claim; or
 - (2) Who has no horse on the grounds registered to race, and who has obtained a claim certificate issued by the board of judges after the expiration of three clear days from the date of receipt of the owner's application for a claim certificate; and
 - c. A person whose application for an owner's license has been approved and who has received a claim certificate issued by the board of judges, after the expiration of three clear days from the date of the receipt of the person's application for an owner's license.
2. A claim certificate is valid only for the current racing season.
 3. No owner may claim his own horse or cause his own horse to be claimed, directly or indirectly, for his own account.
 4. If there are two or more owners of a horse through which a claim is made, all must sign the claim, unless one is appointed in writing as the authorized agent to make the claim for the partnership or group, and no part owner may claim solely for himself unless that part owner has acquired a claim certificate under subdivision c of subsection 1.
 5. An owner may make a claim for his account through his authorized agent.
 6. No person may take more than one claim in any one race.
 7. No person may claim a horse that is trained or driven by the person in that particular race.
 8. No authorized agent, although representing several owners, may submit more than one claim for any one race.
 9. Only one claim for owners having the same trainer may be entered in any one race.
 10. No person other than an authorized agent acting for his principal may claim a horse for or on behalf of any other person and, for the purposes of this section, a person making a claim by merely executing that claim declares that he is claiming on his own account.

11. No person may:
 - a. Offer to, or enter into agreement to, claim or not to claim a horse;
 - b. Attempt to prevent a claim from being made; or
 - c. By intimidation or otherwise prevent a horse from being raced in a claiming race.
12. When a claim has been lodged with an association the claim is not revocable and is made at the sole risk of the claimant.
13. The claimant is responsible for determining the sex of the horse claimed.
14. To be eligible for a claim, a horse shall start in the event to which it was declared.
15. A horse that started in a claiming race but is declared ineligible to the race by the judges is not eligible to be claimed.
16. If a horse is declared to start in a claiming race, but is scratched, the scratch must be noted on its eligibility certificate and if a declaration is made within a period of thirty calendar days before its next start, that horse is subject to claim in its next start, regardless of the type or conditions of the race or ownership, at a claiming price not greater than the amount for which it could have been claimed in the race from which it was scratched.
17. A horse shall race for the account of the owner in whose name it starts, but the title to the horse, whether the horse finishes safely or injured or otherwise or dies before, at, or after the finish, is vested in the successful claimant from the moment that horse becomes a starter.
18. Claims must be made in writing on the proper claim blank form supplied by the association.
19. No person may make a claim unless he has the amount of the claim on deposit with the horsemen's bookkeeper, and obtains a claiming credit note from the horsemen's bookkeeper covering the current balance in the claimant's account.
20. A claim blank, claiming credit note, and claim certificate, properly completed, shall if necessary, all be placed in the claim envelope provided by the association for the purpose, and the envelope must be sealed, the date and number of the race written on it, and the envelope delivered to the horsemen's bookkeeper or another person designated for that purpose by the association, at least thirty minutes before

post time of the race in respect to which the claim is being made, the bookkeeper or other person shall certify by automatic time clock on the outside of the envelope the time it was received.

21. The horsemen's bookkeeper shall cause all claims to be delivered to the judges before the running of each race.
22. The judge may not open any claim until the race in respect to which it is made is on the racetrack.
23. The judges, after approving a claim and determining that the claimant has the required amount on deposit with the horsemen's bookkeeper, shall issue a delivery order for the claimed horse to the original owner who shall immediately make delivery, to the claimant in the paddock or test barn without altering or removing the claimed horse's shoes.
24. If more than one person enters a claim for the same horse, the successful claimant must be determined by lot by the judges, or other racing officials designated by the judges.
25. No claim may be made of a horse that has the same trainer as other horses of the claimant.
26. If an owner or trainer refuses to deliver a claimed horse, the owner, or the trainer and the horse must be suspended.
27. The certificate of registration of a claimed horse, upon completion of the claim procedure prescribed in this section, must be transferred to the claimant by the association.
28. If a horse is claimed:
 - a. The horse or any partial interest in it may not be sold or transferred to anyone, for a period of thirty days from the date of claim, except in a claiming race, nor may it, unless reclaimed, remain in the same stable or under the control or management of its former owner or trainer for that period; and
 - b. It may not race outside of North Dakota except in a stake race until after the expiration of thirty days, or until after the conclusion of the current racing season, whichever first occurs.
29. The new owner or trainer of a claimed horse must be allowed to scratch the horse out of any race in which it had been entered by its former owner.
30. Any claim made in contravention of this regulation may be declared voidable by the judges.

31. If a horse is claimed at a meeting under rules of another turf authority, title to and entry restrictions with respect to that horse must be recognized in North Dakota in accordance with the rules of the other turf authority.
32. Spayed mares may not receive any sex allowance.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-16. Provisions for winners, dead heats, walkovers, and not betting races.

1. When horses finish in a dead heat, the dead heat may not be run off.
2. When two or more horses finish in a dead heat for first place, the prizes allocated for first and second finishing horses shall, if possible, and subject to subsection 5 be divided equally between those horses that finished in dead heat, and the same principle applies to:
 - a. A division of prizes between whatever may be the number of horses that finish in dead heats; and
 - b. Whatever is the finish position in which the dead heat occurs.
3. Each horse that finishes in a dead heat and in respect to which a share of prize money for first place is paid, must be deemed a winner of that race and of the amount it actually received.
4. If a horse that finishes in front of the dead heat is disqualified, the horses that finished in the dead heat must be deemed to have finished the race in the position in which the disqualified horse finished before its disqualification.
5. If a nonmonetary prize cannot be divided equally or otherwise among persons entitled to it, the board of judges may decide the matter by drawing lots for the prize.
6. In a "walkover" by a horse:
 - a. The owner of that horse is entitled to one-half of added money offered, together with all stakes fees;
 - b. The other one-half added money offered accrues to the sponsor;

- c. To claim the purse, the horse must start and complete the course; and
 - d. If the "walkover" is the result of an arrangement between owners or trainers engaged, no portion of the added money, nor any other prize, need be given.
7. In a nonbetting race each horse in the money shall receive:
- a. Its proportionate share of the total stakes fees, depending on the place of finish of that horse and the total number of horses that finished; and
 - b. Its designated percentage of added money, and the sponsor.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-17. Placing and money distribution.

1. Unless otherwise provided in the conditions, all purses must be distributed on the cash basis, with money being awarded according to a horse's position in each separate dash or heat of the race.
2. Purse money distributed must be limited to the first five finishing positions.
3. Unless otherwise specified in the conditions, purse money distribution in dashes must be fifty percent for the first, twenty-five percent for the second, twelve percent for the third, eight percent for the fourth, and five percent for the fifth finishing positions.
4. If there are less than five starters in a stake:
 - a. Each horse in the money shall receive:
 - (1) Its proportionate share of the total stakes fees, depending on the place of finish of that horse and the total number of horses that finished; and
 - (2) Its designated percentage of added money; and
 - b. The balance of added money must be returned to the sponsor.
5. In overnight events, if there are less than five starters, the premiums for the positions for which there are no starters may be retained by the association or sponsor, as the case may be, but any premiums so retained by the association may not be

included in the overall purse structure in any agreement between the association and any horsemen's association.

6. If premiums apply with respect to any horses that start but were unable to finish due to an accident or otherwise, all unoffending horses that did not finish shall share equally in those premiums.
7. If premiums apply with respect to any horses that start but were unable to finish under circumstances to which subsection 6 does not apply, the premiums may be retained by the association or sponsor.
8. Every heat is a race and the purse must be distributed as in dash races with nothing being required to be set aside for the race winner.
9. If an ineligible horse is permitted to race, that horse is disqualified from winning any portion of the purse.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-18. Racing provisions.

1. An association shall establish the post time for each race and the judges shall call the horses on the track at that time to prevent excessive delay after the completion of one or two scores.
2. The time between separate heats of a single race may not be less than forty minutes.
3. Horses called for a race have the exclusive right to occupy the course, and all other horses shall vacate the course as soon as possible.
4. Sulkies may only be permitted to be used in a race if they are of the conventional dual-shaft and dual-hitch type as follows:
 - a. They shall have two shafts that must be parallel to, and securely hitched on each side of the horse;
 - b. No point of hitch and no part of a shaft of a sulky may be above a horizontal level equal to the lowest point of a horse's back;
 - c. They must be equipped with mud guards at any race meetings at which the judges require them; and

- d. They must be equipped with wheel discs approved by the commission.
5. Drivers shall wear distinguishing colors and may not be permitted to drive in a race or other public performance unless, in the opinion of the judges, they are properly dressed, their driving outfits are clean and they are well groomed, and during inclement weather conditions, they shall wear rain suits or winter suits, either of their usual distinguishing colors or made of a transparent material through which their colors can be distinguished.
6. Horses are permitted to take one or two scores before going to the post, and upon completion of the last score, the horses must be gathered by the starter and immediately moved into their appropriate starting positions behind the gate.
7. Horses may be held on the backstretch while awaiting post time, but not more than two minutes, except when delayed by an emergency.
8. If there are two tiers of horses at the start, the withdrawing of a horse that has drawn or earned a position in the front tier does not affect the position of the horses that have drawn or earned positions in the second tier, except as provided for in handicap claiming races.
9. When a horse is withdrawn from any tier, horses on the outside move in to fill the vacancy.
10. If there is only one trailer, he may start from any position in the second tier.
11. If there are more trailers than one, they shall start from inside any horse with a higher post position.
12. All races must be started with a mobile starting gate of a design approved by the board.
13. No person except the starter, his driver, and a patrol judge, shall ride in a starting gate without the permission of the judges.
14. The starting gate must be equipped with two-way communications to the judges' stand and a mechanical loudspeaker for communicating instructions to drivers and no other persons.
15. The starter shall have control of the horses from the formation of the parade until a fair start has been determined.
16. The determination of a fair start is symbolized by the word "go" announced by the starter at the starting point.

17. The horses must be brought to the starting gate as nearly one quarter of a mile [0.40 kilometers] before the start as the track will permit.
18. The starter shall cause the gate to move towards the starting point, gradually increasing the speed of the gate to maximum speed.
19. When maximum speed has been reached in the course of a start there may be no decrease, except in the case of a recall.
20. The starting point is a point that must be marked on the inside rail a distance of not less than two hundred feet [60.96 meters] from the first turn.
21. After the determination by the starter of a fair start, all the horses shall race the course, except in the case of an occurrence that in the opinion of the board of judges makes it impossible for the horses to race the course.
22. If, in the opinion of the board of judges or the starter, a horse is unmanageable or liable to cause an accident or injury to another horse or to a driver, it may be scratched by the board of judges.
23. In case of a recall:
 - a. A light plainly visible to the drivers must be flashed and a recall sounded;
 - b. If possible, the starter shall leave the wings of the starting gate open and gradually slow the speed of the gate to assist in stopping and turning the field; and
 - c. Drivers shall take up their horses and return, without delay, to the point where the field is gathered for starts.
24. There may be no recall after the word "go" has been given to signal a fair start.
25. The starter shall endeavor to get all horses away in position and on gait.
26. The starter shall sound a recall for the following reasons:
 - a. A horse starts ahead of the starting gate.
 - b. There is interference before the word "go" is given.
 - c. A horse has broken equipment, which the starter notices.
 - d. A horse falls before the word "go" is given.

27. The starter, at any time before the word "go" is given, may order a recall and restart the race, and if a second recall is sounded because of the same horse in the same race, that horse must be scratched.
28. The fair start pole is a pole erected at the point approximately ten feet [3.05 meters] nearer the starting point than the pole one-sixteenth of a mile [0.10 kilometers] before the start, and must be yellow in color and must protrude at least two feet [0.61 meters] above the inner rail.
29. When a horse has not reached the "fair start pole" when the word "go" is given, the starter may sound a recall.
30. If the starter fails to sound a recall when required, the judge shall cause the "inquiry" sign to be displayed immediately.
31. No horse or driver may:
 - a. Delay a start;
 - b. Pass the inside or the outside wing of the gate;
 - c. Come to the starting gate in the wrong position;
 - d. Cross over before reaching the starting point;
 - e. Interfere with another horse or driver during the start;
 - f. Fail to come up into position and on the gate;
 - g. Change course or position, swerve in or out, or bear in or out during any part of the race in a manner that will compel another horse to shorten its stride or cause another driver to change course, take his horse back, or pull his horse out of its stride;
 - h. Impede the progress of another horse or cause it to break from its gait;
 - i. Cross over too sharply in front of another horse or horses;
 - j. Crowd another horse by "putting a wheel under him";
 - k. Carry another horse out; or
 - l. Strike or hook wheels with another sulky.
32. No driver may:
 - a. Fail to obey the starter's instructions;

- b. Willfully "back off" the starting gate after having been in position;
- c. Allow another horse to pass needlessly on the inside, or commit any other act that helps another horse to improve its position;
- d. Take up or slow abruptly in front of other horses to cause confusion or interference among the trailing horses;
- e. Lay off a normal pace and leave a hole when it is well within the driver's horse's capacity to keep the hole closed;
- f. Drive in a careless, reckless, or unsatisfactory manner;
- g. Fail to set or maintain a pace comparable to the class in which the driver is racing, considering track conditions, weather, and circumstances in the race;
- h. Fail to properly contest an excessively slow pace;
- i. Back off from any position and subsequently come on when challenged;
- j. Fail to report any interference or any other infraction that occurred during a race and was noticed by the driver;
- k. Lodge a claim of foul, violation of the rules, objection, or complaint which the judges consider that is frivolous;
- l. Drive a horse in a manner that prevents the driver from winning a race;
- m. Drive a horse to perpetrate or aid in a fraud or corrupt practice;
- n. Drive a horse in an inconsistent manner;
- o. Use a whip exceeding four feet [1.22 meters] in length, plus a snapper that is longer than eight inches [203.20 millimeters] in length;
- p. Use the driver's whip or crop in a brutal manner, butt end, punch, jab, or kick a horse or use a whip to interfere with or cause disturbance to any other horse or driver in a race;
- q. Whip under the arch of the sulky; or
- r. Strike a wheel disc with the driver's whip.

33. At the conclusion of a race, each driver shall return in his sulky to be dismissed by the board of judges or the judges' designated replacement.
34. A driver who desires to enter a claim of foul, violation of the rules, or other complaint shall notify the nearest patrol judge accordingly and shall proceed forthwith to the paddock telephone to communicate immediately with the board of judges.
35. A complaint by a driver of any foul, violation of the rules, or other misconduct during a race must be made immediately after the race to which it relates, unless the driver is prevented from doing so by an accident or injury, or other reasonable excuse.
36. Where no communication facilities to the board of judges are available, drivers desiring to lodge claims of foul, violation of the rules, or other complaints shall so indicate to the board of judges when being dismissed and, without delay, shall proceed to the judges' stand.
37. The judges may not cause the official sign to be posted until the matter of a claim of foul, violation of the rules, or other complaint has been dealt with by the board of judges.
38. If a horse that is part of an entry has been disqualified, any other horse that is part of the same entry may also be disqualified.
39. The judges may determine the extent of the disqualification in the case of a foul and may place the offending horse:
 - a. Behind the horses that in the judges' judgment were interfered with; or
 - b. Last in the field.
40. If a horse chokes or bleeds during a race, the driver of that horse is required to report that choking or bleeding to the commission or association veterinarian immediately after the race and that information must be entered into the official past performance line of that horse.
41. If in the opinion of the board of judges a driver, for any reason, is unfit or incompetent to driver or refuses to comply with the directions of the judges, or is reckless in the driver's conduct or may endanger the safety of horses or other drivers in the race, the board of judges may at any time, order, or if necessary cause, that driver to be removed and another driver substituted.

42. All broken equipment must be reported by the driver concerned to the paddock judge, who shall make an examination to verify the allegation.
43. A driver must be mounted in the driver's sulky from the start to the finish of the race or the horse the driver is driving may be disqualified.
44. After the word "go" is given, barring mishap, both feet must be kept in the stirrups until the race has been completed.
45. No horse habitually:
 - a. Wearing hobbles may start in a race other than a qualifying race, without those hobbles unless it has qualified to do so; or
 - b. Racing free-legged, may start in a race other than a qualifying race, wearing hobbles unless it has qualified to do so.
46. No horse may be permitted to wear a head pole protruding more than four inches [101.60 millimeters] beyond its nose.
47. When a horse breaks from its gait, the driver shall:
 - a. Take the horse to the outside of other horses where clearance exists;
 - b. Properly attempt to pull the horse to its gait; and
 - c. Drop back from the field while on the break.
48. If there has been no violation of subsection 47, the horse may not be set back unless a competing horse on its gait is lapped on the hind quarter of the breaking horse at the finish.
49. No driver may allow the driver's horse to break for the purpose of losing a race.
50. Judges shall call out each break made and have each break duly recorded in the official race reports.
51. No major equipment changes shall be allowed after 10:00 a.m. on the day of the race.
52. The board of judges must cause to be posted or announced any major equipment changes.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-19. Time and records.

1. The fastest time raced by a horse in a heat or dash which it won, or in a performance against time, must be its record.
2. A standard record is a record of 2.20 or faster for two-year-olds and 2.15 or faster for all other ages.
3. The time of each heat or dash must be accurately timed and placed in the record in minutes, seconds, and fifths of seconds, and upon the decision of each heat, the time of that heat must be publicly announced or admitted to the record, unless the timers failed to time, in which case no time may be announced or recorded.
4. In the case of an alleged error in the record, announcement, or publication of the time made by a horse, the time questioned may not be changed to favor that horse or its owner, except if so directly by the board of judges and timers who officiated at the race.
5. Every association shall file with the board the certificate of a civil engineer or land surveyor that he has measured the racetrack from wire to wire three feet [0.91 meters] out from the rail or inside hub rail of the track, and certifying to the nearest foot the result of each measurement. If any changes or relocation of the hub rail are made at a track, that track must be measured and recertified.
6. The leading horse must be timed and his time only may be announced.
7. No horse may obtain a win-race record because of the disqualification of another horse unless that horse is declared the winner because the other horse was disqualified as a breaking horse on which he was lapped.
8. No horse may obtain a win-race record in a qualifying race unless that horse in the race in which it competed was subjected to and passed a urine test or other officially recognized test.
9. The judges shall note on the official race reports for each qualifying race whether or not the race was subject to a urine test or other officially recognized test.
10. In case of a dead heat for win, the time constitutes a record for the horses making the dead heat.
11. The time must be taken from the first horse leaving the point from which the distance of the race is measured until the winner reaches the wire.

12. Time trial performances are permitted subject to the following:
 - a. Urine tests are required for all horses.
 - b. An approved electric timer is required.
 - c. If a timing device fails during the progress of a time trial performance, no time trial performance record will be obtained.
 - d. Time trial performances are permitted only during the course of a regular meeting with the regular officials in the judges' stand.
 - e. Time trial performances are limited to two-year-olds who equal or beat 2.10, and three-year-olds and over who equal or beat 2.05.
 - f. Time trial performances must be designated by preceding the time with two capital "T"s.
 - g. A horse may have other horses accompany it in a time trial performance but not to precede it, or be harnessed with it or in any way attached to it.
 - h. A break during a time trial performance results in no time being given to the breaking horse.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-20. Protests.

1. Protests may be made by an owner, authorized agent, trainer, or driver of one of the competing horses not later than forty-eight hours following competing in the race to which the protest applies and must be made in writing, sworn in the form of an affidavit, and must contain at least one specific charge which, if true, will prevent the horse protested from winning purse money or competing in the race.
2. Every protest must be determined by the board of judges and decided by them and if a protest is not decided prior to the race, the horse protested must be allowed to race under protest.
3. A protest that has been duly made may not be withdrawn or surrendered without the approval of the board of judges.

4. If the placings of a race are altered as a result of a protest, purse money for the race must be distributed according to the decision made on the protest.
5. The eligibility of horses involved in protests that may participate in subsequent races pending a decision on the protest is not affected.
6. Decisions on protests that affect purse money or order of finish after a race is declared official have no effect on the distribution of parimutuel pools.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-21. General rules - Others.

1. A driver shall wear an approved protective helmet with the chinstrap properly fastened at all times when racing, jogging, training, or when warming up a horse on the premises of an association.
2. A licensee who fails to meet his financial obligations for services, supplies, or wages required for or in connection with this racing activity may have his entries refused and may be suspended until the time that those obligations are discharged, or until arrangements suitable to the complainant, for the discharge of the debt have been made.
3. No person may associate or consort with a bookmaker, a tout, or a licensee whose license from a turf authority has been revoked or suspended and whose privileges at the grounds of an association have been denied.
4. Husband and wife, unless legally separated, must be considered as a single entity, and any ruling that applies to one applies to the other.
5. No person, between the hours of 8:00 a.m. and 11:00 a.m., may "lead" horses on the premises of an association.
6. A driver shall drive when programmed unless the driver has been excused by the judges.
7. A person driving a horse may not smoke on the racetrack after one hour prior to post time of the first race on a program.
8. A person driving a horse shall wear silks and white pants when warming up a horse prior to racing.

9. A person driving a horse shall have the proper head number and saddlecloth on a horse when warming up for a race.
10. A driver shall participate in a post parade and may not be late without permission of the judges.
11. Before the first race of any race meeting is contested:
 - a. The racing officials and drivers shall meet at a time and place to be designated by the board of judges; and
 - b. The drivers shall attend that meeting unless excused by the board of judges.
12. The board of judges shall keep an attendance record of the meeting referred to in subsection 11.
13. A driver may not be permitted to drive unless the driver has attended the meeting referred to in subsection 11 or has otherwise met with and received permission to drive from the board of judges.
14. No persons may smoke in a stall or an area where feed is kept on the grounds of an association.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-22. Breath analysis.

1. Judges, drivers, starters, and starting gate drivers may be required to submit to blood, breath, saliva, or urine analysis tests at each program at which they officiate or participate.
2. A person showing a blood alcohol concentration of more than three one-hundredths of one percent by weight must:
 - a. If a judge, be relieved of the judge's duties immediately and referred to the commission;
 - b. If a starter or starting gate driver, be relieved of his duties immediately and a fine, suspension, or both may be imposed on him by the board of judges', and
 - c. If a driver, be prohibited from driving in any races scheduled for that day and a fine may be imposed on him by the board of judges.
3. A driver showing a blood alcohol concentration of more than five one-hundredths of one percent by weight shall be prohibited from driving in any races scheduled for that day

and a fine, suspension, or both may be imposed on the driver by the board of judges.

4. A licensee who is in the paddock, when directed by the judges, shall submit to a blood, breath, saliva, or urine analysis test and if the licensee shows a blood alcohol concentration of more than five one-hundredths of one percent by weight may have a fine, suspension, or both imposed on the licensee by the board of judges.
5. A person who refuses to submit to a breath analysis under this section may have a fine, suspension, or both imposed on the person by the board of judges.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-23. Offenses.

1. No person may:
 - a. Commit any corrupt or fraudulent act in relation to a race or racing, nor attempt to enrich himself or his associates or gain an advantage through unfair, unlawful, or dishonest behavior in connection with the racing of horses.
 - b. Threaten any racing official, owner, trainer, driver, or any other person for the purpose of influencing the result of a race or any other reason.
 - c. Give, offer, or promise, directly or indirectly, a bribe in any form to any racing official, owner, trainer, driver, or any other person having access to, or in charge of a racehorse, for the purpose of influencing the result of a race or any other reason.
 - d. Accept, or offer to accept, any bribe in any form.
 - e. Enter or start a horse that is known to the person to be ineligible to the particular race in which it is entered or started.
 - f. Willfully or negligently start, or cause to start, a horse in a race other than the horse named in the entries.
 - g. Conspire with any other person to commit or connive with any other person to commit, any corrupt or fraudulent act in relation to a race or racing.

- h. Offer or give a driver money or any other benefit, except an official prize, in relation to a race unless it is done as or on behalf of the owner or trainer of the horse driven in a race by that driver. If the person is approached with any offer or promise of a bribe, or a wager, or with a request or suggestion for a bribe, or for any corrupt or fraudulent act in relation to racing, or to conduct a race other than fairly and honestly, the person shall report details of the matter on which the person was approached immediately to the board of judges.
- i. Provide inaccurate information about the performance of a horse, or attempt to have misleading information given in a program.
- j. Tamper with an eligibility certificate for the purpose of obtaining unauthorized changes or entries.
- k. Unduly agitate or otherwise abuse a horse by chaining, whipping, or otherwise.
- l. Possess or apply any electrical, mechanical device, spurs, goading device, or other expedient designed to increase or decrease the speed of a horse or intended to do so, other than the ordinary whip at any time on the grounds of an association during a meeting whether in a race or otherwise.
- m. Attempt to or conspire with another or others to stimulate or depress a horse through the administration of any drug, controlled substance, stimulant, depressant, local anesthetic or analgesic that may affect the performance of a horse in a race.
- n. Unless such person is a registered veterinarian, have within the grounds of a racetrack or the stable area thereof, in such person's possession or in such person's effects or in the premises occupied by such person, any controlled substance or drug, as defined in subsection 4, or any hypodermic syringe or needles.
- o. Within the grounds of racetrack where racehorses are lodged or kept, have in such person's possession, or in or upon the premises such person occupies, any medicine or vitamin preparations used for the treatment of horses unless it is contained in a properly marked and numbered container, or the name of the veterinarian who prescribed and the name of the druggist who dispensed the medication and the veterinarians' and the druggists' addresses.
- p. Refuse to permit a horse to be tested in a saliva, blood, urine, or other test as required.

- q. Enter or start a horse:
 - (1) That is not in a serviceably sound condition.
 - (2) That has been trachea tubed.
 - (3) That is totally blind.
 - (4) That has been nerved, unless it is a horse that has had a posterior digital neurectomy, the operation is recorded on the registration certificate, and the board of judges and the commission or association veterinarian is satisfied that the loss of sensation by that horse will not endanger the safety of that horse or any other horse or any driver and the board of judges upon the recommendation of the commission or association veterinarian permits the entry of that horse.
 - (5) In the current tracing season, including any meeting commencing in the current calendar year but extending into the next ensuing calendar year, a horse that has bled during or following a "warmup" or a race, after having previously bled during or following a "warmup" or a race.
 - r. Give instructions to a driver to handle a horse for any purpose other than to win.
2. No owner, trainer, driver, agent, employee, or groom may, unless it is for a feature wagering event in which an owner, trainer, driver, agent, employee, or groom may bet, or cause any other person to bet on his behalf, on combinations, in which his horse or entry is selected in the win position, have parimutuel tickets in his possession, or bet or cause any other person to bet on his behalf, on any other horse in any race in which a horse is owned, trained, or driven, or in which he in any way represents or handles, is a starter.
3. For the purpose of this section, the following designations apply:
- a. "Analgesic" means a drug that may alleviate pain by lessening the excitability of nerves or nerve centers.
 - b. "Controlled substance" means any substance specified in North Dakota Century Code chapter 19-03.1.
 - c. "Depressant" means a drug that may exert or exerts a soothing influence by diminishing pain, depressing vital activity, or tranquilizing normal muscular movement.

- d. "Drug" means a drug as defined in the United States Food and Drug Act, or as defined by the directive of the commission, or the United States department of agriculture and includes a high steroid, polyethylene glycoal, or any other substance that prevents or interferes with the detection or identification by an official chemist of any other drug in an official sample.
 - e. "Local anesthetic" means a drug that may prevent or diminish perception to stimuli by the periphery terminations of sensory nerves.
 - f. "Stimulant" means a drug that may exert or exerts an increase or excitation of the functions of a part or organ of a animal.
- 4. In this section, a "positive test" means that the drug or drugs found must be considered to have the therapeutic effect classification designated in officially recognized pharmaceutical reference books.
 - 5. The detection of any drug in any official sample by the official chemist constitutes prima facie evidence that the performance of the horse was affected by the detected drug and that the drug was administered to the horse in which it was detected by the person or persons having the care and custody of that horse.
 - 6. All horses entered into races held under the rules, at any time before or after a race, may be subjected to any tests or inspections that the commission veterinarian may consider necessary or desirable, including the taking of body fluids.
 - 7. After each race, blood or urine samples, or both, must:
 - a. Be obtained from those horses that the judges designate;
 - b. Be obtained, handled, and analyzed in the manner prescribed in the conditions and rules governing the blood and urine service of the United States department of agriculture; and
 - c. Be designated as official samples.
 - 8. When urine or blood samples, or both, are to be taken from a horse after a race, nothing may be administered or given to the horse, except on the express permission of the judges and in the presence of the board veterinarian, other than pure drinking water, until the official samples have been taken.
 - 9. Any horse from which a positive test is obtained must be disqualified and the order of finish in the race must be revised by the judges accordingly.

