

NORTH DAKOTA ADMINISTRATIVE CODE

Supplements 224 through 226

February 1998
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**Prepared by the Legislative Council staff
for the
Administrative Rules Committee**

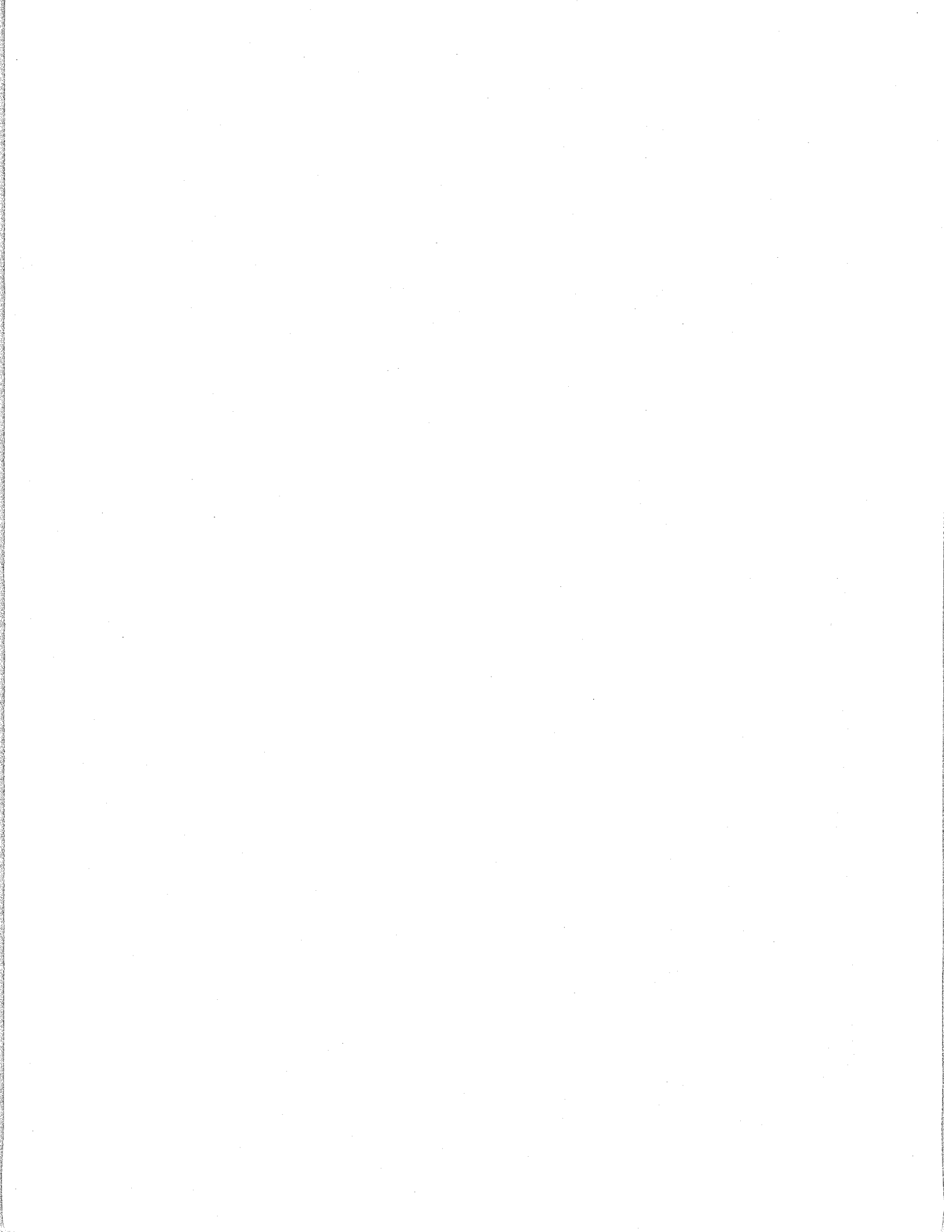
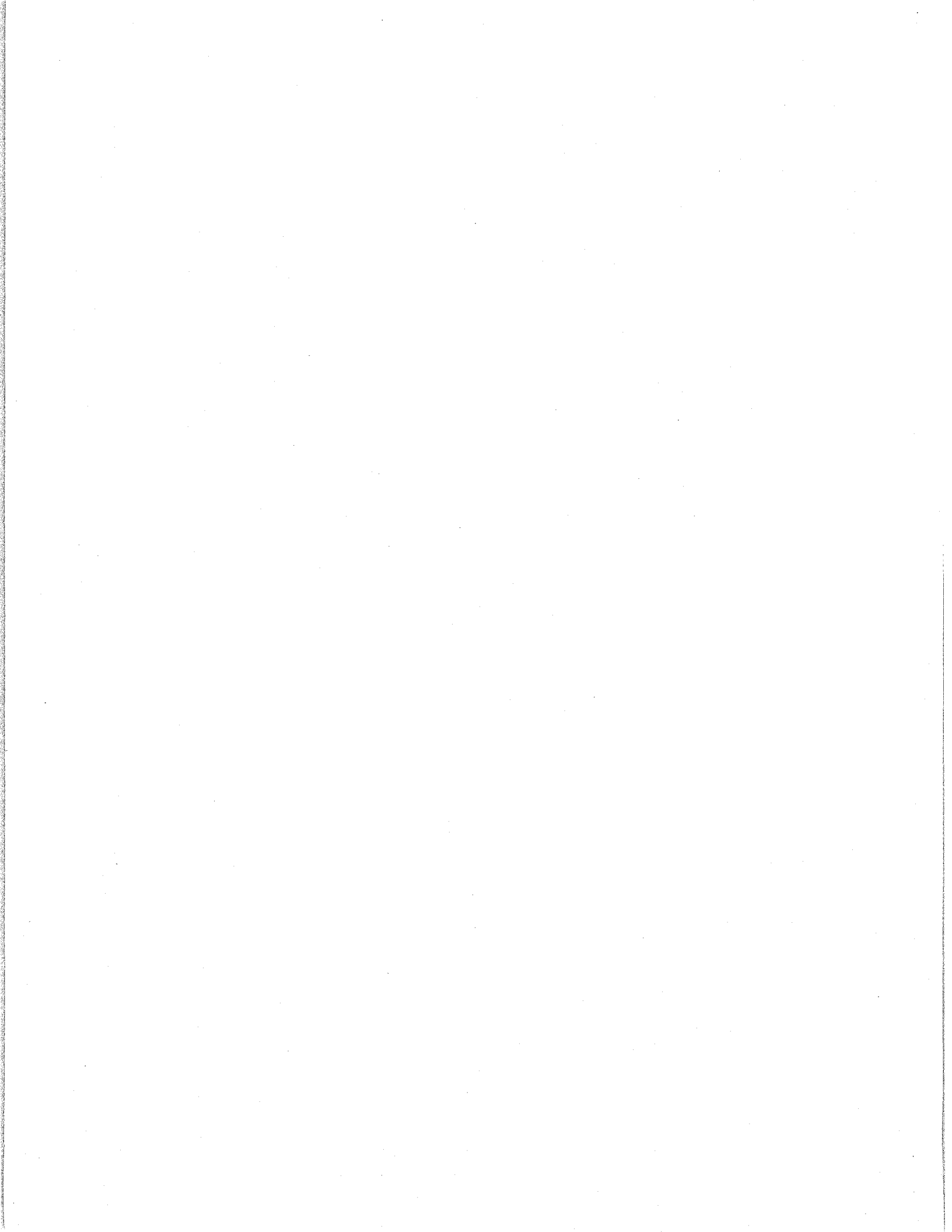


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TITLE 7
Agriculture, Department of

APRIL 1998

CHAPTER 7-12-02

7-12-01-04. General requirements.

1. Frequency of inspection. Existing anhydrous ammonia storage facilities must be inspected once every five years by the chief boiler inspector. New anhydrous ammonia storage facilities must be inspected by the chief boiler inspector prior to any license being issued, and at an interval of once every five years thereafter.
2. Minimum requirements for new storage containers other than refrigerated storage containers.
 - a. American society of mechanical engineers constructed and so stamped;
 - b. National board registered;
 - c. Metal specified tensile strength not exceeding seventy-five seventy thousand pounds per square inch [517500 482636 kilopascals];
 - d. Head and shell materials for storage containers made in accordance with fine grain practice;
 - e. All welds postweld heat treated after construction, for all tanks storage containers ordered or installed after January 1, 1996. An implement of husbandry does not require postweld heat treatment if the implement is fabricated with hot formed heads or with cold formed heads that have been stress relieved; and

- f. Storage containers exceeding six thousand water gallons [22712.4 liters] in capacity must be equipped with a manhole opening.
3. **Minimum requirements for secondhand and reinstalled storage containers other than refrigerated storage containers.**
- a. American society of mechanical engineers constructed and so stamped;
 - b. National board registered or the manufacturer's data report furnished to the chief boiler inspector;
 - c. Metal specified tensile strength not exceeding seventy-five thousand pounds per square inch [517500 kilopascals];
 - d. Heat treated heads or hot formed heads and this indicated on the manufacturer's data report, in lieu of the entire vessel welds being postweld heat treated; and
 - e. All postconstruction repairs and alterations made only by a valid holder of an "R" certificate of authorization from the national board.
4. ~~Exception--for-reinstalled-storage-containers--National-board registration-is-not-required-for-reinstalled-anhydrous-ammonia storage--containers--when--the--container-is-relocated-within North-Dakota--but-the-ownership-does-not-change.~~
5. **Exception for secondhand and reinstalled storage containers.** Metal specified tensile strength may exceed seventy-five thousand pounds per square inch [517500 kilopascals] for secondhand and reinstalled anhydrous ammonia storage containers when the container is relocated within North Dakota and the container has been wet-fluorescent magnetic particle tested by a qualified firm and ~~no-significant-stress-corrosion cracking-has-been-found; as-determined--by--the--chief--boiler inspector~~ any stress corrosion cracking found does not extend beyond the minimum required thickness for original maximum allowable working pressure (MAWP). The minimum required thickness must be determined by code calculation, using the original code of construction. In all cases, all stress corrosion cracking must be removed.
- 6: 5. **Requirements for refrigerated storage containers.** Refrigerated storage containers must be constructed in accordance with section 7 of the 1989 ANSI K61.1 standard. All refrigerated ammonia piping used with refrigerated systems must conform to ASME B31.5, American national standard for refrigerated piping.

- 7- 6. **Hydrostatic test procedures.** Hydrostatic test procedures must comply with the specific requirements of the national board inspection code and be conducted in a manner approved by the chief boiler inspector. ~~The test must be witnessed by and be under the control of the chief boiler inspector.~~ At least one calibrated gauge must be used on the container tested. All air must be vented prior to making the test.
- 8- 7. **Wet-fluorescent magnetic particle test procedures.** Wet-fluorescent magnetic particle test procedures must comply with SNT-TC-1A procedures and the specific requirements of ASME code, section VIII. The person conducting the test must be at least certified as a level II technician, ~~with that person's supervisor being a level III technician.~~ This test may be witnessed by the chief boiler inspector, at the chief boiler inspector's discretion.
- 9- 8. **Welded repairs or alterations, or both, to pressure containers.** Welded repairs or alterations, or both, to pressure containers must only be made by a firm in possession of a valid "R" certificate of authorization from the national board of boiler and pressure vessel inspectors.
- 10- 9. **Requirements for welded piping.** Welders making welds to anhydrous ammonia system piping must be certified in accordance with ASME code, section IX, and must furnish a current QW-484 qualification form upon request. The welder must weld only within the range of the welder's qualifications. Defective weld must be rejected by the chief boiler inspector.
- 11- 10. **Requirements for reinstalled containers and systems.** When a permanent storage container is moved and reinstalled, all fittings and appurtenances must comply with all requirements for new installations.
- 12- 11. **Prohibitions.** In addition to the prohibitions covered by North Dakota Century Code section 19-20.2-08.1, the following are prohibited:
- a. Unattended filling of storage containers and nurse tanks;
 - b. Making repairs or addition of appurtenances directly to pressurized storage containers and nurse tanks;
 - c. Painting or obscuring of ASME data plates on containers;
 - d. Painting of hydrostatic, safety and safety relief valves; and
 - e. Filling nonrefrigerated storage containers and nurse tanks beyond the filling densities permitted by ANSI K61.1, section 5.9.1.

f. Using ASTM A-53 Type F piping for anhydrous ammonia piping systems.

History: Effective July 1, 1996; amended effective April 1, 1998.

General Authority: NDCC 19-20.2-01

Law Implemented: NDCC 19-20.2-01

7-12-01-05. Specific requirements for nonrefrigerated anhydrous ammonia storage facilities.

1. Facility siting requirements:

- a. The siting of the facility must comply with North Dakota Century Code section 19-20.2-05 and this compliance must be verified by the chief boiler inspector.
- b. The facility must be properly licensed by the board of county commissioners in which the facility is located and by the commissioner of agriculture.
- c. The facility must be accessible to emergency vehicles.
- d. A facility identification sign must be displayed stating the name, address, and phone number of the nearest representative, agent, or owner. An emergency phone number must also be displayed. This sign must be posted near the entrance of the facility. Letters must be at least two inches [50.8 millimeters] high, and the sign visible from no less than fifty feet [15.24 meters].

2. Storage container requirements:

- a. The ASME manufacturer's data report must be provided when requested by the chief boiler inspector, should repairs, alterations, or metallurgical data be required.
- b. The container must be ASME constructed, if installed after November 1, 1987.
- c. The container must be national board registered, if installed after November 1, 1987. For secondhand and reinstalled storage containers, a manufacturer's data report must be furnished to the chief boiler inspector if the container is not national board registered.
- d. The condition of the paint shall be such that no more than ten percent of the tank surface is corroded or missing paint.
- e. Container markings and/or decals must meet the requirements of ANSI K61.1.

- f. Postconstruction repairs and alterations, if made, must meet the requirements of the national board inspection code and the proper documentation must be available for inspection if requested by the chief boiler inspector.
 - g. Container fittings, nozzles, and welded seams must be in compliance with the code of construction as judged by the requirements of the national board inspection code.
 - h. Supports and saddles adequately must support the container as required by ANSI K61.1, and there must be no concentration of excessive loads on the supporting portion of the shell.
 - i. A container liquid level gauge must be installed and be operable.
 - j. A pressure gauge graduated from zero to four hundred pounds per square inch to [2760 kilopascals] and designated for use in anhydrous ammonia service must be installed on the container.
 - k. Safety valve manifolds meeting the requirements of ANSI K61.1 must be installed between the container and the safety valves required to be installed.
 - l. Container safety valves must be ASME and national board stamped.
 - m. Container safety valves must be date current and in operable condition.
 - n. Container safety valves must have rain caps in place.
 - o. Installed safety valve capacity must comply with appendix B of ANSI K61.1. The installed capacity must be sufficient with a manifold or manifolds in operation as designed by the manufacturer.
3. Requirements for piping and appurtenances:
- a. Excess flow valves must be installed at all tank openings, or in lieu thereof, approved quick-closing internal valves may be installed which, except during operating periods, must remain closed.
 - b. Main stop valves must be labeled for anhydrous ammonia service and be in good operating condition.
 - c. Main stop valves must be labeled or color coded to indicate liquid or vapor service.

- d. System piping must be at least schedule 40 where welded and schedule 80 where threaded. Threaded and seal welded connections must be at least schedule 80. Piping must be at least ASTM A-53 Grade B seamless or electric resistance welded (ERW) pipe. ASTM A-53 Type F piping is prohibited.
- e. Welded piping must be welded by an ASME section IX certified welder, and proof of the certification must be available if requested by the chief boiler inspector.
- f. Threaded piping must not be used underground for new installations.
- g. Pipe and pipe fittings must not be cast iron, brass, copper, zinc, or galvanized.
- h. Flexible fittings or expansion joints, or both, must be used where necessary.
- i. Underground piping must be installed using approved corrosion protection.
- j. For new systems, the system piping must be pressure tested at the working pressure of the system and the integrity of the system proven.
- k. Approved bulkheads or breakaways, or both, must be provided at nurse tank fill stations. Emergency shutoff valves must be in place on liquid and vapor piping before the bulkhead or breakaways, or both. Approved cables must be connected to the emergency shutoff valves and these cables can be activated both at the valves and at a remote location. Breakaway action will close the valves.
- l. Approved bulkheads and breakaways must be provided at truck unloading stations. There must be an emergency shutoff valve on the vapor piping on the system side of the bulkhead and a backcheck valve is installed on the liquid piping on the system side of the bulkhead. Approved cables must be connected to the emergency shutoff valve and these cables can activate the valve both at the valve and at a remote location.
- m. Date current hydrostatic relief valves must be installed wherever liquid may become trapped between closed valves.
- n. Transfer hoses must be date current and not be weather checked or cut to expose the cords.
- o. Transfer pump, if used, must be rated for anhydrous ammonia service.

- p. A pressure gauge graduated from zero to four hundred pounds per square inch [0 to 2760 kilopascals] and designated for use in anhydrous ammonia service must be installed on the discharge side of the pump, before the bypass piping loop. This gauge must be a liquid filled gauge.
- q. Compressors, if used, must be rated for anhydrous ammonia service.
- r. Approved pressure gauges and stop valves must be installed on the suction and discharge sides of the compressor.
- s. An approved date current pressure relief valve of sufficient capacity must be installed on the discharge side of the compressor prior to any shutoff valve.
- t. Locks and lock boxes must be installed on the main system stop valve, when the facility is unattended.
- u. The system must be leak free in operation.
- v. Adequate provisions for protection of exposed piping and appurtenances from moving vehicles at the facility must be in place.
- w. Loading platforms or other equivalent method must be used to allow safe filling of nurse tanks. Climbing on tires is not permitted for filling nurse tanks.
- x. For facilities installed after January 1, 1998, a bleeder valve must be installed at truck unloading stations to relieve pressure prior to connecting or disconnecting the truck transfer hose. The bleeder hose must be vented to a suitable water container.

4. Requirements for safety equipment:

- a. The following personal safety equipment must be available at a readily accessible location:
 - (1) Two full face gas masks with spare date current ammonia canisters;
 - (2) One pair of protective gloves impervious to ammonia;
 - (3) Chemical splash goggles that are ANSI Z87.1-1989 rated;
 - (4) One pair of protective boots impervious to ammonia;
 - (5) One "slicker suit" impervious to ammonia;

- (6) Safety shower or open container holding at least one hundred fifty gallons [567.8 liters] of clean water; and
 - (7) Adequate fire extinguishers.
- b. A telephone, or other method of communication, is required to be on location at each anhydrous ammonia storage facility during transfer operations.