10. The horse money of each race may not be paid until at least seventy-two hours have elapsed after the concluding time of the race.
11. The owner of a horse that is disqualified for a positive test on the official samples shall pay the owner's driver on the basis of the actual, not revised, order of finish.
12. A list of all horses that have had a posterior digital neurectomy must be kept posted by the commission veterinarian.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-02-01-24. Penalties, hearings, and appeals.

1. If the board of judges finds that a person has been in violation of the rules or of the directives of the board, or any proper order or direction of a judge or judges, the board of judges may, with respect to that person:
 - a. Impose a fine not exceeding one thousand dollars;
 - b. Suspend a license for a period not exceeding two years;
 - c. Suspend a license indefinitely and refer the matter to the commission;
 - d. Refer any disciplinary matter to the commission, with or without recommendations for penalty;
 - e. Direct the forfeiture or return of purses won;
 - f. Disqualify a horse in whole or in part; and
 - g. Declare a race to be no contest.
2. Any person affected by a decision of the board of judges may appeal such decision to the commission.
3. A person who desires to appeal a decision or ruling under subsection 1 shall give notice of intent to appeal to a judge or to the commission within forty-eight hours of receipt of notice of the decision or ruling being appealed.
4. A statement of appeal must be filed with the judges or the commission within eight days of filing the notice of intent to appeal, stating the grounds of appeal.
5. The appellant shall in respect to the applicant's appeal deposit with the commission the sum of fifty dollars to be

- refundable if the appeal is allowed and to be forfeited to the commission if the applicant's appeal is disallowed.
6. An appeal from a decision or ruling of the board of judges does not operate as a stay of that decision or ruling unless so directed by the commission.
 7. A person who is dissatisfied with a decision of the commission that was made without a hearing refusing to grant a license, suspending or revoking a license, and in respect to conduct the board considers to be contrary to the public interest, may request a hearing and review by the commission.
 8. In the case of:
 - a. A referral under subdivision c or d of subsection 1;
 - b. An appeal under subsection 2;
 - c. A request under subsection 7; or
 - d. A hearing called at the insistence of the commission,the commission shall set a time and place for the hearing, and give notice of the time and place set to the affected party or parties.
 9. With regard to such hearing, the commission shall follow the provisions of North Dakota Century Code chapter 28-32.
 10. Notice, for purposes of a board of judges hearing, must be deemed to have been given when:
 - a. A person has been notified in person; or
 - b. A written notice to the person's permanent address on the person's license application has been posted and five days have elapsed.
 11. If a person, upon being notified under subsection 10 fails to appear at a hearing, the person's absence must be construed as a waiver by the person of the person's rights to a hearing.
 12. If the commission finds that a person has been in violation of the rules or of directives of the commission, or any proper order or direction of a judge or judges, the commission may, with respect to that person:
 - a. Impose a fine not exceeding five thousand dollars.
 - b. Refuse to grant, suspend, or revoke the license.
 - c. Direct the forfeiture or return of any purses won.

- d. Disqualify a horse in whole or in part.
 - e. Declare a race to be no contest.
 - f. Expel the person from horse racing.
 - g. Deny the person admission to the grounds of an association conducting a meeting.
 - h. In the case of a referral or an appeal from the board of judges, vary, revoke, or confirm the decision and vary, revoke, or confirm any penalties imposed.
13. If the commission dismisses an appeal, it may order the appellant to pay all or that portion of the costs of the appeal that the commission may reasonably direct, and if the costs ordered to be paid remain unpaid, the appellant must be automatically suspended until the costs are paid in full.
 14. The suspension of a driver for an offense not involving a corrupt or fraudulent act becomes effective not later than on the third racing day after the ruling.
 15. A suspension for a corrupt or fraudulent act must be made immediately upon the discovery of the corrupt or fraudulent act or takes effect immediately after the ruling, as the case may be.
 16. No person may make false statements concerning any racing official or licensee or other person employed in racing, use profane or indecent language, carry deadly or dangerous weapons, or disturb the peace on any racing premises governed by this article.
 17. No person, on the grounds of an association, may carry on or engage in gambling or related offense as set out in North Dakota Century Code chapter 12.1-28 or gaming as set out in North Dakota Century Code chapter 53-06.1.
 18. No person, on the grounds of an association, may carry on bookmaking or the taking of bets or solicit bets from any other person in any manner except as provided in this article.
 19. No person may permit a dog to enter the stable area of an association during the progress of a race meeting.
 20. If a fine has been imposed and remains unpaid upon the expiration of ninety-six hours after its imposition, the violator is automatically suspended until the fine is paid in full.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

TITLE 71
Retirement Board

APRIL 1989

STAFF COMMENT: Article 71-04 contains all new material but is not underscored so as to improve readability.

ARTICLE 71-04

DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES

Chapter	
71-04-01	Definitions
71-04-02	Plan Design
71-04-03	Employee Responsibilities
71-04-04	Retirement Board Responsibilities
71-04-05	Employer Responsibilities
71-04-06	Provider Responsibilities
71-04-07	Benefits

CHAPTER 71-04-01
DEFINITIONS

Section	
71-04-01-01	Definitions

71-04-01-01. Definitions. The terms used throughout this title have the same meaning as in North Dakota Century Code section 54-52.2-04, except:

1. "Beneficiary" means an individual designated by the participant in the participant agreement to receive benefits under the plan in the event the participant dies.
2. "Compensation" means the total annual remuneration for employment or contracted services received by the participant from the employer.
3. "Deferred compensation" means the amount of compensation not yet earned which the participant and the employer shall mutually agree shall be deferred from current monthly salary in accordance with the provisions of the plan.
4. "Eligible state deferred compensation plan" means a plan established and maintained by this state that complies with the Internal Revenue Code (IRC) 457(b).
5. "Employer" means the state of North Dakota or any of its political subdivisions, institutions, departments, or agencies.
6. "Includable compensation" means the remuneration for service performed for the employer which is currently includable in gross income.
7. "Independent contractor participant" means individuals who perform services of the employer but does not include partnerships or corporations.
8. "Participant" means any permanent employee of an employer who the employer designates as eligible to participate, and who executes a participant agreement.
9. "Participant agreement" means a written agreement between the employer and a participant setting forth certain provisions and elections relative to the plan, incorporating the terms of the plan and establishing the participant's deferral and participation in the plan.
10. "Provider" means any insurance company, federally insured financial institutions, Bank of North Dakota, or registered dealer under North Dakota Century Code chapter 10-04 authorized by the retirement board to provide investment vehicles to employees.
11. "Retirement" means severance of the participant's contract or employment with the employer or a date coincidental with the normal, postponed, early, or disability retirement dates as described in North Dakota Century Code chapter 54-52-17.3.
12. "Retirement board" means the five persons described in North Dakota Century Code chapter 54-52-03.

13. "State" means the state of North Dakota, or any department, institution, or separate agency thereof acting as an employer of the participant.
14. "Termination of service" means the separation from service with the employer by reason of death, disability, retirement, or termination of employment.
15. "Unforeseeable emergency" means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant, the participant's spouse, dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

History: Effective April 1, 1989.
 General Authority: NDCC 28-32-02
 Law Implemented: NDCC 54-52.2-03

CHAPTER 71-04-02 PLAN DESIGN

Section
 71-04-02-01 Plan Design

71-04-02-01. Plan design. The retirement board shall establish a deferred compensation plan as allowed under section 457 of the Internal Revenue Code. The plan shall contain sections dealing with definitions, administration, plan participation, benefits, withdrawals, and other areas as determined by the retirement board.

History: Effective April 1, 1989.
 General Authority: NDCC 28-32-02
 Law Implemented: NDCC 54-52.2-03

CHAPTER 71-04-03 EMPLOYEE RESPONSIBILITIES

Section
 71-04-03-01 Enrollment
 71-04-03-02 Effective Date of Deferrals
 71-04-03-03 Change in Monthly Deferral
 71-04-03-04 Change in Beneficiary
 71-04-03-05 Unforeseeable Emergency
 71-04-03-06 Termination

71-04-03-01. Enrollment. Public employees may enroll in the deferred compensation plan by completing a participant agreement and submitting the agreement to the retirement board. The employee must also complete the necessary forms required by the provider and submit them to the retirement board for signature by the plan administrator.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-03-02. Effective date of deferrals. All deferrals are effective the payroll period ending in the month following the month in which the deferral is authorized. Deferrals cannot be authorized during the month in which income is being earned and a deferral is being requested.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03; IRC 457 (b)(4)

71-04-03-03. Change in monthly deferral. A participant may change the amount of deferral at any time, as long as a participant agreement is completed and filed with the retirement board as set forth in section 71-04-03-02.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03; IRC 457 (b)(4)

71-04-03-04. Change in beneficiary. The participant may change the primary or contingent beneficiary at any time by completing a participant agreement and delivering the agreement to the retirement board offices.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-03-05. Unforeseeable emergency. A participant who, prior to termination of employment, has a sudden and unexpected financial need as defined in chapter 71-04-01 may apply for a partial distribution of the participant's deferred compensation account. The participant may make application by completing a financial hardship form and delivering it to the retirement board offices.

The application will be reviewed by the deferred compensation committee of the board and the recommendation of the committee will be sent to the retirement board for a decision at the board's next regularly scheduled meeting.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03; IRC 457 (d)(A)

71-04-03-06. Termination. Participation in the plan may be terminated at any time by completion of a participant agreement indicating an elimination of monthly deferrals. Distribution of assets may be made only at termination of employment, death, disability, retirement, or in accordance with section 71-04-03-05.

In the event of a termination of employment or retirement, the participant shall complete a benefit selection form to apply for immediate or deferred benefits under the plan.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

CHAPTER 71-04-04 RETIREMENT BOARD RESPONSIBILITIES

Section	
71-04-04-01	Enrollment
71-04-04-02	Booklets
71-04-04-03	Provider Agreement
71-04-04-04	Employer Agreement
71-04-04-05	Payroll Deduction Authorization
71-04-04-06	Participant Accounts
71-04-04-07	Termination

71-04-04-01. Enrollment. The retirement board shall design and provide employees with a participant agreement to facilitate the enrollment in the plan.

The participant agreement must provide for the collection of all information regarding identification of the employee, starting date of the deduction, the payroll period affected, name of the provider, and listing of primary and contingent beneficiaries.

The participant agreement may be produced in a three part format, allowing the original to be retained and the copies distributed according to the direction of the retirement board.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-01; 54-52.2-02; 54-52.2-05

71-04-04-02. Booklets. The retirement board shall provide each employee with a descriptive booklet setting forth the enrollment requirements of the plan, explanation of the deferred compensation plan under section 457 of the Internal Revenue Code, and investment options under the plan.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-04-03. Provider agreement. The retirement board shall establish a written provider agreement for the authorization of companies or organizations who offer investment options to public employees. This agreement may include registration and reporting requirements, educational requirements of sales representatives, and limitations of investment options.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-04-04. Employer agreement. The retirement board shall establish a written agreement for all employers other than state departments, agencies, boards, or commissions which appoint the state to administer their deferred compensation plan. This agreement includes requirement for the employer to adopt the retirement board's rules, employers to make the requested payroll deductions upon proper application by the employee, send the retirement board monthly listings of employees and their deferred compensation deductions, submit all provider participant contracts to the retirement board, hold all participant account information as confidential, notify the retirement board within thirty days of participant's termination of employment, and acknowledge the assets invested under the plan are those of the employer and not the participant.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-04-05. Payroll deduction authorization. The retirement board shall deliver to the payroll division of each employer a copy of the participant agreement as the payroll division's authorization to begin deductions.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-02

71-04-04-06. Participant accounts. The retirement board shall have each provider of investment services establish individual accounts to record the participant's contributions, earnings, and other account activity.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-04-07. Termination. The retirement board shall design and provide participants with a benefit selection form to facilitate payment of benefits under the plan.

The benefit selection forms may allow the participant the ability to select from the various payment options granted by providers, and to determine the starting date of benefit payments.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

CHAPTER 71-04-05 EMPLOYER RESPONSIBILITIES

Section	
71-04-05-01	Employer Enrollment
71-04-05-02	Payroll Deductions
71-04-05-03	Monthly Report
71-04-05-04	Providers
71-04-05-05	Contracts
71-04-05-06	Termination Notice
71-04-05-07	Employer Assets
71-04-05-08	Employer Participation Termination

71-04-05-01. Employer enrollment. Any employer may extend the benefits of the deferred compensation plan to its employees by agreeing to abide by the deferred compensation plan, rules developed by the retirement board, executing an administrative agreement and submitting a certified copy of meeting minutes to the employers' governing board, wherein the governing board has appointed the retirement board to administer its deferred compensation plan.

History: Effective April 1, 1989.

General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-05-02. Payroll deductions. The employer shall authorize employee payroll deductions only after receiving a completed and signed participant agreement. The participant agreement must be signed by a designated representative of the retirement board and indicate the date the payroll deduction is to start, the provider, and the monthly contribution. Payroll deductions must be remitted to the provider prior to the tenth of each month.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-02

71-04-05-03. Monthly report. The employer shall provide the retirement board with a listing of all employees actively participating in the deferred compensation plan. The listing must contain the employee's name, social security number, monthly deduction amount, and provider used.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-05-04. Providers. The employer shall authorize payroll deductions in the deferred compensation plan only for providers authorized by the retirement board. The retirement board will supply a listing of all authorized providers to the employer.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-05-05. Contracts. All contracts between the provider and the employee must be delivered to the retirement board for safekeeping.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-05-06. Termination notice. The employer shall notify the retirement board within thirty days of an employee's termination of employment. The retirement board shall then notify the former employee of the payment options under the plan and have the former employee complete a benefit selection form.

History: Effective April 1, 1989.

General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-05-07. Employer assets. The employer must acknowledge that the income deferred by its employees are the assets of the employer until the employee has actually been paid the amounts deferred.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03; IRC 457 (b)(6)

71-04-05-08. Employer participation termination. The employer may terminate participation in the deferred compensation plan by first giving sixty days' written notice to the retirement board of the employer's intent to terminate.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

CHAPTER 71-04-06 PROVIDER RESPONSIBILITIES

Section	
71-04-06-01	Application
71-04-06-02	Administrative Agreement
71-04-06-03	Sales Representatives
71-04-06-04	Listing of Investment Options
71-04-06-05	Employee Statements
71-04-06-06	Retirement Board Report
71-04-06-07	Account Transfer
71-04-06-08	Benefit Requests
71-04-06-09	Benefit Payments
71-04-06-10	Income Tax Withholding
71-04-06-11	Provider Reporting Failure - Penalty
71-04-06-12	Provider Termination - Employee Account Transfers
71-04-06-13	Dormant Accounts

71-04-06-01. Application. Those firms desiring to offer investment services for the deferred compensation plan shall first notify the retirement board, in writing, of the firms' willingness to become a provider.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-06-02. Administrative agreement. Firms expressing a desire to become a provider of investment services under the deferred compensation plan must agree to all provisions found in and sign the retirement boards' administrative agreement. The administrative agreement sets forth the responsibilities of the provider to the plan, the retirement board, and the employee and stipulates that the provider abide by the plan and rules and regulations adopted by the retirement board for the administration of the plan.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-06-03. Sales representatives. All sales representatives of the provider approved by the retirement board to solicit employees must be fully trained to explain the various investment options available through the provider, be able to explain what the deferred compensation program is as found under section 457 of the Internal Revenue Code, and be licensed with the North Dakota state securities commissioner for the sale of registered or unregistered securities or the North Dakota state insurance commissioner for the sale of insurance contracts or policies, or both.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-06-04. Listing of investment options. Each provider shall provide a listing of the investment options offered to employees. The listing must be attached to the administrative agreement.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-06-05. Employee statements. Participants in the provider's investment options shall receive, at least quarterly, account statements detailing each participant's activity and account balance.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-06-06. Retirement board report. The provider shall deliver quarterly reports to the retirement board detailing the activity of each participant's account. The quarterly report must be delivered within forty-five days of the quarter's end and must include, but is not limited to, name of the participant, social security number of the participant, the provider's contract number for the participant (if

any), type of account for each participant, account balance at the beginning of the quarter, contributions made by the participant for the current quarter, investment earnings added to the account (if any for the quarter), any withdrawals made during the quarter, administrative charges assessed against the account during the quarter, and the account balance at the end of the quarter, and must be in alphabetical order.

The quarterly report must include active, inactive, and retired participants and be for all payroll divisions for the plan. The report may be submitted on microfiche plates or on a computer printout.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-06-07. Account transfer. The provider shall allow any participant who so requests, the ability to transfer the participant's account to another provider on a tax-free basis. The request must be made in writing by the retirement board or its designated representative. The transfer must be made within thirty days of the provider's receipt of the transfer request.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03; IRC 457(e)(10)

71-04-06-08. Benefit requests. The provider shall honor all requests for benefit or refund payments made on the retirement board's benefit selection form and signed by the participant and the retirement board's authorized representative.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-06-09. Benefit payments. The provider shall make benefit payments to the participant at the participant's designated mailing address, or, if requested, make direct deposits of the benefits at the participant's bank, savings and loan, or credit union.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-06-10. Income tax withholding. The provider shall, at the request of the participant, allow for the withholding of federal and state income taxes from the benefit payments and file the required reports of the withholdings with the appropriate federal and state

agencies. This includes the delivery of W2's to annuitants or terminated participants.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-06-11. Provider reporting failure - Penalty. Should the provider fail to deliver the required report within a ninety-day period beyond the end of a calendar quarter, notice must be given by certified mail of the provider's failure to comply. The provider shall then have fifteen days from the date of the certified letter to comply with the reporting requirement.

If the provider fails to deliver the required report within the fifteen-day period, the provider is in violation of the administrative agreement and shall lose active provider status.

Loss of active provider status results in all current contributions of active participants being suspended effective in the next payroll cycle. The retirement board will notify all participants of the company's failure to deliver the required reports. Current participants will be required to either select a new provider for future contributions, or allow their account to go into a dormant status with the company losing provider status. The provider will then remain on an inactive status for a period of twelve months. At that time, an inactive provider may reapply for active provider status by signing a new administrative agreement.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-06-12. Provider termination - Employee account transfers. Should the provider be in violation of the administrative agreement, employees shall have the option of transferring their individual accounts to another qualified provider. The employee shall also have the option of leaving the account with the provider, in a dormant status, to be dealt with by the employee at termination of employment.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03; IRC 457 (e)(10)

71-04-06-13. Dormant accounts. The employee may elect to leave the employee's account with the provider after termination of employment.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

CHAPTER 71-04-07
BENEFITS

Section	
71-04-07-01	Application
71-04-07-02	Benefit Options
71-04-07-03	Benefit Commencement
71-04-07-04	Participant Benefits
71-04-07-05	Beneficiary Benefits

71-04-07-01. Application. The participant upon termination of service may apply for settlement of the participant's account by completion of a benefit selection form. Application for benefits should be completed within thirty days of termination of employment.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-05

71-04-07-02. Benefit options. Benefit payments are available in, but not limited to, the following options: lump sum payments, periodic payments, qualified annuity payments over the participant's lifetime or the lifetime of the participant's spouse.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-05

71-04-07-03. Benefit commencement. A participant may elect to begin benefit payments immediately upon termination of employment or defer payments until a later date. Payments of amount deferred must begin not later than April first of the calendar year following the year in which the participant attains age seventy and one-half or, beginning by such date, over the life of the participant, the lives of the participant and a designated beneficiary, or a period certain not extending beyond the life expectancy of the participant, or the joint life expectancy of the participant and a designated beneficiary.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03; IRC 457 (d)

71-04-07-04. Participant benefits. The benefit option selected by the participant must distribute at least two-thirds of the total

amount payable to the participant over the participant's expected lifetime.

History: Effective April 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03; IRC 457 (d)(B)

71-04-07-05. Beneficiary benefits. If the participant dies while employed with employer or terminates his or her employment and dies before payments begin under this plan, the participant's entire amount deferred, including any death benefit payable under a life insurance policy purchased on the life of the participant, must be paid to his beneficiary, over a period not in excess of (a) the life of the beneficiary, if the beneficiary is the participant's surviving spouse; or (b) fifteen years, if the beneficiary is not the participant's surviving spouse. If the designated beneficiary is the participant's spouse, payments are not required to begin until the date on which the participant would have attained age seventy and one-half.

History: Effective April 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03; IRC 457 (d)(B)

TITLE 75
Department of Human Services

JANUARY 1989

AGENCY SYNOPSIS: The Department of Human Services proposes the following amendments to Section 75-03-08-06(2)(g): that the requirement of liability insurance as a precondition to licensure as a family child care home be eliminated.

STAFF COMMENT: In chapter 75-03-08, subdivision g of subsection 2 of section 75-03-08-06 is amended as follows, and the following subdivisions are renumbered accordingly but not printed for clarity.

75-03-08-06. Application for and nontransferability of family child care home license.

~~g. Liability insurance. The family child care provider shall carry liability insurance for bodily injury and property damage covering their family child care operation. This subdivision is effective on July 1, 1987.~~

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; January 1, 1989.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, 50-11.1-08

AGENCY SYNOPSIS: The Department of Human Services proposes the following amendments to Section 75-03-09-09(3)(e): that the requirement of liability insurance as a precondition to licensure as a group child care home be eliminated.

STAFF COMMENT: In chapter 75-03-09, subdivision e of subsection 3 of section 75-03-09-09 is amended as follows, and the following subdivisions are renumbered accordingly but not printed for clarity.

75-03-09-09. Minimum qualifications and duties of operator.

- ~~e. Carry liability insurance for bodily injury and property damage for the home or facility. This subdivision is effective on July 1, 1987.~~

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; January 1, 1989.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-09-30. Penalties.

1. A violation of any of the following sections shall subject the licensee to a fiscal sanction of twenty-five dollars per day: subdivision ~~h~~ g of subsection 3 of section 75-03-09-09, subsection 2 of section 75-03-09-14, section 75-03-09-19, subsections 7, 10, and 14 of section 75-03-09-20, sections 75-03-09-21 and 75-03-09-27.
2. A violation of any of the following sections shall subject the licensee to a fiscal sanction of fifteen dollars per day: subsection 2 of section 75-03-09-10, section 75-03-09-12, subsections 3, 5, 8, 9, and 12 of section 75-03-09-20, subsection 2 and subdivisions b and f of subsection 4 of section 75-03-09-22, subsection 1 of section 75-03-09-23, subsections 2 and 4 of section 75-03-09-24, subsections 1 and 3 of section 75-03-09-25, and section 75-03-09-28.
3. A violation of any other sections of this chapter not noted in subsections 1 and 2 shall subject the licensee to a fiscal sanction of five dollars per day.

History: Effective December 1, 1981; amended effective January 1, 1987; January 1, 1989.

General Authority: NDCC 50-11.1-07.4, 50-11.1-08

Law Implemented: NDCC 50-11.1-07.4, 50-11.1-07.5, 50-11.1-07.6, 50-11.1-07.7

AGENCY SYNOPSIS: This amendment restricts the application of subsection 11 of North Dakota Administrative Code section 75-04-05-13 to services rendered prior to October 1, 1988. Consequently, on and after October 1, 1988, the cost of direct-care staff in residential settings for eight hours each night becomes an allowable cost.

75-04-05-13. Nonallowable costs. Nonallowable costs include, but are not necessarily limited to:

1. Advertising to the general public exclusive of procurement of personnel and yellow page advertising limited to the information furnished in the white page listing.
2. Amortization of noncompetitive agreements.
3. Bad debt expense.
4. Barber and beautician services.
5. Basic research.
6. Capital improvements by the provider to the buildings of a lessor.
7. Compensation of officers, directors, or stockholders other than reasonable and actual expenses related to client services.
8. Concession and vending machine costs.
9. Contributions or charitable donations.
10. Corporate costs, such as organization costs, reorganization costs, and other costs not related to client services.
11. The cost of direct-care staff in residential settings, incurred before October 1, 1988, for eight hours each night, except where the provider has demonstrated, to the satisfaction of the department, that:
 - a. The clients served have been determined incapable of taking action for self-preservation; provided, that the records of the facility demonstrate planning, and plan execution, which is intended to develop, in each resident who has the capacity for such development, the capacity of taking action for self-preservation;
 - b. The clients require the supervision of a medical practitioner without which a serious threat to health may occur;
 - c. The clients of a residence have contracted an infectious or contagious disease resulting in quarantine;
 - d. A resident manifests maladaptive behavior representing a threat to the health or safety of himself or another resident; provided, that the records of the facility demonstrate planning, and plan execution, which is intended to limit such behavior in each resident who manifests it;

- e. There has occurred a calamity, natural disaster, or emergency of such gravity that continuous supervision is required to maintain the health and safety of the residents;
 - f. A single building is of sixteen or more licensed beds; or
 - g. Staff are awakened by the residents and are compensated for those specified time periods, subject to the applicable requirements of the department of labor 29 CFR section 785, et seq.
- 12. Costs for which payment is available from another primary third party payor or for which the department determines that payment may lawfully be demanded from any source.
 - 13. Costs of functions performed by clients in a residential setting which are typical of functions of any person living in their own home, such as keeping the home sanitary, performing ordinary chores, lawnmowing, laundry, cooking, and dishwashing. These activities shall be an integral element of an individual program plan consistent with the client's level of function.
 - 14. Costs of participation in civic, charitable, or fraternal organizations.
 - 15. 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.
 - 16. Costs which are incurred by the provider's subcontractors, or by the lessor of property which the provider leases, and which becomes an element in the subcontractor's or lessor's charge to the provider, if such costs would have not been allowable under this section had they been incurred by a provider directly furnishing the subcontracted services, or owning the leased property.
 - 17. Costs, exceeding the amounts budgeted as "salaries and fringes", "board expenses", "property expenses", "production expenses", or "other costs", unless the written prior approval of the department has been received.
 - 18. Depreciation on assets acquired with federal or state grants.
 - 19. Education costs incurred for the provision of services to clients who are, could be, or could have been, included in a student census. Education costs do not include costs incurred

for a client, defined as an "exceptional child" by subsection 1 of North Dakota Century Code section 15-59-01, who is no longer enrolled in a school district pursuant to an interdepartmental plan of transition.

20. Education or training costs, for provider staff, which exceed the provider's approved budget costs.
21. Employee benefits not offered to all full-time employees.
22. Entertainment costs.
23. Equipment costs for 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 the equipment was related to client services. Equipment used for client services, other than developmental disabilities contract services, will be allocated by time studies, mileage, client census, percentage of total operational costs, or otherwise as determined appropriate by the department.
24. 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 subsection.
25. Federal and other governmental income taxes.
26. Fringe benefits exclusive of Federal Insurance Contributions Act, unemployment insurance, medical insurance, ~~workmen's~~ workers compensation, retirement, and other benefits which have received written prior approval of the department.
27. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose.
28. Funeral and cemetery expenses.
29. Goodwill.
30. Home office costs when unallowable if incurred by facilities in a chain organization.
31. Housekeeping staff or service costs.
32. In-state travel not directly related to industry conferences, state or federally sponsored activities, or client services.
33. Interest cost related to money borrowed for funding depreciation.

34. Items or services, such as telephone, television, and radio, which are located in a client's room and which are furnished solely for the convenience of the clients.
35. Key man insurance.
36. Laboratory salaries and supplies.
37. Matriculation fees and fees associated with the granting of college credit.
38. Meals and food service in day service programs.
39. Membership fees or dues for professional organizations exceeding five hundred dollars in any fiscal year or where the facility has not demonstrated an effort to maximize the professional development of its staff.
40. Miscellaneous expenses not related to client services.
41. Out-of-state travel expense which is not directly related to client services or which has not received written prior approval by the department.
42. Payments to members of the governing board of the provider, the governing board of a related organization, or families of members of those governing boards, including spouses and relatives within the third degree of kinship, except:
 - a. Payments for reasonable and actual expenses incurred in the conduct of the provider's business.
 - b. Payments for a service or product unavailable from another source at a lower cost except that this subdivision shall not be construed to permit the employment of any person subject to this limitation.
43. Penalties, fines, and related interest and bank charges other than regular service charges.
44. Personal purchases.
45. Pharmacy salaries.
46. Physician and dentist salaries.
47. Production costs.
48. Religious salaries, space, and supplies.
49. Room and board costs in residential services other than an intermediate care facility for the developmentally disabled, except when such costs are incurred on behalf of persons who

have been found not to be disabled by the social security administration, but who are certified by the department as indigent and appropriately placed. Allowable room and board cost shall not exceed the room and board rate established pursuant to subsections 2 and 3 of section 75-04-05-09. Services offering room and board temporarily, to access medical care, vocational evaluation, respite care, or similar time limited purposes are or may be exempt from the effect of this provision.

50. Salary costs of employees determined by the department to be inadequately trained to assume assigned responsibilities, but where an election has been made to not participate in appropriate training approved by the department.
51. Salary costs of employees who fail to meet the functional competency standards established or approved by the department.
52. Travel of clients visiting relatives or acquaintances in or out of state.
53. Travel expenses in excess of state allowances.
54. Undocumented expenditures.
55. Value of donated goods or services.
56. Vehicle and aircraft costs not directly related to provider business or client services.
57. X-ray salaries and supplies.

History: Effective July 1, 1984; amended effective June 1, 1985; January 1, 1989.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

JULY 1989

AGENCY SYNOPSIS: Section 75-02-07-01 amends the definitions of three defined terms and adds definitions for ten additional terms.

75-02-07-01. Definitions. As used in this chapter:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Allowable costs" means the facility's actual costs, adjusted according to regulations, which are reimbursable under the general assistance program.
3. "Bad debts" means those amounts considered to be uncollectible from accounts and notes receivable.
- ~~2.~~ 4. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of an institution a facility are divided for purposes of cost allocation assignment and allocations.
5. "Cost finding" means the process of analyzing the data derived from the accounts ordinarily kept by the facility to ascertain costs of the various types of services rendered; it is the determination of these costs by the allocation of direct costs and proration of indirect costs.
6. "Daily room rate" means, when applied to the charge to private pay residents, the rate which includes all items or services furnished as a part of the rate paid for the care and maintenance of individuals dependent in whole or in part on

supplementation of supplemental security income benefits, whether or not a particular item or service is regarded by a facility as special or ancillary.

7. "Department" means the department of human services.
8. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.
9. "Facility" means a licensed boarding home for the aged and infirm.
10. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
11. "Fringe benefits" means all nonsalary employee benefits, including, but not limited to, self-employment (Federal Insurance Contributions Act) taxes, unemployment insurance, workers' compensation, pensions, bonuses, health and life insurance premiums, and accrued compensation for absences.
- 3- 12. "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
13. "Historical cost" means those costs reported on the cost statement which were incurred and recorded in the facility's accounting records.
- 4- 14. "Interest" means the cost incurred from with the use of borrowed funds generally paid at fixed intervals by the user.
- 5- 15. "Reasonable cost" means a necessary and proper cost incurred in rendering the services subject to the principles established for revenue and costs. Reasonable cost includes both direct and indirect costs of providers of services the facility. The actual cost shall be related to resident care and shall not exceed what a prudent and cost-conscious buyer pays for a given item or services. Resident care costs are those costs incurred for common and expected occurrences in the field of the provider's facility's activity.
- 6- 16. "Related organization" means an organization furnishing services, facilities, or supplies which the provider is associated or affiliated with, has control of, or is controlled by. Control can be obtained either through ownership, management, or contractual arrangements which a facility is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the facility. Control exists where an individual or an organization has the

power, directly or indirectly, significantly to influence or direct the policies of an organization or facility.

7. 17. "Resident day" means any day for which the facility has received payment. Hospital days, therapeutic days, and reserved bed days shall be included. The day of admission shall be counted as a resident day but not the day of discharge. The day of death shall be counted.

History: Effective April 1, 1981; amended effective July 1, 1989.

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

Law Implemented: NDCC 50-18-06.1; NDAC 75-02-03-09

AGENCY SYNOPSIS: Section 75-02-07-02 provides an alternative reporting schedule for facilities which are combined with nursing homes or distinct parts of hospitals providing nursing care when the combined facility is obliged to make another cost report to the department; specifies the supporting documentation which must be available to substantiate the cost report; amends the penalty for late filing of cost reports; and, requires the inclusion of a financial statement and reconciliation, together with the cost report.

75-02-07-02. Financial reporting requirements.

1. The facility shall establish and maintain on the premises the required census records and financial information which will be sufficient to provide for a proper audit review. For any cost being claimed on the annual cost report, sufficient data must be available as of the audit date to fully support the report item.
2. A cost report shall be filed with the ~~provider audit unit of the management services division~~ department on or before the last day of the third month following the facility's fiscal yearend unless the facility is operated in conjunction with a nursing home or distinct part of a hospital providing nursing care which is required to file a cost report under section 75-02-06-02. A facility operated in conjunction with such a nursing home or hospital shall file a single cost report, concerning both the facility and the nursing home or hospital, in the form and manner required by section 75-02-06-02.
3. Each ~~provider~~ facility shall maintain, for a period of not less than five years following the date of submission of the cost report form to the ~~state agency~~ department, financial and statistical records, of the period covered by such cost reports, which are accurate and in sufficient detail to substantiate the cost data reported. Such records shall be available upon demand to representatives of the ~~state agency~~ department.

4. Skilled and intermediate care facilities which provide custodial-type care shall submit their cost data on form 674, and the audit and establishment of all rates will be completed with a single audit a cost report form designated by the department.
5. Each facility shall maintain a formal set of accounting records which shall be maintained in accordance with generally accepted accounting principles. A double entry form of accounting system is recommended for all facilities. However, a single entry accounting system, properly maintained, will also be considered acceptable. <Suggested headings for a simple single entry system are contained in Appendix A.>
6. The accounting system must be maintained in such a manner that cost accounts will be grouped by cost center and be readily traceable to the reporting form. Organizations which maintain more than one facility must also maintain separate cost records identifiable with each facility Where several facilities are associated with a group and their accounting and reports are centrally prepared, added information must be submitted, for those items known to be lacking support at the reporting facility, with the annual cost report or must be provided to the local facility prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost.
7. If a facility fails to file the required statistical cost report on or before the due date, total allowable costs, for rate calculation purposes, shall be reduced by ten one hundred dollars for each calendar day of delinquency. This If no report has been submitted by May fifteenth, the payable rate shall be equal to eighty percent of the amount set as the payable rate in the rate period immediately past. These fiscal sanction sanctions may be waived by the director of economic assistance of the social service board department upon a showing of good cause for the delinquency.
8. In order to properly validate the accuracy and reasonableness of cost information reported by the facility, the state will may provide for an onsite audit each year.
9. The accrual basis of accounting must be used for reporting purposes. A facility may maintain its accounting records on a cash basis during the year, but adjustments must be made to reflect proper accrual accounting procedures at yearend and when subsequently reported in the annual cost statement. Generally accepted accounting principles will prevail unless alternative treatment is specified in this chapter. The method for annual reporting of costs for reimbursement purposes shall be prescribed by the department.

10. The facility shall make all adjustments, allocations, and projections necessary to arrive at allowable costs. Costs reported must include total costs and be adjusted to allowable costs. Adjustments required by the department to attain allowable cost, though not meeting the criteria of fraud or abuse on their initial identification, could, if repeated on future cost filings, be considered as possible fraud or abuse.
11. Any facility required by medicare to submit a medicare cost report using the stepdown method shall submit a copy of the medicare cost report with the annual cost report required by this section. If the medicare cost report covers a period other than the report period, the facility shall provide a statement of costs reported on a medicare cost report form prepared using costs for the report period.
12. The facility shall submit a copy of its financial statement together with supplemental information which reconciles costs on the financial statement with costs on the cost report.

History: Effective April 1, 1981; amended effective July 1, 1989.

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

Law Implemented: NDCC 50-18-06.1; NDAC 75-02-03-09

AGENCY SYNOPSIS: Section 75-02-07-03 removes requirements that the facility provide detailed accounting for salaries for specific categories of services and removes limit on operator compensation.

75-02-07-03. Salaries Compensation.

1. ~~The facility must provide, within their accounting records, adequate detail to show salaries as follows:~~
 - a. ~~Administrative.~~
 - b. ~~Plant.~~
 - c. ~~Services, including personal care, dietary, laundry, housekeeping, and any other service-related salary.~~
2. ~~The allowance of compensation for services of sole proprietors and partners is the amount determined to be the reasonable value of the services rendered regardless of whether there is any actual distribution of the profits of the business. The limits set forth in subsection 5 4 will be allowable for sole proprietors and partners except that operator compensation may not exceed the facility's net profit for the period.~~
3. 2. The allowance of compensation for managerial, administrative, and other services related to resident care is limited to the reasonable value regardless of the form in which it is paid.

Compensation of this type must be documented. Any salaries accrued at yearend must be paid within the first seventy-five days of the new fiscal year to be considered an allowable cost of the previous year.

- ← 3. Services which are not related either directly or indirectly to resident care (those provided primarily for the purpose of managing or improving the owner's financial investment) will not be recognized as an allowable cost.
- 5- 4. Administrator compensation shall be determined, by survey, every two years. Survey data will be revised, at least annually, to reflect changes in the consumer price index (all items - U.S. City Average). Reasonable administrator compensation shall be limited to the least of (a) the compensation actually paid, (b) the ninetieth percentile cost per licensed bed per year, or (c) the ninetieth percentile salary.

History: Effective April 1, 1981; amended effective July 1, 1989.

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

Law Implemented: NDCC 50-18-06.1; NDAC 75-02-03-09

AGENCY SYNOPSIS: Section 75-02-07-04 reworks recordkeeping requirements concerning the basis for depreciable assets, increases the minimum cost of assets requiring depreciation, requires asset life depreciation to be based upon a life at least as long as AHA guidelines, sets limits on the basis for depreciation, and provides for the recapture of overstated depreciation expense.

75-02-07-04. Depreciation.

1. The principles of reimbursement for provider facility costs require that payment for services should include depreciation on all depreciable type assets that are used to provide covered service to general assistance recipients. ~~Costs acceptable for depreciation purposes shall be based on actual cost of the fixed assets. Proper records shall be maintained by the facility to provide accountability for the fixed assets and also provide adequate means by which depreciation can be computed and established as an allowable resident related cost. Tagging of major equipment items is not mandatory, but alternative records must exist to satisfy audit verification of the existence and location of the assets. Lack of adequate records will result in depreciation costs being excluded from the rate computation. A depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity. This includes assets that may have been fully (or partially) depreciated on the books of the facility, but are in use at the time the facility enters the program. The useful lives of such assets are considered not to have ended~~

and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as an adjustment in the cost report.

2. The straight-line method of depreciation must be used. All accelerated methods of depreciation are unacceptable. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and detailed schedules of individual assets shall be maintained. If the books of account reflect depreciation different than that submitted on the ~~form 19~~ cost report, a reconciliation shall be prepared.
3. The depreciable life of an asset is its expected useful life to the provider; not necessarily the inherent useful or physical life. If a difference is considered, a salvage value should be established prior to the application of the depreciation rate. The useful life of a depreciable asset is determined in the light of the provider's facility's experience and the general nature of the asset and other pertinent data. In projecting a useful life, providers may follow Facilities shall project a useful life at least as long as the useful life guidelines published by the American hospital association. A different longer useful life may be used, however, when. When the useful life selected differs significantly from that established by the guidelines, the deviation must be based on convincing reasons supported by adequate documentation, generally describing the realization of some unexpected event. Depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, may not be used for purposes of reimbursement. A composite useful life may be used for a class or group of assets.
4. If a depreciable asset has, at the time of its acquisition, an estimated useful life of at least two years and historical cost of at least one hundred fifty one thousand dollars, or if it is acquired in quantity and the cost of the quantity is at least three hundred dollars, its cost must be capitalized and written off ratably depreciated over the estimated useful life of the asset. Cost during the construction of an asset, such as architectural, consulting and legal fees, interest, etc., should be capitalized as a part of the cost of the asset.
5. Major All repair or maintenance costs on equipment or buildings must be capitalized if the repairs have increased the useful life of the asset by at least two years in excess of five thousand dollars must be capitalized and depreciated

over the remaining useful life of the repaired or maintained asset.

6. Proper records will provide accountability for the fixed assets and also provide adequate means by which depreciation can be computed and established as an allowable resident-related cost. Tagging of major equipment items is not mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.

7. Basis for depreciation.

a. Depreciable costs may not exceed the lower of:

(1) Current reproduction costs less straight-line depreciation over the life of the asset to the time of purchase;

(2) Fair market value at time of purchase;

(3) In the case of a trade-in, the sum of the book value of the trade-in plus the cash paid; or

(4) In the case of the assets which have been previously owned by a hospital, nursing home, or facility, and for which such hospital, nursing home, or facility has received payment for services provided to recipients of benefits under title XVIII (medicare), or XIX (medicaid) of the Social Security Act, or as optional supplementation of supplemental security income under North Dakota Century Code chapter 50-01, at a rate which reflects depreciation expense concerning those assets, the allowable acquisition cost of such assets to the first owner on or after July 18, 1984.

b. For purposes of this chapter, donated assets may be recorded and depreciated based on their fair market value. In the case where the facility's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal must be made. The appraisal will be made by a recognized appraisal expert and will be accepted for depreciation purposes. The facility may elect to forego depreciation on donated assets thereby negating the need for a fair market value determination.

c. Purchase of a facility and its depreciable assets as an ongoing operation.

(1) Determination of the cost basis of a facility and its depreciable assets of an ongoing operation depends on whether or not the transaction is a bona fide sale.

Should the issue arise, the purchaser has the burden of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide. The cost basis of a facility and its depreciable assets acquired as an ongoing operation is limited to the lowest of the following:

- (a) Current reproduction cost of the assets, depreciated on a straight-line basis over its useful life to the time of the sale;
 - (b) Price paid by the purchaser (actual cost);
 - (c) Fair market value of the facility or asset at the time of the sale;
 - (d) In a sale not bona fide, the seller's cost basis, less accumulated depreciation; or
 - (e) With respect to sales made on or after July 18, 1984, the seller's cost basis less accumulated depreciation, plus recaptured depreciation.
- (2) The seller shall always use the sale price in computing the gain or loss on the disposition of assets.
- (3) Appraisal guidelines. To properly provide for costs or valuations of fixed assets, an appraisal will be required if the facility:
- (a) Has no historical cost records or has incomplete records of depreciable fixed assets; or
 - (b) Prior to July 18, 1984, is purchased without designation of purchase price for the classification of assets acquired. Before an appraisal is made, the department must be informed of the intention to have the appraisal made. This information must also set forth the reasons for the appraisal and the agreement with the appraiser. The appraisal agreement should contain the appraisal date, the estimated date of completion, the scope of the appraisal, and the statement that the appraisal will conform to the current medicare regulation on principles of reimbursement for provider cost.
 - (c) Limitation. With respect to purchases occurring before July 18, 1984, the department will recognize appraised value not to exceed cost basis for tax purposes. In all cases of major

change, proper authority for expenditure shall be obtained.

8. Recapture of depreciation.

- a. At any time that the operators of a facility sell an asset, or otherwise remove that asset from service in or to the facility, any depreciation costs asserted after June 1, 1984, with respect to that asset, are subject to recapture to the extent that the sale or disposal price exceeds the undepreciated value. If the department determines that a sale or disposal was made to a related party, or if a facility terminates participation as a provider of services, any depreciation costs asserted after June 1, 1984, with respect to that asset or facility, are subject to recapture to the extent that the fair market value of the asset or facility exceeds the depreciated value.
- b. The seller and the purchaser may, by agreement, determine who shall pay the recaptured depreciation. If the parties to the sale do not inform the department of their agreement, the department will set a recapture payable rate in an amount equal to one hundred dollars less than the payable rate which would otherwise be set under this chapter. The recapture payable rate shall be in effect until the facility demonstrates that the total reduction in revenues due to the establishment of the recapture rate is equal to the amount of depreciation subject to recapture.

History: Effective April 1, 1981; amended effective July 1, 1989.

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

Law Implemented: NDCC 50-18-06.1; NDAC 75-02-03-09

AGENCY SYNOPSIS: Section 75-02-07-05 refines requirements concerning allowable interest expense and creates a mechanism for recognizing funded depreciation.

75-02-07-05. Interest expense.

1. To be allowable, interest must be supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are required; identifiable in the provider's accounting records; related to the reporting period in which the costs are incurred; necessary and proper for the operation, maintenance, or acquisition of the provider's facilities and used therein General.
 - a. To be allowable, interest must be:

- (1) Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are required;
 - (2) Identifiable in the provider's accounting records;
 - (3) Related to the reporting period in which the costs are incurred;
 - (4) Necessary and proper for the operation, maintenance, or acquisition of the facility as set forth in HCFA-15 paragraphs 202.2 and 202.3;
 - (5) Unrelated to funds borrowed to purchase assets in excess of allowed cost;
 - (6) Unrelated to funds borrowed to purchase assets to the extent that the borrowed amount exceeds the basis for depreciation established pursuant to section 75-02-07-04 less the value of any payment and trade-in made at the time of purchase; and
 - (7) When representative of borrowing for the purpose of making capital expenditures for assets that were owned by any other hospital, nursing home, or facility, on or after July 18, 1984, limited to that amount of interest cost which such hospital, nursing home, or facility may have reported, for ratesetting purposes, had the asset undergone neither refinancing nor a change of ownership.
2. In such cases where it was necessary to issue bonds for financing, any bond premium or discount shall be **accounted for and written off** amortized over the life of the bond issue.
 3. Interest paid by the provider facility to partners, stockholders, or related organizations of the provider to the facility is not allowable as a cost. Where the owner's funds are used in a business owner loans funds to a facility, the funds are considered **invested funds or** capital, rather than borrowed funds.
 4. Where the provider facility has invested funds from gifts or grants which are unrestricted as to use, and these funds are commingled with other funds, the provider's facility's allowable interest expense is reduced by the amount of investment income earned by the funds. **Any investment income in excess of interest expense will not be used to offset other operating expenses.** However, if the gifts and grants are not commingled with other funds, the investment income earned by the fund does not reduce allowable interest expense.
 5. Funded depreciation.

- a. Funding of depreciation is the practice of setting aside cash or other liquid assets, in a fund separate from the general funds of the provider, to be used for replacement of the assets depreciated, or for other capital purposes. The deposits are, in effect, made from the cash generated by the noncash expense depreciation.
- b. Deposits to the funded depreciation account are generally in an amount equal to the depreciation expense charged to costs each year. In order to qualify for all provisions of funded depreciation, the minimum deposits, exclusive of interest income to the account, must be fifty percent of the depreciation expensed that year. Deposits in excess of accumulated depreciation are allowable; however, the interest income generated by the "extra" deposits will be considered as a reduction of allowable interest expense. This provision is recommended as a means of conserving funds for the replacement of depreciable assets and purchase of capital assets. It is expected that the funds will be invested to earn revenues. The revenues generated by this investment will not be considered as a reduction of allowable interest expense if the earned interest or other income on the investment remains in the funded depreciation account.
- c. Monthly or annual deposits representing depreciation must be in the funded depreciation account for six months or more to be considered as valid funding transactions. Deposits of less than six months are not eligible for the benefits of a funded depreciation account. However, if deposits invested before the six-month period remain in the account after the six-month period, the investment income for the entire period will not reduce the allowable interest expensed in that period. Total funded depreciation in excess of accumulated depreciation on resident-related assets will be considered as ordinary investments and the income therefrom will be used to offset interest expense.
- d. Withdrawals for the acquisition of capital assets, the payment of mortgage principal on these assets and for other capital expenditures are on a first-in, first-out basis. Withdrawals for general operating purposes or for loans to the general fund are made on a last-in, first-out basis. Such loans must meet the "necessary and proper" requirements for need of the loan. Interest paid from the general fund to the funded depreciation account on the loan is an allowable cost, except as mentioned in subdivision c, where the deposit has not been in the fund for the six-month period, the interest paid on the loan is not an allowable cost. Loans made to the general fund may not be made for a period or term which is longer than three years. Documentation on prevailing interest rates

at the time of the loan shall be maintained on file. The necessary and proper requirements set forth in HCFA-15 paragraphs 202.2 and 202.3 will apply to all loans made.

- e. The facility may use the funds in the funded depreciation account for purposes other than the improvement, replacement, or expansion of facilities or equipment related to patient care. However, allowable interest expenses for the period of withdrawal will be reduced to adjust for offsets not made in prior years for earnings applicable to such funds. For example, if the facility withdraws funds equal to two years' deposits, using the last-in, first-out method, any earnings applicable to these deposits during the two-year period are applied as a reduction of interest expense incurred during the period of withdrawal. When funded depreciation accounts are used for capital and noncapital purchases, the total interest income will be offset.
- f. When money is borrowed to fund depreciation, interest paid by the facility on the money borrowed for this purpose is not an allowable cost.
- g. Funded depreciation is to be used both for the replacement of existing assets and for expansion. These funds must be used for all capital outlays in excess of one thousand dollars except with regard to those assets purchased exclusively with donated funds, and cannot be restricted for a specific or future purpose. For example, restricting the account to funding depreciation for "building" would negate the intent of funding depreciation as defined by this section.
- h. When capital purchases are made with borrowed funds rather than funds from the funded depreciation account, the entire interest income for funded depreciation will be offset up to the entire interest expense.

History: Effective April 1, 1981; amended effective July 1, 1989.

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

Law Implemented: NDCC 50-18-06.1; NDAC 75-02-03-09

AGENCY SYNOPSIS: Section 75-02-07-06 removes extraneous language explaining the intended effect of the consideration of rental expense when the landlord and the facility are related organizations.

75-02-07-06. Rental expense paid to related organization. A provider may lease a facility may be leased from a related organization within the meaning of the principles of reimbursement. In such case, the rent paid to the lessor by the provider facility is not allowable as cost unless the rent paid is less than allowable costs of ownership.

The provider facility, however, ~~would~~ may include the cost of ownership of the facility. ~~Generally, these would be~~ These costs such as are depreciation, interest on the mortgage, and real estate taxes, ~~and other expenses attributable to the leased facility.~~ The effect is to treat the facility as though it were owned by the provider. Therefore, the owner's equity in the leased assets is includable in the equity capital of the provider and is further used in the calculation of return on investment for proprietary homes.

History: Effective April 1, 1981; amended effective July 1, 1989.

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

Law Implemented: NDCC 50-18-06.1; NDAC 75-02-03-09

AGENCY SYNOPSIS: Section 75-02-07-07 substitutes the term "facility" for the term "provider".

75-02-07-07. Taxes.

1. Except as provided in subsection 2, taxes assessed against the provider facility, in accordance with the levying enactments of the several states and lower levels of government and for which the provider facility is liable for payment, are allowable costs. Tax expense does not include fines and penalties. Whenever exemptions to taxes are legally available, the provider facility is to take advantage of them. If the provider facility does not take advantage of available exemptions, the expense incurred for such taxes are not recognized as allowable costs under the program.
2. The following taxes, which are levied on providers facilities, are not allowable as costs:
 - a. Federal income and excess profit taxes, including any interest or penalties paid thereon.
 - b. State or local income and excess profit taxes.
 - c. Taxes in connection with financing, refinancing, or refunding operations, such as taxes in the issuance of bonds, property transfers, issuance or transfers of stocks, etc. Generally, these costs are either amortized over the life of the securities or depreciated over the life of the asset. They are not, however, recognized as tax expense.
 - d. Special assessments on land which represents capital improvements such as sewers, water, and pavements, should be capitalized.
 - e. Taxes on property which is not used in the rendering of covered services.

- f. Taxes, such as sales taxes, levied against the resident and collected and remitted by the provider facility.
- g. Self-employment (Federal Insurance Contributions Act) taxes applicable to individual proprietors, partners, members of a joint venture, etc.

History: Effective April 1, 1981; amended effective July 1, 1989.

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

Law Implemented: NDCC 50-18-06.1; NDAC 75-02-03-09

AGENCY SYNOPSIS: Section 75-02-07-08 refines description of the allowability and treatment of home office costs in chain organizations where a part of that cost is claimed as a facility cost.

75-02-07-08. Home office costs - Related organization. Facilities which are directly related to a parent organization and have services provided to them for legal, accounting, and management assistance will be allowed to report the cost for these services only if the facility provides, with the cost report ~~19~~, the actual computation of the cost to the facility by the parent organization. Actual cost to the parent organization is the only cost which will be allowed for reimbursement purposes to the facility preparing the cost report. If the documentation does not accompany the cost report, this cost item will be eliminated from the reimbursement rate until such time as the cost data is received by the provider audit unit.

1. Costs applicable to services, facilities, and supplies furnished to a facility by a related organization may not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. Facilities shall identify such related organizations and costs in the cost report. An appropriate statement of cost and allocations must be submitted with the annual cost report. For cost reporting purposes, management fees will be considered as administrative costs.
2. A chain organization consists of a group of two or more facilities which are owned, leased, or through any other device controlled by one business entity. This includes not only proprietary chains but also chains operated by various religious and other charitable organizations.
3. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to their member facilities. Although the home office of a chain is normally not a facility in itself, it may furnish, to the individual facility, central administration or other services such as centralized accounting, purchasing, personnel, or management services. Only the home office's

actual cost of providing such services is includable in the facility's allowable costs under the program. Any services provided by the home office which are also included in reported costs as payments to an outside provider of services will be considered a duplication of costs and not be allowed.

4. In order to be considered an allowable cost, the home office cost must be directly related to those services performed for individual facilities and relate to resident care. An appropriate share of indirect costs will also be considered. Documentation as to time or services provided must be available to substantiate cost.

History: Effective April 1, 1981; amended effective July 1, 1989.

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

Law Implemented: NDCC 50-18-06.1; NDAC 75-02-03-09

AGENCY SYNOPSIS: Section 75-02-07-09 removes limitations on board of directors' fees (these limitations are now found in subsection 6 of section 75-02-07-15).

75-02-07-09. Board of directors' fees. The fees paid to members of a board of directors for meetings attended shall be allowable in an amount not to exceed the maximum permitted compensation to members of the legislative council pursuant to subsection 4 of North Dakota Century Code section 54-35-10, with additional compensation for mileage and travel expense not to exceed the maximum allowed for state officials pursuant to North Dakota Century Code section 54-06-09. In addition, a maximum of twenty-four meetings per fiscal year will be considered reasonable. One meeting shall consist of any number of days required to transact the required business of the home. Any exceptions to the stated number of meetings shall be considered by the auditor in charge during the onsite audit and a determination made at that time. Repealed effective July 1, 1989.

History: Effective April 1, 1981.

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

Law Implemented: NDCC 50-18-06.1; NDAC 75-02-03-09

AGENCY SYNOPSIS: Section 75-02-07-10 removes limitation on preferential treatment for annuities and pensions furnished as compensation (the limitations are now found in subsection 7 of section 75-02-07-15).

75-02-07-10. Annuities and pensions. Annuity and pension cost will be considered an allowable cost for reimbursement purposes if the facility formally adopts a plan and this plan is conveyed and open to all eligible employees. An eligible employee is anyone that has been employed by the facility for the required minimum period of time that is called for in the established plan. Repealed effective July 1, 1989.