History: Effective July 1, 1996; amended effective April 1, 1998.

General Authority: NDCC 19-20.2-01

Law Implemented: NDCC 19-20.2-01

7-12-01-06. Specific requirements for nurse tanks.

1. The ASME manufacturer's data report must be provided, if requested by the chief boiler inspector, should repairs or alterations become necessary.
2. The container must be ASME constructed, if installed after November 1, 1987.
3. The container must be national board registered, if installed after November 1, 1987. For secondhand storage containers, a manufacturer's data report must be furnished to the chief boiler inspector if the container is not national board registered.
4. The data plate must be readable and not painted over or obscured.
5. The condition of the paint shall be such that no more than ten percent of the tank surface is corroded or missing paint.
6. Container markings and decals must meet the requirements of ANSI K61.1:
 - a. "1005" department of transportation decal must be in place on sides and heads.
 - b. "ANHYDROUS AMMONIA" decal must be in place on sides and heads.
 - c. Legible transfer and safety decals must be in place.
7. The container must be numbered or otherwise identified.
8. A department of transportation-approved slow moving vehicle sign must be in place and in good condition.

9. Postconstruction repairs and alterations, if made, must meet the requirements of the national board inspection code and the proper documentation must be available for inspection if requested by the chief boiler inspector.
10. Container fittings, nozzles, and welded seams must be in compliance with the code of construction as judged by the requirements of the national board inspection code.
11. A container liquid level gauge must be installed and must be operable.
12. A pressure gauge graduated from zero to four hundred pounds per square inch [0 to 2760 kilopascals] and designated for use in anhydrous ammonia service must be installed on the container.
13. Container safety valves must be ASME and national board stamped.
14. Container safety valves must be date current and in operable condition.
15. Container safety valves must have rain caps in place.
16. The transfer hose must be date current and not be weather checked or cut to expose the cords. If the transfer hose is not installed on the nurse tank, a record of the age, condition, and user of the transfer hose must be maintained at the office of the facility.
17. An "ACME" type fitting must be used to secure the transfer hose.
18. Protective gloves and Z87 rated goggles must be in a safety kit attached to the container or assigned to each nurse tank when the container is filled. If the gloves and goggles are assigned, a record of this assignment must be maintained at the office of the facility.
19. Five gallons [18.93 liters] of clean water in a container must be carried on the nurse tank.
20. A hydrostatic relief valve or approved built-in hydrostatic relief must be installed at the main liquid stop valve. This hydrostatic relief valve must be date current and equipped with a rain cap.
21. Protective caps must be in place for the main liquid and vapor connections.

22. Excess flow valves must be in place on the liquid and vapor connections at the tank. Excess flow valves may be incorporated into the main stop valves on the tank.
23. The wagon tires must be in a safe and serviceable condition, with no cords showing.
24. The wagon must be equipped with two suitable safety chains and a hitch pin.
25. The wagon tongue and undercarriage must be in a condition to provide safe transport.
26. The pressure vessel and appurtenances must be leak free in service.
27. Fittings and safety valves must be protected from physical damage, such as rollover, by roll cages or other protective devices.
28. An implement of husbandry may be fabricated from steel having a specified tensile strength not to exceed seventy-five thousand pounds per square inch [517110 kilopascals].

History: Effective July 1, 1996; amended effective April 1, 1998.

General Authority: NDCC 19-20.2-01

Law Implemented: NDCC 19-20.2-01

7-12-01-08. Alternate procedures for transferring anhydrous ammonia directly from cargo tanks to nurse tanks.

1. Cargo tanks must have current United States department of transportation certification and container labeling and proof of such certification must be furnished to the commissioner of agriculture initially and within thirty days of the recertifications required by the department of transportation.
2. Adequately sized wheel chocks must be used to prevent movement of both nurse tanks and cargo tanks prior to the start of any transfer operations.
3. Cargo tanks must have all safety equipment required by ANSI K61.1 - 1989:
 - a. At least five gallons [18.93 liters] of clean water in a container;
 - b. One pair of protective gloves impervious to ammonia;
 - c. A full facepiece gas mask with an ammonia canister and at least one spare canister; and

- d. Chemical splash goggles.
4. Nurse tanks must be equipped with all safety equipment required by ANSI K61.1 - 1989:
 - a. At least five gallons [18.93 liters] of clean water in a container;
 - b. A legible decal depicting step-by-step ammonia transfer instructions; and
 - c. A legible decal depicting first-aid procedures to follow if injured by ammonia.
5. Transfer operations must take place:
 - a. Only on firm, well-prepared, level surfaces;
 - b. Only during daylight hours, or with proper lighting;
 - c. Only on the owner's or consignee's own property, to include rented or leased property;
 - d. At least fifty feet [15.24 meters] from the line of any adjoining property which may be built upon, or any highway or railroad mainline;
 - e. At least four hundred fifty feet [137.16 meters] from any place of public assembly or residence;
 - f. At least seven hundred fifty feet [228.6 meters] from any institutional residence; and
 - g. No closer than one mile [1.61 kilometers] from any city limits.
6. Initial written notification of intent to transfer anhydrous ammonia from any cargo tank to nurse tanks shall be given to the commissioner of agriculture, the board of county commissioners, and the county emergency manager in the county in which transfer operations will take place. This notification must be made by the owner or the consignee.
7. Any additional requirements of the local jurisdiction (county and township) must be complied with fully.

History: Effective July 1, 1996; amended effective April 1, 1998.

General Authority: NDCC 19-20.2-01

Law Implemented: NDCC 19-20.2-01

TITLE 18.5
Credit Review Board

APRIL 1998

CHAPTER 18.5-01-01

18.5-01-01-01. History.

1. The provisions of North Dakota Century Code chapter 6-09.10 were established in 1985, setting up a credit review board to deal with the matter of ever increasing farm foreclosures. The board was given authority to negotiate with lenders on behalf of farmers and to provide interest subsidies to eligible farmers for eligible purchases, refinancing, or redemptions of the farmer's home-quarter.
2. In 1987, North Dakota Century Code chapter 6-09.10 was amended to consolidate the negotiations undertaken by the board and the department of agriculture's farm credit counseling program. North Dakota Century Code sections 4-01-19.2 and 4-01-19.3 were repealed.
3. In 1987, North Dakota Century Code sections 6-09.10-08.1 through 6-09.10-08.6 were added to North Dakota Century Code chapter 6-09.10 to provide further assistance to financially distressed farmers and small businesses in the form of legal and tax assistance. Two hundred thousand dollars were appropriated to the board to provide such assistance under the administration and supervision of the commissioner of agriculture and the board.
4. In 1989, North Dakota Century Code chapter 6-09.10 was further amended. The farm credit counseling program was renamed the agricultural mediation service. The commissioner of agriculture was given additional authority to contract with

mediators to mediate between a farmer and a farmer's creditors.

5. In 1991, North Dakota Century Code chapter 6-09.10 was amended, authorizing the agricultural mediation service to negotiate and resolve any farmer-related problems.
6. In 1993, North Dakota Century Code chapter 6-09.10 was amended to expand the number of members of the board and to increase its responsibilities to include recommending policies and procedures to the industrial commission and to the state board of vocational education, and to coordinate a farm management delivery system.
7. In 1995, North Dakota Century Code chapter 6-09.10 was amended to permit use of the home-quarter purchase fund for coordination and operation of a farm management delivery system.
8. In 1997, North Dakota Century Code chapter 6-09.10 was amended to transfer the coordination and operation of the farm management delivery system from the credit review board to the state board for vocational and technical education. North Dakota Century Code sections 6-09.10-08.1 through 6-09.10-08.6 were repealed.

History: Effective January 1, 1988; amended effective December 1, 1989; January 1, 1992; June 1, 1994; February 1, 1996; April 1, 1998.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

18.5-01-01-01.1. Definitions.

1. The definitions as set forth in section 18.5-02-01-00.1 are applicable to this chapter.
2. "Board" means the credit review board.
3. ~~"Coordinator" means the coordinator of the farm management delivery system.~~
4. ~~"Farm management delivery system" means the coordinated effort among various entities and the credit review board to provide farmers with education and analysis of their farm businesses through farm budgeting, financial planning, production practices, and enterprise analysis. The system will be promoted and referred to as farm management for profit.~~
5. "Home-quarter purchase fund" means the fund established at the Bank of North Dakota and includes interest earned on moneys in that fund.

6. -- "Moneys -- generated -- by -- the -- farm -- management -- delivery -- system" means any moneys used to pay related expenses other than the home-quarter-purchase fund.

History: Effective June 1, 1994; amended effective February 1, 1996; April 1, 1998.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-02.1, 6-09.10-03

18.5-01-01-02. Coordination of farm assistance programs. The credit review board is charged with responsibility in providing assistance to eligible farmers and other persons pursuant to the provisions of North Dakota Century Code chapter 6-09.10.

1. The responsibilities and duties under North Dakota Century Code chapter 6-09.10 belonging solely to the board are as follows:

a. Adopting written policies governing negotiators, mediators, and staff of the agricultural mediation service including:

(1) Approving interest rate buydowns as authorized by North Dakota Century Code sections 6-09.10-05, 6-09.10-07, and 6-09.10-08.

(2) Charging reasonable fees to farmers and other persons for any assistance provided pursuant to North Dakota Century Code chapter 6-09.10. Mediation fees must be twenty-five dollars per hour for the farmer and for each creditor of the farmer attending mediation meetings to whom the farmer owes ten thousand dollars or more. For noncredit-related disputes, parties must each be charged twenty-five dollars per hour for attending mediation meetings. The board may waive the payment of all or a portion of mediation fees for anyone that the administrator certifies is unable to pay such fees. Fees must be fifteen dollars per hour per farmer for providing negotiating assistance. However, no farmer may be charged for the first ten hours of negotiating assistance provided by a negotiator. The board may waive payment of all or a portion of the fees to be paid for providing negotiating assistance for any farmer that the administrator certifies is unable to pay such fees.

(3) Making all decisions on deferral, restructure, or waiver of payment, or other reasonable loan servicing options, for assistance provided under the provisions of North Dakota Century Code sections 6-09.10-05 and 6-09.10-08.4.

- b. Recommending policies and procedures to the industrial commission regarding farm loan programs of the Bank of North Dakota.
 - c. Recommending policies for the adult farm management program to the state board of vocational education.
 - d. ~~Coordination--and--operation--of~~ Participation in a farm management delivery system among the adult farm management program, agricultural mediation service, and North Dakota state university.
 - e. Adopting rules implementing any of the provisions of North Dakota Century Code chapter 6-09.10.
2. The responsibilities and duties belonging solely to the commissioner under North Dakota Century Code chapter 6-09.10 are as follows:
- a. Establishing and administering the agricultural mediation service.
 - b. Appointing the administrator of the service.
 - c. Hiring staff and hiring or contracting with mediators and negotiators to mediate between eligible farmers and other persons.
3. ~~The commissioner and the board shall have joint responsibility and duty under North Dakota Century Code chapter 6-09.10 as follows:~~
- a. ~~Implementing and administering legal and tax assistance to eligible farmers and small businesses as authorized by North Dakota Century Code sections 6-09.10-08.1 through 6-09.10-08.5.~~
 - b. ~~Selecting appropriate cases for assistance to be made pursuant to North Dakota Century Code sections 6-09.10-08.1 through 6-09.10-08.5 among eligible farmers and small business persons.~~
 - e. ~~Administering payment for assistance to any farmer or small business who receives assistance under North Dakota Century Code sections 6-09.10-08.1 through 6-09.10-08.5.~~

History: Effective January 1, 1988; amended effective December 1, 1989; January 1, 1992; June 1, 1994; February 1, 1996; April 1, 1998.

General Authority: NDCC 6-09.10-09, 28-32-02.1

Law Implemented: NDCC 6-09.10-02.1, 6-09.10-03, 6-09.10-05, 6-09.10-06, 6-09.10-07, 6-09.10-08, 6-09.10-08.1, 6-09.10-08.2, 6-09.10-08.3, 6-09.10-08.4, 6-09.10-08.5, 28-32-02.1

18.5-01-01-05. Inquiries.

1. Any inquiries concerning assistance to be provided by the agricultural mediation service through its negotiators and mediators should be addressed to:

Administrator
Agricultural Mediation Service
Department of Agriculture
State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

2. Any inquiries concerning the board or laws administered by the board should be addressed to:

Chair
Credit Review Board
6th Floor, State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

- ~~3. Any inquiries concerning legal or tax assistance to be provided under the supervision and administration of the commissioner and the board should be addressed to the same person as in subsection 1.~~

History: Effective January 1, 1988; amended effective December 1, 1989; January 1, 1992; June 1, 1994; April 1, 1998.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

CHAPTER 18.5-02-01

18.5-02-01-00.1. Definitions. In title 18.5, unless the context or subject matter otherwise requires:

1. "Administrator" means the administrator of the agricultural mediation service, appointed by the commissioner to administer the service.
2. "Commissioner" means the commissioner of the state department of agriculture.
3. "Formal mediation" means the process of formal meetings between a farmer and another person, initiated by request of either the farmer or another person. Formal mediation meetings must be held with the objective of obtaining a voluntary settlement of the farmer's problems and providing for the future conduct of financial relations between the parties. Settlement must be satisfactory to all parties and must have a goal of permitting the farmer to reside in the farm residence and to continue to produce agricultural commodities. Formal mediation must always result in issuance of a mediation report. A negotiator may be assigned to assist a farmer in formal mediation.
4. "Informal mediation" means the process of assisting a farmer to obtain settlement. The administrator shall assign a negotiator to assist an eligible farmer in informal mediation. The negotiator will provide negotiation assistance and information to the farmer regarding problems.
5. "Initiating creditor" means a creditor that has notified the farmer of the availability of mediation.
6. "Mediator" means a person hired by or contracting with the commissioner to do formal mediation work as directed by the administrator.
7. "Negotiator" means a person hired by or contracting with the commissioner to do the negotiating work of informal and formal mediation as directed by the administrator.
8. "Party" means the following:
 - a. For the purposes of chapters 18.5-02-03 and 18.5-02-03.1, any person notified of or attending a formal mediation meeting. For noncredit mediations, only participants who requested, initiated, or offered mediation will be charged mediation fees. Participants attending mediation for the purpose of providing technical support will not be charged.

- b. For the purposes of chapter 18.5-02-02, any person as determined by the administrator based upon a review of the file and interviews with the negotiator and farmer, if necessary. Parties include persons who provided to, or discussed with, the negotiator information ordinarily deemed confidential, such as financial, mental health, and similar personal information.
9. "Person" means a person as defined in subsection 5 of North Dakota Century Code section 6-09.10-01.
 10. "Requesting creditor" means a creditor that has requested mediation.
 11. "Service" means the agricultural mediation service established by the commissioner to disseminate information to farmers concerning farm problems, to assist in resolving problems, to provide negotiators to negotiate on behalf of the farmer, and to provide mediators to mediate between a farmer and any other person.
 12. "Staff" means a person or those persons hired by the commissioner, who are not mediators or negotiators, but who work directly under the supervision of the administrator to assist in administering the service or to assist the credit review board in its responsibilities and duties.

History: Effective January 1, 1988; amended effective December 1, 1989; January 1, 1992; June 1, 1994; April 1, 1998.

General Authority: NDCC 6-09.10-09

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

18.5-02-01-08. Program implementation. ~~The---board---shall coordinate-and-operate-a-program-to-provide-farmers-with-access--to--the farm--management--delivery--system---The-program-shall-coordinate-a-farm management-delivery-system-among--the--adult--farm--management--program, agricultural-mediation-service,-and-North-Dakota-state-university-~~

~~1.--Each--of--these-three-entities-shall-report-at-least-quarterly to-the-credit-review-board-addressing-the-following:~~

~~a.--The-extent-and-nature-of-assistance-provided-to-farmers-~~

~~b.--Number-of-farmers-assisted-~~

~~c.--Recommendations--to--the--credit-review-board-on-how-these three--entities--and--others,--if--appropriate,--can--most effectively-and-efficiently-serve-farmers-~~

~~d.--Future-plans-and-goals-of-the-entity-~~

~~e.--Other-matters-as-deemed-appropriate-by-the-board-~~

2. --None--of--these--three--entities--is--entitled--to--receive--more--than--forty--percent--of--the--moneys--generated--by--the--farm--management--delivery--system.
3. --The--farm--management--delivery--system--shall--meet--or--exceed--the--requirements--for---farmers---home---administration---borrower--training.
4. --Additional--responsibilities--and--duties--of--the--board--are--as--follows:
 - a. --Charge--a--reasonable--tuition--fee--to--help--defray--operating--expenses--and--salaries--associated--with--the--program.
 - b. --Award--scholarships--based--on--financial--need.
 - c. --Use--any--moneys--in--the--fund--to--pay--salaries--and--operating--expenses--not--covered--by--moneys--generated.
5. --Additional--responsibilities--and--duties--of--the--administrator--are--as--follows:
 - a. --Oversee--the--administration--of--the--farm--management--delivery--system.
 - b. --Supervise--a--coordinator--of--the--farm--management--delivery--system--who--will--be--hired--by--the--commissioner--with--advice--and--consent--of--the--board.
 - (1) --The--coordinator--shall--report--directly--to--the--administrator--and--to--the--board--at--regular--monthly--meetings.
 - (2) --The--coordinator--shall--coordinate--activities--regarding--the--farm--management--delivery--system--among--the--participating--entities. Repealed effective April 1, 1998.

History: Effective June 1, 1994; amended effective February 1, 1996.
 General Authority: NDCG-6-09:10-09
 Law Implemented: NDCG-6-09:10-02:1

TITLE 32
Cosmetology, Board of

MARCH 1998

CHAPTER 32-01-01

32-01-01-01. Organization of board of cosmetology.

1. **History and functions.** The 1927 legislative assembly passed a Cosmetology Practice and Training Act, codified as North Dakota Century Code chapter 43-11. This chapter requires the governor to appoint a state board of cosmetology. The board regulates and licenses all cosmetologists, manicurists, estheticians, instructors, students, schools, and salons. It is the duty of the board to protect ~~the public against poorly trained cosmetologists--as--well--as--to--protect~~ the public health, welfare, and safety through the prevention of the creating and spreading of infectious and contagious diseases.
2. **Board membership.** The board consists of three members appointed by the governor. Each member has a three-year term, and the terms are so arranged that only one term expires on June thirtieth of each year.
3. **Board officers.** Each year the board meets and elects a president and secretary from their own number. All records of the board shall be kept at the board office.

4. **Board office.** The address of the board office is:

North Dakota State Board of
Cosmetology
1102 South Washington
Suite 200
Bismarck, North Dakota 58501

History: Amended effective October 1, 1987; July 1, 1988; September 1, 1989; April 1, 1994; March 1, 1998.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 43-11-03, 43-11-04

CHAPTER 32-01-02

32-01-02-01. Definitions. The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 43-11, except:

1. "Cosmetology establishment" includes businesses, premises, and schools required to have a certificate of registration from the North Dakota board of cosmetology pursuant to North Dakota Century Code chapter 43-11.
2. "Cosmetology school" means any school teaching any or all of the practices of cosmetology.
3. "Disinfect" means to destroy harmful micro-organisms; to free from infection.
4. "Disinfectant" means an agent used to kill germs.
5. "Good repair" means that an item is soil free with no holes, frayed wires, or tears in covering and fully operational for the purpose intended.
6. "Infectious disease" means any disease which can be transmitted, directly or indirectly, from person to person.
- 4: 7. "Occupation of cosmetologist" includes the practice of esthetics and manicuring as defined in North Dakota Century Code section 43-11-01.
- 5: 8. "Sanitized" means rendered free of dust, foreign material, and agents of disease or infestation through use of effective cleaning and disinfecting processes.
- 6: 9. "Sanitizer" means a container holding a sanitizing agent which is large and deep enough to completely submerge the tools and implements to be disinfected.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-01, 43-11-11, 43-11-27.1

CHAPTER 32-02-01

32-02-01-01. Rules posted. The owner or manager of every cosmetology salon and school shall keep a copy of the rules of sanitation posted in a conspicuous place in each salon and school for the information and guidance of all persons employed or studying therein ~~and the public generally.~~

History: Amended effective March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-02. Space dimensions and requirements.

1. **Cosmetology salon.** To maintain adequate conditions of sanitation and in the interest of the public health and welfare, each cosmetology salon shall have a minimum adequate workspace of one hundred fifty square feet {13.94 square meters} to maintain a safe and sanitary condition for a cosmetology salon ~~operated by a licensed manager-operator.~~ In addition to such workspace, the cosmetology salon shall have a reception room, supply room, toilet facilities, facilities to maintain sanitary conditions, and hallways. There shall be a minimum of an additional thirty square feet {2.79 square meters} adequate workspace for each additional operator or manager-operator in the salon.
 - a. **Separate entrance.** ~~Each cosmetology salon shall have a separate public entrance and exit approved by the board.~~ All public entrances and exits must meet the local or state building codes.
 - b. **Cosmetology salon separate.** ~~Each cosmetology salon shall be separated from living quarters and any other business by a solid, nontransparent wall from floor to ceiling containing no openings or doors.~~ A cosmetology salon must be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.
 - c. **Resident salons.** Each cosmetology salon in a residential building shall maintain an entrance separate from the entrance to living quarters ~~and remaining space, and entrances through garages or any other rooms are not permitted.~~ ~~There shall be a solid wall with no openings or doors between the salon and living quarters and remaining space.~~ No cosmetology services shall be conducted in any room used as living or sleeping quarters. A cosmetology salon must be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

d. Mobile home salons. Mobile homes, motor homes, trailers, or any type of recreational vehicles containing a cosmetology salon shall be permanently set on a foundation. Each cosmetology salon in such mobile home, motor home, trailer, or any type of recreational vehicle shall maintain an entrance separate from the living quarters ~~and--remaining-space,-and-there-shall-be-a-solid wall-with-no-openings--or--doors--between--the--salon--and living--quarters--and--remaining--space.~~ No cosmetology services shall be conducted in any room used as living or sleeping quarters. A cosmetology salon must be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

2. Cosmetology schools. To maintain adequate conditions of sanitation and in the interest of the public health and welfare, each cosmetology school shall have ~~a-minimum-of-three thousand-square-feet-{278.71-square-meters}-of--floor--space; plus--an--additional--thirty-five--square--feet--{3.25--square meters}-for-each-student-enrolled-in--the--cosmetology--course and-an-additional--thirty-five-square-feet--{3.25-square-meters} per-student-enrolled-in-either-the-manicurist--or--esthetician course~~ adequate square feet of floor space to maintain a safe and sanitary condition for a cosmetology school. Such floor space must include a business office, reception room, clinic laboratory practice room, dispensary, student lounge, two lavatories, hallways, and classrooms for training a minimum of forty students. In addition, for the manicurist and esthetician courses, floor space must include separate classrooms with adequate space to teach students enrolled. ~~An additional--thirty--square--feet--{2.79-square-meters}-of-floor space-per-student-shall-be-required-for-each-student--enrolled over-the-original--forty-students.~~

~~a--Separate--entrance---Each-cosmetology-school-shall-have-a separate-public-entrance-and-exit-approved-by-the-board.~~

b. 3. Cosmetology school separate. Each cosmetology school shall be separated from living quarters and any other business by a solid nontransparent wall from floor to ceiling containing no openings or doors.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-03. Lighting - Exhaust fans - Fire extinguishers.

1. Each cosmetology establishment shall have ~~artificial-light-in an-amount--yielding--fifty--foot-candles--intensity--for--each operating-station~~ adequate lighting at all workstations.

2. Each cosmetology establishment shall be equipped with an exhaust fan pursuant to good engineering practices in the working area.
3. Each cosmetology establishment shall maintain on the premises a five-pound-~~{2.27-kilogram}~~-ABC fire extinguisher mounted in public view. All employees and students shall be instructed in the proper operation and use of the fire extinguisher.

All exhaust fans, fire extinguishers, and lighting must comply with the state and local building codes.

History: Amended effective July 1, 1988; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-04. Sanitary premises.

1. Walls, floors, and fixtures must be kept clean and in good repair at all times.
2. All floors must be kept clean and free of hair and other debris at all times and must be in good repair. Carpeting is not permitted in the working area. Carpeting will only be permitted in the reception, drying, facial treatment, and manicuring area only.
3. Windows and mirrors should be clean.
4. Shampoo bowls and implements must be free from all hair and debris and cleansed immediately after prior to each use.
5. The dispensing area must be neat and clean. The supply area may not be accessible to the public.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-05. Water supply and waste disposal. Each cosmetology establishment shall be equipped with an adequate supply of hot and cold running water and proper plumbing. Each salon and school shall:

1. Have a safe water supply, approved by the local health authority or the state department of health and ~~consolidated laboratories.~~
2. Dispose of sewage and other liquid wastes in a sanitary manner, approved by the local health authority or the state department of health and ~~consolidated laboratories.~~

3. Store and collect solid waste so as to avoid health hazards, rodent harborages, insect breeding areas, and accidents.
4. Have solid wastes collected at least once each week, and an adequate number of approved covered containers shall be provided for storage of solid waste pending collection.

~~5. Comply with the state and local plumbing codes.~~

All plumbing in every cosmetology establishment shall comply with the state and local plumbing code.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-06. Personal hygiene. Every operator, manager-operator, manicurist, esthetician, instructor, and student, while on the cosmetology establishment premises, shall be neat and clean in person and in attire, and free from any infectious or communicable disease.

1. **Attire.** Every operator, manager-operator, manicurist, esthetician, instructor, student instructor, and student must be neat and clean in person and attire, and shall wear clean washable professional attire as determined by salon and school owner.
2. **Hands.** Every operator, manager-operator, manicurist, esthetician, instructor, student instructor, and student shall wash one's hands with soap and water immediately before serving each client.
3. **Carrying combs.** Combs or other instruments shall not be carried in clothing pockets.
4. **Contagious Infectious or communicable diseases.** No An operator, manager-operator, manicurist, esthetician, instructor, student instructor, or student who has an infectious or contagious communicable disease shall may not knowingly serve transmit the disease to the public in a cosmetology establishment while such a disease is in a communicable stage. (~~Common--colds--and--flu--are--two--common examples--of--contagious--diseases--~~)
5. **Smoking.** No An operator, manager-operator, manicurist, esthetician, instructor, student instructor, or student shall may not smoke while actively engaged in serving the public.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-09. Laundry and storage of cloth items.

1. **Clean cloth and linen items.** All clean cloth and linen towels, robes, and similar items shall be kept in an enclosed, dustproof cabinet in cosmetology establishments until used.
2. **Soiled cloth items and laundering.** Each towel, robe, and linen article may be used only once and then must be properly laundered. After use, and until laundering, each item must be placed in a ~~fire-retardant~~ an enclosed container. All soiled towels and linens must be laundered in a washing machine with laundry detergent in hot water ~~of a temperature of at least one-hundred-sixty-degrees-Fahrenheit-{71,11-degrees-Celsius}~~. Commercial laundering is acceptable.

History: Amended effective July 1, 1988; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-10. Method of disinfection. The disinfection process shall consist of three steps, and the elimination of any one of the steps render the process ineffective. The three steps to be followed are:

1. **Cleaning.** Clean hair out of combs, brushes, tools, and instruments and wash them thoroughly with hot water and a synthetic detergent in order to remove all traces of soil. Contact points of nonimmersible (electrical) equipment such as clippers must be wiped or sprayed with an environmental protection agency registered, hospital grade, tuberculocidal disinfectant created specifically for electrical equipment.
2. **Rinse.** Thoroughly rinse in clear water to remove all traces of detergent from the combs, brushes, tools, and instruments.
3. **Immersion.** Completely immerse combs and brushes in an appropriate utensil with an effective germicidal solution prepared and used in accordance with directions on the label, after which the combs, brushes, tools, and instruments shall be removed, dried, and stored in a clean, covered, and dustproof cabinet in the cosmetology establishment until used.

History: Amended effective March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-11. Particular aspects of disinfecting.

1. **Germicides.** In disinfecting tools, instruments, and implements, any ~~department of health and consolidated laboratories~~ federally approved germicide prepared

specifically for germicidal treatment of tools, instruments, and implements shall be used in accordance with the directions of the manufacturer. All germicidal solutions shall be fresh, clean, and free from contaminants.

2. **Fluids, creams, and powders.** All fluids, semifluids, creams, wax, and powders shall be kept in a clean, covered container at all times and shall be dispensed with a clean sanitized spatula or from a shaker, dispenser pump, or spray-type container. Spatulas made of a washable, nonabsorbent material may be sanitized and used again, and spatulas made of wood shall be discarded after use. Fluids, semifluids, creams, and powders shall be applied only by sanitary, disposable applicators, and the applicators shall be discarded after use.
3. **Tools and instruments.** All permanent wave equipment, clips, rollers, pins, shampoo and comb-out capes, nets, as well as all other tools, instruments, and implements shall be kept in a clean, sanitized condition at all times. Neck strips or similar covering shall be used in lieu of a clean towel whenever applicable in order to prevent such materials from coming in contact with the skin or hair of each client. Such neck strips or similar covering shall not be used more than once, and all other reusable items shall be washed, sanitized, and disinfected before use on each client.
4. **Containers.** All bottles and containers shall be correctly and distinctly labeled to disclose their contents, and all bottles and containers containing poisonous substances shall be so designated.
5. **Waste container.** Each ~~work-station-in-a~~ cosmetology establishment shall ~~be-provided-with-a-covered~~ provide adequate covered and lined waste container containers which shall be emptied and washed daily. All chemical waste material must be deposited immediately in a closed fire-retardant container and frequently disposed of in a sanitary manner.
6. **Protective coverings.** All protective coverings used on a client shall be kept clean and in good condition, and such protective coverings shall be stored in a closed cabinet when not in use.
7. **Wet and-dry sanitizers.** Each cosmetology establishment shall have wet and-dry sanitizers of sufficient size and quantity to sanitize all tools, instruments, and implements of the establishment, and such sanitizers shall be readily accessible. Such sanitizers shall contain a commercial sanitizing agent approved by ~~the-department-of-health-and-consolidated-laboratories-and-the-board~~, federally and such sanitizing agent shall be used according to the manufacturers' directions.

8. **Metal instruments.** All metal tools, instruments, and implements shall be sanitized with a seventy-percent-isopropyl alcohol disinfectant solution after each use and stored in a dry-sanitizer closed container until the next use. A small amount of oil may be added to the alcohol solution when used to sanitize metal instruments. All clippers and trimmers must be cleaned with a disinfectant spray after each client.
9. **Storage of supplies.** Every cosmetology establishment shall have a separate cabinet or storage area for the storage of supplies, and any supplies containing any caustic or other material harmful to humans shall be stored in a place not readily accessible to clients or the public.
10. **Combs and brushes.** ~~Each operator, manager-operator, instructor, and student shall have a minimum of twelve professional combs and twelve professional brushes.~~ Combs and brushes shall be cleansed and disinfected prior to each use. All shall be in good usable condition.
11. **Electric tools and outlets.** ~~All electric tools, instruments, and implements, including but not limited to blowers and irons, shall be kept in proper stands or holders when not in use, and each~~ Each cosmetology establishment shall have a sufficient number of electrical outlets so that no cord or electrical connection constitutes a hazard, fire or otherwise, to the public or persons employed or learning in the establishment.
12. **Neck brushes.** No salon or school may use neck brushes.
13. **Dry sanitizers.** All tools, instruments, and implements must be stored in a clean closed cabinet or drawer. Paper, money, candy, and personal items may not be stored or placed in cabinets or drawers where tools, instruments, and implements are stored.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-12. Toilet facilities. All cosmetology establishments salons in commercial or public buildings shall have adequate toilet facilities conveniently located and readily accessible to the public patronizing the establishment. All cosmetology salons in residential establishments shall provide toilet facilities within the salon. Such toilet facilities shall be clean, sanitary, and properly maintained at all times. All plumbing must be in accordance with the state or local plumbing codes.

Each salon shall provide adequate handwashing facilities, including hot and cold running water. Each handwashing sink must have a

soap dispenser supplied with liquid soap and disposable towels or approved air dryer.

History: Amended effective March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

CHAPTER 32-03-01

32-03-01-02. Floor plan. Every application for a certificate of registration shall be accompanied by a detailed floor plan of the proposed salon premises drawn to scale. The floor plan shall show entrances, exits, electrical outlets, water and sewer facilities, air-conditioning, exhaust fans, locations of equipment, reception room, supply room, toilet facilities, hallways, and facilities to maintain sanitary conditions. ~~Letters--of--compliance--from~~ A copy of approved inspection report by local, county, or state authorities governing plumbing, electrical, and building codes are required prior to final inspection. A revised floor plan shall be filed with the board in the event of any change of location or major changes in the salon premises.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-03-01-06. Changes in operators or manager-operators. Every ~~cosmetology-salon-shall-notify-the-board-in-writing-of-any-change-its manager-operators-prior-to-such-change-whenever-possible-but-not-more than-five-days-after-such-change.~~

~~1.--Name,---address,---and---certificate---number. The written notification provided to the board by the salon shall contain the name, current home address, and certificate number of each operator and manager-operator employed or terminated.~~

~~2.--Current-staff,---Each-cosmetology-salon-shall-be-responsible-to keep-the-board-informed--by-written-notice--of--the-current operators-and-manager-operators-employed.~~

~~3.--Manager-operator,---Each-cosmetology-salon-shall-notify-the board-in-writing--the--name,---home--address,---and--certificate number--of-the-manager-operator-responsible-for-the-operation, management,--and-conduct-of-the--salon,---Any--changes--in--the manager-operator-responsible-shall-be-reported-to-the-board-in writing-pursuant-to-the-provisions-of-this-section. Repealed effective March 1, 1998.~~

History: Amended-effective-July-1,-1990-

General Authority: NDCC-43-11-05

Law Implemented: NDCC-43-11-14,-43-11-15,-43-11-28

32-03-01-07. Manager-operator. Every cosmetology salon shall have a manager-operator who shall be responsible for the operation, conduct, and management of the salon;and-the. The manager-operator shall need not be present on the salon premises at all times during business hours, but must be available to provide direction and

supervision if needed. Each salon owner or manager-operator shall provide the office with an accurate schedule of the days and hours the salon is open for business.

History: Amended effective July 1, 1988; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-15

32-03-01-09. Signs.

~~1.--Entrance--signs:~~ Every cosmetology salon shall display and maintain a sign that is clearly visible to anyone approaching the entrance to the salon. The sign shall designate the establishment as a cosmetology establishment and give the name of the salon.

~~2.--Signs-for-salon-areas:--The-entrances-to-the-various-rooms-and-areas-of-each-salon-premises-shall--be--clearly--and--suitably marked-with-signs.~~

History: Amended effective July 1, 1988; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-13

32-03-01-10. Booth space. In the event any salon premises are divided into booth space allotments to be leased to others, each person, firm, association, partnership, corporation, or other entity whose name appears on the application as owner operator of the cosmetology--salon booth space shall be responsible for the sanitary conditions of the salon-and-shall-be-responsible-for-the-entire-salon--and--its--operation being--in--compliance--with--federal,--state,--and--local--laws,--ordinances, rules,--regulations,--and--codes space. Booth rental salons are subject to inspections during the operation whether or not a booth operator is available. The owner of the cosmetology salon shall be responsible for keeping the entire salon open for inspection by the board or board inspectors, and the board shall examine and inspect the entire salon premises regardless of any booth space allotments.

Each booth space allotment shall be licensed as a separate salon having a separate and independent certificate of registration, and each booth space allotment shall be operated only by a manager-operator.

1. **Compliance as salon.** Each booth space allotment must have a minimum-of-thirty-square-feet-{2.79-square-meters}-of adequate workspace. The salon premises must meet all of the requirements of a salon contained in North Dakota Century Code chapter 43-11 and this article, except that there may be common reception areas, common toilet facilities, common product dispensing area, and common entrances and exits.

2. **Certificates displayed.** The certificate of registration for each booth space allotment shall be displayed in the booth.
3. **Signs:** ~~For each booth, the signs required of cosmetology salons shall be displayed at the entrances to the premises and at the entrance to each booth.~~
4. **Premises used.** Each manager-operator operating a booth space salon shall be responsible for all professional services performed and for all of the premises used.
5. ~~Entrances: All entrances shall be approved by the board.~~

History: Amended effective February 1, 1996; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-13, 43-11-15, 43-11-17

32-03-01-11. Salon discontinuance. Each cosmetology salon intending to discontinue its operation shall notify the office in writing ~~at least thirty days~~ prior to the final date of operation.

History: Amended effective July 1, 1988; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-15

32-03-01-13. Brush rollers. All brush rollers must be free of hair before sanitizing.