History: ~~Effective April 1, 1981.~~
General Authority: ~~NDEC 50-18-02, 50-18-06~~
Law Implemented: ~~NDEC 50-18-06.1, NDAE 75-02-03-09~~

AGENCY SYNOPSIS: Section 75-02-07-11 removes limits on the cost of dues, subscriptions, public relations, and advertising (limitations are now found in subsection 2 of section 75-02-07-15).

75-02-07-11. Dues, subscriptions, public relations, and advertising. ~~Costs of dues, subscriptions, and advertising are allowable only if directly related to resident care. Dues to fraternal organizations are not allowable. Subscriptions should be those of a type which will benefit the residents of the facility or which will keep administration on a current level with facilities of this type in their area. Public relations costs will not be considered as an allowable cost for reimbursement. Advertising costs will be considered for those items which include soliciting for employees. Other advertising costs will not be considered allowable for reimbursement purposes. Repealed effective July 1, 1989.~~

History: ~~Effective April 1, 1981.~~
General Authority: ~~NDEC 50-18-02, 50-18-06~~
Law Implemented: ~~NDEC 50-18-06.1, NDAE 75-02-03-09~~

AGENCY SYNOPSIS: Section 75-02-07-12 removes budget-based ratesetting for the first twelve months of a facility operation (requirements for budget-based ratesetting for new facilities are now found in subdivision c of subsection 7 of section 74-02-07-17).

75-02-07-12. Startup costs.

- ~~1. In the first stages of operation, a new institution facility incurs certain costs in developing its ability to care for residents prior to admissions of residents. Staff is obtained, organized, and other operating costs are incurred during this time of preparation which cannot be allocated to resident care during the period because there are no residents receiving services. These costs are commonly referred to as startup costs. These costs must be capitalized and amortized over sixty consecutive months starting with the month in which the first resident is admitted for treatment.~~
- ~~2. In establishing the rate for the facility in the first twelve months of operation, budgeted costs for services will be considered and administrative costs, plant costs, and property costs shall be considered at eighty-five percent of licensed beds times the number of days in the first twelve months of operation.~~

History: Effective April 1, 1981; amended effective July 1, 1989.
General Authority: NDCC 50-18-02, 50-18-06
Law Implemented: NDCC 50-18-06.1; NDAC 75-02-03-09

AGENCY SYNOPSIS: Section 75-02-07-13 removes provision for return on investment previously available only to proprietary (for profit) facilities.

75-02-07-13. Return on investment. In order to provide for a return on investment for proprietary homes, an allowance of eight and one-half percent of net investment of fixed assets relating to resident care will be established. To compute the amount on which the percentage of return is applied, begin with the costs of fixed assets relating to resident care. Deduct therefrom the accumulated depreciation. This will produce the net fixed assets relating to resident care. From this amount deduct the balance of notes and mortgages payable pertaining to the fixed assets relating to resident care. The result will be the net investment which is eligible for the percentage of return. This allowance of the return on an investment will be made on form 19, annual statement of reimbursable cost. No return on investment shall be allowed.

History: Effective April 1, 1981; amended effective July 1, 1989.
General Authority: NDCC 50-18-02, 50-18-06
Law Implemented: NDCC 50-18-06.1; NDAC 75-02-03-09

AGENCY SYNOPSIS: Section 75-02-07-14 removes unenforceable "advisory" requirements concerning resident census.

75-02-07-14. Resident census.

- 1- A resident day is any day that the facility has received remuneration for the available bed. The amount of remuneration has no bearing on whether a day should be counted or not.
- 2- A daily census record must be maintained by the facility to allow for proper audit of the census data. A suggested form would be a register allowing for listing of all rooms available and their occupants. The register would allow for a daily tally of in-house residents, hospital residents (when paid for), and therapeutic leave days. This register would provide for a daily census total and also a resident total which could be used as a billing at month end. Examples of days that must be included in census, providing they have been paid for, are hospital days and therapeutic leave days. In the case where a private room has been made of a previously utilized double room and a rate has been charged that does not correspond to a normal private room rate, two resident days would be counted for this room.

History: Effective April 1, 1981; amended effective July 1, 1989.
General Authority: NDCC 50-18-02, 50-18-06
Law Implemented: NDCC 50-18-06.1; NDAC 75-02-03-09

AGENCY SYNOPSIS: Section 75-02-07-15 restates list of income-producing activities and describes cost adjustments produced by these activities; describes proper treatment of vendor discounts, refunds, or rebates; describes proper treatment of discounts, allowances, refunds, and rebates produced by a central purchasing unit or organization; identifies costs not related to resident care; describes treatment of costs separately reimbursed by the department; describes appropriate travel cost accounting; establishes limits on fees paid to members of the facility's governing board; and provides that deferred compensation and pension plan costs are allowable only if the plans are not discriminatory.

75-02-07-15. Adjustment to cost and cost limitation. Reasonable resident-related costs will be determined in accordance with these rules and interpretations issued by the department.

1. Income to offset cost.

a. Several items of income to the home must be considered as offsets against various costs as recorded in the books of the facility. Basically, any 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 residents for care items which are included in the payable rate, will be offset against costs reported. The following list details many of the items which must be offset, but any reimbursement not so listed which may be classified as an offset must be shown as such on form 19 and costs reduced accordingly. 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. In the event that income exceeds costs, the excess must be offset to all costs on the basis of percentage of total remaining nonoffset costs:

1. (1) ~~Activities income~~ — "Activities income". Income from activities department and the gift shop to the extent that it does not exceed the expenses as reported.
2. (2) ~~Confections~~ — All income "Confections income". Income from the sale of pop, candy, or other items.

3. ~~(3) Dietary~~ "Dietary income". Amounts received from or on behalf of employees, guests, or other nonresidents for lunches, meals, or snacks.
4. ~~(4) Drugs or supplies~~ All revenues "Drugs or supplies income". Amounts received from employees, doctors, or ~~other~~ others not admitted as residents.
5. ~~(5) Insurance recoveries~~ Any amount "Insurance recoveries income". Amounts received from insurance for a loss incurred shall be offset against costs reported in the current year to the extent of costs allowed in prior or current year if the facility did not adjust the basis for depreciable assets.
6. ~~(6) Interest or investment income~~ "Interest or investment income". Interest received on investment to the extent that it does not exceed the total cost for the year except amounts allowable as funded depreciation or from earnings on noncommingled gifts.
7. ~~(7) Laundry~~ All amounts "Laundry income". Amounts received for services rendered on behalf of employees, doctors, or others not admitted as residents.
8. ~~Maintenance of personnel - The cost (to be determined) of providing meals and lodging on premises to home personnel.~~
9. ~~Nonrelated depreciation expenses - All depreciation reported in costs which is not related to resident care.~~
10. ~~(8) Purchase discounts~~ All discounts "Purchase discounts and allowances". Discounts and allowances received from vendors on purchase purchases included in costs.
11. ~~(9) Rebates and refunds~~ Any refund "Rebates and refunds income". Amounts received on expense or cost item shall must be offset against the appropriate cost.
12. ~~(10) Rental of home space~~ Any revenues "Rental of home space income". Revenues received from outside sources for the use of home space or equipment.
13. ~~(11) Telegraph and telephone~~ All revenues "Telegraph and telephone income". Revenues received from residents, guests, or employees.
- ~~(12) "Other cost-related income". Amounts generated through the sale of a previously expensed item, e.g., supplies or equipment.~~

- b. Payments to a facility 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 facility and the vendor. However, such payments may represent a true donation or grant. Examples include, but are not limited to: (1) payments made by a vendor in response to building or other fundraising campaigns in which community-wide contributions are solicited; (2) payments in addition to discounts, refunds, or rebates, which have been customarily allowed under arrangements between the facility and the vendor; (3) cases where the volume or value of purchases is so nominal that no relationship to the contribution can be inferred; (4) cases where the contributor is not engaged in business with the facility or a related facility.
 - c. Where an owner or other official of a facility directly receives from a vendor monetary payments for goods or services for the owner's or official's own personal use as a result of the facility'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 facility's costs for goods or services purchased from the vendor.
 - d. Where the purchasing function for a facility is performed by a central unit or organization, all discounts, allowances, refunds, and rebates must be credited to the costs of the facility 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.
2. Costs not related to resident care are costs which are not appropriate or necessary and proper in developing and maintaining the operation of resident 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 resident 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 resident accommodations and which are furnished solely for the personal comfort of the residents 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 asset, 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 resident care.
- g. Costs, including, but not limited to, 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, nursing home, or facility.
- h. Costs which are incurred by the facility's subcontractors, or by the lessor of property which the facility leases, and which become an element in the subcontractor's or lessor's charge to the facility, if such costs would not have been allowable had they been incurred by a facility 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. Depreciation expense for facility assets which are not related to resident care.
- j. 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.
- k. Operations and associated administrative costs not related to the provision of care in the facility.
- l. Nursing care or other types of medical care.

3. All costs for services reimbursed by the department directly to a facility, 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 shall support vehicle travel costs with sufficient documentation to establish that the purpose of the travel is related to resident care.
 - c. The facility shall 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 resident 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, must 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 April 1, 1981; amended effective July 1, 1989.

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

Law Implemented: NDCC 50-18-06.1; NDAC 75-02-03-09

APPENDIX A

EXPENSES	INCOME
Salaries - administrative	Resident income - welfare
Salaries - bookkeeper-accountant	Resident income - private
Salaries - dietary	Interest income
Salaries - personal care aide	Telephone income
Salaries - housekeeping	Meal income
Salaries - other	Activity income
Supplies	Purchase discount
Food	Other income
Linen	
Utilities	
Repair & maintenance	
Depreciation	
Interest	
Insurance	
Taxes	
Rent	
Telephone	
Printing & postage	
Dues & subscription	
Legal & audit	
Payroll taxes	
Travel & education	
Miscellaneous	

AGENCY SYNOPSIS: Section 75-02-07-16 identifies costs which must be considered as routine for purposes of cost reporting.

75-02-07-16. Resident care services. Resident care services are those services included by the facility in a daily services charge usually referred to as the room and board charge. The following types of items and services in addition to room, dietary, and social services must be considered to be routine for purposes of cost reporting even though they may be considered ancillary by the facility:

1. All personal care services including, but not limited to, assistance in bathing, dressing, walking, toilet usage, supervision, motivation, and transportation services.
2. Items which are furnished routinely and relatively uniformly to all residents, e.g., water pitchers, basins, bedpans, etc.
3. Items stocked in gross supply and distributed or utilized individually in small quantities, e.g., alcohol, applicators, cotton balls, bandaids, antacids, aspirins, (and other nonlegended drugs ordinarily kept on hand), suppositories, tongue depressors, paper tissues, deodorants, mouthwashes, kleenex, toothpaste, denture cleaner, etc.
4. Items which are used by individual residents which are reusable and expected to be available in the facility, e.g., ice bags, bedrails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.
5. Laundry services considered necessary for the proper care and appearance of the patient.

History: Effective July 1, 1989.

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

Law Implemented: NDCC 50-18-06.1; NDAC 75-02-03-09

AGENCY SYNOPSIS: Section 75-02-07-17 describes the process for establishing rates for facilities (primarily by moving provisions formerly found in section 74-02-08-16 to this section), with changes intended to reflect amendments to North Dakota Century Code section 50-01-09.2 made by the 1987 legislative assembly. Also describes the method for establishing rates where ownership changes, existing facilities add beds, or new facilities open for business. Also includes procedures for adjustment and reconsideration of rates.

75-02-07-17. Ratesetting.

1. The department shall establish reasonable rates for facilities for the care and maintenance of individuals dependent in whole or in part upon state or county supplementation of supplemental security income benefits.
2. The department shall annually determine the allowable costs and shall adjust those costs to reflect changes projected in

- operational and labor costs for the year, beginning on July first and ending on June thirteenth of the following year. The rate thereby established must be called the audit rate.
3. The department shall rank all licensed beds, in facilities for which an audit rate is established, by the respective audit rate set for the bed, and determine position in the ranking below which lie seventy percent of the ranked beds. The reasonable rate established for each facility must be the lesser of the facility's audit rate or the audit rate which has been established for the facility in which the bed thus determined is located. The reasonable rate shall be effective from July first through June thirteenth of the following year.
 4. A county social service board shall determine the payable rate for any resident whose care is, in whole or in part, paid for by that county social service board. The payable rate shall be an amount equal to forty-five dollars plus the least of:
 - a. The reasonable rate;
 - b. The rate charged by the facility to residents not dependent upon state or county supplementation of supplemental security income benefits; or
 - c. A rate voluntarily agreed to by the facility.
 5. In the event a county social service board establishes a payable rate less than that required by subsection 4, any county social service board expenditures made pursuant to that rate will not be considered by the department in determining that county social service board's expenditures for poor relief pursuant to North Dakota Century Code section 50-01-09.2.
 6. The payable rate shall include a forty-five dollar per month clothing and personal needs allowance which must be reserved for each individual. Facilities shall ensure that this monthly clothing and personal needs allowance is reserved for its intended purpose.
 7. Partial year.
 - a. For facilities changing ownership during the rate period, the rate established for the previous owner will be retained.
 - b. For existing facilities adding beds, the rate for the new beds will be the same as for the other similarly licensed beds in the facility.
 - c. New facilities will submit, for departmental approval, a proposed budget for operations for the period, at least

three months but not more than fifteen months in duration, which ends on June thirteenth. The rate established based upon the approved budget shall be final and shall continue in effect until the beginning of the rate period next following after the end of the report period which coincides with the end of the budget period.

8. Adjustments and reconsideration procedures.

- a. Rate adjustments may be made to correct errors subsequently determined and shall also be retroactive to the beginning of the facility's rate period.
- b. An adjustment must be made for a facility which has terminated participation in the program and has disposed of its depreciable assets or which has changed ownership. In this case, the regulations pertaining to gains and losses on disposable assets will be effective.
- c. Any requests for reconsideration of the rate must be filed with the department for administrative consideration within thirty days of the date of the rate notification.

History: Effective July 1, 1989.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-06.1

AGENCY SYNOPSIS: Section 75-02-07-18 describes method by which a provider may appeal the rate set under chapter 75-02-07.

75-02-07-18. Appeals. A facility dissatisfied with the rate established under this chapter may appeal. An appeal may be perfected by mailing or delivering the information described in subsections 1 through 5 to the appeals referee supervisor, department of human services, state capitol, Bismarck, North Dakota, so that the mailed or delivered material arrives at the office of the appeals referee supervisor on or before five p.m. on the thirty-first day after the date of the determination of the department made with respect to a request for reconsideration. An appeal under this section is perfected only if accompanied by written documents including all the following information:

1. A copy of the letter received from the department advising of the department's decision on the request for reconsideration.
2. A statement of each disputed item and the reason or basis for the dispute.
3. A computation and the dollar amount which reflects the facility's claim as to the correct computation and dollar amount for each disputed item.

4. The authority in statute or rule upon which the facility relies for each disputed item.
5. The name, address, and telephone number of the person upon whom all notices will be served regarding the appeal.

History: Effective July 1, 1989.

General Authority: NDCC 50-18-06, 50-18-06.1

Law Implemented: NDCC 50-18-06.1

75-02-08-16. Ratesetting.

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

5. The payable rate shall include a forty-five dollar per month clothing and personal needs allowance which must be reserved for each individual. Homes shall ensure that this monthly clothing and personal needs allowance is reserved for its intended purpose. Repealed effective July 1, 1989.

History: Effective June 1, 1983.

General Authority: NDCC ~~50-18-02~~, ~~50-18-06~~, ~~50-18-06.2~~

Law Implemented: NDCC ~~50-18-06.1~~

TITLE 81
Tax Commissioner

JANUARY 1989

STAFF COMMENT: Chapter 81-02.1-03 contains all new material but is not underscored so as to improve readability.

CHAPTER 81-02.1-03
PROPERTY EXEMPT FROM AD VALOREM PROPERTY TAX

Section

81-02.1-03-01 Definitions
81-02.1-03-02 Requirements for Property Tax Exemption

81-02.1-03-01. Definitions. As used in this chapter and for the administration of the ad valorem property tax exemption set out in North Dakota Century Code sections 57-51-03 and 57-51-04, unless the context otherwise requires:

1. "Point of measurement as to quantity and testing as to quality" means the earliest possible point after oil or gas is brought to the surface at which it is both feasible and reasonable to measure.
2. "Producing well" means a well which is producing oil or gas or which has produced oil or gas at some time within the last twelve months prior to the assessment date of January first for centrally assessed property or February first for locally assessed property.
3. "Production" means the act of bringing oil or gas to the surface and to the point of measurement as to quantity and testing as to quality.

History: Effective January 1, 1989.
General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-51-03, 57-51-04

81-02.1-03-02. Requirements for property tax exemption. To be exempt from ad valorem property tax, property must meet all of the following conditions:

1. Property must be used in the actual production of oil or gas.
2. Property must be at the site of a producing well. Property is considered to be at the site of a producing well if it is used prior to the first point at which it is both feasible and reasonable to measure, or point of sale, whichever is first.
3. Property must be necessary, but need not be indispensable, to the production of oil or gas.

History: Effective January 1, 1989.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-51-03, 57-51-04

STAFF COMMENT: Chapter 81-10-01 contains all new material but is not underscored so as to improve readability.

ARTICLE 81-10

BANKS, TRUST COMPANIES, AND SAVINGS AND LOAN ASSOCIATIONS

Chapter
81-10-01 General

CHAPTER 81-10-01 GENERAL

Section	
81-10-01-01	General
81-10-01-02	Definitions
81-10-01-03	Preparation of Pro Forma Return
81-10-01-04	Computation of Pro Forma Taxable Income
81-10-01-05	Deposit Factor

81-10-01-01. General. This chapter sets forth the rules which a bank must follow in filing its tax return if the bank has consolidated or merged pursuant to North Dakota Century Code chapter 6-03.

History: Effective January 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-35-02.1, 57-35.2-02.2

81-10-01-02. Definitions. As used in this chapter and for the administration of North Dakota Century Code sections 57-35-02.1 and 57-35.2-02.2, unless the context otherwise requires:

1. "Allocate" means to assign the income or expense item to either the principal office or a particular branch office.
2. "Apportion" means to divide the income or expense item between the principal office and each branch office by using the applicable deposit factor.
3. "Bank" means the principal office and all branch offices.
4. "Branch office" means the banking houses or offices or the paying or receiving stations of the bank other than the principal office.
5. "Commissioner" means the tax commissioner of the state of North Dakota.
6. "Deposits" mean:
 - a. The unpaid balance of money or its equivalent received or held by the principal office or one of its branch offices in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the principal office or a branch office, or a letter of credit or a traveler's check on which the principal office or a branch office is primarily liable. Provided, that, without limiting the generality of the term "money or its equivalent", any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to the principal office or a branch office for collection.
 - b. Trust funds received or held by the principal office or a branch office, whether held in the trust department or

held or deposited in any other department of the principal office or a branch office.

- c. Money received or held by the principal office or a branch office, or the credit given for money or its equivalent received or held by the principal office or a branch office, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds, funds held as security for an obligation due to the principal office or a branch office or others (including funds held as dealer's reserves), or for securities loaned by the principal office or a branch office, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States government securities, funds held to meet its acceptance of letters of credit, and withheld taxes. Provided, that there shall not be included funds which are received by the principal office or a branch office for immediate application to the reduction of an indebtedness to the receiving entity, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness.
- d. Outstanding draft (including advice or authorization to charge the principal office or a branch office's balance in another bank), cashier's check, money order, or other officer's check issued in the usual course of business for any purpose, including, without being limited to, those issued in payment for services, dividends, or purchases.
- e. Such other obligations of the principal office or a branch office as the board of directors, after consultation with the comptroller of the currency and the board of governors of the federal reserve system, shall find and prescribe by regulation to be deposit liabilities by general usage, except that the following shall not be a deposit for any of the purposes of this chapter or be included as part of the total deposits or of an insured deposit:
 - (1) Any obligation of a principal office or a branch office which is payable only at a location outside of the States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.
 - (2) Any international banking facility deposit, including an international banking facility time deposit, as such term is from time to time defined by the board of governors of the federal reserve system in Regulation D or any successor regulation issued by the board of governors of the federal reserve system.

7. "Principal office" means the office where the bank's charter is located.

History: Effective January 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 57-35-02.1, 57-35.2-02.2

81-10-01-03. Preparation of pro forma return. The principal office and each branch office shall prepare a pro forma federal income tax return based on the income and expense it would have earned or incurred if the merger or consolidation had not occurred. Provided, however, that the principal office and all branch offices may submit the required information in another format if the principal office receives written permission to do so from the commissioner.

History: Effective January 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 57-35-02.1, 57-35.2-02.2

81-10-01-04. Computation of pro forma taxable income. The following method must be used by the principal office and each branch office to compute its pro forma federal taxable income:

1. Any item of income or expense that is entirely earned or incurred by the principal office or a particular branch office must be allocated to the office which earned the income or incurred the expense. Examples of income or expense items which should be allocated include, but are not limited to, the following:
 - a. Income items.
 - (1) Rents.
 - (2) Royalties.
 - (3) Capital gains.
 - (4) Interest from loans.
 - b. Expense items.
 - (1) Repairs.
 - (2) Bad debts.
 - (3) Rents.
 - (4) Property taxes.
 - (5) Contributions.

- (6) Depreciation.
 - (7) Salaries and wages.
2. Any item of income or expense that is earned or incurred for the benefit of the principal office and one or more branch offices must be apportioned to the principal office and the appropriate branch offices by using the applicable deposit factor. Income and expense items which should be apportioned include, but are not limited to, the following:
- a. Income items.
 - (1) Dividends.
 - (2) Interest.
 - (3) Capital gains.
 - b. Expense items.
 - (1) Salaries of officers and directors.
 - (2) Salaries and wages of employees.
 - (3) Taxes, except for property taxes.
 - (4) Payments to employee pension, profit sharing, or benefit plans.
 - (5) Advertising.
 - (6) Insurance.
 - (7) Interest.

History: Effective January 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 57-35-02.1, 57-35.2-02.2

81-10-01-05. Deposit factor. The deposit factor must be determined in the following manner:

- 1. The numerator must be equivalent to either the principal office or a particular branch office's deposits during the tax period.
- 2. The denominator must be equivalent to the principal office and all branch offices' deposits during the tax period.

History: Effective January 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 57-35-02.1, 57-35.2-02.2

JULY 1989

STAFF COMMENT: Chapters 81-03-05.2 and 81-03-05.4 contain all new material but are not underscored so as to improve readability.

CHAPTER 81-03-05.2
WATER'S EDGE METHOD

Section

81-03-05.2-01	Definitions
81-03-05.2-02	Water's Edge Election
81-03-05.2-03	Method of Reporting
81-03-05.2-04	Elements of the Water's Edge Combined Report
81-03-05.2-05	Domestic Disclosure Spreadsheet
81-03-05.2-06	Failure to Comply With Water's Edge Election
81-03-05.2-07	Procedure for Review of Tax Commissioner's Recision of Water's Edge Election
81-03-05.2-08	Administrative Provisions of Income Tax Law Applicable

81-03-05.2-01. Definitions. As used in these sections and for the administration of North Dakota Century Code chapter 57-38.4, unless the context otherwise requires:

1. "Affiliated corporation" means a United States parent corporation and any corporation more than fifty percent of the voting stock of which is owned directly or indirectly by the parent corporation or another member of the water's edge group.
2. "Assets" means both tangible and intangible property valued at original cost less depreciation, amortization, or depletion as

- reflected on the corporation's balance sheet prepared according to generally accepted accounting principles.
3. "Average of property and payroll" means average of property and payroll as defined pursuant to chapter 81-03-09 and North Dakota Century Code chapters 57-38.1 and 57-59.
 4. "Commissioner" means the tax commissioner of the state of North Dakota.
 5. "80/20 corporation" means a corporation that:
 - a. Is incorporated in the United States.
 - b. Is eligible to be included in a federal consolidated return as defined in subsection 5 of North Dakota Century Code section 57-38.4-01.
 - c. Has eighty percent or more of the average of its property and payroll assigned to locations in foreign countries.
 6. "Foreign corporation" means a corporation incorporated outside the United States.
 7. "Foreign country" means a country other than the United States or a possession of the United States.
 8. "Income from an 80/20 corporation" means net book income for financial statement purposes. However, a corporation's net book income cannot be offset by a net book loss from another 80/20 corporation. In addition, when calculating net book income, an expense cannot be taken for federal income taxes that are eliminated through the application of foreign tax credits.
 9. "Joint election" means that the water's edge election form was executed on behalf of more than one taxpayer. Provided, however, that the taxpayer executing the election form must be authorized to bind the other taxpayers.
 10. "New corporation" means a corporation that either has not filed or was not required to file an income tax return after the 1979 tax year.
 11. "Property, payroll, and sales" means property, payroll, and sales as defined in chapter 81-03-09 and North Dakota Century Code chapters 57-38.1 and 57-59.
 12. "Required to file a worldwide combined report" means that the taxpayer filed its original North Dakota income tax return for the tax year immediately preceding the first year to which the water's edge election applies on the basis of the worldwide method of apportionment.

13. "State" means each of the fifty states and the District of Columbia.
14. "Taxpayer" means a corporation that is required to file an income tax return in North Dakota.
15. "Transaction" means an event that causes a change in a corporation's assets, liabilities, or owner's equity.
16. "United States" means the fifty states and the District of Columbia.

History: Effective July 1, 1989.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38.4

81-03-05.2-02. Water's edge election.

1. A taxpayer may elect to use the water's edge method for any taxable year beginning on or after January 1, 1989.
2. Each taxpayer in the unitary group shall take the following steps when electing to use the water's edge method:
 - a. Execute the water's edge election form provided by the commissioner; and
 - b. File the water's edge election form with its original North Dakota income tax return for the first year to which the election applies.

Provided, however, that a joint election may be made on behalf of more than one taxpayer.

3. Each taxpayer in the unitary group shall make an election pursuant to subsection 2 before any taxpayer in the group may use the water's edge method.
4. An affiliated corporation is considered to have consented to a unitary group's water's edge election if the corporation becomes a member of the group after the group elects to use the water's edge method.

History: Effective July 1, 1989.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38.4-02

81-03-05.2-03. Method of reporting. A water's edge group shall use a combined report to determine the amount of income which should be assigned to North Dakota on behalf of each member of the group. If the combined report assigns income to North Dakota on behalf of a member of

the group, that member shall report the assigned income on its North Dakota income tax return.

History: Effective July 1, 1989.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38.4-02

81-03-05.2-04. Elements of the water's edge combined report.

1. A taxpayer who elects to use the water's edge method shall include the income and the apportionment factors of the water's edge group in its combined report. The aforementioned group must include the following unitary corporations:
 - a. A United States parent corporation.
 - b. An affiliated corporation incorporated in the United States, excluding, however, an 80/20 corporation.
 - c. An affiliated corporation incorporated in a possession of the United States as described in Internal Revenue Code sections 931 through 936.
 - d. A domestic international sales corporation as described in Internal Revenue Code sections 991 through 994.
 - e. A foreign sales corporation as described in Internal Revenue Code sections 921 through 927.
 - f. An export trade corporation as described in Internal Revenue Code sections 970 through 972.
 - g. A foreign corporation which derived gain or loss from disposing of a United States real property interest but only to the extent the gain or loss was recognized under Internal Revenue Code section 897.
 - h. A foreign corporation if over fifty percent of its voting stock is owned, directly or indirectly, by a member of the water's edge group, and if more than twenty percent of the average of its property and payroll is assignable to a location within the United States or its possessions.
2. Income for the water's edge group must be computed on the same basis as federal taxable income, except as provided for in the following subdivisions and in subsection 2 of North Dakota Century Code section 57-38.4-02, and plus or minus the adjustments provided for in North Dakota Century Code section 57-38-01.3 with the exception of subdivision c of subsection 1 of North Dakota Century Code section 57-38-01.3:

- a. Transactions between members of the water's edge group must be eliminated.
 - b. Transactions between a member of the water's edge group and an affiliated corporation that has been excluded from the group must be included.
 - c. If a corporation is included in the water's edge group but it is not required to file a federal income tax return, the equivalent of its federal taxable income must not include a deduction for foreign taxes based on income.
3. The factors used to apportion the income of the water's edge group must be determined pursuant to North Dakota Century Code chapters 57-38.1 and 57-59, chapter 81-03-09, and the following subdivisions:
- a. Transactions between members of the water's edge group must be eliminated.
 - b. Transactions between any member of the water's edge group and an affiliated corporation that has been excluded from the group must be included.
 - c. The property, payroll, and sales of an 80/20 corporation, a dividend payor corporation, or any other affiliated corporation that has been excluded from the water's edge group must not be included in the apportionment factors of the group.

History: Effective July 1, 1989.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-01.3, 57-38.1, 57-38.4, 57-59

81-03-05.2-05. Domestic disclosure spreadsheet.

- 1. A taxpayer electing to use the water's edge method shall file a domestic disclosure spreadsheet if the affiliated corporations as a group have:
 - a. Property, payroll, or sales in foreign countries exceeding ten million dollars.
 - b. Assets exceeding two hundred fifty million dollars.
- 2. A domestic disclosure spreadsheet must include the following:
 - a. A list of the corporations in the water's edge group and any corporation in which more than twenty percent of the voting stock is, either directly or indirectly, owned or controlled by a member of the water's edge group.

- b. The following identifying information for each corporation listed in subdivision a:
 - (1) Federal identification number.
 - (2) Address.
 - (3) Percentage of voting stock, that is either directly or indirectly owned or controlled by each member of the water's edge group.

- c. The following information for each corporation in the water's edge group:
 - (1) Primary business locations.
 - (2) Primary business activities.
 - (3) Country of incorporation.
 - (4) Dates of acquisition or disposition of the ownership interest.
 - (5) For each state which assesses a tax on, according to, or measured by net income, a schedule detailing the tax liability and the computations used to allocate or apportion the corporation's income to each state in which the corporation is taxable. The details which must be disclosed on the aforementioned schedule include:
 - (a) Whether the liability was computed on a single entity basis or pursuant to a combined report.
 - (b) The entities included in the combined report.
 - (c) The federal taxable income for each entity whose income was included in determining the amount of income that was allocated and apportioned to the state.
 - (d) The amount of income apportioned to the state, the formula used to apportion the income, and the amount of property, payroll, and sales included in the formula used to apportion the income.
 - (e) The amount of income allocated to the state.
 - (f) The total amount of income not subject to apportionment by formula under the rules of the state.

- (g) The amount of tangible personal property sales made or delivered to customers within the state.
 - (6) For each state which does not assess a tax on, according to, or measured by income, a schedule disclosing the following information for each corporation which has a taxable presence in the state:
 - (a) The federal taxable income for the corporation or for the federal consolidated filing group of which the corporation is a member.
 - (b) The amount of property, payroll, and sales that would be assigned to the state under North Dakota Century Code chapter 57-38.1 and the rules adopted pursuant thereto.
 - (c) The amount of tangible personal property sales made or delivered to customers within the state.
 - d. A copy of pages one through four of the federal income tax return that was filed with the internal revenue service for each corporation listed in subdivision c of subsection 2.
3. The spreadsheet information must be filed on the forms provided by the commissioner. Data not submitted on the preapproved forms will be deemed incomplete.
 4. A spreadsheet must be filed by a taxpayer with its North Dakota income tax return. However, if the information is not available when the return is filed, a taxpayer may file the spreadsheet within six months after the due date of the return, including any extensions. If the aforementioned time deadlines cannot be met, a taxpayer shall file a written request for an extension of time with the commissioner within six months after the due date of the return, including any extensions. This request which will be deemed filed on the date it is sent by certified mail must state the grounds for the request. Within a reasonable time after receiving the request, the commissioner shall notify the taxpayer as to whether the request for additional time is granted. Provided, however, that the commissioner will not grant an extension of time that exceeds one hundred twenty days.
 5. A spreadsheet will be deemed complete when filed unless the commissioner notifies the taxpayer, within one hundred eighty days after the spreadsheet was filed, that the spreadsheet requirements have not been met. This notice must be sent by certified mail and it must inform the taxpayer as to why the spreadsheet was not properly completed. A taxpayer shall correct the deficiencies in its spreadsheet within ninety days

after receiving the aforementioned notice of deficiency. If the ninety-day deadline cannot be met, a taxpayer shall file a written request for an extension of time with the commissioner within ninety days after receiving the notice of deficiency. This request which will be deemed filed on the date it is sent by certified mail must state the grounds for the request. Within a reasonable time after receiving the request, the commissioner shall notify the taxpayer as to whether the request for additional time is granted.

History: Effective July 1, 1989.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38.4-02

81-03-05.2-06. Failure to comply with water's edge election.

1. If a taxpayer fails to make a valid water's edge election, the taxpayer will be prohibited from using this method to apportion its income for the year in question. If this occurs, the taxpayer shall determine its income and resulting tax liability pursuant to North Dakota Century Code chapters 57-38, 57-38.1, and 57-59, which chapters include reporting on a worldwide combined basis.
2. A taxpayer's failure to file a spreadsheet or to correct deficiencies in its spreadsheet will constitute a failure to file a return. If this occurs, the tax liability computed under the water's edge method will be subject to penalty and interest pursuant to North Dakota Century Code section 57-38-45.
3. If a taxpayer fails to comply with the conditions in North Dakota Century Code section 57-38.4-02 and this chapter, the commissioner may rescind the taxpayer's water's edge election for the entire election period. If this occurs, the commissioner will require the taxpayer to apportion its income for the period to which the election applied pursuant to worldwide combination or any other method of reporting permitted under North Dakota Century Code chapter 57-38, 57-38.1, or 57-59.

History: Effective July 1, 1989.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38, 57-38.1, 57-38.4, 57-38-45

81-03-05.2-07. Procedure for review of tax commissioner's rescision of water's edge election.

1. The commissioner shall notify a taxpayer if there is a decision to rescind the taxpayer's water's edge election. The notice of rescision must be sent to the taxpayer by certified

mail with a return receipt requested, and it must state the reasons for the rescission.

2. The notice of rescission becomes final and irrevocable thirty days after the date the notice is received by the taxpayer unless within that thirty-day period the taxpayer files a written protest with the commissioner. The protest which will be deemed filed on the date it is sent by certified mail must state the grounds upon which the protest is based.
3. If a protest is filed, the commissioner shall reconsider the notice of rescission. This reconsideration may include further examination by the commissioner of any affiliated corporation's books, papers, records, or memoranda pursuant to North Dakota Century Code sections 57-01-02, 57-38-56, and section 81-01.1-01-03.
4. Upon request, the commissioner may grant the taxpayer an informal conference.
5. Within a reasonable time after receiving the protest, the commissioner shall notify the taxpayer as to whether the decision to rescind the taxpayer's water's edge election is affirmed or reversed. Notice of this reconsideration must be sent to the taxpayer by certified mail with a return receipt requested. A decision to affirm becomes final and irrevocable thirty days after the notice of reconsideration has been received by the taxpayer unless, within that thirty-day period, the taxpayer seeks formal administrative review by filing a complaint and requesting an administrative hearing. The provisions of North Dakota Century Code chapter 28-32 will apply to and govern the filing of the complaint and the administrative hearing, including an appeal of the decision rendered by the commissioner.
6. Upon written request, the commissioner may grant an extension of time to file a protest or a complaint.

History: Effective July 1, 1989.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-01-02, 57-38-56, 57-38.4

81-03-05.2-08. Administrative provisions of income tax law applicable. Administration of the water's edge method under North Dakota Century Code chapter 57-38.4 will be governed by those provisions in North Dakota Century Code chapters 57-38, 57-38.1, and 57-59 which are not in conflict with any provision in North Dakota Century Code chapter 57-38.4.

History: Effective July 1, 1989.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38, 57-38.1, 57-38.4, 57-59

CHAPTER 81-03-05.4
FEDERAL INCOME TAX DEDUCTION

Section	
81-03-05.4-01	Definitions
81-03-05.4-02	Use of This Rule
81-03-05.4-03	Computation of Federal Income Tax Deduction
81-03-05.4-04	Additional Provisions

81-03-05.4-01. Definitions. The following definitions are only applicable in computing a taxpayer's federal income tax deduction pursuant to subdivision c of subsection 1 of North Dakota Century Code section 57-38-01.3:

1. "Federal" means the United States.
2. "Federal income tax deduction" means the adjustment provided for in subdivision c of subsection 1 of North Dakota Century Code section 57-38-01.3.
3. "Federal income tax paid" means the amount of federal income tax that was either paid or accrued.
4. "Federal income tax ratio" means North Dakota taxable income divided by income relating to federal income tax paid.
5. "Income relating to federal income tax paid" means total income less income relating to foreign tax credit.
6. "Income relating to foreign tax credit" means income directly attributable to either the foreign tax credit or the possessions credit.
7. "North Dakota taxable income" means income which has been apportioned to North Dakota pursuant to North Dakota Century Code chapters 57-38, 57-38.1, and 57-59; provided, however, that no adjustment should be made for the federal income tax deduction.
8. "Taxpayer" means a corporation that is required to file an income tax return in North Dakota.
9. "Total income" means the federal taxable income of those entities in the unitary group that are required to file a federal income tax return during the period in question, plus or minus the adjustments provided for in North Dakota Century Code section 57-38-01.3, with the exception of subdivisions c and f of subsection 1 of North Dakota Century Code section 57-38-01.3.

History: Effective July 1, 1989.
General Authority: NDCC 57-38-57
Law Implemented: NDCC 57-38-01.3

81-03-05.4-02. Use of this rule. Any taxpayer that is filing as a member of a worldwide unitary group shall compute its federal income tax deduction in accordance with this chapter. However, this chapter cannot be used if either or both North Dakota taxable income or income relating to federal income tax paid is less than zero.

History: Effective July 1, 1989.
General Authority: NDCC 57-38-57
Law Implemented: NDCC 57-38-01.3

81-03-05.4-03. Computation of federal income tax deduction. A taxpayer filing a federal consolidated return and qualifying to use this method under section 81-03-05.4-02 shall compute the taxpayer's federal income tax deduction in the following manner:

1. Consolidated federal income tax paid XXX
2. Separate company pro forma federal income tax liability for all of the profit companies that are on the consolidated return and included in the unitary group XXX
3. Separate company pro forma federal income tax liability for all of the profit companies that are included on the consolidated return XXX
4. Line 2 divided by line 3 XXX
5. Unitary companies' share of consolidated federal income tax paid (line 1 multiplied by line 4) XXX
6. Federal taxable income of the unitary companies which are included on the consolidated return XXX
7. Amount of federal taxable income reported on line 6 that is not taxable in North Dakota XXX
8. Federal taxable income attributable to North Dakota (line 6 minus line 7) XXX
9. Line 8 divided by line 6 XXX

- | | |
|---|-----|
| 10. Consolidated federal income tax paid on income which is taxable in North Dakota (line 5 multiplied by line 9) | XXX |
| 11. Federal income tax ratio | XXX |
| 12. Federal income tax deduction (line 10 multiplied by line 11) | XXX |

History: Effective July 1, 1989.
 General Authority: NDCC 57-38-57
 Law Implemented: NDCC 57-38-01.3

81-03-05.4-04. Additional provisions. A taxpayer shall compute the taxpayer's federal income tax deduction in the following manner if the members of the unitary group filed more than one federal income tax return:

1. Steps 1 through 10 in section 81-03-05.4-03 must be repeated for each federal income tax return filed by the members of the worldwide group.
2. The sum of subsection 1 hereof must be multiplied by the federal income tax ratio.

History: Effective July 1, 1989.
 General Authority: NDCC 57-38-57
 Law Implemented: NDCC 57-38-01.3

81-03-02.1-01. Credit for taxes paid to another state. A resident who pays income tax to another state or territory of the United States or the District of Columbia on income which is also taxed by this state, is entitled to a tax credit. The tax credit may be deducted from the North Dakota income tax liability. A copy of the income tax return filed with another ~~state~~ jurisdiction must be filed with the North Dakota income tax return and the tax commissioner may require the taxpayer to have the copy certified by the other ~~state~~ jurisdiction.

If a North Dakota resident is paying income tax to more than one jurisdiction other than North Dakota, on income which is also taxed by this state, a separate computation must be made to determine the amount of the tax credit available from each jurisdiction. These separate tax credits must be added together to determine the total tax credit which may be reported on the taxpayer's North Dakota tax return.

History: Effective July 1, 1985; amended effective July 1, 1989.
 General Authority: NDCC 57-38-56
 Law Implemented: NDCC 57-38-04, 57-38-30.3

81-03-02.1-10. Limitations on adjustments available on form 37. An individual who files North Dakota individual income tax return form 37 for the current year may make the following adjustments only if form 37 was filed for the applicable prior year:

1. Refunds of state and local income taxes may only be deducted on form 37 if they were reported on federal form 1040 for the current year and if form 37 was filed for the year in which the state and local income taxes were added back.
2. The deduction provided for in subdivision b of subsection 3 of North Dakota Century Code section 57-38-01 for the amount of accelerated cost recovery system depreciation disallowed in a prior year may only be allowed on form 37 if form 37 was filed for the prior year when the disallowance of accelerated cost recovery system depreciation occurred.

History: Effective July 1, 1989.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-01(3)(b), 57-38-01.2(1)(f), 57-38-30.3(9)

81-03-04-02. Individual, estate, and trust required to file a declaration and make payment of estimated income tax, penalty, and interest.

1. Except as otherwise provided, an individual, estate, or trust shall file a declaration and make payment of estimated state income tax if all three of the following conditions exist:
 - a. There is a requirement to make payment of estimated federal income tax.
 - b. The estimated state income tax for the current year exceeds two hundred dollars. The state income tax liability for the current year means the amount of North Dakota income tax due after any allowable credits and state income tax withheld, but before estimated state income tax is subtracted.
 - c. The state income tax liability for the previous year exceeded two hundred dollars. The state income tax liability for the previous year means the amount of North Dakota income tax due after any allowable credits, but before state income tax withheld and estimated state income tax are subtracted.
2. A resident individual, estate, or trust that was not required to file a return for the previous year, and therefore had no state income tax liability for the previous year, does not have to file a declaration and make payment of estimated state income tax.

3. A nonresident individual, estate, or trust that was not required to file a return for the previous year, and therefore had no state income tax liability for the previous year, shall file a declaration and make payment of state income tax if there is a requirement to make payment of estimated federal income tax and the estimated state income tax liability for the current year exceeds two hundred dollars.
4. If an individual derives over two-thirds of gross income from farming, files a federal income tax return by March first of the following tax year, and pays the federal tax in full by that same date, the individual does not have to file a declaration and make payment of estimated state income tax. The individual does not have to file a state income tax return or pay any state income tax due on or before March first of the following tax year to qualify for this exception.
5. If an individual derives over two-thirds of gross income from farming, makes the one required estimated federal tax installment on January fifteenth of the following tax year, and files a federal income tax return after March first of the following tax year, the individual is required to file the a declaration and pay the estimated state income tax due on January fifteenth of the following tax year. The first three ~~declarations and~~ payments due on April fifteenth, June fifteenth, and September fifteenth of the current tax year are not required.
6. Any individual, estate, or trust that is not required to file a declaration and make payment of estimated state income tax may elect to do so.
7. An individual shall use form 400-ES to file a declaration and make payment of estimated state income tax.
8. An estate and trust shall use form 401-ES to file a declaration and make payment of estimated state income tax.
9. An individual, estate, or trust required to file a declaration and make payment of estimated state income tax shall pay the estimated tax in four equal installments due on the fifteenth day of the fourth, sixth, and ninth months of the current tax year and the fifteenth day of the first month of the following tax year. As an alternative, the entire estimated state income tax may be paid on the fifteenth day of the fourth month of the current tax year.
10. Penalty and interest must be computed and added in the following situations:
 - a. An individual, estate, or trust did not timely file a declaration on or before the quarterly due date.

- b. An individual, estate, or trust did not pay the required estimate on or before the quarterly due date.
11. Penalty and interest will not be applied in the following situations:
- a. An individual, estate, or trust utilizes the annualized income installment method as provided in section 6654 of the Internal Revenue Code, and makes the required estimated state income tax payment based thereon.
 - b. The quarterly payment of estimated state income tax, including state withholding, equals or exceeds the previous year's total state income tax liability for the previous year, as defined in subdivision c of subsection 1, divided by four. The previous year's total state income tax liability means the amount of North Dakota income tax computed after any allowable credits, but before income tax withheld and estimated payments, are subtracted.
 - c. The quarterly payment of estimated state income tax, including state withholding, equals ninety percent of the total state income tax liability for the current year, as defined in subdivision b of subsection 1, divided by four. The total state income tax liability for the current year means the actual net state tax liability computed after any allowable credits, but before state income tax withheld and estimated state income tax, are subtracted.

History: Effective November 1, 1987; amended effective July 1, 1989.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-62, 57-38-63, 57-38-64

STAFF COMMENT: Chapter 81-03-10 contains all new material but is not underscored so as to improve readability.

CHAPTER 81-03-10 VOLUNTARY CONTRIBUTIONS

Section	
81-03-10-01	Designation of Overpayment Amount
81-03-10-02	Available Overpayment
81-03-10-03	Designation for Taxpayers Owing Tax
81-03-10-04	Taxpayers With No Payments or Balance Due

81-03-10-01. Designation of overpayment amount. North Dakota taxpayers with available overpayments of tax of at least five dollars

may designate a portion of their overpayment, as a voluntary contribution, a minimum of one dollar to either or both of the following:

1. The nongame wildlife management fund.
2. The centennial tree program trust fund.

History: Effective July 1, 1989.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-34.3, 57-38-35.1

81-03-10-02. Available overpayment. The procedure by which the taxpayer's return is originally processed by the tax department may result in adjustments to the available overpayment amount computed by the taxpayer for errors on the return; reduction for taxes, including interest and penalty, owed for prior years; or reduction for amounts owed as child support pursuant to North Dakota Century Code chapter 57-38.3.

When the overpayment amount computed by the taxpayer is reduced by the tax department, taxpayer designations will be reduced in the following order, each designated item to be reduced to zero before proceeding to reduce the next item:

1. The amount of the overpayment that the taxpayer has designated as voluntary contributions to the nongame wildlife fund and the centennial tree program trust fund. If the tax department does not reduce the overpayment computed by the taxpayer by the total amount of the voluntary contributions, any remaining overpayment will be allocated between the funds in the same ratio as the designations bear to one another on the taxpayer's return.
2. The amount of the overpayment that the taxpayer has designated as a refund.
3. The amount of the overpayment that the taxpayer has designated as an estimated tax payment for a succeeding year.

History: Effective July 1, 1989.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-34.3, 57-38-35.1(3), 57-38-38(1), 57-38-62, 57-38.3

81-03-10-03. Designation for taxpayers owing tax. Taxpayers who have a tax balance due, including penalty and interest, of at least five dollars on their income tax return may designate that an additional amount of at least one dollar be paid to the nongame wildlife fund or to the centennial tree program trust fund by paying the entire balance that is due for both tax and the designations at the same time that the

return is filed. Any designations to the nongame wildlife fund or to the centennial tree program trust fund are not obligations enforceable by the tax department. If the amount that is paid with the return does not equal the total of the tax balance due and the amounts designated, the amount of the tax balance due must be paid first and the optional designations must be reduced to the amount paid with the return which is in excess of the tax balance due. The amount paid which is in excess of the tax balance due must be allocated between the funds in the same ratio as the taxpayer designations bear to one another on the taxpayer's return.

History: Effective July 1, 1989.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-34.3, 57-38-35.1

81-03-10-04. Taxpayers with no overpayment or balance due. A taxpayer with no overpayment of tax of at least five dollars or tax balance due of at least five dollars, may not use the state income tax return to make voluntary contributions. Taxpayers may make contributions directly to the North Dakota game and fish department for the nongame wildlife fund, or to the centennial decades tree committee for the centennial tree program trust fund.

History: Effective July 1, 1989.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-34.3, 57-38-35.1

81-04.1-01-25. ~~Bad~~ Credit sales and bad debts. Conditional sales contracts or other forms of sales, where the payment of the principal sum is to be extended over a period longer than sixty days from the date of the sale, do not include credit sales for which the purchaser is billed in full in intervals of less than sixty consecutive days even though the credit terms may allow the purchaser to extend the principal payments beyond sixty consecutive days.

When a retailer sells or renegotiates a conditional sales contract or other form of credit for which the principal payment is to be extended over a period longer than sixty days to a third party, the retailer is required to remit the full amount of tax due on the outstanding credit balance.

Bad debts may be deducted from gross receipts when the tangible personal property is sold on credit and the following facts are fully shown:

1. That the account has not been paid and has been found to be worthless.
2. That the amount was previously included in the gross receipts and sales tax collected and remitted by the retailer.

3. That the account has been charged off the retailer's books for income tax purposes.

When claiming the deduction, the permit holder must report the customers' names, addresses, amount charged off, and the period in which the sale was included in the holder's taxable sales.

History: Effective June 1, 1984; amended effective July 1, 1989.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-05, 57-39.2-10, 57-39.2-11

81-04.1-01-28. Coupons. When a manufacturer, processor, or wholesaler issues a coupon entitling a purchaser to credit on the item purchased, the tax is due on the total gross receipts.

Example: If a manufacturer, processor, or wholesaler issues coupons entitling the holder to a credit allowance of seven cents on the purchase of its products from a retailer, the sales tax is computed by the retailer as follows:

Regular price	.75
Sales tax at 5 1/2 percent	.05
Subtotal	.80
Credit for coupon	.07
Amount due from purchaser	.73

When a retailer issues a coupon entitling the purchaser to a discounted price on the item purchased and when the retailer receives no reimbursement from a manufacturer, processor, or wholesaler, the sales tax is due from the purchaser only on the discounted price.

Example: If a retailer issues coupons entitling the holder to a credit allowance of seven cents on the purchase of its products from the retailer, the sales tax is computed by the retailer as follows:

Regular price	.75
Credit for coupon	.07
Subtotal	.68
Sales tax at 5 1/2 percent	.04
Amount due from purchaser	.72

Sales of coupons, coupon books, and other certificates which entitle the holder to a discount or other price advantage on the purchase of goods or services, whether or not the goods or services are subject to sales or use tax, are taxable as sales of tangible personal property.

Sales of gift certificates or other forms of credit which may be redeemed by the holder for equivalent cash value are deposits or prepayments and are not subject to tax when sold. However, the value of

these certificates is taxable when redeemed if they are redeemed for taxable goods or services.

History: Effective October 1, 1986; amended effective March 1, 1988; July 1, 1989.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01(3)(7), 57-39.2-02.1

81-04.1-04-43. School - Students - Fraternities and sororities. Colleges, universities, student fraternities, or sororities serving meals to students other than members, for which separate charges are made, or operating canteens selling tangible personal property must collect and remit sales tax.

College and university food service operations which provide catering services are responsible for collecting and remitting sales tax on the gross receipts from catering activities.

~~College and university sales of lodging accommodations to nonstudents, including sales to families of enrolled students, are subject to sales tax.~~

Student fraternities and sororities are not political subdivisions or institutions of the state and are not exempt from sales tax on purchases of tangible personal property for their own use.

History: Effective June 1, 1984; amended effective March 1, 1988; July 1, 1989.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-04, 57-39.2-20

81-06.1-03-05. Supporting documents required for refunds. ~~Claims for refund of motor vehicle fuel tax and aviation fuel tax must be supported by original sales tickets and invoices. For this purpose, only the top copy will be considered as original and must be designated by the word "original" shown thereon. Double-faced carbon must be used between the top original and the second copy so that carbon imprint is made on the reverse side of the top of the original ticket.~~

~~Sales tickets or invoices must be issued in an original and one or more carbon copies and must show the following information:~~

- ~~1. Date of sale (date of delivery of the fuel).~~
- ~~2. Name and address of the purchaser (which must be in the name of the claimant).~~
- ~~3. Name and address of seller (machine printed or rubber stamped).~~

4. Number of gallons [liters] purchased and price per gallon [3.79 liters], exclusive of taxes, accurately extended.
5. North Dakota motor vehicle tax must be listed as a separate item.
6. The invoice book and the sales tickets or invoices in each book must be used in consecutive order and must be machine numbered serially.
7. Sales tickets or invoices must bear the signature of the purchaser as having received the motor vehicle or aviation fuels.
8. Only paid sales tickets or invoices may be submitted for refund, and proof of payment must appear on the face of the document.
9. Mileage of licensed vehicles is to be listed on the claim.
10. Service station purchases for licensed vehicle use must be listed in space provided on the refund claim form.
11. The gasoline tax report and claim for refund must be gold in color, Form R-11-12, and the aviation fuel tax refund claim must be pink in color, Form R-31.
12. Claims for refunds filed on behalf of another, such as a deceased person or trust, must include a certified copy of the authority of the person making the claim.

All sales tickets or invoices must be made out at the time of delivery of the motor vehicle or aviation fuel and only in the amount of the gallonage delivered at the time.

Making erasures, changes, or corrections on the tickets or invoices, such as changes in dates, gallonage, and name, may result in rejection of the entire claim. When corrections are necessary, they must be certified by the dealer by affidavit.

Sales tickets or invoices for all purchases during a calendar year presented for refund must be filed on or after January first and before July first of the next succeeding year and must be attached to the claim.

A carbon copy of each invoice must be retained by the seller for a period of not less than two years.

All dealers who use a computerized system such as GARD FROL must supply a monthly invoice and must attach copies of all billings to that invoice when requesting a refund. Repealed effective July 1, 1989.

History: Effective June 1, 1984.

General Authority: ~~NDCC 57-43.1-30, 57-43.3-05~~

Law Implemented: ~~NDCC 57-43.1-04, 57-43.1-05, 57-43.1-10, 57-43.3-03~~

81-06.1-03-07. Sales tickets or invoices required for refunds. Claims for refund of motor vehicle fuel, special fuel, and aviation fuel shall include retail service station sales tickets or bulk dealers invoices.

1. The sales ticket or invoice must be an original. Computerized invoices must have the word "original" imprinted on the invoice. If an original sales ticket or invoice is lost, stolen, or destroyed, a duplicate may be substituted with an affidavit. The affidavit must be on a form prescribed by the tax commissioner.
2. The sales ticket or invoice must contain the following information:
 - a. Date of sale.
 - b. Name, address, and signature of purchaser. A sales ticket or invoice issued to a person other than the person claiming a refund will be rejected.
 - c. Name and address of seller, machine printed or rubber stamped thereon.
 - d. Number of gallons [liters] purchased.
 - e. Price per gallon [liter], exclusive of tax.
 - f. Tax as a separate item. This applies to the per gallon [liter] tax and to the two percent excise tax computed on the price of the fuel.
 - g. A sales ticket or invoice number machine printed thereon.
 - h. A notation by the seller that the invoice has been paid, and date of payment. The seller should not release original sales tickets or invoices to the purchaser until payment is made.
3. If the seller discovers an error on a sales ticket or invoice, the seller shall correct the error by crossing out the incorrect information and writing the correct information directly above the error. The seller shall verify corrections by the seller's signature on the corrected sales tickets or invoices. Sales tickets or invoices containing erasures or corrections made with correction fluid will be rejected and a refund of tax will not be made thereon.

4. All sales tickets or invoices must be for the calendar year of the refund claim. Sales tickets or invoices dated December of the previous year will be rejected and a refund of tax will not be made thereon.
5. When a computerized system such as CARDTROL is used, the seller shall issue a monthly bulk invoice for the purchaser's use in requesting a refund of tax. Monthly statements will be rejected and a refund of tax will not be issued thereon.

History: Effective July 1, 1989.