History: Effective March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-11.1

CHAPTER 32-04-01

32-04-01-01. School applications. All persons, firms, associations, partnerships, corporations, and other entities desiring to operate a cosmetology school shall make application to the board for a certificate not less than three months prior to commencing business. The application shall be made on a form provided by the board and shall be accompanied by the fee of five hundred dollars. All renewal applications of cosmetology schools shall be made to the board before December thirty-first in each year. Renewal applications shall be accompanied by the fee of two hundred dollars. Six weeks prior to any change of ownership, name, location, or address, a cosmetology school shall ~~apply for reregistration with the board, and the same information, documents, bond, and registration fee required of new applicants shall be submitted to the board~~ make written application to the board. The application for reregistration must be made on a form provided by the board and must be accompanied by a fee of two hundred dollars.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-16, 43-11-17

32-04-01-06. Student registration. Each cosmetology school shall register students taking a complete course of study ~~before the tenth day of each month~~ within ten days after students' enrollment. Each school shall register students' enrollment by written notification to the board.

1. **Student contract.** Each cosmetology school shall provide the board with a true copy of the student contract for each student and student instructor enrolled. The student contract shall contain the entire contract between the parties, including a complete list of tools, books, and supplies provided to the student or student instructor. Such student contract shall be provided to the board ~~by the tenth day of the month when~~ within ten days of enrollment of each student and student instructor ~~is enrolled.~~
2. **Registration.** Each cosmetology school shall furnish the board for each student and student instructor enrolled with the completed state board notice of registration form accompanied by a copy of the student's birth certificate and high school diploma or official transcript signed by school or general educational development. All such materials shall be provided to the board ~~by the tenth of the month when each student and student instructor is enrolled~~ within ten days of student and student instructor enrollment.
3. **Credit before approval.** No student or student instructor shall be given credit for any time prior to the receipt and

approval of the student's or student instructor's registration by the board.

4. **Reregistration.** Upon reregistration for any reason, the provisions of this section shall be complied with where applicable.

History: Amended effective July 1, 1990; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16, 43-11-19

32-04-01-08. Discontinuance of students. Each cosmetology school shall notify the board in writing within five days after the discontinuance of the course. The written notification shall contain the name of the student, the last known address or home address of the student, the reason for the discontinuance, and a statement of the hours completed by the student, and the amount of refund to the student or the reason for no refund to the student. Upon reentrance to the school, an application shall be submitted to the board in the same manner as new student applications.

History: Amended effective March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16, 43-11-19

32-04-01-09. Change in instructors. Every cosmetology school shall notify the board in writing of any change in the staff of instructors prior to the change whenever possible but not more than five days after the change.

1. Name, address, and certificate number. The written notification provided to the board by the school shall contain the name, current home address, and certificate of registration number of each instructor employed or terminated.

2. Current staff. Each cosmetology school shall be responsible to keep the board informed by written notice of the current staff of instructors.

History: Amended effective March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16, 43-11-17

32-04-01-11. Attendance reports. Each cosmetology school shall submit a written maintain monthly report to the office reports for each student enrolled. The report reports shall be on forms furnished by or acceptable to the board and shall contain the full name of each student attending during the calendar month, the date the student enrolled, the number of hours of training had by each student during the calendar month, and the total number of hours of training credited the student

since the date of enrollment. ~~The monthly report shall be filed with the board not later than the tenth day of the succeeding month.~~

History: Amended effective July 1, 1988; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16, 43-11-19, 43-11-22

32-04-01-12. Signs and advertising.

1. **Entrance sign.** Every cosmetology school shall display and maintain a sign, clearly visible to anyone approaching the entrance to the school, designating it as a school and giving the name of the school. ~~The sign shall have lettering of not less than twelve inches [30.48 centimeters].~~
2. **Student services sign.** Every cosmetology school shall prominently display signs stating "all services performed by students". The signs shall be clearly visible in the clinic laboratory area and the reception area.
3. **Signs for entrances to school areas.** The entrances to the various rooms and areas of each school premises shall be clearly and suitably marked with signs.
4. **Price signs.** Signs listing prices charged for clinic work shall be prominently displayed in the reception area.
5. **Advertising.** All advertising of cosmetology schools shall disclose that services are performed by students.

History: Amended effective March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-16, 43-11-18

32-04-01-13. Equipment and library. Each cosmetology school shall have the following minimum equipment and library:

1. Cosmetology minimum equipment:

First 25 students	26-50	51-75	76-100
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1-Chart of anatomy

- a. Bones
- b. Muscles
- c. Nerves
- d. Circulatory system
- e. Skin

1-Blackboard four feet by six feet [1.22 meters by 1.83 meters] for each theory room

2-Master dry sterilizers or electric sterilizers			
2-Large wet sterilizers	3	4	6
4-Shampoo basins	6	8	10
6-Facial chairs	8	10	12
12-Hair dryers	15	25	30
6-Manicure tables	8	10	10
12-Work stations with mirrors	25	35	45
1-Therapeutic lamp			
two-colored bulbs			
300- 60 <u>Gold Permanent cold</u> wave rods and other <u>permanent cold</u> wave supplies			
6-Waste containers	10	14	20
1-Full length mirror			
2-Soiled towel	4	8	10
<u>closed</u> containers			
2- Towel <u>Closed towel</u> cabinets			
2- Supply <u>Closed supply</u> cabinets			
1-Bulletin board - conspicuously located			
Solution dispensers adequate for enrollment			
Fireproof cabinet for school and student records			
Adequate supply of facial supplies			

2. Esthetician minimum equipment:

- a. Sufficient chalkboards.
- b. One lavatory bowl for enrollment for up to fifteen students.
- c. One work station or position per two students, must include a facial chair or cushioned massage table.
- d. One set of facial equipment per two work stations or positions to include manual, mechanical, or electrical apparatus (at least one of the following): electrical heating mask, steamer, brushing, vacuum ionization, glass electrode or high frequency galvanic or cathodic current (prohibited faradic) decrustation machine, spray or mister, one magnification lamp.
- e. Sufficient trays for facial supplies.
- f. One dry sterilizer per each work station.
- g. One properly lighted makeup area.
- h. One head form or chart per class.

i. Audiovisual aids.

3. Manicurist minimum equipment:

a. Sufficient chalkboards.

b. A minimum of one handwashing sink separate from restrooms for enrollment up to fifteen, and one additional sink for each fifteen students or fraction thereof.

c. Advanced department will have adequate chairs for clients, also adequate ventilation for work areas.

d. One work space with adequate light must be provided for every student.

e. Sufficient trays for manicuring supplies.

f. One set of mannequin hands per student.

g. Manicuring kit for each student containing proper implements for manicuring and pedicuring.

h. Implements for artificial nails, nail wraps, and tipping.

i. One pedicure setup station.

j. Audiovisual aids.

4. Minimum school library:

a. Standard dictionary.

b. Dictionary of medical words.

c. Standard textbook.

d. References on iron curling.

e. References on hair straightening.

f. References on hair coloring.

g. Copy of cosmetology law.

h. Copy of sanitary rules and regulations.

i. Copy of minimum prices.

j. Trade magazines.

k. Slides and films pertaining to cosmetology.

History: Amended effective July 1, 1990; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-16

32-04-01-16. Lockers. Every cosmetology school shall provide each student with a locker and lock. Each student locker shall be of adequate size for the storage of personal effects, books, tools, and instruments, et-cetera.

History: Amended effective March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-16

32-04-01-18. Curriculum. Each cosmetology school shall teach branches and areas of cosmetology, which shall include theory and practice in subjects required, provided, and approved by the board.

1. **Hours.** The course of instruction shall consist of one thousand eight hundred hours for cosmetology, nine hundred hours for esthetics, and three hundred fifty hours for manicuring.
2. **Theory classes.** Each cosmetology school shall conduct theory classes ~~during the first hour of each day of the week~~ a minimum of one hour per day for a minimum of four days per week.
3. **Student credit hour and credit record.** The requirements set forth in the student hour and credit record provided by the board shall be completed within a twelve-month period for cosmetology students enrolled in a forty-hour week course or within a twenty-month period for students enrolled in a twenty-four-hour week course. Esthetics students enrolled in a forty-hour week course must be completed in seven months, or a twenty-four-hour week course in eleven months. Manicurist students enrolled in a forty-hour week course must be completed in a three-month period, or a twenty-four-hour week course completed in a five-month period. Each cosmetology school shall keep the student hour and credit record current for each student, and the record shall be current by the fifth of each month the student is enrolled. Within five days of a school's knowledge that a student has either completed the course, transferred, or discontinued and fulfilled all school requirements accordingly, the school shall furnish the board with the record.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16, 43-11-22

32-04-01-25. Examinations.

1. **School examinations.** Each student must have successfully passed eighty percent of the weekly examinations and secured a seventy-five percent average in the cosmetology school final examination in both written and practical work ~~before--making application to take the board examination,--The marks obtained in the school examination shall--be--retained--by--the--school until--the--student--has--successfully--passed--the--board examination.~~
2. **Board examinations.** The time, place, and date of board examinations shall must be set by the board, and there shall be a minimum of four board examinations per year submitted to the board two weeks prior to test date. A cosmetologist examination shall consist of a theoretical portion and a practical portion. The theoretical portion shall be administrated by the board members or staff. The practical portion of the cosmetologist examination will be administrated by the cosmetology school. A board member shall be present to observe during practical examination. There shall be no more than one test date per month.

The practical portion of the cosmetologist examination shall consist of the candidate demonstrating:

- a. Hairstyling.
 - b. Basic hair shaping.
 - c. Hair coloring.
 - d. Permanent waving.
 - e. Chemical hair relaxing.
- In order to be certified as passing an examination, a candidate shall score at least seventy-five percent or more on the theoretical and practical portions of the examination. Candidates' scores shall be submitted to the board five days after the examination date.
3. **Failing applicant.** Applicants who fail any portion of the examination shall reregister and pay the required fee before being permitted to retake the portion of the examination they have failed.

4. Applicant complaint. An applicant shall notify the board in writing if there is reason to believe that there has been discrimination during any portion of the examination.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16, 43-11-22, 43-11-23

CHAPTER 32-05-01

32-05-01-01. Operators. Every person desiring to be licensed by the board as an operator shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to operators and shall make application to the board for a certificate prior to commencing any activity as an operator.

1. **Fee and proof.** The application shall be accompanied by the required proof of qualification applicable to the applicant and the examination fee of twenty dollars.
2. **Renewal.** Every operator shall renew the operator's certificate by annually making written application to the board before December thirty-first each year, and such renewal application shall be accompanied by the ten dollar fee.
3. **Penalty fee.** If the licensee fails to renew the operator's license following the expiration date, a penalty fee of ten dollars is required.
4. **Change of name or address.** Every operator shall notify the board in writing of any change of name or change of residence ~~within thirty days after the change;--in the event of a change of name;--the notice shall--state--the--full--name--before--the change--and--the--full--name--after--the--change--together--with--the current--address--and--certificate--number;--in--the--event--of--a change--of--residence--address;--the--notice--shall--state--the--full name;--the--new--residence;--address;--and--the--certificate--number~~ address.
5. **Certificates displayed.** Every operator shall conspicuously display the operator's certificate of registration in the reception or work area of the cosmetology salon.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-28

32-05-01-02. Manager-operators. Every person desiring to be licensed by the board as a manager-operator shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to manager-operators and shall make written application to the board to register for the manager-operator's examination license.

1. **Fee and proof.** The application shall be accompanied by the fee of ~~forty~~ twenty dollars and the required proof of qualification.

2. **Renewal.** Every manager-operator shall renew the manager-operator's certificate by annually making an application to the board before December thirty-first each year, and the renewal application shall be accompanied by the fifteen dollar fee.
3. **Penalty fee.** If the licensee fails to renew the manager-operator's license following the expiration date, a penalty fee of ten dollars is required.
4. **Change of name or address.** Every manager-operator shall notify the board in writing of any change of name or change of residence address ~~within thirty days after the change. In the event of a change of name, the notice shall state the full name before the change and the full name after the change together with the current address and certificate number. In the event of a change of residence address, the notice shall state the full name, the new residence address, and the certificate number.~~
5. **Certificates displayed.** Every manager-operator shall conspicuously display the manager-operator's certificate of registration in the reception or work area of the cosmetology salon.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-22, 43-11-23, 43-11-26, 43-11-28

32-05-01-03. Instructors. Every person desiring to be an instructor shall have the qualifications and passed the examination required by North Dakota Century Code chapter 43-11 applicable to student instructors and instructors and shall make application in writing to the board pursuant to North Dakota Century Code section 43-11-27 and this section.

1. **Renewal.** Every instructor shall renew the instructor's certificate by annually making written application to the board before December thirty-first each year, and the renewal application shall be accompanied by the fifteen dollar fee and evidence of attendance at a board-approved seminar during the previous year.
2. **Penalty fee.** If the licensee fails to renew the instructor's license following the expiration date, a penalty fee of ten dollars is required.
3. **Seminars.** Every instructor shall attend a board-approved seminar annually. Before attending any seminar, every instructor shall apply in writing to the board for approval of the seminar.

4. **Change of name or address.** Every instructor shall notify the board in writing of any change of name or change of residence address ~~within thirty days after the change. In the event of a change of name, the notice shall state the full name before the change and the full name after the change together with the current address and certificate number. In the event of a change of residence address, the notice shall state the full name, the new residence address, and the certificate number.~~
5. **Certificate displayed.** Every instructor shall conspicuously display the instructor's certificate of registration in the clinic laboratory area of the cosmetology school.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-22, 43-11-23, 43-11-27, 43-11-28

32-05-01-05. Demonstrators. ~~Every person desiring to be licensed by the board as a demonstrator shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to demonstrators and shall make written application to the board for a license prior to commencing any activity as a demonstrator.~~

~~1. Fee and proof. The application shall be accompanied by the fee of twenty-five dollars and the required proof of qualification.~~

~~2. Renewal. Every demonstrator shall renew the demonstrator's license by annually making an application to the board before December thirty-first each year, and the renewal application shall be accompanied by the fifteen dollar fee.~~

~~3. Change of name or address. Every demonstrator shall notify the board in writing of any change of name or change of residence address within thirty days after the change. In the event of a change of name, the notice shall state the full name before the change and the full name after the change together with the current address and the license number. In the event of a change of residence address, the notice shall state the full name, the new residence address, and the license number.~~ Repealed effective March 1, 1998.

History: Amended effective July 1, 1988.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-27, 43-11-28

32-05-01-06. Esthetician. Every person desiring to be licensed by the board as an esthetician shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to estheticians and

shall make written application to the board to register for the esthetician's examination:

1. **Fee and proof.** The application must be by the required proof of qualification applicable to the applicant and the examination fee of twenty dollars.
2. **Renewal.** Every esthetician shall renew the esthetician's certificate by annually making written application to the board office before December thirty-first each year, and such renewal application must be accompanied by the fifteen dollar fee.
3. **Penalty fee.** If the licensee fails to renew the esthetician's license following the expiration date, a penalty fee of ten dollars is required.
4. **Change of name or address.** Every esthetician shall notify the board in writing of any change of name or residence within ~~thirty--days--after--the--change;--in--the--event--of--a--change--of--name;--the--notice--must--state--the--full--name--before--the--change--and--the--full--name--after--the--change--together--with--the--address--and--certificate--number;--in--the--event--of--a--change--of--residence--address;--the--notice--must--state--the--full--name;--the--new--residence--address;--and--the--certificate--number.~~
5. **Certificates displayed.** Every esthetician shall conspicuously display the esthetician's certificate of registration in the reception or work area of the cosmetology salon.

History: Effective July 1, 1990; amended effective March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-27.1, 43-11-28

32-05-01-07. Manicurist. Every person desiring to be licensed by the board as a manicurist shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to manicurists and shall make written application to the board to register for the manicurist's examination.

1. **Fee and proof.** The application must be accompanied by the required proof of qualification applicable to the applicant and the examination fee of twenty dollars.
2. **Renewal.** Every manicurist shall renew the manicurist's certificate by annually making written application to the board before December thirty-first each year, and such renewal application must be accompanied by the fifteen dollar fee.

3. **Penalty fee.** If the licensee fails to renew the manicurist's license following the expiration date, a penalty of ten dollars is required.
4. **Change of name or address.** Every manicurist shall notify the board in writing of any change of name or any change of residence ~~within--thirty-days-after-the-change;--In-the-event of-a-change-of-name,-the--notice--must--state--the--full--name before--the-change-and-the-full-name-after-the-change-together with-the-current-address-and-certificate-number;--In-the-event of--a--change--of-residence-address,-the-notice-must-state-the full-name,-the-new--residence--address;--and--the--certificate number.~~
5. **Certificates displayed.** Every manicurist shall conspicuously display the manicurist's certificate of registration in the reception or work area of the cosmetology salon.

History: Effective July 1, 1990; amended effective March 1, 1998.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-27, 43-11-27.1, 43-11-28

TITLE 33
Department of Health

APRIL 1998

CHAPTER 33-15-13

33-15-13-01.1. Scope. The subparts and appendices of title 40, Code of Federal Regulations, part 61, as they exist on ~~October 1, 1996~~ July 1, 1997, which are listed under section 33-15-13-01.2 are incorporated into this chapter by reference. Any changes to the emission standard are listed below the title of the standard.

History: Effective June 1, 1992; amended effective March 1, 1994; December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997; April 1, 1998.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-13-01.2. Emission standards.

Subpart A - General provisions.

*61.02 - The definition of administrator is deleted and replaced with the following:

Administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the department and the administrator of the United States environmental protection agency.

The following definition is added:

"Waiver of compliance" means a permit to operate with a compliance schedule.

*Sections 61.07 and 61.08 are deleted in their entirety and replaced with the following:

Application for permit to construct. The owner or operator of any new source to which a standard prescribed under these subparts is applicable, prior to the date on which construction or modification is planned to commence, shall apply for and receive a permit to construct as provided in section 33-15-14-02. For those sources on which construction or modification has commenced and initial startup has not occurred prior to the effective date of a standard of this chapter, the owner or operator shall apply for a permit to construct within thirty days after the effective date of the standard.

Neither the submission of an application for a permit to construct nor the administrator's approval of construction or modification shall:

- (1) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this chapter or of any other applicable federal, state, or local requirement; or
- (2) Prevent the administrator from implementing or enforcing this chapter or taking any other action under this article.

*61.09(b) is deleted in its entirety.

*61.11(f) is deleted in its entirety and replaced with the following:

- (f) The granting of a permit under this section does not abrogate the department's authority under section 33-15-01-06 and subsection 9 of section 33-15-14-02, and subsection 6 of section 33-15-14-03.

*61.16 is deleted in its entirety and replaced with the following:

Availability of information.

- a. Emission data provided to, or otherwise obtained by, the department in accordance with the provisions of this chapter must be available to the public.
- b. Any records, reports, or information, other than emission data, provided to, or otherwise obtained by, the department in accordance with the provisions of this chapter must be available to the public, except that upon a showing satisfactory to the department by any person that such records, reports, or information, or particular

part thereof (other than emission data), if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the department will consider such records, reports, or information, or particular part thereof, confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such records, reports, or information, or particular part thereof, may be disclosed to other officers, employees, or authorized representatives of the state and federal government concerned with carrying out the provisions of North Dakota Century Code chapter 23-25 or when relevant in any proceeding under North Dakota Century Code chapter 23-25.

*61.17 is deleted in its entirety.

Subpart C - National emission standard for beryllium.

Subpart D - National emission standard for beryllium rocket motor firing.

Subpart E - National emission standard for mercury.

Subpart F - National emission standard for vinyl chloride.

Subpart G - [Reserved]

~~Subpart I - National emission standards for radionuclide emissions from facilities licensed by the nuclear regulatory commission and federal facilities not covered by subpart H.~~

Subpart J - National emission standard for equipment leaks (fugitive emission sources) of benzene.

Subpart L - National emission standard for benzene emissions from coke byproduct recovery plants.

Subpart N - National emission standard for inorganic arsenic emissions from glass manufacturing plants.

Subpart O - National emission standard for inorganic arsenic emissions from primary copper smelters.

Subpart P - National emission standard for inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities.

Subpart S - [Reserved]

Subpart U - [Reserved]

Subpart V - National emission standard for equipment leaks (fugitive emission sources).

Subpart Y - National emission standard for benzene emissions from benzene storage vessels.

Subpart BB - National emission standard for benzene emissions from benzene transfer operations.

Subpart FF - National emission standard for benzene waste operations.

Appendix A - National emission standards for hazardous air pollutants, compliance status information.

Appendix B - Test methods.

Appendix C - Quality assurance procedures.

History: Effective June 1, 1992; amended effective March 1, 1994; August 1, 1995; April 1, 1998.

General Authority: NDCC 23-25-03, 23-25-04

Law Implemented: NDCC 23-25-03, 23-25-04

CHAPTER 33-15-21

33-15-21-01. General provisions.

1. **Definitions.** The terms used in this chapter have the meanings set forth in title IV of the Clean Air Act, 42 U.S.C 7401, et seq. as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. 7651, et seq. (November 15, 1990). All terms not defined herein have the meaning given them in section 33-15-01-04 or in North Dakota Century Code chapter 23-25.
 - a. "Acid rain compliance option" means one of the methods of compliance used by an affected unit under the acid rain program as described in a compliance plan submitted and approved in accordance with section 33-15-21-04 or regulations or rules implementing section 407 of the Act.
 - b. "Acid rain emissions limitation" means:
 - (1) For the purposes of sulfur dioxide emissions:
 - (a) The tonnage equivalent of the basic phase II allowance allocations authorized to be allocated to an affected unit for use in a calendar year;
 - (b) As adjusted:
 - [1] By allowances allocated by the administrator pursuant to section 403, section 405 (a)(2), (a)(3), (b)(2), (c)(4), (d)(3), and (h)(2), and section 406 of the Act;
 - [2] By allowances allocated by the administrator pursuant to subpart D of title 40, Code of Federal Regulations, part 72, and thereafter; and
 - [3] By allowance transfers to or from the compliance subaccount for that unit that were recorded or properly submitted for recordation by the allowance transfer deadline as provided in title 40, Code of Federal Regulations, 73.35, after deductions and other adjustments are made pursuant to title 40, Code of Federal Regulations, 73.34(c).
 - (2) For purposes of nitrogen oxides emissions, the applicable limitation established by regulations promulgated by the administrator pursuant to section

407 of the Act, as modified by an acid rain permit application submitted to the department, and an acid rain permit issued by the department, in accordance with rules implementing section 407 of the Act.

- c. "Acid rain emissions reduction requirement" means a requirement under the acid rain program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.
- d. "Acid rain permit or permit" means the legally binding written document, or portion of such document, issued by the department following an opportunity for appeal pursuant to North Dakota Century Code chapter 28-32 or article 33-22, or both, including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.
- e. "Acid rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with title IV of the Act, title 40, Code of Federal Regulations, parts 72, 73, 75, 77, and 78, and regulations or rules implementing sections 407 and 410 of the Act, and this chapter.
- f. "Act" means the Federal Clean Air Act, 42 U.S.C. 7401, et seq. as amended by Public Law No. 101-549 (November 15, 1990).
- g. "Actual sulfur dioxide emissions rate" means the annual average sulfur dioxide emissions rate for the unit (expressed in lb/mmBtu), for the specified calendar year; provided that, if the unit is listed in the national allowance data base, the "1985 actual sulfur dioxide emissions rate" for the unit is the rate specified by the administrator in the national allowance data base under the data field "SO₂RTE".
- h. "Administrator" means the administrator of the United States environmental protection agency or the administrator's duly authorized representative.
- i. "Affected source" means a source that includes one or more affected units.
- j. "Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation.

- k. "Affiliate" has the meaning set forth in section 2(a)(11) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79b(a)(11), as of November 15, 1990.
- l. "Allocate or allocation" means the initial crediting of an allowance by the administrator to an allowance tracking system unit account or general account.
- m. "Allowance" means an authorization by the administrator under the acid rain program to emit up to one ton of sulfur dioxide during or after a specified calendar year.
- n. "Allowance deduction, or deduct when referring to allowances" means the permanent withdrawal of allowances by the administrator from an allowance tracking system compliance subaccount to account for the number of the tons of sulfur dioxide emissions from an affected unit for the calendar year, for tonnage emissions estimates calculated for periods of missing data as provided in title 40, Code of Federal Regulations, part 75, or for any other allowance surrender obligations of the acid rain program.
- o. "Allowances held or hold allowances" means the allowances recorded by the administrator, or submitted to the administrator for recordation in accordance with title 40, Code of Federal Regulations, 73.50, in an allowance tracking system account.
- p. "Allowance tracking system" means the acid rain program system by which the administrator allocates, records, deducts, and tracks allowances.
- q. "Allowance tracking system account" means an account in the allowance tracking system established by the administrator for purposes of allocating, holding, transferring, and using allowances.
- r. "Allowance transfer deadline" means midnight of January thirtieth or, if January thirtieth is not a business day, midnight of the first business day thereafter and is the deadline by which allowances may be submitted for recordation in an affected unit's compliance subaccount for the purposes of meeting the unit's acid rain emissions limitation requirements for sulfur dioxide for the previous calendar year.
- s. "Authorized account representative" means a responsible natural person who is authorized, in accordance with title 40, Code of Federal Regulations, part 73, to transfer and otherwise dispose of allowances held in an allowance tracking system general account; or, in the case

of a unit account, the designated representative of the owners and operators of the affected unit.

- t. "Basic phase II allowance allocations" means:
- (1) For calendar years 2000 through 2009 inclusive, allocations of allowances made by the administrator pursuant to section 403 and section 405 (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i); and (j) of the Act.
 - (2) For each calendar year beginning in 2010, allocations of allowances made by the administrator pursuant to section 403 and section 405 (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i); and (j) of the Act.
- u. "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or any other medium.
- v. "Certificate of representation" means the completed and signed submission required by title 40, Code of Federal Regulations, 72.20, for certifying the appointment of a designated representative for an affected source or a group of identified affected sources authorized to represent the owners and operators of such sources and of the affected units at such sources with regard to matters under the acid rain program
- w. "Certifying official" means:
- (1) For a corporation, a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the corporation;
 - (2) For partnership or sole proprietorship, a general partner or the proprietor, respectively; and
 - (3) For a local government entity or state, federal, or other public agency, either a principal executive officer or ranking elected official.
- x. "Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American society for testing and materials designation ASTM D388-92 "Standard Classification of Coals by Rank".

- y. "Coal-derived fuel" means any fuel, whether in a solid, liquid, or gaseous state, produced by the mechanical, thermal, or chemical processing of coal (e.g., pulverized coal, coal refuse, liquefied or gasified coal, washed coal, chemically cleaned coal, coal-oil mixtures, and coke).
- z. "Coal-fired" means the combustion of fuel consisting of coal or any coal-derived fuel, except a coal-derived gaseous fuel with a sulfur content no greater than natural gas, alone or in combination with any other fuel, where a unit is "coal-fired" if it uses coal or coal-derived fuel as its primary fuel (expressed in mmbtu); provided that, if the unit is listed in the national allowance data base, the primary fuel is the fuel listed in the national allowance data base under the data field "PRIMEFUEL".
- aa. "Cogeneration unit" means a unit that has equipment used to produce electric energy and forms of useful thermal energy, such as heat or steam, for industrial, commercial, heating or cooling purposes, through the sequential use of energy.
- bb. "Commence commercial operation" means to have begun to generate electricity for sale, including the sale of test generation.
- cc. "Commence construction" means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.
- dd. "Commence operation" means to have begun any mechanical, chemical, or electronic process, including startup of an emissions control technology or emissions monitor or of a unit's combustion chamber.
- ee. "Common stack" means the exhaust of emissions from two or more units through a single flue.
- ff. "Compliance certification" means a submission to the administrator or the department that is required by this chapter, by title 40, Code of Federal Regulations, part 72, 73, 75, 77, or 78, or by regulations or rules implementing sections 407 or 410 of the Act to report an affected source or an affected unit's compliance or noncompliance with a provision of the acid rain program and that is signed and verified by the designated representative in accordance with subpart B of title 40, Code of Federal Regulations, part 72, section 33-15-21-08, and the acid rain program regulations or rules generally.

- gg. "Compliance plan", for purposes of the acid rain program, means the document submitted for an affected source in accordance with subsections 1 and 2 of section 33-15-21-03 and specifying the methods, including one or more acid rain compliance options under section 33-15-21-04 or regulations or rules implementing section 407 of the Act, by which each affected unit at the source will meet the applicable acid rain emissions limitation and acid rain emissions reduction requirements.
- hh. "Compliance subaccount" means the subaccount in an affected unit's allowance tracking system account, established pursuant to title 40, Code of Federal Regulations, 73.31 (a) or (b), in which are held, from the date that allowances for the current calendar year are recorded under title 40, Code of Federal Regulations, 73.34(a) until December thirty-first, allowances available for use by the unit in the current calendar year and, after December thirty-first until the date that deductions are made under title 40, Code of Federal Regulations, 73.35(b), allowances available for use by the unit in the preceding calendar year, for the purpose of meeting the unit's acid rain emissions limitation for sulfur dioxide.
- ii. "Compliance use date" means the first calendar year for which an allowance may be used for purposes of meeting a unit's acid rain emissions limitation for sulfur dioxide.
- jj. "Construction" means fabrication, erection, or installation of a unit or any portion of a unit.
- kk. "Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with subpart B of title 40, Code of Federal Regulations, part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in section 33-15-14-06, it shall be deemed to refer to the "designated representative" with regard to all matters under the acid rain program.
- ll. "Diesel fuel" means a low sulfur fuel oil of grades 1-D or 2-D, as defined by the American society for testing and materials ASTM D975-91, "Standard Specification for Diesel Fuel Oils".
- mm. "Direct public utility ownership" means direct ownership of equipment and facilities by one or more corporations, the principal business of which is sale of electricity to the public at retail. Percentage ownership of such

equipment and facilities shall be measured on the basis of book value.

- nn. "Draft acid rain permit or draft permit" means the version of the acid rain permit, or the acid rain portion of an operating permit, that the department offers for public comment.
- oo. "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the designated representative and as determined by the administrator, in accordance with the emissions monitoring requirements of title 40, Code of Federal Regulations, part 75.
- pp. "EPA" means the United States environmental protection agency.
- qq. "Excess emissions" means:
 - (1) Any tonnage of sulfur dioxide emitted by an affected unit during a calendar year that exceeds the acid rain emissions limitation for sulfur dioxide for the unit; and
 - (2) Any tonnage of nitrogen oxide emitted by an affected unit during a calendar year that exceeds the annual tonnage equivalent of the acid rain emissions limitation for nitrogen oxides applicable to the affected unit taking into account the unit's heat input for the year.
- rr. "Existing unit" means a unit, including a unit subject to section 111 of the Act, that commenced commercial operation before November 15, 1990, and that on or after November 15, 1990, served a generator with a nameplate capacity of greater than twenty-five megawatts electrical. "Existing unit" does not include simple combustion turbines or any unit that on or after November 15, 1990, served only generators with a nameplate capacity of twenty-five megawatts electrical or less. Any "existing unit" that is modified, reconstructed, or repowered after November 15, 1990, shall continue to be an "existing unit".
- ss. "Facility" means any institutional, commercial, or industrial structure, installation, plant, source, or building.
- tt. "Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

- uu. "Fossil fuel-fired" means the combustion of fossil fuel or any derivative of fossil fuel, alone or in combination with any other fuel, independent of the percentage of fossil fuel consumed in any calendar year.
- vv. "Fuel oil" means any petroleum-based fuel, including diesel fuel or petroleum derivatives such as oil tar, as defined by the American society for testing and materials in ASTM D396-90a, "Standard Specification for Fuel Oils", and any recycled or blended petroleum products or petroleum byproducts used as a fuel whether in a liquid, solid, or gaseous state.
- ww. "Gas-fired" means the combustion of natural gas, or a coal-derived gaseous fuel with a sulfur content no greater than natural gas, for at least ninety percent of the average annual heat input during the previous three calendar years and for at least eighty-five percent of the annual heat input in each of those calendar years; and any fuel other than coal or any other coal-derived fuel for the remaining heat input, if any.
- xx. "General account" means an allowance tracking system account that is not a unit account.
- yy. "Generator" means a device that produces electricity and was or would have been required to be reported as a generating unit pursuant to the United States department of energy form eight hundred sixty (1990 edition).
- zz. "Generator output capacity" means the full-load continuous rating of a generator under specific conditions as designed by the manufacturer.
- aaa. "Heat input" means the product (expressed in mBtu/time) of the gross calorific value of the fuel (expressed in Btu/lb) and the fuel feed rate into the combustion device (expressed in mass of fuel/time) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.
- bbb. "Independent power production facility" means a source that:
 - (1) Is nonrecourse project financed, as defined by the secretary of energy at title 10, Code of Federal Regulations, part 715;
 - (2) Is used for the generation of electricity, eighty percent or more of which is sold at wholesale;
 - (3) Is a new unit required to hold allowances under title IV of the Act; and

- (4) Provided that direct public utility ownership of the equipment comprising the facility does not exceed fifty percent.
- ccc. "Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified generating unit and pays its proportional amount of such unit's total costs, pursuant to a contract:
- (1) For the life of the unit;
 - (2) For a cumulative term of no less than thirty years, including contracts that permit an election for early termination; or
 - (3) For a period equal to or greater than twenty-five years or seventy percent of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.
- ddd. "Nameplate capacity" means the maximum electrical generating output (expressed in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the national allowance data base under the data field "NAMECAP" if the generator is listed in the national allowance data base or as measured in accordance with the United States department of energy standards if the generator is not listed in the national allowance data base.
- eee. "National allowance data base" means the data base established by the administrator under section 402(4)(C) of the Act.
- fff. "Natural gas" means a naturally occurring fluid mixture of hydrocarbons containing little or no sulfur (e.g., methane, ethane, or propane), produced in geological formations beneath the earth's surface, and maintaining a gaseous state at standard atmospheric temperature and pressure conditions under ordinary conditions.
- ggg. "New unit" means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of twenty-five megawatts electrical or less or that is a simple combustion turbine.

- hhh. "Offset plan" means a plan pursuant to title 40, Code of Federal Regulations, part 77 for offsetting excess emissions of sulfur dioxide that have occurred at an affected unit in any calendar year.
- iii. "Oil-fired" means the combustion of: fuel oil for more than ten percent of the average annual heat input during the previous three calendar years or for more than fifteen percent of the annual heat input in any one of those calendar years; and any solid, liquid, or gaseous fuel, other than coal or any other coal-derived fuel, except a coal-derived gaseous fuel with a sulfur content no greater than natural gas, for the remaining heat input, if any.
- jjj. "Operating permit" means a permit issued under section 33-15-14-06.
- kkk. "Owner" means any of the following persons:
- (1) Any holder of any portion of the legal or equitable title in an affected unit;
 - (2) Any holder of a leasehold interest in an affected unit;
 - (3) Any purchaser of power from an affected unit under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit; or
 - (4) With respect to any allowance tracking system general account, any person identified in the submission required by title 40, Code of Federal Regulations, 73.31(c) that is subject to the binding agreement for the authorized account representative to represent that person's ownership interest with respect to allowances.
- lll. "Owner or operator" means any person who is an owner or who operates, controls, or supervises an affected unit or affected source and includes any holding company, utility system, or plant manager of an affected unit or affected source.
- mmm. "Permit revision" means a permit modification, fast tract modification, administrative permit amendment, or automatic permit amendment, as provided in section 33-15-21-07.

- nnn. "Phase II" means the acid rain program period beginning January 1, 2000, and continuing into the future thereafter.
- ooo. "Potential electrical output capacity" means the megawatts electrical capacity rating for the units which shall be equal to thirty-three percent of the maximum design heat input capacity of the steam generating unit, as calculated according to appendix D of title 40, Code of Federal Regulations, part 72.
- ppp. "Power distribution system" means the portion of an electricity grid owned or operated by a utility that is dedicated to delivering electric energy to customers.
- qqq. "Power purchase commitment" means a commitment or obligation of a utility to purchase electric power from a facility pursuant to:
- (1) A power sales agreement;
 - (2) A state regulatory authority order requiring a utility to:
 - (a) Enter into a power sales agreement with the facility;
 - (b) Purchase from the facility; or
 - (c) Enter into arbitration concerning the facility for the purpose of establishing terms and conditions of the utility's purchase of power;
 - (3) A letter of intent or similar instrument committing to purchase power (actual electrical output or generator output capacity) from the source at a previously offered or lower price and a power sales agreement applicable to the source is executed within the timeframe established by the terms of the letter of intent but no later than November 15, 1992, or, where the letter of intent does not specify a timeframe, a power sales agreement applicable to the source is executed on or before November 15, 1992; or
 - (4) A utility competitive bid solicitation that has resulted in the selection of the qualifying facility of independent power production facility as the winning bidder.
- rrr. "Power sales agreement" is a legally binding agreement between a qualifying facility, independent power producer, or firm associated with such facility and a regulated

electric utility that establishes the terms and conditions for the sale of power from the facility to the utility.