General Authority: NDCC 57-43.1-30, 57-43.3-05

Law Implemented: NDCC 57-43.1-04, 57-43.1-05, 57-43.1-10, 57-43.3-03

81-08-03-07. Byproducts exempt from taxation. Calculation of the sale of byproducts exempt from taxation must be accomplished by multiplying total gross receipts from the sale of synthetic natural gas plus the sale of byproducts during the month for which the report is made by twenty percent, and subtracting the result from gross receipts from the sale of byproducts for that month.

History: Effective November 1, 1987; amended effective July 1, 1989.

General Authority: NDCC 57-60-12

Law Implemented: NDCC 57-60-01, 57-60-02, 57-60-03

81-09-02-01. Definitions. As used in this chapter and for the administration of North Dakota Century Code chapter 57-51, unless the context otherwise requires:

1. "Casinghead gas" means gas as produced from a well classified as an oil well by the industrial commission.
2. "Commissioner" means the tax commissioner of the state of North Dakota.
3. "Gross value at the well" means fair market value at the time of production.
4. "Natural gas" means gas as produced from a well classified as a gas well by the industrial commission.
- ~~4~~ 5. "Nonoperating interest" means an interest in production from a mineral property which does not share in operating rights. A nonoperating interest includes an overriding royalty interest, a net profit interest, and a carried interest.
- ~~5~~ 6. "Oil" means petroleum, crude oil (including condensate), mineral oil, and casinghead gasoline.
- ~~6~~ 7. "Person" means an individual, partnership, corporation, association, fiduciary, trustee, and any combination thereof.

- ~~7-~~ 8. "Producer" means the owner of a working interest or a nonoperating interest, in a well capable of producing oil or gas, or both.
- ~~8-~~ 9. "Purchaser" means any buyer of oil or gas after it has been produced. Purchaser does not include one who acquires oil or gas in place in the earth through a lease, estate, or other interest.
- ~~9-~~ 10. "Return" means any statement, report, or return required by North Dakota Century Code chapter 57-51 to be filed with the commissioner.
- ~~10-~~ 11. "Tax" means the oil and gas gross production tax.
12. "Taxpayer" means any person that is responsible for filing a report or paying the tax.
- ~~11-~~ 13. "Working interest" means a mineral interest which includes the rights granted to a lessee of property to explore for, produce and own, oil or gas.

History: Effective July 1, 1982; amended effective August 1, 1986; July 1, 1989.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-51

81-09-02-02. Procedure for review of commissioner's determination of additional tax due, penalty, and interest.

1. The commissioner ~~shall~~ will review or audit the returns filed pursuant to North Dakota Century Code chapter 57-51.
2. If the commissioner finds it is determined that additional tax is due, the commissioner shall notify the person of the determination taxpayer of this determination within six years of the due date for payment of the tax. The notice of determination must be sent by first class certified mail with a return receipt requested and it must state the statutory basis for the determination, the reasons for the determination, and the amount of additional tax due and state the reasons for the determination along with the applicable penalty and interest.
3. A person has thirty days to file a written protest objecting to the commissioner's notice of determination. The notice of determination becomes final and irrevocable thirty days after the date the notice is received by the taxpayer, unless, within this thirty-day period, the taxpayer files a written protest with the commissioner. The protest which will be deemed filed the date it is sent by certified mail must set forth the basis for the protest and state the grounds upon

which the protest is based along with any other additional information which may be required by the commissioner. If a person fails to file a written protest within the time provided, the amount of additional tax stated in the notice of determination becomes finally and irrevocably fixed. If a person taxpayer protests only a portion of the commissioner's determination, the portion which is not protested becomes finally and irrevocably fixed.

4. Upon written request, the commissioner may grant the taxpayer an informal conference.
5. If a protest is filed, the commissioner shall reconsider the notice of determination. ~~The~~ This reconsideration may include further examination by the tax commissioner or his representative of a person's. The commissioner, upon request, may grant the person an informal conference the taxpayer's books, papers, records, or memoranda, pursuant to section 81-01.1-01-03 and North Dakota Century Code sections 57-01-02 and 57-51-07 .
- ~~5-~~ 6. Within a reasonable time after receiving the protest, the commissioner shall ~~mail~~ send a notice of reconsideration to the taxpayer by certified mail with a return receipt requested. ~~The~~ This notice of reconsideration must respond to the person's taxpayer's protest and must assess state the amount of additional tax due, along with the applicable penalty and interest.
7. The amount of additional tax due stated in the notice of reconsideration becomes finally and irrevocably fixed unless the person files a complaint pursuant to North Dakota Century Code chapter 28-32 within thirty days after receipt of the notice of reconsideration final and irrevocable thirty days after the date the notice is received by the taxpayer, unless within this thirty-day period, the taxpayer seeks formal administrative review of the notice by filing a complaint and requesting an administrative hearing. The provisions of North Dakota Century Code chapter 28-32 apply to and govern the filing of the complaint and the administrative hearing, including any appeal from a decision rendered by the commissioner.
- ~~6-~~ 8. Upon written request, the commissioner may grant an extension of time to file a protest or a complaint.

History: Effective July 1, 1982; amended effective August 1, 1986; July 1, 1989.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 28-01-16, 57-01-02, 57-01-11, 57-51-07, 57-51-09

81-09-02-03. Procedure for refund of overpayments, duplicate payments, and erroneous payments of tax.

1. For purposes of this section, "taxpayer" means the party who has actually remitted an overpayment, duplicate payment, or erroneous payment of tax.
2. A claim for credit or refund must be made by filing with the ~~tax~~ commissioner, within six years of the due date for payment of the tax, an amended return, or other report as prescribed by the tax commissioner, accompanied by a statement outlining the specific grounds upon which the claim for credit or refund is based.
3. ~~The tax~~ Within a reasonable time after receiving the claim for credit or refund, the commissioner shall notify the taxpayer of the commissioner's decision to either grant or deny as to whether the taxpayer's claim for credit or refund within a reasonable period of time will be granted or denied. This notice must be sent by certified mail with a return receipt requested and it must state the reasons for the decision. If the tax commissioner decides to deny the taxpayer's claim for credit or refund, in part or in full, this the decision becomes final and irrevocable thirty days after the date the notice of denial is mailed to received by the taxpayer unless, within this thirty-day period, the taxpayer files a written protest with the tax commissioner. Upon written request of the taxpayer, the tax commissioner may grant a reasonable extension of time for the filing of a protest.
- ~~4.~~ The protest, which will be deemed filed the date it is sent by certified mail, must state the grounds upon which the protest is based along with any additional information required by the tax commissioner. If a taxpayer protests only a portion of the commissioner's decision, the portion which is not protested becomes finally and irrevocably fixed.
4. Upon written request of the taxpayer, the tax commissioner may grant the taxpayer, or the taxpayer's authorized representative, an informal conference.
5. ~~The tax~~ If a protest is filed, the commissioner shall reconsider the denial of the claim for credit or refund after the taxpayer has filed a written protest. This reconsideration may include further examination by the tax commissioner or the tax commissioner's representative of the taxpayer's books, papers, records, or memoranda, including, but not limited to, corporate minutes and committee notes pursuant to section 81-01.1-01-03 and North Dakota Century Code sections 57-01-02 and 57-01-07.
6. ~~The tax~~ Within a reasonable time after receiving the protest, the commissioner shall notify the taxpayer of the

reconsideration of the taxpayer's claim for credit or refund within a reasonable period of time after a protest is filed. This notice must be sent by certified mail with a return receipt requested, and it must respond to the taxpayer's protests. If the decision of the tax commissioner commissioner's decision is to deny the claim for credit or refund, in part or in full, the decision becomes final and irrevocable thirty days after the date the notice of denial is mailed to received by the taxpayer unless, within this thirty-day period, the taxpayer seeks formal administrative review of the tax commissioner's reconsideration of claim for credit or refund by filing a complaint and requesting an administrative hearing. The provisions of North Dakota Century Code chapter 28-32 apply to and govern the filing of the complaint and the administrative hearing procedure, including appeals an appeal from any decision rendered by the tax commissioner.

7. Upon written request of the taxpayer, the tax commissioner may grant a reasonable an extension of time for the filing of a to file a protest or complaint.

History: Effective October 1, 1987; amended effective July 1, 1989.
General Authority: NDCC 57-51-21
Law Implemented: NDCC 57-01-02, 57-01-07, 57-51-19

81-09-02-03.1. No interest on refund or credit. The commissioner does not have the authority to pay interest on a claim for credit or refund of tax.

History: Effective July 1, 1989.
General Authority: NDCC 57-51-21
Law Implemented: NDCC 57-51-19

81-09-02-04. Due dates for filing a return and paying tax. If the due date for filing a return and paying the tax owed falls on a Saturday, Sunday, or legal holiday, the return and payment are due on the next business day. If a taxpayer is required to file an amended return, this return is due on the date set by the commissioner. A return or payment is delinquent if it is postmarked after the due date.

History: Effective July 1, 1989.
General Authority: NDCC 57-51-21
Law Implemented: NDCC 57-51-05, 57-51-06, 57-51-10

81-09-02-05. Extension of due date for filing a return or paying tax.

1. A taxpayer may request that the due date for payment of the tax be extended by a maximum of fifteen days. In addition, a

taxpayer may request that the due date for filing a return be extended. However, if tax is due with the return, the due date for filing will only be extended by a maximum of fifteen days.

2. A taxpayer may request an extension of time either verbally or in writing. A verbal request must be made on or before the due date for paying the tax or filing the return. A written request must be received by the commissioner on or before the due date for paying the tax or filing the return. Both a verbal and written request must advise the commissioner as to why the extension of time is needed.
3. If a request for an extension of time is approved verbally, the taxpayer shall send a letter to the commissioner confirming this fact within five days of the date the request was approved. If a request is not approved verbally, the commissioner shall promptly notify the taxpayer in writing as to whether the request is approved or denied.

History: Effective July 1, 1989.
General Authority: NDCC 57-51-21
Law Implemented: NDCC 57-51-05, 57-51-06

81-09-02-06. Penalty for delinquent filing of a return. A delinquent return is subject to a penalty of twenty-five dollars per day for each well or unit reported on the return.

History: Effective July 1, 1989.
General Authority: NDCC 57-51-21
Law Implemented: NDCC 57-51-05

81-09-02-13. Measurement or determination of oil or gas production. The volume of oil or gas to be reported is the gross amount of oil or gas produced. When measuring or determining the amount of oil production, a reasonable deduction may be made for basic sediment and water and a reasonable allowance may be made for correction of the temperature to sixty degrees Fahrenheit [15.55 degrees Celsius]. When measuring or determining the amount of gas production, the measurement must be at a pressure base of 14.73 pounds per square inch absolute and a standard temperature base of sixty degrees Fahrenheit [15.55 degrees Celsius].

The amount of production is generally measured or determined at the lease by tank tables, meters, or other measuring devices. However, the commissioner may verify the accuracy of measurements or determinations made at the lease by comparing those amounts with measurements or determinations made at some other point.

History: Effective July 1, 1989.
General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-51-02

81-09-02-15. Exempt royalty interests.

1. A royalty interest in oil or gas is exempt from the gross production tax if the royalty interest is owned by any of the following:
 - a. The federal government or an instrumentality of the federal government.
 - b. The state of North Dakota or its political subdivisions.
 - c. An organized Indian tribe, whose land cannot be alienated without consent of the federal government.
2. A royalty interest in production which is owned by a private or charitable organization, whether profit or nonprofit, is not exempt from the gross production tax.
3. The value of an exempt royalty interest is limited to the lesser of the following:
 - a. The amount of any royalty payments made to the entities listed in subdivisions a, b, and c of subsection 1.
 - b. The royalty percentage attributable to the entities listed in subdivisions a, b, and c of subsection 1 times the total amount reported as the gross value at the well.

History: Effective August 1, 1986; amended effective July 1, 1989.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-51-02

81-09-02-16. Exemption for lease use gas. Gas used for production purposes on the lease from which it was produced is exempt. This exemption does not include gas that has been processed in any manner.

"Processed", as used in this section, does not include gas that has passed through a heater-treater, or other similar device, commonly used at the well site by the producer.

Any gas taken directly from the wellhead or returned to the lease from a treating or processing plant and used in the production of oil or gas is exempt from taxation. This exemption is for gas used in drilling for or producing oil or gas or repressurization of a reservoir. Examples of exempt gas include, but are not limited to, gas used as fuel for heater-treaters or separators or in lift or injection operations.

History: Effective August 1, 1986; amended effective July 1, 1989.

General Authority: NDCC 57-51-21
Law Implemented: NDCC 57-51-05

TITLE 89
Water Commission

NOVEMBER 1988

STAFF COMMENT: Article 89-07 contains all new material but is not underscored so as to improve readability.

ARTICLE 6-03

WEATHER MODIFICATION BOARD

[Superseded by Article 89-07]

ARTICLE 89-07

ATMOSPHERIC RESOURCE BOARD

Chapter	
89-07-01	Practice and Procedure
89-07-02	Weather Modification Operations

CHAPTER 89-07-01
PRACTICE AND PROCEDURE

Section	
89-07-01-01	General Provisions
89-07-01-02	Liberal Construction
89-07-01-03	Suspension of Chapter
89-07-01-04	Definitions
89-07-01-05	Case Numbers and Title
89-07-01-06	Personal Appearances

89-07-01-07	Practice Before the Board
89-07-01-08	Parties
89-07-01-09	Investigation on the Board's Own Motion
89-07-01-10	Computation of Time
89-07-01-11	Service
89-07-01-12	Record
89-07-01-13	Informal Complaint
89-07-01-14	Formal Complaints
89-07-01-15	Order to Show Cause
89-07-01-16	Petition for Hearing
89-07-01-17	Answers
89-07-01-18	Response to Petition for Hearing
89-07-01-19	Intervention
89-07-01-20	Amendments
89-07-01-21	Withdrawal of Pleading
89-07-01-22	Motions
89-07-01-23	Informal Disposition
89-07-01-24	Prehearing Conference
89-07-01-25	Conference Results Stipulated
89-07-01-26	Consolidation
89-07-01-27	Hearing Officers
89-07-01-28	Discovery
89-07-01-29	Appearance
89-07-01-30	Continuance
89-07-01-31	Order of Procedure
89-07-01-32	Appeal to Board from Ruling of Hearing Officer - Offer of Proof
89-07-01-33	Oral Argument
89-07-01-34	Briefs, Proposed Findings of Facts, and Conclusions of Law
89-07-01-35	Decisions of the Board
89-07-01-36	Evidence
89-07-01-37	Witnesses
89-07-01-38	Subpoena
89-07-01-39	Stipulations
89-07-01-40	Documentary Evidence
89-07-01-41	Exhibits
89-07-01-42	Official Notice
89-07-01-43	Petition to Reopen
89-07-01-44	Petition for Rehearing
89-07-01-45	Appeal

89-07-01-01. General provisions. The provisions of this chapter apply to all hearings held by the board for the purposes of adjudicating the rights of parties under North Dakota Century Code chapter 61-04.1. This chapter provides procedures in addition to or in explanation of those procedures provided by North Dakota Century Code chapters 61-04.1 and 28-32.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 28-32-05, 61-04.1-08(3)

89-07-01-02. Liberal construction. This chapter must be liberally construed in order to secure just, speedy, and inexpensive determination of the issues presented.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 28-32-05

89-07-01-03. Suspension of chapter. The board or any hearing officer shall have the right, upon either its own motion or the motion of any party, to suspend the operation and effect of this chapter or any portion thereof, whenever the public interest and the interests of any party to a proceeding are not substantially prejudiced by such suspension.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 61-04.1-08(3)

89-07-01-04. Definitions. As used in this chapter, the following words have the meaning given to them below, unless otherwise made inappropriate by context:

1. "Board" means the atmospheric resource board.
2. "Hearing officer" or "officer" means the person appointed by the board to call and conduct a hearing.
3. "License" means a professional weather modification license issued under the provisions of North Dakota Century Code chapter 61-04.1.
4. "Order" means any written command or direction made by the board as provided by law.
5. "Permit" means a weather modification permit issued under the provisions of North Dakota Century Code chapter 61-04.1.
6. "Person" means any real person, county, municipality or other political subdivision, department, agency or commission, any public or private corporation, any partnership, association or other organization, any receiver, trustee, assignee, or other legal entity, other than a court of law, or other legal representative of the foregoing but does not include the board.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 61-04.1-03, 61-04.1-08(3)

89-07-01-05. Case numbers and title. Each matter coming formally before the board for hearing will be known as a case and must be given a docket number and title, descriptive of the subject matter. Such number and title must be used on all papers in the case, and as far as possible, any communication to the board in any particular case must bear the number of said case.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 61-04.1-08(3)

89-07-01-06. Personal appearances. Participants may appear in any proceeding in person or by an attorney or other representative qualified under subsection 3 of section 89-07-01-07. An individual may appear in the individual's own behalf, a member of a partnership may represent the partnership, a bona fide officer or duly authorized employee of a corporation, association, or group may represent the corporation, association, or group, and an officer or employee of a state agency, a department or political subdivision of the state, or other governmental authority may represent the state agency or the department or the political subdivision of the state or other governmental authority in any proceeding.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 61-04.1-08(3)

89-07-01-07. Practice before the board.

1. Person in own interest. Any person may appear before the board in the person's own right if the person has a bona fide interest in the subject matter of the proceeding.
2. Attorneys. Attorneys at law who are admitted to practice before the courts of North Dakota may represent any party to a proceeding. Any member of the bar of another state may be permitted by the board to appear in and conduct a case or proceeding while retaining residence in another state.
3. Other persons. Any other person who shall file proof to the satisfaction of the board that the person is possessed of necessary legal or technical qualifications to enable the person to render valuable service may be permitted to practice before the board.

4. Rules of conduct. All persons appearing before the board shall conform to the standards of ethical conduct required of practitioners before the courts of the state of North Dakota.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-02, 61-04.1-08(3)

89-07-01-08. Parties.

1. Complainant. Persons who complain of any act or omission in violation of any statute, regulation, or permit of the board must be styled complainants.
2. Intervenor. Persons petitioning to intervene when admitted as a participant to a proceeding must be styled intervenors. Admission as an intervenor may not be construed as recognition by the board that such intervenor might be aggrieved by any order of the board in such proceeding.
3. Parties. Any person whose legal rights, duties, or privileges may be determined in the case for which the hearing may be held is a party. When a hearing is held pursuant to a request for a hearing, the person making the request is a party. The board is a party in any action to enforce any regulation, statute, permit condition, or order of the board. Any person who has properly intervened in a case is a party.
4. Petitioner. Any person seeking reconsideration, as provided by law, of any administrative action taken pursuant to law and this chapter must be styled the petitioner.
5. Respondent. Any person against whom any complaint is filed or order issued under this chapter must be styled the respondent.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-01, 61-04.1-08(3)

89-07-01-09. Investigation on board's own motion. The board may at any time, upon its own motion, or upon the complaint of any person, institute investigations and order hearings in any thing done by any person which the board may believe is in violation of the law or any order, regulation, or permit of the board. The board may secure and present such evidence as it may consider necessary or desirable in any proceeding in addition to the evidence presented by any other party.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-08(3)

89-07-01-10. Computation of time.

1. In determining the day upon which an answer must be served pursuant to North Dakota Century Code section 28-32-05, the day of the hearing and the last day upon which an answer may properly be received may not be included in computing the required twenty-day time period. If the day upon which the answer is due falls on a Saturday, Sunday, or legal holiday, the answer is due on the preceding business day.
2. In computing any period of time prescribed or allowed by this chapter, other than that time period set out in subsection 1, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Sundays and holidays must be excluded in the computation.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-05

89-07-01-11. Service. For the purposes of this chapter, service or filing must be deemed to have occurred upon actual receipt of the document served or filed. If a person refuses to accept service, service is deemed to have occurred upon the date of such refusal.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-05

89-07-01-12. Record. Unless any party demands otherwise at least ten days prior to the date of hearing, a stenographic or electronic recording of the proceeding will be made and filed. If demanded, the board shall cause a verbatim transcript to any proceedings to be made at the expense of the demanding parties. The time period required herein must be computed, as nearly as practicable, by that method specified in section 89-07-01-10.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-12

89-07-01-13. Informal complaint. Informal complaints may be made orally or in writing addressed to the board. Letters of complaint to the board will be considered as informal complaints. Matters thus presented will be handled by correspondence or by other informal

communications, or by conference with the party or parties complained of, or by formal investigation instituted by the board upon its own motion, or in such other manner as the board deems to be appropriate and warranted by the facts and the nature of the complaint in an endeavor to bring about satisfaction of the complaint without formal hearing.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-05

89-07-01-14. Formal complaints.

1. Complaints must be made by the board on its own motion by complaint in writing, setting forth any act or thing done or omitted to be done in violation or claimed to be in violation of any provision of law or of any order, rule, regulation, or permit of the board.
2. Each formal complaint must show the venue, "before the atmospheric resource board", and must contain a heading, "in the matter of", showing the name and address of the respondent. The complaint must be so drawn as to fully and completely advise the respondent or the board of the facts constituting the ground of the complaint; the provisions of the statutes, regulations, orders, or permit relied upon; the injury complained of; and must contain a clear, concise statement of the relief sought.
3. The board shall serve a true copy of the complaint and notice for hearing upon the respondent personally, or by registered or certified mail, as the board may direct, in such time as provided by law before the time specified for hearing thereof unless the service of such complaint or notice of hearing is waived, in writing, by the respondent, or unless the parties agree upon a definite time and place for hearing thereof with the consent of the board. However, in case of an emergency, the board shall notice a proceeding for hearing upon its merits as provided by law.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-02, 28-32-05, 28-32-08, 61-04.1-18

89-07-01-15. Order to show cause.

1. The board may, by order, compel any person who it believes is violating any law, regulation, or order of the board subject to enforcement by this chapter, or any person who has been granted a permit, to show cause why such law, regulation, or order should not be enforced against such person or why such

permit should not be suspended, revoked, or modified, either in whole or in part.

2. An order to show cause must specifically advise the respondent of the facts of the violation and law applicable thereto and of the time and place of the hearing to be conducted on the order.
3. If the board finds that the respondent is committing or is about to commit an alleged violation, it may order the respondent to cease and desist from the acts constituting the violation. The board may also, or in lieu thereof, enter any other just and reasonable order.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-05, 28-32-08, 28-32-13, 61-04.1-08(5)

89-07-01-16. Petition for hearing. Any petitioner requesting the board to review by hearing, as provided by law, any board action, rule, or regulation shall file with the board a petition, which may be in letter form, advising the board of the facts constituting the grounds

for the petition, the injury complained of, and a clear and concise statement of the relief sought.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-05, 28-34-04, 61-04.1-08(3), 61-04.1-18

89-07-01-17. Answers.

1. Each answer filed with the board must be designated as "an answer" and must contain the correct title of the proceeding, a specific denial of such material allegations of the complaint as are controverted by the respondent, and a statement of any new matter which may constitute a defense. If the answering party has no information or belief upon the subject sufficient to enable the answering party to answer an allegation of the complaint, the answering party may so state in the answer and place the denial upon that ground. The filing of an answer will not be deemed an admission of the sufficiency of the complaint.
2. An answer must be signed and verified by the respondent filing the answer.
3. Two true and correct copies of the answer must be served upon the board personally or by registered mail, within twenty days after service of the complaint and notice of hearing.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 28-32-05

89-07-01-18. Response to petition for hearing.

1. Upon receiving a petition for hearing upon any matter, as provided by law, the board shall, within thirty days of such receipt, serve upon the petitioner a response to the petition. The response may be in letter form and must state the decision of the board whether or not to hold the requested hearing. If a hearing is granted, the response must state the date upon which the petitioning party may appear to be heard, and such other conditions of the hearing as the board may determine. If the requested hearing is denied, the reasons for such denial must be clearly stated. This subsection does not apply to hearings on emergency orders.
2. Upon receiving a petition for hearing pursuant to an emergency order, as provided by law, the board shall set a date for hearing to be held within ten days of receipt of such petition and shall notify the petitioner of such date and of such other conditions of the hearing as the board shall determine.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 28-32-04, 28-32-05, 61-04.1-08(3)

89-07-01-19. Intervention. In any formal proceeding, any person having a substantial interest in the subject matter of such proceeding may petition for leave to intervene in such proceeding and may become a party thereto upon compliance with the provisions of this section. In general, such petitions will not be granted unless it is found that such person has a statutory right to be made a party to such proceedings or that such person has a property, financial, or other legally recognizable interest which may not be adequately represented by existing parties, and such intervention would not unduly broaden the issues or delay the proceeding.

1. A petition for leave to intervene must be in writing, unless made at the commencement of a hearing, and must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and whether the petitioner's position is in support of or in opposition to the relief sought.
2. A written petition for leave to intervene in any proceeding may be filed prior to or at the commencement of the hearing, but not after commencement, except for good cause shown.

3. The petitioner shall furnish a copy of any written petition to each party to the proceeding, including the board.
4. Admission as an intervenor may not be construed as recognition by the board that such intervenor might be aggrieved by any act of the board in such proceeding.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-02, 61-04.1-08(3)

89-07-01-20. Amendments. The board, prior to any hearing, or the hearing officer during any hearing, may, after notice to the other parties to a proceeding, allow any pleading to be amended or corrected or any omission therein to be supplied, provided that if any such amendment, when allowed, so alters or broadens the issues that it appears proper, the board may permit any party affected thereby a reasonable time to prepare to meet the changed issues.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-02, 61-04.1-08(3)

89-07-01-21. Withdrawal of pleading. A party desiring to withdraw a pleading filed with the board may file a notice of withdrawal thereof with the board. The notice must set forth the reason for the withdrawal. A copy of the withdrawal notice must be served upon all other parties to the proceeding and a certificate of service to that effect filed with the notice of withdrawal. Withdrawal of any pleading in any proceeding in which a hearing has been held or convened may not be allowed without express permission of the board.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-05, 61-04.1-08(3)

89-07-01-22. Motions. After a complaint or petition has been served, a request may be made by motion for any procedural or interlocutory ruling or relief proper and desired. All motions not made in the course of a hearing must be in writing and must be served on the other parties to the hearing by the moving party.

1. The board, prior or subsequent to any hearing, or the hearing officer, during any hearing, may set any motion for oral argument.
2. The hearing officer designated to preside at a hearing is authorized to rule upon any motion not formally acted upon by the board prior to the commencement of the hearing, wherein the immediate ruling is essential in order to proceed with the

hearing and upon any motion filed and made after the commencement thereof and prior to the decision in the proceedings. However, no motion made before or during a hearing, a ruling upon which would involve or constitute a final determination of the proceeding, must be ruled upon by a hearing officer.

3. Motions not ruled upon by the hearing officer must be ruled upon by the board.
4. Appeals from rulings of the hearing officer on any motion may be taken as provided in section 89-07-01-32.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-05, 61-04.1-08(3)

89-07-01-23. Informal disposition. Informal disposition may be made of any case, or any issue therein, by stipulation, or consent order at any point therein, subject to the approval of such informal disposition, or any terms thereof, by the board.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-02, 28-32-05, 61-04.1-08(3)

89-07-01-24. Prehearing conference. A prehearing conference may be held at any time at the discretion of the board or hearing officer prior to any hearing. The prehearing conference must be an informal proceeding conducted fairly and expeditiously by the hearing officer, for purposes of identifying and simplifying the issues to be determined, identifying and limiting the number of witnesses, and reaching an agreement on any or all issues of law or fact without the necessity for further hearing thereon. In addition to any offer of settlement, the following are appropriate for consideration at a prehearing conference:

1. The simplification of issues.
2. The necessity or desirability of amendment to the pleadings.
3. The exchange and acceptance of service of exhibits proposed to be offered in evidence.
4. The obtaining of admission as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which may properly shorten the hearing.
5. The limitation of the number of witnesses.
6. Such other matters as may properly be dealt with to aid in expediting the orderly conduct of the proceeding.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 28-32-05, 61-04.1-08(3)

89-07-01-25. Conference results stipulated. Upon conclusion of prehearing conference, the parties shall immediately reduce the results thereof to the form of a written stipulation which recites the matters agreed upon, and the stipulation must be filed with the board. Any such stipulation may be received in evidence at a hearing and, when so received, is binding on the parties with respect to the matters therein stipulated.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 28-32-05, 61-04.1-08(3)

89-07-01-26. Consolidation. The board, upon its own motion, or upon motion by any party, may order two or more proceedings involving a similar question of law or facts to be consolidated for hearing where rights of the parties or the public interest will not be prejudiced by such procedure.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 28-32-05, 61-04.1-08(3)

89-07-01-27. Hearing officers.