- sss. "Primary fuel or primary fuel supply" means the main fuel type (expressed in mmbtu) consumed by an affected unit for the applicable calendar year.
- ttt. "Proposed acid rain permit or proposed permit" means the version of an acid rain permit that the department submits to the administrator after the public comment period, but prior to completion of the United States environmental protection agency permit review period under subdivision c of subsection 7 of section 33-15-14-06 and title 40, Code of Federal Regulations, 70.8(c).
- uuu. "Qualifying facility" means a "qualifying small power production facility" within the meaning of section 3(17)(C) of the Federal Power Act or a "qualifying cogeneration facility" within the meaning of section 3(18)(B) of the Federal Power Act.
- vvv. "Qualifying power purchase commitment" means a power purchase commitment in effect as of November 15, 1990 without regard to changes to that commitment so long as:
- (1) The identity of the electric output purchaser, the identity of the steam purchaser, and the location of the facility remain unchanged as of the date the facility commences commercial operation; and
 - (2) The terms and conditions of the power purchase commitment are not changed in such a way as to allow the costs of compliance with the acid rain program to be shifted to the purchaser.
- www. "Qualifying repowering technology" means:
- (1) Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator, in consultation with the secretary of energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple-combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990; or

- (2) Any oil-fired or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the United States department of energy.
- xxx. "Receive or receipt of" means the date the administrator or the department comes into possession of information or correspondence, whether sent in writing or by authorized electronic transmission, as indicated in an official correspondence log, or by a notation made on the information or correspondence, by the administrator or the department in the regular course of business.
- yyy. "Recordation, record, or recorded" means, with regard to allowances, the transfer of allowances by the administrator from one allowance tracking system account or subaccount to another.
- zzz. "Schedule of compliance" means an enforceable sequence of actions, measures, or operations designed to achieve or maintain compliance, or correct noncompliance, with an applicable requirement of the acid rain program, including any applicable acid rain permit requirement.
- aaaa. "Secretary of energy" means the secretary of the United States department of energy or the secretary's duly authorized representative.
- bbbb. "Simple combustion turbine" means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined cycle units without auxiliary firing. This term excludes combined cycle units with auxiliary firing, unless the unit did not use the auxiliary firing from 1985 through 1987 and does not use auxiliary firing at any time after November 15, 1990.
- cccc. "Solid waste incinerator" means a source as defined in section 129(g)(1) of the Act.
- dddd. "Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the Act. For purposes of section 502(c) of the Act, a "source", including a "source" with multiple units, shall be considered a single "facility".
- eeee. "Stack" means a structure that includes one or more flues and the housing for the flues.
- ffff. "State" means one of the forty-eight contiguous states and the District of Columbia and includes any nonfederal

authorities, including local agencies, interstate associations, and statewide agencies with approved state-operating permit programs. The term "state" shall have its conventional meaning where such meaning is clear from the context.

gggg. "State-operating permit program" means an operating permit program that the administrator has approved as meeting the requirements of titles IV and V of the Act and title 40, Code of Federal Regulations, parts 70 and 72.

hhhh. "Submit or serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States postal service certified mail with the official postmark or, if service is by the administrator or the department, by any other mail service by the United States postal service; or

(3) By other means with an equivalent time and date mark used in the regular course of business to indicate the date of dispatch or transmission and a record of prompt delivery. Compliance with any "submission", "service", or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

iiii. "Ton or tonnage" means any "short ton" (i.e., two thousand pounds). For the purpose of determining compliance with the acid rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with title 40, Code of Federal Regulations, part 75, with any remaining fraction of a ton equal to or greater than fifty hundredths ton deemed to equal one ton and any fraction of a ton less than fifty hundredths ton deemed not to equal any ton.

jjjj. "Total planned net output capacity" means the planned generator output capacity, excluding that portion of the electrical power which is designed to be used at the power production facility, as specified under one or more qualifying power purchase commitments or contemporaneous documents as of November 15, 1990. "Total installed net output capacity" shall be the generator output capacity, excluding that portion of the electrical power actually used at the power production facility, as installed.

kkkk. "Unit" means a fossil fuel-fired combustion device.

- llll. "Unit account" means an allowance tracking system account, established by the administrator for an affected unit pursuant to title 40, Code of Federal Regulations, 73.31(a) or (b).
- mmmm. "Utility" means any person that sells electricity.
- nnnn. "Utility competitive bid solicitation" is a public request from a regulated utility for offers to the utility for meeting future generating needs. A qualifying facility, independent power production facility may be regarded as having been "selected" in such solicitation if the utility has named the facility as a project with which the utility intends to negotiate a power sales agreement.
- oooo. "Utility regulatory authority" means an authority, board, commission, or other entity, limited to the local, state, or federal level, whenever so specified, responsible for overseeing the business operations of utilities located within its jurisdiction, including utility rates and charges to customers.
- pppp. "Utility unit" means a unit owned or operated by a utility:
- (1) That serves a generator that produces electricity for sale; or
 - (2) That during 1985 served a generator that produced electricity for sale.
 - (3) Notwithstanding paragraphs 1 and 2, a unit that was in operation during 1985, but did not serve a generator that produced electricity for sale during 1985, and did not commence commercial operation on or after November 15, 1990, is not a utility unit for purposes of the acid rain program.
 - (4) Notwithstanding paragraphs 1 and 2, a unit that cogenerates steam and electricity is not a utility unit for purposes of the acid rain program, unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990, and supplies, more than one-third of its potential electrical output capacity and more than twenty-five megawatts electrical output to any power distribution system for sale.
2. **Measurements, abbreviations, and acronyms.** Measurements, abbreviations, and acronyms used in this chapter are defined as follows:
- a. ASTM - American society for testing and materials.

- b. Btu - British thermal unit.
- c. CFR - Code of Federal Regulations.
- d. DOE - department of energy.
- e. mBtu - million Btu.
- f. MWe - megawatt electrical.
- g. SO₂ - sulfur dioxide.

3. Applicability.

- a. Each of the following units shall be an affected unit, and any source that includes such a unit shall be an affected source, subject to the requirements of the acid rain program:
 - (1) A unit listed in table 1 of title 40, Code of Federal Regulations, 73.10(a).
 - (2) An existing unit that is identified in table 2 or 3 of title 40, Code of Federal Regulations, 73.10 and any other existing utility unit, except a unit under subdivision b of this subsection.
 - (3) A utility unit, except a unit under subdivision b of this subsection, which:
 - (a) Is a new unit;
 - (b) Did not serve a generator with a nameplate capacity greater than twenty-five megawatts electrical on November 15, 1990, but serves such a generator after November 15, 1990;
 - (c) Was a simple combustion turbine on November 15, 1990, but adds or uses auxiliary firing after November 15, 1990;
 - (d) Was an exempt cogeneration facility under paragraph 4 of subdivision b but during any three calendar year period after November 15, 1990, sold, to a utility power distribution system, an annual average of more than one-third of its potential electrical output capacity and more than two hundred nineteen thousand megawatts electrical-hours electric output, on a gross basis;
 - (e) Was an exempt qualifying facility under paragraph 5 of subdivision b but, at any time

after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;

(f) Was an exempt independent power production facility under paragraph 6 of subdivision b but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of an independent power production facility; or

(g) Was an exempt solid waste incinerator under paragraph 7 of subdivision b but during any three calendar year period after November 15, 1990, consumes twenty percent or more (on a Btu basis) fossil fuel.

b. The following types of units are not affected units subject to the requirements of the acid rain program:

(1) A simple combustion turbine that commenced operation before November 15, 1990.

(2) Any unit that commenced commercial operation before November 15, 1990, and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than twenty-five megawatts electrical.

(3) Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.

(4) A cogeneration facility that:

(a) For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than two hundred nineteen thousand megawatts electrical-hours actual electric output on an annual basis to any utility power distribution system for sale on a gross basis. If the purpose of construction is not known, it will be presumed to be consistent with the actual operation from 1985 through 1987. However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential

electrical output capacity and more than two hundred nineteen thousand megawatts electrical-hours actual electric output on a gross basis, that unit shall be an affected unit, subject to the requirements of the acid rain program; or

- (b) For units that commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than two hundred nineteen thousand megawatts electrical-hours actual electric output on an annual basis to any utility power distribution system for sale on a gross basis. However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than two hundred nineteen thousand megawatts electrical-hours actual electric output on a gross basis, that unit shall be an affected unit, subject to the requirements of the acid rain program.

(5) A qualifying facility that:

- (a) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least fifteen percent of its total planned net output capacity; and
- (b) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding one hundred thirty percent of the total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

(6) An independent power production facility that:

- (a) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least fifteen percent of its total planned net output capacity; and
- (b) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding one hundred thirty percent of its total planned net output capacity. If the emissions rates of the units

are not the same, the administrator may exercise discretion to designate which units are exempt.

(7) A solid waste incinerator, if more than eighty percent on a Btu basis of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerator that began operation before January 1, 1985, the average annual fuel consumption of nonfossil fuels for calendar years 1985 through 1987 must be greater than eighty percent for such an incinerator to be exempt. For a solid waste incinerator that began operation after January 1, 1985, the average annual fuel consumption of nonfossil fuels for the first three years of operation must be greater than eighty percent for such an incinerator to be exempt. If, during any three calendar year period after November 15, 1990, such incinerator consumes twenty percent or more fossil fuel on a Btu basis, such incinerator will be an affected source under the acid rain program.

(8) A nonutility unit.

c. A certifying official of any unit may petition the administrator for a determination of applicability under title 40, Code of Federal Regulations, 72.6(c). The administrator's determination of applicability shall be binding upon the department, unless the petition is found to have contained significant errors or omissions.

4. New units exemption.

a. Applicability. This subsection applies to any new utility unit that serves one or more generators with total nameplate capacity of twenty-five megawatts electrical or less and burns only fuels with a sulfur content of five hundredths percent or less by weight, as determined in accordance with paragraph 1 of subdivision d.

b. Petition for written exemption. The designated representative, authorized in accordance with subpart B of title 40, Code of Federal Regulations, part 72, of a source that includes a unit under subdivision a may petition the department for a written exemption, or to renew a written exemption, for the unit from certain requirements of the acid rain program. The petition shall be submitted on a form approved by the department which includes the following elements:

(1) Identification of the unit.

(2) The nameplate capacity of each generator served by the unit.

- (3) A list of all fuels currently burned by the unit and their percentage sulfur content by weight, determined in accordance with subdivision a.
 - (4) A list of all fuels that are expected to be burned by the unit and their sulfur content by weight.
 - (5) The special provisions in subdivision d.
- c. North Dakota state department of health-and-consolidated laboratories' health's action.
- (1) (a) The department will issue, for any unit meeting the requirements of subdivisions a and b, a written exemption from the requirements of the acid rain program except for the requirements specified in this subsection, title 40, Code of Federal Regulations, 72.2 through 72.7, and title 40, Code of Federal Regulations, 72.10 through 72.13; provided that no unit shall be exempted unless the designated representative of the unit surrenders, and the administrator deducts from the unit's allowances tracking system account, allowances pursuant to title 40, Code of Federal Regulations, 72.7(c)(1)(i) and (d)(1).
 - (b) The exemption shall take effect on January first of the year immediately following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with paragraph 2 of subdivision c; provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of the acid rain program concerning all years for which the unit was not exempted, even if such requirements arise, or must be complied with, after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the acid rain program whether the violation occurs before or after the exemption takes effect.
- (2) In considering and issuing or denying a written exemption under paragraph 1 of subdivision c, the department will apply the permitting procedures in section 33-15-21-06 by:
 - (a) Treating the petition as an acid rain permit application under such provisions;

- (b) Issuing or denying a draft written exemption that is treated as the issuance or denial of a draft permit under such provisions; and
- (c) Issuing or denying a proposed written exemption that is treated as the issuance or denial of a proposed permit under such provisions; provided that no provision under section 33-15-21-06 concerning the content, effective date, or term of an acid rain permit shall apply to the written exemption or proposed written exemption under this subsection.

(3) A written exemption issued under this subsection shall have a term of five years from its effective date, except as provided in paragraph 3 of subdivision d.

d. Special provisions.

(1) The owners and operators of each unit exempted under this subsection shall determine the sulfur content by weight of its fuel as follows:

- (a) For petroleum or petroleum products that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using American society for testing and materials methods ASTM D4057-88 and ASTM D129-91, ASTM D2622-92, or ASTM D4294-90.
- (b) For natural gas that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, the sulfur content shall be assumed to be five hundredths percent or less by weight.
- (c) For gaseous fuel other than natural gas which the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using American society for testing and materials methods ASTM D1072-90 and ASTM D1265-92; provided that if the gaseous fuel is delivered by pipeline to the unit, a sample of the fuel shall be tested, at least once every quarter in which the unit operates during any year for which the exemption is in effect, using American society for testing and materials method ASTM D1072-90.

- (2) The owners and operators of each unit exempted under this subsection shall retain at the source that includes the unit, the records of the results of the tests performed under subparagraphs a and c of paragraph 1 and a copy of the purchase agreements for the fuel under paragraph 1, stating the sulfur content of such fuel. Such records and documents shall be retained for five years from the date they are created.
- (3) On the earlier of the date the written exemption expires, the date a unit exempted under this subsection burns any fuel with a sulfur content in excess of five hundredths percent by weight, as determined in accordance with paragraph 1, or twenty-four months prior to the date the unit first serves one or more generators with total nameplate capacity in excess of twenty-five megawatts electrical, the unit shall no longer be exempted under this subsection and shall be subject to all requirements of the acid rain program, except that:
 - (a) Notwithstanding subdivisions b and c of subsection 1 of section 33-15-21-03, the designated representative of the source that includes the unit shall submit a complete acid rain permit application on the later of January 1, 1998, or the date the unit is no longer exempted under this subsection.
 - (b) For purposes of applying monitoring requirements under title 40, Code of Federal Regulations, part 75, the unit shall be treated as a new unit that commenced commercial operation on the date the unit no longer meets the requirements of subdivision a of this subsection.

5. Retired units exemption.

- a. **Applicability.** This subsection applies to any affected unit that is retired prior to the issuance, including renewal, of an acid rain permit for the unit as a final agency action.
- b. **Petition for written exemption.**
 - (1) The designated representative, authorized in accordance with subpart B of title 40, Code of Federal Regulations, part 72, of a source that includes a unit under subdivision a may petition the department for a written exemption, or to renew a written exemption, for the unit from certain requirements of the acid rain program.

(2) A petition under this subsection shall be submitted on or before:

(a) The deadline for submitting an acid rain permit application for phase II; or

(b) If the unit has a phase II acid rain permit, the deadline for reapplying for such permit.

(3) The petition under this subsection shall be submitted on a form approved by the department which includes the following elements:

(a) Identification of the unit;

(b) The applicable deadline under paragraph 2;

(c) The actual or expected date of retirement of the unit;

(d) The following statement: "I certify that this unit [is or will be, as applicable] permanently retired on the date specified in this petition and will not emit any sulfur dioxide or nitrogen oxides after such date";

(e) A description of any actions that have been or will be taken and provide the basis for the certification in subparagraph d; and

(f) The special provisions in subdivision d.

c. North Dakota state department of health-and-consolidated laboratories' health's action.

(1) (a) The department will issue, for any unit meeting the requirements of subdivisions a and b, a written exemption from the requirements of sections 33-15-21-01 through 33-15-21-08 and title 40, Code of Federal Regulations, part 72, except for the requirements specified in this subsection and title 40, Code of Federal Regulations, 72.1 through 72.6, title 40, Code of Federal Regulations, 72.8, and title 40, Code of Federal Regulations, 72.10 through 72.13.

(b) The exemption shall take effect on January first of the year following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with paragraph 2; provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the

requirements of sections 33-15-21-01 through 33-15-21-08 and title 40, Code of Federal Regulations, part 72, concerning all years for which the unit was not exempted, even if such requirements arise or must be complied with after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the acid rain program whether the violation occurs before or after the exemption takes effect.

- (2) In considering and issuing or denying a written exemption under paragraph 1, the department will apply the procedures in section 33-15-21-06 by:
 - (a) Treating the petition as an acid rain permit application under such provisions;
 - (b) Issuing or denying a draft written exemption that is treated as the issuance or denial of a draft permit under such provisions; and
 - (c) Issuing or denying a proposed written exemption that is treated as a proposed permit under such provisions; provided that no provision under section 33-15-21-06 concerning, the content, effective date, or term of an acid rain permit shall apply to the written exemption or proposed written exemption under this section.
- (3) A written exemption issued under this subsection shall have a term of five years, except as provided in paragraph 3 of subdivision d.

d. Special provisions.

- (1) A unit exempted under this subsection shall not emit any sulfur dioxide and nitrogen dioxide starting on the date it is exempted.
- (2) The owners and operators of a unit exempted under this subsection shall comply with monitoring requirements in accordance with title 40, Code of Federal Regulations, part 75, and will be allocated allowances in accordance with title 40, Code of Federal Regulations, part 73.
- (3) A unit exempted under this subsection shall not resume operation unless the designated representative of the source that includes the unit submits an acid rain permit application for the unit not less than twenty-four months prior to the later of January 1, 2000, or the date the unit is to resume operation.

On the earlier of the date the written exemption expires or the date an acid rain permit application is submitted or is required to be submitted under this subdivision, the unit shall no longer be exempted under this subsection and shall be subject to all requirements of sections 33-15-21-01 through 33-15-21-08 and title 40, Code of Federal Regulations, part 72.

6. Standard requirements.

a. Permit requirements.

- (1) The designated representative of each affected source and each affected unit at the source shall:
 - (a) Submit a complete acid rain permit application under this chapter in accordance with the deadlines specified in subsection 1 of section 33-15-21-03; and
 - (b) Submit in a timely manner any supplemental information that the department determines is necessary in order to review an acid rain permit application and issue or deny an acid rain permit.
- (2) The owners and operators of each affected source and each affected unit at the source shall:
 - (a) Operate the unit in compliance with a complete acid rain permit application or a superseding acid rain permit issued by the department; and
 - (b) Have an acid rain permit.

b. Monitoring requirements.

- (1) The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in title 40, Code of Federal Regulations, part 75, and section 407 of the Act and regulations or rules implementing section 407 of the Act.
- (2) The emissions measurements recorded and reported in accordance with title 40, Code of Federal Regulations, part 75, and section 407 of the Act and regulations or rules implementing section 407 of the Act shall be used to determine compliance by the unit with the acid rain emissions limitations and

emissions reduction requirements for sulfur dioxide and nitrogen oxides under the acid rain program.

- (3) The requirements of title 40, Code of Federal Regulations, part 75, and regulations or rules implementing section 407 of the Act shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the Act and other provisions of the operating permit for the source.

c. Sulfur dioxide requirements.

- (1) The owners and operators of each source and each affected unit at the source shall:
 - (a) Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount, after deductions under title 40, Code of Federal Regulations, 73.34(c), not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and
 - (b) Comply with the applicable acid rain emissions limitation for sulfur dioxide.
- (2) Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation of the Act.
- (3) An affected unit shall be subject to the requirements under paragraph 1 as follows:
 - (a) Starting January 1, 2000, an affected unit under paragraph 2 of subdivision a of subsection 3; or
 - (b) Starting on the later of January 1, 2000, or the deadline for monitor certification under title 40, Code of Federal Regulations, part 75, an affected unit under paragraph 3 of subdivision a of subsection 3.
- (4) Allowances shall be held in, deducted from, or transferred among allowance tracking system accounts in accordance with the acid rain program.
- (5) An allowance shall not be deducted, in order to comply with the requirements under subparagraph a of paragraph 1 of subdivision c, prior to the calendar year for which the allowance was allocated.

- (6) An allowance allocated by the administrator under the acid rain program is a limited authorization to emit sulfur dioxide in accordance with the acid rain program. No provision of the acid rain program, the acid rain permit application, the acid rain permit, or the written exemption under subsections 4 and 5 and no provision of law shall be construed to limit the authority of the United States environmental protection agency to terminate or limit such authorization.
 - (7) An allowance allocated by the administrator under the acid rain program does not constitute a property right.
- d. Nitrogen oxides requirements. The owners and operators of the source and each affected unit at the source shall comply with the applicable acid rain emissions limitation for nitrogen oxides.
- e. Excess emissions requirements.
- (1) The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan to the administrator, as required under title 40, Code of Federal Regulations, part 77, and submit a copy to the department.
 - (2) The owners and operators of an affected unit that has excess emissions in any calendar year shall:
 - (a) Pay to the administrator without demand the penalty required, and pay to the administrator upon demand the interest on that penalty, as required by title 40, Code of Federal Regulations, part 77; and
 - (b) Comply with the terms of an approved offset plan, as required by title 40, Code of Federal Regulations, part 77.
- f. Recordkeeping and reporting requirements.
- (1) Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep onsite at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the administrator or the department.

- (a) The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with title 40, Code of Federal Regulations, 72.24; provided that the certificate and documents shall be retained onsite at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.
 - (b) All emissions monitoring information, in accordance with title 40, Code of Federal Regulations, part 75.
 - (c) Copies of all reports, compliance certifications, and other submissions and all records made or required under the acid rain program.
 - (d) Copies of all documents used to complete an acid rain permit application and any other submission under the acid rain program or to demonstrate compliance with the requirements of the acid rain program.
- (2) The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the acid rain program, including those under section 33-15-21-08 and title 40, Code of Federal Regulations, part 75.

g. Liability.

- (1) Any person who knowingly violates any requirement or prohibition of the acid rain program, a complete acid rain permit application, an acid rain permit, or a written exemption under subsections 4 or 5, including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement by the administrator pursuant to section 113(c) of the Act and by the department.
- (2) Any person who knowingly makes a false, material statement in any record, submission, or report under the acid rain program shall be subject to criminal enforcement by the administrator pursuant to section 113(c) of the Act and 18 U.S.C. 1001 and by the department.

- (3) No permit revision shall excuse any violation of the requirements of the acid rain program that occurs prior to the date that the revision takes effect.
 - (4) Each affected source and each affected unit shall meet the requirements of the acid rain program.
 - (5) Any provision of the acid rain program that applies to an affected source, including a provision applicable to the designated representative of an affected source, shall also apply to the owners and operators of such source and of the affected units at the source.
 - (6) Any provision of the acid rain program that applies to an affected unit, including a provision applicable to the designated representative of an affected unit, shall also apply to the owners and operators of such unit. Except as provided under subsection 2 of section 33-15-21-04, phase II repowering extension plans, section 407 of the Act and regulations or rules implementing section 407 of the Act, and except with regard to the requirements applicable to units with a common stack under title 40, Code of Federal Regulations, part 75, including title 40, Code of Federal Regulations, 75.16, 75.17, and 75.18, the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.
 - (7) Each violation of a provision of sections 33-15-21-01 through 33-15-21-10 and title 40, Code of Federal Regulations, parts 72, 73, 75, 77, and 78, and regulations or rules implementing sections 407 and 410 of the Act by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the Act.
- h. Effect on other authorities. No provision of the acid rain program, an acid rain permit application, an acid rain permit, or a written exemption under subsections 4 or 5 shall be construed as:
- (1) Except as expressly provided in title IV of the Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the Act,

including the provisions of title I of the Act relating to applicable national ambient air quality standards or state implementation plans;

- (2) Limiting the number of allowances a unit can hold; provided, that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the Act or this article;
- (3) Requiring a change of any kind in any state law regulating electric utility rates and charges, affecting any state law regarding such state regulation, or limiting such state regulation, including any prudence review requirements under such state law;
- (4) Modifying the Federal Power Act or affecting the authority of the federal energy regulatory commission under the Federal Power Act; or
- (5) Interfering with or impairing any program for competitive bidding for power supply in a state in which such program is established.

History: Effective December 1, 1994; amended effective April 1, 1998.

General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1

Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1, 23-25-10

33-15-21-10. Acid rain nitrogen oxides emission reduction program. {Reserved} Title 40, Code of Federal Regulations, part 76 and its appendices, as they exist on July 1, 1997, are incorporated into this chapter by reference.

History: Effective April 1, 1998.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-01-04.1, 23-25-03

CHAPTER 33-15-22

33-15-22-01. Scope. The subparts and appendices of title 40, Code of Federal Regulations, part 63, as they exist on ~~October 1, 1996~~ July 1, 1997, which are listed in section 33-15-22-03 are incorporated into this chapter by reference. Any changes to the emission standard are listed below the title of the standard.

History: Effective December 1, 1994; amended effective August 1, 1995; January 1, 1996; September 1, 1997; April 1, 1998.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-22-03. Emission standards.

Subpart A - General provisions.

Subpart B - Requirements for control technology determinations for major sources in accordance with Clean Air Act sections 112(g) and 112(j).

*Sections 63.42(a) and 63.42(b) are deleted in their entirety.

Subpart C - List of hazardous air pollutants, petitions process, lesser quantity designations, source category list. [Reserved]

Subpart D - Regulations governing compliance extensions for early reductions of hazardous air pollutants.

Subpart F - National emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry.

Subpart G - National emission standards for organic hazardous air pollutants from synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater.

Subpart H - National emission standards for organic hazardous air pollutants for equipment leaks.

Subpart I - National emission standards for organic hazardous air pollutants for certain processes subject to the negotiated regulation for equipment leaks.

Subpart M - National perchloroethylene air emission standards for drycleaning facilities.

Subpart N - National emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks.

Subpart O - Ethylene oxide emissions standards for sterilization facilities.

Subpart Q - National emission standards for hazardous air pollutants for industrial process cooling towers.

Subpart R - National emission standards for gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations).

Subpart T - National emission standards for halogenated solvent cleaning.

Appendix A to subpart T - test of solvent cleaning procedures.

Appendix B to subpart T - general provisions applicability to subpart T.

Subpart W - National emission standards for hazardous air pollutants for epoxy resins production and non-nylon polyamides production.

Table 1 to subpart W - General provisions applicability to subpart W.

Subpart X - National emission standards for hazardous air pollutants from secondary lead smelting.

Subpart CC - National emission standards for hazardous air pollutants from petroleum refineries.

Subpart EE - National emission standards for magnetic tape manufacturing operations.

Subpart GG - National emission standards for aerospace manufacturing and rework facilities.

Subpart JJ - National emission standards for wood furniture manufacturing operations.

Subpart KK - National emission standards for the printing and publishing industry.

Table 1 to subpart KK - Applicability of general provisions to subpart KK.

Appendix A to subpart KK - Data quality objective and lower confidence limit approaches for alternative capture efficiency protocols and test methods.

Appendix A to part 63 - Test methods.

Appendix B to part 63 - Sources defined for early reduction provisions.

Appendix C to part 63 - Determination of the fraction biodegraded (f_{bio}) in a biological treatment unit.

History: Effective December 1, 1994; amended effective August 1, 1995; January 1, 1996; September 1, 1997; April 1, 1998.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

TITLE 43
Industrial Commission

FEBRUARY 1998

CHAPTER 43-02-10

43-02-10-06. Incremental production determination for a secondary recovery project.

1. a. In a unit where there has not been a secondary recovery project, the commission will establish a primary production decline curve. In such instance, incremental production is the production above the established primary production decline curve which production is a result of the secondary recovery project.
- b. The total amount of primary production from the unit will be determined by the commission through the use of a computer generated production decline curve developed by software used by the commission at the time of certification. The decline curve will be a production versus time plot. The oil production and the time used to develop the curve will be that production occurring and period of time from the latest peak in production through the last month of oil production prior to the month in which secondary recovery project operations commence. However, the director shall have discretionary authority to select a different period of time to establish the decline curve if deemed necessary to obtain a more accurate estimate of the ultimate primary production.
- c. The production decline curve established in subdivision b of this subsection is projected from the end of the last

month in which production was used to develop the primary decline curve to a producing rate of one barrel of oil per well per day. All production above the projected decline curve is incremental production and production below the decline curve is primary production. The total projected primary production, on a monthly basis in numerical form, is derived from the projected primary production decline curve. A copy of the projected monthly primary production, in numerical form, will be furnished to the unit operator and the tax commissioner.

- d. For purposes of determining the primary production provided for in this subsection, where practices and procedures used by the commission cannot be used because production has been restricted due to the prolific nature of the reservoir (such as a Lodgepole reservoir), where unitization is accomplished early in the life of the reservoir, and sufficient primary production history does not exist for decline curve analysis, the commission will have the authority to determine an alternate method using fundamental reservoir engineering principles. One example the commission might use is a pressure decline versus cumulative production plot to estimate the ultimate primary production. Based on available data and reservoir characteristics an initial rate and decline percent would be extrapolated to match the estimated ultimate recovery. In this case the operating company would be required to monitor the reservoir pressure and production and coordinate all activities and measurements with the commission.
2. In a unit which commences a new secondary recovery project where a secondary recovery project was in existence prior to July 1, 1991, and the commission cannot establish an accurate production decline curve, incremental production will be determined pursuant to paragraph 2 of subdivision c of subsection 5 of North Dakota Century Code section 57-51.1-03.
3. a. In a unit which commences a new secondary recovery project where a secondary recovery project was in existence before July 1, 1991, and where the commission can establish an accurate production decline curve, incremental production is the production above the established production decline curve which production is a result of the new secondary recovery project.
- b. The total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced will be determined by the commission through the use of a computer generated production decline curve developed by software used by the commission at the time of certification. The decline curve will be a production versus time plot. The oil production and the

time used to develop the curve will be that production occurring and period of time from the latest peak in production through the last month of oil production prior to the month in which the new secondary recovery project operations commence. However, the director shall have discretionary authority to select a different period of time to establish the decline curve if deemed necessary to obtain a more accurate estimate of the ultimate production that would have been produced if the new secondary recovery project had not been commenced.

- c. The production decline curve established in subdivision b of this subsection is projected from the end of the last month in which production was used to develop the decline curve to a producing rate of one barrel of oil per well per day. All production above the projected decline curve is incremental production and production below the decline curve is production which would have occurred in the absence of the new secondary recovery project. The total projected production below the curve, on a monthly basis in numerical form, is derived from the projected production decline curve. A copy of the projected monthly production below the curve, in numerical form, will be furnished to the unit operator and the tax commissioner.
4. The commission will hold a hearing to establish a decline curve and a projection of the curve from which incremental production can be determined. At the hearing the project operator of a secondary recovery project or a new secondary recovery project must introduce evidence regarding the work proposed or accomplished which will result in incremental production, and evidence showing that the project is a qualifying project. Application for the hearing may, at the discretion of the project operator, be made prior or subsequent to the commencement of a secondary recovery project or commencement of a new secondary recovery project.

History: Effective May 1, 1992; amended effective February 1, 1998.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51.1-01

TITLE 46
Labor, Commissioner of

FEBRUARY 1998

CHAPTER 46-02-07

46-02-07-02. Standards that apply.

1. The North Dakota minimum wage is no less than ~~four~~ five dollars and ~~seventy-five~~ fifteen cents per hour and must be paid to all employees in every occupation in the state.
2. Overtime pay must be paid at one and one-half times the regular rate of pay to any employee for hours worked in excess of forty hours in any one week. Individuals employed as drivers by taxicab companies must be compensated at one and one-half times the regular rate of pay for all hours worked in excess of fifty hours in any one week. Hospitals and residential care establishments may adopt, by agreement with their employees, a fourteen-day overtime period in lieu of the usual seven-day workweek, if the employees are paid at least time and one-half their regular rate for hours worked over eight in a day or eighty in a fourteen-day work period, whichever is the greater number of overtime hours. The following types of employment are exempt from the overtime provisions of this subsection:
 - a. Any employee employed in a bona fide executive, administrative, or professional capacity.
 - b. Any employee engaged in an agricultural occupation.
 - c. Any employee of a shelter, foster care, or other such related establishment whose primary responsibilities are to provide temporary shelter, crisis intervention, prevention, education, and fellowship.

- d. Any employee employed in domestic service who resides in the household in which employed.
 - e. A straight commission salesperson in retail automobile, trailer, boat, aircraft, truck, or farm implement dealerships unless that salesperson is required to be on the premises for more than forty hours per week.
3. A minimum thirty-minute uninterrupted break must be provided to any employee desiring it in each shift exceeding five hours when there are two or more employees on duty. Collectively bargained agreements will prevail over this provision. Employees not allowed to leave the business location during the break period must be compensated at the regular rate of pay or provided with in-kind compensation (such as a meal) equal to or greater than the regular rate of pay.
4. Attendance at lectures, meetings, training programs, and similar activities need not be counted as working time if all the following four criteria are met:
- a. Attendance is outside of the employee's regular working hours.
 - b. Attendance is in fact voluntary.
 - c. The course, lecture, or meeting is not directly related to the employee's job.
 - d. The employee does not perform any productive work during such attendance.

Training or education mandated by the state, federal government, or any political subdivision for a specific occupation need not be counted as worktime.

5. Ordinary travel from home to work need not be counted as worktime. Special and unusual one-day assignments performed for the employer's benefit and at the employer's request is worktime for the employee regardless of driver or passenger status. Travel away from home is worktime when performed during the employee's regular working hours. Time spent traveling on nonworking days during regular working hours is worktime. The time spent as a passenger on an airplane, train, bus, or automobile after normal working hours is not worktime. The driver of a vehicle is working at anytime when required to travel by the employer. Traveltime from jobsite to jobsite, or from office to jobsite, is worktime to be compensated.
6. Standby time on the premises, or "on call" as in an engaged to wait manner is worktime to be compensated. Waiting to be engaged is not required to be compensated as worktime.

7. If an employee is required to be on duty for twenty-four hours or more, the employer and the employee may agree to exclude bona fide meal periods and bona fide regularly scheduled sleeping periods of not more than eight hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted sleep. If the sleeping period is more than eight hours, only eight hours will be deducted from hours worked. If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted as worktime.
8. Every employer must furnish to an employee each pay period a check stub or pay voucher that indicates hours worked, the rate of pay, and required state and federal deductions.
9. An employer may require an employee to purchase uniforms if the cost of such uniforms does not bring that employee's wage below the hourly minimum wage for all hours worked during that pay period.
10. Vacation pay and paid time off must be treated the same as wages upon separation from employment if the employee has earned vacation or paid time off and has been employed for at least one year. Earned vacation pay or paid time off under collectively bargained agreements must be paid the same as wages when a labor dispute lasts more than fifteen days.
11. The commissioner may grant subminimum wages for students enrolled in vocational education or related programs as long as the wage is not below three dollars and sixty cents per hour.
12. Any employee working on a casual basis for less than twenty hours per week for less than three consecutive weeks in domestic service employment providing babysitting services is exempt from minimum wage and overtime provisions.
13. The reasonable value not exceeding the employer's actual cost of board, lodging, and other facilities customarily furnished by the employer for the employee's benefit may be treated as part of the wages, up to a maximum of fifteen dollars per day, if agreed to by a written agreement and if the employee's acceptance of facilities is in fact voluntary.
14. The common law test provided in subdivisions a and b of subsection 5 of section 27-02-14-01 will be used to determine whether or not an individual may be considered an employee or an independent contractor.

15. The entire employment relationship history existing between the employer and employee, including the employer's previous practices under similar circumstances, will be considered to determine when commissions should be paid to salespersons whose employment has ended.

History: Effective May 1, 1994; amended effective October 1, 1996; September 1, 1997.

General Authority: NDCC 28-32-02(1), 34-06-04

Law Implemented: NDCC 34-06-03, 34-06-09, 34-06-11, 34-06-12

46-02-07-03. Additional standards that apply to service and nonprofit industries.

1. A tip credit of thirty-three percent of the minimum wage may be allowed for tipped employees. The employer may consider tips as part of wages, but such a tip credit must not exceed thirty-three percent of the minimum wage. The employer who elects to use the tip credit provision must inform the employee in advance and must maintain written records showing that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined. The minimum-cash-wage-payable-to-tipped-employees-is-three-dollars-and-eighteen-cents-per-hour.
2. Tip pooling is allowed only among the tipped employees. A vote of tipped employees to allow tip pooling must be taken, and it must be approved by fifty percent plus one of all tipped employees. A written record of each vote on tip pooling must be maintained by the employer, including names of employees voting and the vote totals.
3. Tipped employees employed in the nonprofit gaming industry means all employees with a gaming work permit issued by the North Dakota attorney general and who are employed as gaming attendants by a gaming organization licensed under North Dakota Century Code section 53-06.1-03.
 - a. Gaming sites that regularly have four or fewer tipped employees on duty can require tip pooling among all tipped employees at the site.
 - b. A gaming organization licensed under North Dakota Century Code section 53-06.1-03 may require tip pooling by blackjack (twenty-one) dealers at an authorized site as provided in North Dakota Century Code section 53-06.1-10. This tip pooling requirement only pertains to any employee, pit boss, or supervisor when actually dealing blackjack.
 - c. Pit bosses or supervisors at gaming sites are not tipped employees and cannot be part of the tip pool when

performing functions of those positions other than dealing blackjack (twenty-one).