1. Appointment. All hearing officers must be appointed by the board. The board shall appoint a hearing officer within five days of service of a complaint or petition. Notification of the appointment must be made to all parties in such manner as the board may determine.
2. Qualifications.
 - a. All appointments of hearing officers must be consistent with the purpose of obtaining objectivity and impartiality in making decisions.
 - b. The hearing officer may be an employee or a member of the board. The board may appoint as hearing officer a person who is not an employee or member of the board. In such event, the hearing officer must be an attorney at law licensed to practice in North Dakota, unless some other person is agreed upon by all parties; provided, that such hearing officer must be considered an employee of the board for sole purpose of compensation, if any, and authorized to conduct the hearing and recommend findings of fact and a decision to the board. In all other

respects, the hearing officer must be independent of the board.

- c. In all cases, the board retains discretion to conduct the hearing itself, in which case an employee of the board must be the hearing officer.
3. Authority. The appointment of the hearing officer shall, to the extent permitted by law, authorize and direct the hearing officer to conduct the hearing and recommend a decision to the board. When evidence is to be taken in a proceeding, one or more hearing officers, when duly designated for that purpose, shall preside at a hearing. An officer duly designated by the board to preside at a hearing shall have the authority to take any of the following actions in the name of the board:
- a. To regulate the course of hearing.
 - b. To administer oath.
 - c. To issue subpoenas.
 - d. To take depositions or cause depositions to be taken.
 - e. To rule upon offers of proof and to receive evidence.
 - f. To hold appropriate conferences before or during hearings.
 - g. To dispose of procedural matters but not to dispose of motions made during hearings to dismiss proceedings or other motion which involves a final determination of proceedings.
 - h. To exclude evidence which is cumulative or repetitious.
 - i. To authorize any party to furnish and serve designated late filed exhibits within a specified time after the close of the hearing, provided North Dakota Century Code section 28-32-07 is adhered to before such late exhibits are made part of the record.
 - j. To order discovery.
 - k. Within the hearing officer's discretion, or upon direction of the board, to certify any question to the board for its consideration and disposition.
 - l. To take any other action necessary or appropriate to discharge the duties vested in the hearing officer, consistent with statutory or other authorities under which the board functions and with the rules, regulations, and policies of the board.

4. **Limitations.** Hearing officers shall perform no duties inconsistent with their responsibilities as such. No officer may in any proceeding for an adjudication required by statute to be determined on the record after opportunity for hearing consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.
5. **Disqualification.**
 - a. Any party may file a petition with the board to disqualify any hearing officer. The petition must be filed within ten days of the hearing officer's appointment. The board shall determine the petition in accordance with this subsection and enter its decision on the record.
 - b. The board may, for good cause, revoke the appointment of any hearing officer upon the filing of a petition of a party or upon the board's own motion. Any such revocation is effective upon notice to the officer.
 - c. A hearing officer shall withdraw from participation in a hearing at any time prior to the final determination if the officer deems oneself disqualified for any reason.
 - d. Whenever a hearing officer withdraws or is disqualified, the board shall appoint another in the officer's place, without the need for such newly appointed officer hearing evidence already presented in the case.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-05, 28-32-07, 28-32-09, 61-04.1-08(3)

89-07-01-28. Discovery.

1. Agency discovery.

- a. **Information.** Upon request of the board or the hearing officer, any party to the matter shall furnish to the board or the hearing officer any information which the party may have which is relevant to the matter under consideration.
- b. **Examination of records.** Upon request of the board or the hearing officer, any party shall allow the board or any member, employee, or agent of the board, when authorized by it or the hearing officer, or the officer personally, to examine and copy any books, papers, records, or memoranda pertaining to the matter under consideration.
- c. **Inspection of premises.** Upon request of the board or the hearing officer, any party shall allow the board or any

member, employee, or agent of the board when authorized by it or the hearing officer, or the hearing officer personally, to enter upon any of the party's property for the purpose of obtaining information, examining any physical facility, or examining records or conducting surveys or investigations.

2. Discovery by parties.

- a. Parties other than the board may obtain discovery by examination of those public records which are in possession of the hearing officer or the board. Any party to a case may request the board or the hearing officer to exercise its powers in subsection 1 to obtain public information or to issue a subpoena as provided in section 89-07-01-38. The board or the hearing officer may grant or deny such requests. A party may request voluntary disclosure of information by any other party.
- b. The deposition of any witness or party required in any proceeding before the board may be taken in the same manner and on the same notice as in an action pending in the district courts of this state. Any person whose deposition is taken shall receive the same fees and mileage as a witness in a civil case in the district courts and such costs must be paid by the party at whose insistence the deposition is taken.
- c. Interrogatories may be issued, in any proceeding before the board, in the same manner as in an action pending in the district courts of this state.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-06, 28-32-09, 61-04.1-08(3)

89-07-01-29. Appearance. Interested parties shall enter their appearances at the beginning of the hearing by giving their name and address and briefly stating whether they appear in support of the complaint or in opposition thereto, or otherwise. All such appearances must be noted on the record with a notation in whose behalf each appearance is made. Included in such appearances must be the names of the members of the board's staff participating in the hearing of investigation and the names of any other persons appearing for the board.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-01(2), 28-32-01(3), 61-04.1-08(3)

89-07-01-30. Continuance. Before or after any hearing, continuances may be granted by the board for good and sufficient cause. A motion for such a continuance must be made in writing, filed with the board, and served on opposing counsel or parties. Such motions must be presented as far in advance of date fixed for hearing as possible to ensure favorable action. The board may effect a continuance before or after any hearing upon its own motion. The hearing officer may grant oral or written requests for continuances during any hearing.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 61-04.1-08(3)

89-07-01-31. Order of procedure. In hearings on formal complaints and petitions, the complainant or petitioner, as the case may be, shall open and close. In hearings on an order to show cause, the respondent shall open and close. When proceedings have been consolidated for hearing, the officer shall designate who shall open and close. Intervenors shall follow the parties in whose behalf the intervention is made. Where the intervention is not in support of an original party, the presiding officer shall designate at which stage such intervenor must be heard. In proceedings where the evidence is materially within the knowledge or control of another party or participant, the foregoing order or presentation may be varied by the officer.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 28-32-05(5), 28-32-06, 61-04.1-08(3)

89-07-01-32. Appeal to board from ruling of hearing officer - Offer of proof. An appeal may be taken to the board from a ruling of an officer during the course of a hearing only where extraordinary circumstances necessitate a prompt decision by the board to prevent detriment to the public interest.

Any offer of proof made in connection with an objection taken to any ruling of the hearing officer rejecting or excluding proffered oral testimony must consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence is in documentary or written form or refers to documents or records, a copy of such evidence must be marked for identification and must constitute the offer of proof.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 28-32-06, 61-04.1-08(3)

89-07-01-33. Oral argument.

1. Before officer. When, in the opinion of the hearing officer, time permits and the nature of the proceedings, the complexity or the importance of the issues of fact or law involved, and the public interest warrant, such officer may, either on the officer's own motion, or at the request of any party at or before the close of the taking of testimony, allow and fix a time for the presentation of oral argument imposing such limits of time on the argument as deemed appropriate. Such arguments must be transcribed and bound with the transcript of testimony, if a transcript is prepared.
2. Before board. Request for authority to present oral argument before the board may be made at the time of any appeal taken during the hearing, at the conclusion of the taking of evidence, or on brief, at such time as the board may allow.

The board will fix the time for oral argument, if allowed, and notify the parties.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-05, 61-04.1-08(3)

89-07-01-34. Briefs, proposed findings of facts, and conclusions of law.

1. Each party to any proceeding may file proposed findings of fact and conclusions of law, briefs, or memoranda of law; provided, however, that the board or hearing officer may direct any party to file proposed findings of fact and conclusions of law, briefs, or memoranda of law.
2. The board or hearing officer shall fix the time for the filing and service of proposed findings of fact and conclusions of law, briefs, or memoranda of law, giving due regard to the nature of the proceeding, the magnitude of the record, and the complexity or importance of the issues involved, and the board or hearing officer shall fix the order in which such documents must be filed.
3. Should a party find that it is unable to meet the date for filing and serving proposed findings of fact and conclusions of law, briefs, or memoranda of law, such party shall so notify the board or hearing officer and the other parties in writing, therein setting forth the reasons for such inability together with a request for an extension of time to a date certain for filing and service.
4. When it is ordered that proposed findings of fact and conclusions of law, briefs, or memoranda of law be filed and served by the party initiating the proceeding, and where such party fails to file and serve by the date specified without

complying with subsection 3, the board on its own motion or the motion of any party may, in its discretion, dismiss the proceeding. Such failure in the case of an intervenor, protestant, or respondent may be deemed a waiver of the right to participate further in the proceeding, and the board on its own motion or the motion of any party may so order.

5. Exhibits should not be reproduced in a brief, but may, if desired, be reproduced in an appendix to the brief. Every brief of more than twenty pages must contain a subject index, with page references, and the pages where the citations appear. All briefs must be as concise as possible.
6. All briefs must be accompanied by certificate showing service upon all parties or their attorneys who appeared at the hearing. One copy of each brief must be furnished for the use of the board unless otherwise directed by the board or hearing officer.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-05, 61-04.1-08(3)

89-07-01-35. Decisions of the board. In all cases in which more than one member or employee of the board shall act as hearing officer, only an odd number of members or employees shall so act. In all cases in which any matter shall be heard by more than one hearing officer, sitting jointly, and in all cases in which the board shall rule on any issue, motion, or objection, the decision of the board must be determined by vote.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-08(3)

89-07-01-36. Evidence. The admissibility of evidence must be determined generally in accordance with the practice in the district courts of this state, except to the extent that this chapter conflicts therewith. However, the board or the hearing officer may waive the usual common law or statutory rules of evidence where such waiver is necessary to ascertain the substantial rights of the public and interested parties. When objection is made to the admissibility of evidence, the hearing officer shall receive such evidence subject to later ruling by the board.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-06, 61-04.1-08(3)

89-07-01-37. Witnesses. Witnesses will be orally examined under oath before the board or hearing officer. Testimony may also be taken by deposition as provided in subdivision b of subsection 2 of section 89-07-01-08. Written testimony of any witness may be received when properly supported by the oral testimony of its author.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-06, 28-32-11, 61-04.1-08(3)

89-07-01-38. Subpoena. Subpoenas for the attendance of witnesses or for the production of documentary evidence, unless directed by the board upon its own motion, will issue only upon application in writing to the board, or to the hearing officer, except that during a hearing such application may be made orally on the record before the hearing officer who shall have the authority to determine the relevancy and the materiality of the evidence sought and to issue subpoenas if warranted. Written application must specify the general relevance and materiality of the testimony or documentary evidence sought, including, as to documentary evidence, specifications as nearly as may be of the documents desired and the facts to be proved by them. The cost of serving any subpoena must be paid by the party requesting it. Any witness who is subpoenaed under the provisions of this section and who appears at the hearing shall receive the same fees and mileage as witnesses in the district courts of this state, and such costs will be paid by the party at whose insistence the witness appears. No witness fees will be allowed except on a subpoena.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-06, 28-32-09, 61-04.1-08(3)

89-07-01-39. Stipulations. The parties to any proceeding or investigation before the board may, by stipulation in writing filed with the board or orally entered in the record, agree upon the facts, or any portion thereof, involved in the controversy, and any such stipulation may be received in evidence at a hearing and when so received is binding upon the parties with respect to the matters stipulated therein.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-05(6), 28-32-06, 61-04.1-08(3)

89-07-01-40. Documentary evidence. Where relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party shall plainly designate the matter so offered. If the other matter is in such volume as would unnecessarily encumber the record, such book, paper, or document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant and

material matter may be read into the record, or if the board or hearing officer directs, a true copy of such matter in proper form must be received as an exhibit and like copies delivered by the party offering the same to all parties or their attorneys appearing at the hearing who must be afforded an opportunity to examine the entire book, paper, or document and to offer in evidence in like manner any portions thereof found to be material and relevant. Any matter contained in a report or other official document on file with the board may be offered in evidence by merely identifying the report, document, or other file containing the matter so offered.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-06, 61-04.1-08(3)

89-07-01-41. Exhibits.

1. Exhibits must be on paper of good quality and so prepared as to be plainly legible and durable whether printed, typewritten, mimeographed, photographed, or otherwise, and if possible should be folded to size not to exceed eight and one-half by fourteen inches [21.59 by 35.56 centimeters]. Whenever practicable, the sheets of each exhibit and line of each sheet should be numbered, and if the exhibit consists of five or more sheets, the first sheet or title page should contain a brief statement of what the exhibit purports to show with reference by sheet and line to illustrative or typical example contained in the exhibit. Whenever practicable, documents produced by a single witness must be assembled and bound together suitably arranged and indexed so that they may be identified and offered as one exhibit. The source of all material contained in any exhibit should be definitely shown.
2. Two copies of each exhibit will be furnished for the use of the board whenever it shall request. Copies must also be available for all parties of record in a proceeding.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-06, 61-04.1-08(3)

89-07-01-42. Official notice. The board or the hearing officer may take notice of any fact or facts set forth in duly established regulations, annual reports, or any statistical data to which reference is made on the record at the hearing or any facts which are judicially noticed by the courts of this state.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-06, 61-04.1-08(3)

89-07-01-43. Petition to reopen. At any time after the conclusion of a hearing, but before entry of the final order by the board, any party to a proceeding may file with the board a petition to reopen the proceeding for the purpose of taking additional evidence.

1. The petition must set forth clearly the facts claimed to constitute the grounds requiring reopening of the proceeding, including the material changes of fact or law alleged to have occurred since the conclusion of the hearing.
2. A copy of the petition to reopen must be served by the petitioning party upon all parties to the proceedings or their attorneys of record, and a certificate to that effect will be attached to the petition when filed with the board.
3. Within ten days following the service of any petition to reopen, any other party to the proceeding may file with the board the party's answer thereto. Any party not filing such answer is in default thereof and must be deemed to have waived any objection to the granting of such petition.
4. If, after the hearing in a proceeding, either before or after the issuance of its final order, or if no hearing has been held, only after the issuance of its final order, the board shall have reason to believe the conditions of fact or law have so changed as to require, or that public interest requires, the reopening of such proceeding, the board may issue an order for the reopening of the proceeding.
5. The board shall act on any petition to reopen within ten days of receipt thereof and may, in its discretion, hear oral argument on any such petition.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-06, 28-32-14, 61-04.1-08(3)

89-07-01-44. Petition for rehearing.

1. A petition for rehearing of a proceeding must be filed within fifteen days after a copy of the final order has been sent to the petitioning party by the board.
2. The petition must state concisely the alleged errors in the board's decision or order and the specific grounds relied upon by the petitioner. If an order of the board is sought to be vacated, reversed, or modified by reason of matters that have arisen since the hearing and decision or order, or by reason of a consequence that would result from the compliance therewith, the matters relied upon by the petitioner must be set forth in the petition.

3. A petition for rehearing must be served by the petitioner upon all parties to the proceeding or their attorneys of record.
4. Within ten days following the service of such petition, any party to the proceeding may file with the board the party's answer thereto. Any party not filing such an answer is in default thereof and must be deemed to have waived any objection to the granting of such petition.
5. The board shall act on any petition for rehearing within ten days of receipt thereof and may, in its discretion, hear oral argument on such petition.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-14, 61-04.1-08(3)

89-07-01-45. Appeal. Any party to a proceeding conducted pursuant to this chapter or other provisions of North Dakota Century Code chapter 28-32 has the right of appeal, in the manner provided in North Dakota Century Code chapter 28-32, from any adverse ruling by the board. Such appeal may not be a trial de novo but is limited to the hearing record and to those issues specified in North Dakota Century Code section 28-32-19.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 28-32-01(4), 28-32-15, 61-04.1-08(3)

CHAPTER 89-07-02 WEATHER MODIFICATION OPERATIONS

Section

89-07-02-01	General Provisions
89-07-02-02	Definitions
89-07-02-03	Administration
89-07-02-04	Exempt Activities
89-07-02-05	Approval of Exempt Activities
89-07-02-06	License Required
89-07-02-07	Criteria for Issuance
89-07-02-08	Application Procedure
89-07-02-09	Procedure for Issuance
89-07-02-10	Renewal of License
89-07-02-11	Responsibility of Controller
89-07-02-12	Suspension, Revocation, Refusal to Renew a License
89-07-02-13	Restoration of License
89-07-02-14	Application for Permit
89-07-02-15	Procedure for Issuance
89-07-02-16	Permit Form

89-07-02-17	Permit Conditions
89-07-02-18	Permit Expiration
89-07-02-19	Suspension - Revocation - Modification
89-07-02-20	Automatic Suspension of Permit
89-07-02-21	Restoration of Permit
89-07-02-22	Proof of Financial Responsibility
89-07-02-23	Records
89-07-02-24	Reports
89-07-02-25	Bid Procedure
89-07-02-26	Award of Contracts

89-07-02-01. General provisions. This chapter applies to any weather modification operation conducted wholly or partially within North Dakota. This chapter must be applied in conjunction with North Dakota Century Code chapter 61-04.1.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-02, 61-04.1-08(3)

89-07-02-02. Definitions. As used in this chapter, the following words have the meaning given to them below unless otherwise made inappropriate by use or context. Words not defined in this section have the meaning given to them in North Dakota Century Code section 61-04.1-03.

1. "Applicant" means any person who applies for a professional weather modification license.
2. "Board" means the atmospheric resource board.
3. "Director" means the executive director of the atmospheric resource board.
4. "License" means a weather modification license.
5. "Licensee" means a person to whom a license has been issued.
6. "Permit" means a weather modification permit.
7. "Permittee" means a person to whom a permit has been issued.
8. "Operations area" means an area in which weather modification operations are conducted.
9. "Target area" means an area in which the effects of weather modification are desired.
10. "Weather modification apparatus" means any device used to dispense any chemical material used to modify any weather condition.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 61-04.1-03

89-07-02-03. Administration. Except as otherwise provided in subsection 4 of section 89-07-02-15 and subsection 3 of section 89-07-02-26, the powers and duties of the board must be exercised by the director and such other persons as the director may direct.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 61-04.1-08(3)

89-07-02-04. Exempt activities. Any person intending to conduct any exempt activities under the provisions of North Dakota Century Code section 61-04.1-12 shall furnish notice of such intention to the board at least thirty days prior to the time such activities are to begin. Notice must consist of the following information and such other information as the board deems necessary:

1. The name and address of the person giving notice.
2. The name and address of the person who will conduct the activity.
3. A description of the procedures to be used in the operation or the research and development.
4. A description of the object of the activity.
5. The legal description of, and a map showing the area of, the operations area and target area, if any.
6. The date upon which the activity is to commence and its approximate duration.
7. A description of the equipment to be used in conducting the activity.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-12
Law Implemented: NDCC 61-04.1-12

89-07-02-05. Approval of exempt activities. No weather modification activity intended to be conducted pursuant to the provisions of North Dakota Century Code section 61-04.1-12 must be commenced without prior approval of the board if such activity is to be conducted in the out of doors with weather modification apparatus. The board may approve only those activities which provide for the protection of the health, safety, and welfare of those persons who may be affected

by such activities, and which otherwise comply with the provisions of North Dakota Century Code section 61-04.1-12.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-12, 61-04.1-16

89-07-02-06. License required. Every person intending to conduct operations in this state shall designate to the board, on forms furnished by the board, at least one natural person who shall at all times be physically present during all operations for which a permit is required and who will be in control of such operations.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-11, 61-04.1-14

89-07-02-07. Criteria for issuance. The competence of any applicant to engage in weather modification operations must be demonstrated to the board pursuant to North Dakota Century Code section 61-04.1-14 upon the showing that the natural person designated by the applicant pursuant to section 89-07-02-06 has:

1. A minimum of one year of field experience in the management and control of weather modification operations or research; and
2. One of the following requirements:
 - a. Four additional years experience in weather modification operations or research;
 - b. A degree in mathematics, engineering, or the physical sciences, plus two years additional experience in weather modification operations or research; or
 - c. A degree in meteorology; or a degree in engineering, mathematics, or the physical sciences which includes at least twenty-five semester hours of coursework in meteorology.

In determining competency, the board may also consider any other items to be set forth in a license application pursuant to section 89-07-02-08.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-14

89-07-02-08. Application procedure. An applicant for a license shall apply to the board on forms supplied by the board. The forms may require relevant information about the knowledge and experience of the applicant and the natural person designated under section 89-07-02-06, and must include the following:

1. Educational background, at the college and graduate level, of both the natural person designated by the applicant and the other employees of the applicant. This includes the dates of attendance and of graduation, the major and minor subjects, including the number of semester hours of meteorological coursework, the degrees received, and the titles of any thesis or dissertation.
2. Experience in weather modification or related activities of both the natural person designated by the applicant and the other employees of the applicant. Attention should be given to experience with reference to meteorological conditions typical of North Dakota. The applicant should list the dates of each position held by the natural person designated pursuant to section 89-07-02-06, the title of position (indicate whether it was of subprofessional or professional level), the name and address of the employer, a description of the work done (indicate both the magnitude and complexity of the work and the duties and degree of responsibility for the work), and the name and address of the supervisor.
3. Scientific or engineering society affiliations of the natural person designated by the applicant and the grade of membership in and certification by each.
4. Publications, patents, and reports of the natural person designated by the applicant.
5. Three references who will attest to such natural person's character, knowledge, and experience.
6. A list of all jurisdictions in which the applicant has previously filed application for a professional weather modification license. The result of the applications should be indicated.
7. Indication whether a professional weather modification license issued to the applicant in any jurisdiction has ever been suspended or revoked or whether there has been refusal to renew such a license by any jurisdiction. If the answer is yes, the circumstances must be explained in detail.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-14

89-07-02-09. Procedure for issuance. The board shall evaluate the applications, including responses from any references given by the applicant. On the basis of all such information the board, within thirty days of receipt of an application, shall determine whether the natural person designated by the license applicant under section 89-07-02-06 meets the education and experience criteria established by subsections 1 and 2 of section 89-07-02-07 and whether such person and the applicant possess the knowledge and experience necessary to engage in weather modification operations. The board shall issue a license to the applicant who satisfies the requirements of this chapter and North Dakota Century Code section 61-04.1-14. If an applicant for a license or the natural person designated by the applicant do not satisfy any of such requirements, the board shall deny the license.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-14

89-07-02-10. Renewal of license. Forty-five days before expiration of licenses, the board shall mail license application forms to all licensees and request each licensee to complete the form and file the original with the board. The board shall evaluate the available data about the licensee and the natural person designated by the license applicant under section 89-07-02-06 and shall issue a renewal license within thirty days of receipt of the application to each applicant who pays the license fee established by subsection 1 of North Dakota Century Code section 61-04.1-14 and who has the qualifications necessary for issuance of an original license. The board shall deny a renewal license within thirty days of receipt of the application of each applicant who does not pay the renewal fee or who does not possess the qualifications necessary for issuance of an original license or who does not designate a natural person, pursuant to section 89-07-02-06, who satisfies the requirements of section 89-07-02-07.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-14

89-07-02-11. Responsibility of controller. The natural person designated by the license applicant under section 89-07-02-06 is deemed by the board to be in control of and primarily responsible for operations conducted under the terms of any permit. However, nothing in this section may be construed to prevent appropriate enforcement of any regulation, limitation, permit condition, or order against either the permittee, or licensee, whether or not such licensee is a natural person.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-18, 61-04.1-37

89-07-02-12. Suspension, revocation, refusal to renew a license. In addition to the reasons cited in North Dakota Century Code section 61-04.1-15, the board may suspend, revoke, or refuse to renew a license for violation of any permit or permit condition.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-14, 61-04.1-15

89-07-02-13. Restoration of license. At any time after the suspension or revocation of a license or after refusal to renew a license, the board may restore it to the licensee or renew it upon a finding that the requirements for issuance of an original license have been met by the licensee.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-14

89-07-02-14. Application for permit. Application for a weather modification permit must be made on forms furnished by the board. A properly executed application must be submitted to the board by every applicant. The application may contain such information as the board deems necessary, and must include the following information:

1. Name and address of the applicant.
2. Whether a weather modification operational permit issued to the applicant in any jurisdiction has ever been suspended or revoked or whether there has been refusal to renew such a permit by any jurisdiction. If the answer is yes, the circumstances must be explained in detail.
3. If the applicant is a corporation, whether it is licensed to do business in North Dakota.
4. Whether a license has been issued under North Dakota Century Code section 61-04.1-14, and if so, the names, addresses, and professional license numbers of the controller or controllers.
5. Whether professional weather modification licenses issued to such licensee or licensees in any jurisdiction have ever been suspended or revoked or whether there has been refusal to renew such license or licenses by any jurisdiction. If the answer is yes, the circumstances must be explained in detail.
6. Whether proof of financial responsibility has been furnished in accordance with section 89-07-02-22 and North Dakota Century Code section 61-04.1-19.

7. If the operation will be conducted under a contract, the value of the contract.
8. If the operation will not be conducted under a contract, an estimate of the costs of the operation and information as to how the estimate was made.
9. Whether the applicant has paid the application fee.
10. Whether the applicant has North Dakota worker's compensation coverage.
11. A copy of any promotional and advertising material used in connection with negotiations for the contract, if any.
12. Whether the applicant has furnished a performance bond, as required by subsection 4 of section 89-07-02-26.
13. Whether the applicant has furnished the bid bond, as required by North Dakota Century Code section 61-04.1-35.
14. Whether the applicant has registered all pilots and aircraft to be used in the operation for which the permit is sought with the North Dakota aeronautics commission.
15. A complete and detailed operational plan for the operation which includes:
 - a. The nature and object of the operation.
 - b. The legal descriptions of, and a map showing the operations area, and the target area.
 - c. The approximate starting date of the operation and its anticipated duration.
 - d. The kind of seeding agent or agents intended for use and the anticipated rate of their use.
 - e. A list of equipment which will be used and the method or methods of seeding for which they will be used.
 - f. An emergency shutdown procedure which states conditions under which operations will be suspended because of possible danger to the public health, safety, and welfare or to the environment.
 - g. The means by which the operation plans will be implemented and carried out; such as the location of the main operational office and any other offices used in connection with the operation, the location of such ground equipment as seeding generators, radar and evaluation instrumentation, the number and kinds of aircraft which

will be used and the extent to which weather data will be made available to the licensees; and other personnel carrying out the project.

- h. How conduct of the operation will interact with or affect other weather modification operations.
16. The application must show an acceptable plan for evaluation of the operation by the use of surface data reasonably available to the applicant.
 17. Such additional information as will assist the board in deciding whether or not to issue the permit.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16

89-07-02-15. Procedure for issuance.

1. Notice. The board shall give notice of its consideration of an application in accordance with North Dakota Century Code section 61-04.1-17. Notice must be given once a week for two consecutive weeks. The notice must:
 - a. Describe the primary target area.
 - b. Describe the operations area.
 - c. Specify the period of operation including starting and ending dates.
 - d. Describe the general method of operation.
 - e. Describe the intended effect of the operation.
 - f. State the name of the proposed permittee.
2. Hearings. The board shall allow twenty days for public comment, in accordance with North Dakota Century Code section 61-04.1-17, from the date of the last publication of the notice. Any hearing held upon objection received by the board or any hearing held upon the board's own motion must be held upon at least ten days' notice in the county newspaper in which notice of consideration of the application was published. At any such hearing, the board shall make a brief record of testimony received, and shall consider all such testimony in its decision on the permit application.
3. Director's recommendation. At the close of the public comment period provided for in North Dakota Century Code section 61-04.1-17, the director of the atmospheric resource board

shall review all applications for permits which have been received and shall recommend approval or disapproval of such applications and the reasons therefor.

4. Final action by board. The board shall take final action on all applications for permits for which notice of consideration was published, pursuant to North Dakota Century Code section 61-04.1-17, within forty-five days of the close of the public comment period. Approval of applications considered must be by majority vote. In acting on any such applications, the board shall consider any recommendations made by the director of the board and all testimony received at any hearing pursuant to North Dakota Century Code section 61-04.1-17. The board may issue a permit only if it determines that the requirements of subsection 2 of North Dakota Century Code section 61-04.1-16 have been met.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 61-04.1-16, 61-04.1-17

89-07-02-16. Permit form. Each permit shall set forth the permit number, effective period of the permit, name of the permittee, the name of the licensee and the license number, the location of the operation, and such other information, terms, or conditions as the board shall deem appropriate.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 61-04.1-16

89-07-02-17. Permit conditions. The board may attach to any permit such conditions as it may deem appropriate, including any conditions concerning method and time of operation, target and operation areas, safety precautions, and recordkeeping. The Operations Manual for Hail Decrease and Precipitation Increase is hereby made a condition of all permits issued and all permits are subject thereto. Violation of any permit or any permit condition may result in permit revocation or suspension or other appropriate enforcement action by the board.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)
Law Implemented: NDCC 61-04.1-16(2)

89-07-02-18. Permit expiration. All permits which have expired pursuant to North Dakota Century Code section 61-04.1-16 are nonrenewable.

History: Effective November 1, 1988.
General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16

89-07-02-19. Suspension - Revocation - Modification. In addition to the reasons cited in North Dakota Century Code section 61-04.1-18, the board may suspend, revoke, or modify any permit or any provision or condition of a permit if it appears to the board the permittee has violated any of the provisions of the North Dakota Century Code or the terms or conditions of any permit held by the permittee.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-20. Automatic suspension of permit. Any permit issued to any person under this chapter is suspended automatically if such person's weather modification license expires or is suspended, revoked, or not renewed by the board. Automatic suspension shall result in the case of a permit issued to a corporation, partnership, or other business association, if the natural person designated as being in control of the operation in such business association's application for a weather modification license becomes incapacitated, leaves the person's employment, or is in any way unable to continue in control of the operation. A permit of a business association suspended under such circumstances may be reinstated by the nomination of replacement personnel in accordance with section 89-07-02-06.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-21. Restoration of permit. At any time after the suspension, revocation, or modification of a permit, the board may restore it to the permittee, or delete any modification thereof, upon a finding that the requirements for issuance of an original permit have been met by the permittee, or that the conditions requiring modification no longer exist.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-22. Proof of financial responsibility. Proof of financial responsibility is made by showing to the satisfaction of the board that the permittee has the ability to respond in damage to liability which might reasonably result from the operation for which the permit is sought. Such proof of financial responsibility may be shown by any of the following:

1. Presentation to the board of, or proof of purchase of, a prepaid noncancelable insurance policy or a corporate surety bond issued by a company against whom service of legal process may be made in North Dakota against such liabilities in an amount five times the value of an operation conducted under contract or in an amount five times the estimated costs of an operation not conducted under contract.
2. Depositing with the board cash or negotiable securities in an amount five times the value of an operation conducted under contract or in an amount five times the estimated costs of an operation not conducted under contract.
3. Any other manner approved by the board.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-19

89-07-02-23. Records.

1. Daily log. Each permittee shall fill in and retain a daily log of weather modification activities for each unit of weather modification apparatus used during an operation. Such log must include a record of the following information for each day of weather modification operations:
 - a. Date of the weather modification activity.
 - b. Each aircraft flight track and location of each radar unit during each modification mission. Maps may be used.
 - c. Local time when modification activity began and ended. For intermittent operations, the beginning and ending time of the total sequence are acceptable.
 - d. Duration of operation of each unit of weather modification apparatus, in hours and minutes.
 - e. Description of type of modification agent or agents used.
 - f. Rate of dispersal of agent during the period of actual operation of weather modification apparatus, by hour or other appropriate time period.
 - g. Total amount of modification agent used. If more than one agent was used, report total for each type separately.
 - h. Local time when any radar monitoring operations were turned on and turned off.

- i. Type of clouds modified, that is, whether they were stratiform, isolated cumuliform, organized cumuliform, or other types of clouds.
 - j. Remarks indicating such operational problems as equipment failure, weather conditions not conducive to successful performance of the operation, personnel problems, and the like.
2. Monthly totals. Monthly totals must be kept on the basis of the daily logs, listing the total:
 - a. Days during month in which operation conducted.
 - b. Time of operation.
 - c. Amount of each kind of agent used.
 - d. Average rate of dispersal of each kind of agent used.
 - e. Days of each type of cloud treated.
 - f. Duration of operation of each unit of weather modification apparatus, in hours and minutes.
3. Weather records. Each permittee shall obtain and retain copies of all daily precipitation total records available from the national weather service stations for the target area.
4. Addresses of participants. Each permittee shall keep a roster of the names and North Dakota addresses of all employees participating in the state on an operation for which a permit has been issued.
5. Inspection. Duly authorized agents of the board have the authority to enter and inspect any equipment and to inspect any records required by this section and to make copies thereof.
6. Exempted weather modification activities. All persons conducting weather modification activities exempted by the board under the provisions of North Dakota Century Code section 61-04.1-12 shall record and maintain all of the records required of any permittee by this section.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-08(3)

89-07-02-24. Reports.

1. **Monthly.** Within ten days after the conclusion of each calendar month, each permittee shall submit a written report to the board which must include:
 - a. A copy of the summary record prepared under subsection 2 of section 89-07-02-23.
 - b. A copy of the roster of the names and North Dakota addresses of all employees participating in state operations which were prepared under subsection 2 of section 89-07-02-23.
 - c. A copy of the federal interim activity report form filed for that month with the national oceanic and atmospheric administration in accordance with the rules adopted under the authority of Public Law 92-205.
 - d. A narrative account of the manner in which operations during the month did not conform to the operational plan filed in accordance with subsection 15 of section 89-07-02-14.
2. **Final.** Within thirty days after final completion of any operation, each permittee shall file with the board a final report on the operation which must include:
 - a. Copies of the logs prepared in accordance with subsection 1 of section 89-07-02-23, copies of the weather records obtained in accordance with subsection 3 of section 89-07-02-23, and copies of the totals for the entire operational period from the monthly summary records prepared under subsection 2 of section 89-07-02-23.
 - b. A copy of the federal final activity report form filed with the national oceanic and atmospheric administration in accordance with the rules adopted under the authority of Public Law 92-205.
 - c. A narrative account of the manner in which the operation did not conform to the operational plan filed in accordance with subsections 1 through 15 of section 89-07-02-14.
3. **Evaluation.** Within sixty days after completion of any operation for which a permit was issued, each permittee shall file with the board a narrative evaluation of the operation. The data for this report must be assembled and evaluated in accordance with the evaluation plan prepared in compliance with subsections 1 through 16 of section 89-07-02-14.
4. **Exempted weather modification activities.** The board may, in its discretion, require persons operating weather modification activities exempted under sections 89-07-02-04 and

89-07-02-05, but who have been required to keep records pursuant to this section, to file all or any part of such records with the board.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-08(3)

89-07-02-25. Bid procedure.

1. Advertisement and request for bid.

a. In all cases where the board shall undertake to contract for services, supplies, or materials, the estimated cost of which shall exceed ten thousand dollars for any one contract, the board shall advertise for bids for such services, supplies, or materials. Such advertisement must be placed for three consecutive weeks in the official newspaper of the county in which the board's offices are located and in at least one official newspaper in general circulation in the state. In the case of contracts for weather modification operations, such advertisement must also be placed in some trade publication of general circulation among those groups most likely to bid on the contract. The advertisement must state:

- (1) That any prospective bidders may secure such contract specifications and requirements as may be available by applying in writing to the offices of the board.
- (2) The place where and the day and hour when the bids will be opened.
- (3) That the right of the board to reject any and all bids is reserved.
- (4) Each bid must be accompanied by a bidder's bond in a sum equal to five percent of the full amount of the bid, executed by the bidder as principal and by a surety company authorized to do business within this state, conditioned that if the bid be accepted and the contract awarded to the bidder, the bidder, within ten days' notice of award, will execute and effect a contract in accordance with the terms of the bidder's bid and a contractor's bond in the manner specified by subsection 4 of section 89-07-02-26.
- (5) No bid will be read or considered which does not fully comply with the above provisions concerning bonding and no contract will be awarded to any person who has not complied with any applicable licensing requirements of the board.

- b. In the case of contracts for weather modification operations, the board may, in addition to the requirements of subdivision a, prepare a request for bid in which it shall describe the minimum requirements for aircraft, radar, communications, and other equipment, operational and such other requirements as it may deem necessary. Such request for bid must include those items of information specified in paragraphs 2 through 5 of subdivision a. The request may be sent by the board to those persons having a recognized interest in operations contracts.
2. Opening of bids. At the time and place designated in the request for bids, the board shall conduct a public hearing at which it shall open all bids received. After opening each bid, the board shall determine whether such bid meets the minimum requirements set forth in North Dakota Century Code chapter 61-04.1, this chapter, and the request for bid, and then read aloud each bid meeting such minimum requirements.

Bids which do not meet such minimum requirements may not be read or considered.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-33, 61-04.1-35

89-07-02-26. Award of contracts.

1. Deviation from technical requirements. Any or all bids may be rejected by the board on the basis of technical inadequacy or other failure to comply with the specifications included in the request for bids.
2. Point scoring system to be used. Bidders for weather modification operations contracts must be evaluated on the basis of the amount of the bid submitted and a system of points allotted to each bidder for evaluation criteria established by the board. Sole authority for establishment of point values and scoring shall rest with the director. Point scores assigned are final and nonnegotiable. Previous experience and performance must be a criteria to be considered in scoring each bidder. The bidder scoring the lowest cost per point must be awarded the contract in accordance with subsection 3.
3. Low bid preference for North Dakota bidders. In awarding any contract, the board shall award it to the lowest and best bidder, and shall, if all other factors are equal, give that preference for North Dakota bidders established by North Dakota Century Code section 44-08-01.

4. Contractor's bond. Before the board shall award any contract, it shall require the contractor to furnish a surety bond for the faithful performance of the contract in the amount of twenty-five percent of the contract price, conditioned that the contractor and the contractor's agents will, in all respects, faithfully perform all weather modification contracts undertaken with the board and will comply with all provisions of North Dakota Century Code chapter 61-04.1, this chapter, and the contract entered into by the board and the contractor. Should the contract involve the erection, repair, or alteration of any public improvement, the surety bond must be in the full amount of the contract price.

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 44-08-01, 61-04.1-33, 61-04.1-34, 61-04.1-35

APRIL 1989

89-03-01-01. Submission of application for conditional water permit. State water commission form number one hundred eight is the application for a conditional water permit; it will be accompanied by a fee schedule and instructions for completion. Application for a conditional water permit must be submitted to the state engineer on the form provided by the state engineer. Application forms are available at the office of the state engineer in Bismarck. A fee schedule and instructions for completion of the form are attached to it. Information not provided for requested in the application may nonetheless be required by the state engineer.

History: Amended effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-03, 61-04-06(4)(f)

89-03-01-01.1. Priority date. The date of receipt by the state engineer of a properly completed application must be endorsed thereon. Except for water applied to domestic, livestock, or fish, wildlife, and other recreational uses, this date of filing establishes the original priority date of an application, subject to final acceptance of the application and issuance of a perfected water permit by the state engineer. For water applied to domestic, livestock, or fish, wildlife, and other recreational uses, the priority date is determined to be the date the quantity of water was first appropriated.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-04, 61-04-06.3

89-03-01-01.2. Land interest requirement for conditional water permit. Before considering an application, the state engineer may require the applicant to submit evidence of an interest or intent and

ability to acquire an interest in the land on which the point of diversion and conveyance system will be located. If the applicant is seeking a permit for irrigation, the applicant shall also, if the state engineer requests, submit evidence of the applicant's interest in the land to be irrigated. At any time the state engineer may require additional verification of land interest.

History: Effective April 1, 1989.

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

Law Implemented: NDCC 61-04-03

89-03-01-02. Return Correction of unsatisfactory application.

- ~~1. If the application is defective in form or incomplete, it shall be returned within thirty days, along with a statement of the required corrections.~~
- ~~2. The~~ If an unsatisfactory application may be is refiled in an allowed within sixty days from the date the request for corrections is mailed, and if it meets the required corrections and is accepted, it shall take the priority date of its original filing.
- ~~3. Any corrected application filed after the allowed sixty days shall be treated as an original application received on the date of its refiling. The amended priority date and time shall be noted on the corrected application.~~

History: Amended effective April 1, 1989.

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

Law Implemented: NDCC 61-04-04

89-03-01-03. Amendment of application.

1. An applicant, prior to being instructed to give notice as provided in section 89-03-01-04, may amend an application prior to publication and mailing of notice. The applicant may make amendments after publication and mailing of the notice, but only if those amendments do not substantially modify the application, and are approved by the state engineer without affecting the priority date. An applicant, having been instructed to give notice as provided in section 89-03-01-04, may still request an amendment to the application, but the proposed amendment must be submitted to and approved by the state engineer. However, the priority date will be changed to the date the request for amendment is received by the state engineer if the amendment is likely to adversely effect the interests of an applicant who has a permit application pending.

2. In order to protect other intervening applications submitted in good faith, an applicant's ability to amend an application prior to being instructed to give notice as provided in section 89-03-01-04 will be limited, and because a substantial amendment to an a pending application which has been long pending could disrupt the objectives of the appropriation system. For example:
 - a. Assume "applicant a" submits an application on January 1, 1980, to withdraw five hundred acre-feet [616.5 cubic dekameters] from coldwater aquifer. Notice has been published and a hearing conducted on the application. Approval of the application was deferred by the state engineer since hydrologic modeling studies indicate that approval of the application could be to the detriment of existing water rights in the coldwater aquifer.
 - b. Assume "applicant b" submits an application on July 1, 1980, to withdraw four hundred acre-feet [493.2 cubic dekameters] from hot water aquifer. Notice has been published and a hearing conducted on the application. Studies indicate a marginal water supply adequate for the needs of "applicant b".
 - c. Assume "applicant a" requests the state engineer to amend the point of diversion on the applicant's application to a new location over hot water aquifer.
 - d. The state engineer should deny the request to amend since it constitutes a substantial amendment and the approval of that amendment would be to the detriment of a pending application submitted in good faith.
3. A request to amend an application may be by letter or by the submission of an amended state water commission form number one hundred eight application form for a conditional water permit.
4. If notice of the application has been published and mailed, prior to the request to amend, the applicant is required to publish and mail a corrected notice any notices of application of section 89-03-01-04 have been mailed or if the notice of hearing of section 89-03-01-05 has been published, the applicant shall mail corrected notices of application and, as the case may be, publish a corrected notice of hearing and a new hearing is will be held on the amended application. The state engineer has the discretion to relieve the applicant from the duties of this subsection if the state engineer considers the amendment to be insubstantial.

History: Amended effective April 1, 1989.
 General Authority: NDCC 28-32-02, 61-03-13
 Law Implemented: NDCC 61-04-04

89-03-01-03.1. Transfer of an application to another parcel. Requests by the applicant to transfer an application for a water permit to another parcel of land owned or leased by the applicant must be submitted to the state engineer on the form provided by the state engineer.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-03, 61-04-04, 61-04-15

89-03-01-03.2. Assignment of an application to another person. Requests for the assignment of an application for a water permit to another person must be submitted to the state engineer on the form provided by the state engineer. When title of land for which there is a pending application is transferred, either the transferee or the applicant may apply for assignment of the application.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-03, 61-03-13
Law Implemented: NDCC 61-04-03, 61-04-04

89-03-01-03.3. Evaporative losses. When an application involves water stored in a reservoir, a volume of water equal to the mean net evaporative loss over the surface area of the impoundment at the principal spillway elevation must be included in the total volume of water for which application is sought.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-03, 61-03-13
Law Implemented: NDCC 61-04-03, 61-04-06.2

89-03-01-04. Notice of application.

1. When an application ~~complying with article 89-04~~ is filed, the state engineer ~~forwards~~ will forward the appropriate number of completed notice ~~form copies~~ of application forms to the applicant. The notice ~~includes some of~~ will include, but is not limited to, the following essential facts: the places and use of appropriation, the amount of and purpose for which the water is to be used, the applicant's name and address, and the newspaper in which the time and place of hearing will be published.
2. Upon receipt of the completed notice forms, the applicant shall send a notice of application by certified mail to the following:
 - a. Each city located within a one-mile [1.6-kilometer] radius of the proposed ~~water appropriation site~~ point of diversion.

- b. Each record title owner of real estate within a one-mile [1.6-kilometer] radius of the proposed water appropriation site point of diversion (excluding all landowners within the geographical boundary of a city). Within fifteen days of mailing of notice to landowners, record title ownership shall be established through records in the appropriate register of deeds office, treasurer's office, or abstract office. Record title owners of land under a contract for deed shall include both the grantor and grantee of the contract for deed. The determination of title owners must be based on title records on file with the register of deeds of the appropriate county. For land subject to a contract for deed, the contract's grantor and grantee must both be notified.
3. After notice of application has been mailed to those required by this section, the applicant shall complete an affidavit of mailing and return it to the state engineer. The affidavit must state how the applicant determined the record title owners and must list the names and addresses of those who were sent notices by certified mail. This affidavit must be mailed to the state engineer within sixty days from the date the state engineer sent the notices of application to the applicant. If it is not submitted within sixty days, the priority date of the conditional water permit application will be amended to the date on which the state engineer receives the affidavit of mailing. If it is not submitted within one hundred twenty days the application must be considered to have been withdrawn by the applicant.
4. For purposes of clarification, illustrated examples involving the one-mile [1.6-kilometer] radius from the location of the proposed water appropriation site are attached in "Appendix A" as the final page of this article appendix A.
- ~~5. The application's priority date is retained when the completed affidavit is returned within sixty days from the mailing date of the transmittal letter, as provided in subsection 1.~~

History: Amended effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-05

89-03-01-05. Publication of notice of hearing.

1. Upon receipt of ~~a~~ an applicant's completed affidavit of mailing, the state engineer shall set a hearing date for a hearing on the application.
2. Notice of hearing shall be printed, once a week for two consecutive weeks, in The state engineer will provide a notice of hearing to a newspaper of general circulation in the area

of the proposed appropriation site. The notice of hearing includes the following: the places and use of appropriation, the amount of and purpose for which the water is to be used, the applicant's name and address, and the newspaper in which the time and place of hearing will be published point of diversion.

3. A copy of the notice of hearing shall be forwarded to the applicant so that the notice may be reviewed for accuracy.
4. The applicant must pay costs of publication.

History: Amended effective April 1, 1989.

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

Law Implemented: NDCC 61-04-05

89-03-01-06. Filing proof of publication and mailing.

1. Proof of publication, including both the affidavit of mailing and the affidavit of publication, must be filed with the state engineer within sixty days from the state engineer's instruction for publication.
2. When proof of publication is not filed in accordance with subsection 1, the application is treated as an original application filed on receipt of the proof of publication.
Repealed effective April 1, 1989.

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

Law Implemented: ~~NDCC 61-04-05~~

89-03-01-06.1. Consideration of evidence not contained in the state engineer's record. The record of the state engineer's hearing must be closed at the conclusion of the state engineer's formal hearing. It is in the state engineer's discretion to receive testimony and evidence that is not contained in the record. However, the state engineer, before considering any evidence not contained in the record, will transmit the evidence to the parties of record for their examination and comment. The costs of reproducing and transmitting the evidence must be paid in advance by the party offering the evidence. Written comment or a request for a supplemental hearing must be submitted to the state engineer within ten days after transmittal of the additional evidence. Any request for a supplemental hearing must provide sufficient information to allow the state engineer to determine if a supplemental hearing is warranted. If a supplemental hearing is warranted, ten days' notice by certified mail must be afforded the parties of record to inform them of the date, time, place, and nature of the hearing. All supplemental hearings must be held in Bismarck.

History: Effective April 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 28-32-07

89-03-01-06.2. Notice of continuance - Responsibility. If any party to a water permit hearing requests and receives a continuance of a water permit hearing, that party shall provide notice of the continuance as set forth in sections 89-03-01-04 and 89-03-01-05. The cost of the notice must be borne by the party requesting the continuance.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-04

89-03-01-07. Necessity of works and construction of works for a conditional water permit. A permit application may only be considered if works are associated with the proposed appropriation. For any water appropriation that involves the construction of the kind of works that require a construction permit from the state engineer, the water permit may be issued prior to receipt of the construction permit. However, if this is done, the water permit is not valid and has no effect until the construction permit is issued.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-02

89-03-01-08. Point of diversion. Application may not be made for and the state engineer may not issue a water permit that allows for the appropriation of water from more than one water source. An appropriation from the main channel of a river and from a tributary of the river is an example of an appropriation from more than one water source. The state engineer may issue a water permit that allows for points of diversion from different locations on the same water source, provided the state engineer finds good cause for doing so.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-02-14
Law Implemented: NDCC 61-04-06.2

89-03-01-09. Appropriation not requiring water permit. Applications for appropriations of water for which a water permit is not required may be obtained from the state engineer to clearly establish a priority date. A fee schedule and instructions for completion are attached to the form.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-02

89-03-01-10. Emergency or temporary authorization. Application for a temporary appropriation must be made on the form provided by the state engineer. In that request the applicant must indicate the reason for the permit, quantity of water needed, proposed point of diversion, type of use, place of use, rate of withdrawal, source of water, dates of proposed use, and applicant's address. The state engineer will evaluate the request and, if it is granted, the state engineer will list on the temporary authorization conditions that govern the appropriation.

An applicant for emergency use of water, if the situation warrants, may telephone the office of the state engineer requesting immediate use of water. Following an oral request and oral approval by the state engineer for authorization, the above procedures must be completed.

The applicant for temporary or emergency appropriations is responsible for all damages that may be caused to other appropriators and any other individual as a result of an emergency or temporary use of water.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-02.1

89-03-01-11. Competing applications. Applications for conditional water permits from the same source for different uses will be considered competing applications if received by the state engineer within ninety days of each other.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-06.1

89-03-01-12. Extensions and cancellation. Where the time has expired to put all or any portion of the water of a conditional water permit to the beneficial use named in the permit, the state engineer will notify the permittee of this fact. The state engineer will provide the permittee with a form upon which the permittee may request an extension for applying the water to the beneficial use and to explain why an extension should be granted. Except in overriding circumstances no extension will be granted when other conditional water permit applications are pending from a limited source of supply.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-14

89-03-01-13. Report of water usage. The form for reporting water usage pursuant to North Dakota Century Code section 61-04-27 must include the permit number, name of water source, amount of water usage,

pumping rate, and such other information as the state engineer shall require. One form must be filed for each water permit held within the timeframe set by North Dakota Century Code section 61-04-27.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-27

89-03-02-01. Submission of application for a change in point of diversion and change in purpose of use. State water commission form number two hundred forty three is the application Application for a change in point of diversion, state water commission form number two hundred forty four is the application and for a change in purpose of use, and procedures outlined in section 89-03-01-01 are applicable must be submitted to the state engineer on the form provided by the state engineer. Application forms are available at the office of the state engineer in Bismarck. A fee schedule and instructions for completion of the forms are provided with the form. Information not provided for in the applications may be required by the state engineer. A change in purpose of use may only be granted for a use that has a higher priority than the use from which a change is sought.

History: Amended effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-04, 61-04-06.1, 61-04-15.1

89-03-02-02. Return of unsatisfactory application. If the change in purpose of use or change in point of diversion application is defective in form or incomplete not submitted on the proper form or if the form is improperly completed, it shall be returned within thirty days, along with a statement of the required corrections.

History: Amended effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-04, 61-04-15.1

89-03-02-03. Amendment of application. An applicant for change in purpose of use or a change in point of diversion, prior to being instructed to give notice as provided in section 89-03-01-04, may amend an application prior to publication and mailing of notice. An amendment request may be made by letter or by submission of an amended state water commission form number two hundred forty three for a change in point of diversion, or an amended state water commission form number two hundred forty four for a change in purpose of use application.

If notice, prior to the request to amend, any notices of the application has been published prior to receipt of the amendment request, provided by section 89-03-02-05 have been mailed or if the notice of hearing of section 89-03-02-06 has been published, the applicant shall publish and mail a corrected notice mail corrected

notices of application and, as the case may be, publish a corrected notice of hearing and a new hearing shall be held. The state engineer has the discretion to relieve the applicant from these duties of corrected notice if the state engineer considers the amendment to be insubstantial.

History: Amended effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-04, 61-04-15.1

89-03-02-04. Fee. The fee for a change in point of diversion shall be twenty five dollars. Repealed effective April 1, 1989.

General Authority: ~~NDCC 28-32-02, 61-03-13~~
Law Implemented: ~~NDCC 61-03-05, 61-04-15.1~~

89-03-02-05. Notice of application. Notification of an application for change in purpose of use or change in point of diversion shall be handled in the manner outlined in subsections 1 through 4 of section 89-03-01-04.

History: Amended effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-05, 61-04-15.1

89-03-02-06. Publication of notice of hearing. Procedures in section 89-03-01-05 are applicable to publication of a notice of hearing required for an application for change in purpose of use or change in point of diversion.

History: Amended effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-05, 61-04-15.1

89-03-02-07. Filing proof of publication and mailing. Proof of publication, including both the affidavit of mailing and the affidavit of publication, must be filed with the state engineer within sixty days from the state engineer's instruction for publication. Repealed effective April 1, 1989.

General Authority: ~~NDCC 28-32-02, 61-03-13~~
Law Implemented: ~~NDCC 61-04-05, 61-04-15.1~~

89-03-02-08. Assignment of a water permit to another person. Applications for the assignment of a water permit to another person must be submitted to the state engineer on the form provided by the state engineer. When title of land on which there is a water permit for irrigation is transferred, either the transferee or the holder of the

permit may apply for assignment of the water right. An assignment may only be granted if the criteria of North Dakota Century Code section 61-04-06 are met.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-15

89-03-02-09. Transfer of a water permit to another parcel. Applications for the transfer of a water permit to another parcel of land owned or leased by the permittee must be submitted to the state engineer on the form provided by the state engineer.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-03, 61-03-13
Law Implemented: NDCC 61-04-15

89-03-02-10. Change in location of use. No change in location of use of a conditional or perfected water permit will be granted if other appropriators rely upon the return flows from the permittee's beneficial use of water. "Return flow" is residual water that is returned to its source or some other source after beneficial use by a permittee.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-01-01(3), 61-04-15

89-03-02-11. Increase in pumping rate. Requests to increase a permittee's pumping rate must be made in writing to the state engineer. The state engineer, prior to making a decision on the request, will consider what effect the increase has on other appropriators from the water source.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-06.2

89-03-02-12. Water permit for irrigation - Limitation. The state engineer may, to allow for more efficient farming, increase the number of acres that may be irrigated under a water permit.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-06.2

89-03-03-01. Definitions. The following definitions apply to this title:

1. "One-mile radius" means the distance of one mile [1.6 kilometers] from a specific point of diversion as listed in a water permit application. Where the point of diversion is listed as a parcel, the one mile [1.6 kilometers] is measured from the exterior boundary of the area contained in the legal description.
2. "Point of diversion" is the geographical location from which water is appropriated for beneficial use. A point of diversion may be described as a tract of land, that is, a forty, one hundred sixty, or six hundred forty acre tract of land, or it may be described as a specific point using a metes and bounds description.
3. "Works" include canals, ditches, pipelines, and other conveyance systems, irrigation facilities, wells, pumps, dams, dikes, reservoirs, and other devices used for the appropriation or storage of water and land improved for irrigation.

History: Effective April 1, 1989.

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

Law Implemented: NDCC 61-04-02, 61-04-05