4. Nonprofit camps that are directly youth related, and intended for educational purposes are exempt from minimum wage and overtime rules.

History: Effective May 1, 1994; amended effective October 1, 1996; September 1, 1997.

General Authority: NDCC 28-32-02(1), 34-06-04

Law Implemented: NDCC 34-06-03, 34-06-09, 34-06-11, 34-06-12

MARCH 1998

CHAPTER 46-02-07

46-02-07-01. Definitions. As used in this title:

1. "Administrative" means an employee employed in a bona fide administrative capacity, but is not exclusive to any employee whose primary duty consists of:
 - a. The performance of office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customer; or
and
 - b. Who customarily and regularly exercises discretion and independent judgment.
2. "Agricultural employment" means employment on a farm, for a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to carriers for transportation to market.
3. "Casual employment" means employment that is irregular or intermittent.
4. "Domestic service employment" means services of a household nature performed by an employee in or about a private home (permanent or temporary) of the person by whom the employee is employed.
5. "Engaged to wait" means when employees are required to remain on call on the employer's premises or so close thereto that

they cannot use the time effectively for their own purposes and thus are considered to be working.

6. "Executive" means an employee employed in a bona fide executive capacity, but is not exclusive to any employee whose primary duty consists of:
 - a. The management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;
 - b. Directing the work of two or more other employees therein; and
 - c. The authority to hire or fire other employees or whose suggestions as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight.
7. "Nonprofit" means a nonprofit corporation organized under the laws of this or another state.
8. "Occasional and sporadic" means infrequent, irregular, or occurring in scattered instances.
9. "Professional" means an employee employed in a bona fide professional capacity, but is not exclusive to any employee whose primary duty consists of:
 - a. Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or
 - b. Work requiring the consistent exercise of discretion and judgment in its performance; and
 - c. Work that is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.
10. "Residential care establishment" means an institution primarily engaged in the care of the sick, the aged, or the mentally ill residing on the premises requiring general treatment or observation of a less critical nature than provided by a hospital. Such institutions may include nursing homes, rest homes, convalescent homes, homes for the elderly and infirm, and the like.

11. "Retail establishment" means an establishment in which seventy-five percent or more of the annual gross sales are sold to the final consumer and are not sold for resale, and is recognized as retail sales or services in the industry.
12. "Service employee" means any employee who is providing direct service to the customer and to whom that customer shows appreciation for that service by tipping that employee for the direct service. The employee must regularly and customarily provide personal face-to-face service to individual customers, which the customer would recognize as being performed for the customer's his or her benefit. Services such as cooking and dishwashing are not included.
- ~~11-~~ 13. "Service industry" means an industry in which the principal activity is to provide goods and services directly to the consuming public.
14. "Taxicab driver" means an individual employed as a driver by a taxicab company; where the service is a computer or radio dispatched door-to-door service but not a motorcoach or a routed system.
- ~~12-~~ 15. "Tip credit" means the amount or percentage by which an employer is allowed to reduce the minimum wage for a tipped employee.
- ~~13-~~ 16. "Tip pooling" means when two or more tipped employees agree to pool their tips and split them as agreed upon.
- ~~14-~~ 17. "Tipped employee" means any service employee in an occupation in which the employee customarily and regularly receives more than thirty dollars a month in tips.
- ~~15-~~ 18. "Waiting to be engaged" means when employees are on call and not required to remain on the employer's premises, but are required to respond to a beeper or leave word at home or the employer's business where they may be reached. Employees in this--status are not considered to be working while in this status.
- ~~16-~~ 19. "Week" means any seven-consecutive-day consecutive seven-day period established by the employer.

History: Effective May 1, 1994; amended effective March 1, 1998.

General Authority: NDCC 28-32-02(1), 34-06-04

Law Implemented: NDCC 34-06-03, 34-06-09, 34-06-11, 34-06-12

46-02-07-02. Standards that apply.

1. The North Dakota minimum wage is no less than five dollars and fifteen cents per hour and must be paid to all employees in every occupation in the state.

The following are exempt from minimum wage and working conditions provided in this chapter:

- a. Employees of nonprofit camps that are directly youth-related and intended for educational purposes.
- b. A guide, cook, or camp-tender for a hunting or fishing guide service.
- c. Golf course caddies.
- d. Any person in a program for youthful or first-time offenders designed as an alternative to incarceration if the person:
 - (1) Voluntarily enters into the program for personal benefit;
 - (2) Does not displace regular employees or infringe on the employment opportunities of others;
 - (3) Is under the supervision or control of a court; and
 - (4) Performs the work without contemplation of pay.
- e. Prison or jail inmates who do work for the prison, jail, institution, or other areas directly associated with the incarceration program. The work must be performed for the prison, jail, institution, state, or a political subdivision.
- f. Actors or extras for a motion picture.
- g. Any person working on a casual basis for less than twenty hours per week for less than three consecutive weeks in domestic service employment providing babysitting services.
- h. Volunteers as described in this subdivision:
 - (1) Individuals who donate their time and services, usually on a part-time basis, including public service, humanitarian objectives, religious, fraternal, nonprofit, and charitable organizations, not as employees and without contemplation of pay.

(2) Individuals who provide services to hospitals or nursing homes to provide support and assistance to families and patients.

(3) Regular employees of religious, nonprofit, or charitable organizations may volunteer their services for activities outside of their normal work duties.

(4) Residents or patients of shelters, foster care, or other such related establishments may volunteer their services as long as regular employees are not displaced.

i. Student trainees meeting the following six criteria:

(1) The training is similar to that in a vocational school.

(2) The training is clearly for the benefit of the trainee.

(3) The trainee does not displace regular employees.

(4) The employer derives no immediate benefit.

(5) The trainee is not entitled to a job.

(6) The trainee is not entitled to wages.

2. The commissioner may issue subminimum wages for students enrolled in vocational education or related programs as long as the wage is not below eighty-five percent of the current state minimum wage.

The process for granting subminimum wages for students includes:

a. The student must complete the application for subminimum wage certificate for vocational education students (SFN 51370). The application (SFN 51370) includes: the employee's name, address, and signature; the employer's name, type of business, address, and signature; a description of the job; the pay rate; the vocational education instructor's signature.

b. Upon receipt of the application the commissioner may issue a license to pay a subminimum wage to the employee for not more than one year.

3. The process for granting subminimum wages to individuals with disabilities in accordance with North Dakota Century Code section 34-06-15 includes:

- a. The disabled worker must complete the application for subminimum wage certificate for individuals with disabilities (SFN 51371). The application (SFN 51371) includes: the employee's name, address, and signature; the employer's name, type of business, address, and signature; a description of the job; the prevailing wage; the proposed pay rate; and an analysis of the employee's productive capacity. A physician's signed verification of the disability in relationship to the job duties or existing supporting evidence of the disability must be provided.
- b. In order to be paid less than the minimum wage, documentation of the employee's commensurate wage rate must be provided to the commissioner and maintained by the employer. Commensurate wages are determined by assessing nondisabled worker productivity, the prevailing wage rate for the same or similar work, and an evaluation of the worker's own efficiency.
- c. Upon receipt of the application and documentation the commissioner may issue a license to pay a subminimum wage to the employee for not more than one year.
- d. The worker's commensurate wage rate must be reevaluated by the employer every six months and adjusted accordingly; the employer must maintain all documentation.

The commissioner may issue a special license to pay less than the minimum wage to nonprofit community rehabilitation programs for the handicapped under North Dakota Century Code section 34-06-15. Those programs must conduct a recognized program for rehabilitation for handicapped workers or provide paid employment for such workers or other occupational rehabilitative activity of an educational or learning nature. Special licenses to these programs may be issued after the commissioner receives a copy of the application and license from the commensurate federal program for employment of disabled workers under special certificates.

- 2- 4. Overtime pay must be paid at one and one-half times the regular rate of pay to any employee for hours worked in excess of forty hours in any one week. Paid holidays, paid time off, or sick leave are not counted in computing overtime hours. Overtime is computed on a weekly basis regardless of the length of the pay period. Hours worked may not be averaged over the pay period or used to offset shorter weeks. Employees working more than one job under the control of the same employer must have all hours worked counted toward overtime.

Individuals employed as drivers by taxicab companies must be compensated at one and one-half times the regular rate of pay

for all hours worked in excess of fifty hours in any one week. Hospitals and residential care establishments may adopt, by agreement with their employees, a fourteen-day overtime period in lieu of the usual seven-day workweek, if the employees are paid at least time and one-half their regular rate for hours worked over eight in a day or eighty in a fourteen-day work period, ~~whichever is the greater number of overtime hours~~. The following types of employment are exempt from the overtime provisions of this subsection:

- a. Any employee employed in a bona fide executive, administrative, or professional capacity.
- b. Any employee engaged in an agricultural occupation.
- c. Any employee spending at least fifty-one percent of the employee's worktime providing direct care to clients of a shelter, foster care, or other such related establishment whose primary responsibilities are to provide temporary shelter, crisis intervention, prevention, education, and fellowship.
- d. Any employee employed in domestic service who resides in the household in which employed.
- e. A straight commission salesperson in retail automobile, trailer, boat, aircraft, truck, or farm implement dealerships unless that salesperson is required to be on the premises for more than forty hours per week.
- f. Computer professionals exercising discretion and independent judgment when designing, developing, creating, analyzing, testing, or modifying computer programs or who are paid hourly at a rate of at least twenty-seven dollars and sixty-three cents.
- g. Any employee who is customarily and regularly engaged away from the employer's premises for the purpose of making sales or taking orders. Work unrelated to outside sales may not exceed twenty percent of the hours worked in the week for the exemption to apply.
- h. Mechanics paid on a commission basis off a flat rate schedule.
- i. An employee of a retail establishment if the employee's regular rate of pay exceeds 1.5 times the minimum hourly rate applicable if more than half of the employee's compensation for a period of not less than one month is derived from commission on goods or services sold.
- j. Any employee employed as an announcer, news editor, or chief engineer by a radio or television station.

k. Artistic professions which are original and creative in nature or where the work is dependent upon the invention, imagination, or talent of the employee, such as: editors, columnists, critics, publishers, cartoonists, graphic artists, musicians, composers, conductors, soloists, novelists, writers, and actors.

l. Motor carrier: Any employee exempted by section 13(b)(1), (2), and (3) of the Fair Labor Standards Act [29 U.S.C. 213(b)(1), (2), and (3)] from section 7 of the Fair Labor Standards Act [29 U.S.C. 207], as applied to covered employees of motor common, contract, and private carriers specified by the Motor Carriers Act [49 U.S.C. 3102].

m. Teachers, instructors, tutors, and lecturers engaged in teaching in a school or educational system.

3- 5. A minimum thirty-minute uninterrupted-break meal period must be provided ~~to any employee desiring it~~ in each shift exceeding five hours when there are two or more employees on duty. Employees may waive their right to a meal period upon agreement with the employer. Employees do not have to be paid for meal periods if they are completely relieved of their duties and the meal period is ordinarily thirty minutes in length. The employee is not completely relieved if required to perform any duties during the meal period. Collectively bargained agreements will prevail over this provision. Employees not allowed to leave the business location during the break period must be compensated at the regular rate of pay or provided with in-kind compensation (such as a meal) equal to or greater than the regular rate of pay.

4- 6. Attendance at lectures, meetings, training programs, and similar activities need not be counted as working time if all the following four criteria are met:

- a. Attendance is outside of the employee's regular working hours.
- b. Attendance is in fact voluntary.
- c. The course, lecture, or meeting is not directly related to the employee's job.
- d. The employee does not perform any productive work during such attendance.

Training or education mandated by the state, federal government, or any political subdivision for a specific occupation need not be counted as worktime.

5- 7. Ordinary travel from home to work need not be counted as worktime. Special and unusual one-day assignments performed

for the employer's benefit and at the employer's request is worktime for the employee regardless of driver or passenger status. Travel away from home is worktime when performed during the employee's regular working hours. Time spent traveling on nonworking days during regular working hours is worktime. The time spent as a passenger on an airplane, train, bus, or automobile after normal working hours is not worktime. The driver of a vehicle is working at anytime when required to travel by the employer. Traveltime from jobsite to jobsite, or from office to jobsite, is worktime to be compensated. Activities which are merely incidental use of an employer-provided vehicle for commuting home to work are not considered part of the employee's principal activity and therefore need not be counted as worktime.

- 6- 8. Standby time on the employer's premises, or "on call" as in an engaged to wait manner is worktime to be compensated. Waiting to be engaged is not required to be compensated as worktime.
- 7- 9. If an employee is required to be on duty for twenty-four hours or more, the employer and the employee may agree to exclude bona fide meal periods and bona fide regularly scheduled sleeping periods of not more than eight hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted sleep. If the sleeping period is more than eight hours, only eight hours will be deducted from hours worked. If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted as worktime.
- 8- 10. Recordkeeping: Every employer must furnish to an employee each pay period a check stub or pay voucher that indicates hours worked, the rate of pay, and required state and federal deductions, and authorized deductions.

Time clocks: Time clocks are not required. If used, the employer may round the time to the nearest five minutes or quarter hour using the total minutes for the day as long as the employee over a period of time is paid for all the time the employee has actually worked.

Employees who voluntarily clock in before their regular starting time or remain after closing time do not have to be compensated provided that no work is performed.

- 9- 11. An employer may require an employee to purchase uniforms if the cost of such uniforms does not bring that employee's wage below the hourly minimum wage for all hours worked during that pay period.

10- 12. Vacation--pay--and--paid--time--off--must--be--treated--the--same--as--wages--upon--separation--from--employment--if--the--employee--has--earned--vacation--or--paid--time--off--and--has--been--employed--for--at--least--one--year--. Earned--vacation--pay--or--paid--time--off--under--collectively--bargained--agreements--must--be--paid--the--same--as--wages--when--a--labor--dispute--lasts--more--than--fifteen--days. Paid time off includes annual leave, earned time, personal days, or any other provisions of the employment relationship intended to provide compensation as vacation. Provisions where employees earn time off and the employees can use the days for any purpose, are paid time off unless separate arrangements are made for sick leave.

Paid time off, once earned or awarded, is considered wages upon separation from employment. If the paid time off is available for use at the time of separation from employment, the employer must pay the employee for that time at the regular rate of pay earned by the employee prior to separation.

No employment contract or policy may provide for forfeiture of earned paid time off upon separation. An employment contract or policy may require an employee to take vacation by a certain date or lose the vacation (use it or lose it), provided that the employee is given a reasonable opportunity to take the vacation. The employer must demonstrate that the employee had notice of such contract or policy provision.

11. The--commissioner--may--grant--subminimum--wages--for--students--enrolled--in--vocational--education--or--related--programs--as--long--as--the--wage--is--not--below--three--dollars--and--sixty--cents--per--hour.

12. Any--employee--working--on--a--casual--basis--for--less--than--twenty--hours--per--week--for--less--than--three--consecutive--weeks--in--domestic--service--employment--providing--babysitting--services--is--exempt--from--minimum--wage--and--overtime--provisions.

13. The reasonable value not exceeding the employer's actual cost of board, lodging, and other facilities customarily furnished by the employer for the employee's benefit may be treated as part of the wages, up to a maximum of fifteen eighteen dollars per day, if agreed to by a written agreement and if the employee's acceptance of facilities is in fact voluntary.

14. The common law test provided in subdivisions a and b of subsection 5 of section 27-02-14-01 will be used to determine whether or not an individual may be considered an employee or an independent contractor.

15. The--entire--employment--relationship--history--existing--between--the--employer--and--employee--including--the--employer's--previous--practices--under--similar--circumstances--will--be--considered--to

~~determine when commissions should be paid to salespersons whose employment has ended.~~ Earned bonus: An earned bonus is an amount paid in addition to a salary, wage, or commission. An earned bonus is compensable when an employee performs the requirements set forth in a contract or an agreement between the parties.

Earned commission: A commission is a fee or percentage given for compensation to an individual for completion of a sale, service, or transaction. Upon separation from employment, the past practices, policies, and entire employment relationship will be used to determine if the commission is earned and compensable.

16. The department will use the past practices, policies, and entire employment relationship in wage claim determinations.

History: Effective May 1, 1994; amended effective October 1, 1996; September 1, 1997; March 1, 1998.

General Authority: NDCC 28-32-02(1), 34-06-04

Law Implemented: NDCC 34-06-03, 34-06-09, 34-06-11, 34-06-12, 34-06-15

46-02-07-03. Additional standards that apply to service and nonprofit industries.

1. A tip credit of thirty-three percent of the minimum wage may be allowed for tipped employees. The employer may consider tips as part of wages, but such a tip credit must not exceed thirty-three percent of the minimum wage. The employer who elects to use the tip credit provision must inform the employee in advance and must maintain written records showing that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined.
2. Tip pooling is allowed only among the tipped employees. A vote of tipped employees to allow tip pooling must be taken, and ~~it must be approved by~~ fifty percent plus one of all tipped employees must approve it. A The employer must maintain a written record of each vote on tip pooling must be maintained by the employer, including names of employees voting and the vote totals. A vote on whether to pool tips is required if requested by fifty-one percent or more of the tipped employees. The tipped employees shall provide documentation verifying the request. Time spent in meetings called by the employees exclusively for tip issues is not worktime.
3. Tipped employees employed in the nonprofit gaming industry means all employees ~~with a gaming work permit issued by the North Dakota attorney general~~ and who are employed as gaming attendants by a gaming organization licensed under North Dakota Century Code section 53-06.1-03.

- a. Gaming sites that regularly have four or fewer tipped employees on duty can require tip pooling among all tipped employees at the site.
- b. A gaming organization licensed under North Dakota Century Code section 53-06.1-03 may require tip pooling by blackjack (twenty-one) dealers at an authorized site as provided in North Dakota Century Code section 53-06.1-10. This tip pooling requirement only pertains to any employee, pit boss, or supervisor when actually dealing blackjack (twenty-one).
- c. Pit bosses or supervisors at gaming sites are not tipped employees and cannot be part of the tip pool when performing functions of those positions other than dealing blackjack (twenty-one).

~~4.---Nonprofit--camps--that--are--directly--youth--related,--and--intended
for--educational--purposes--are--exempt--from--minimum--wage--and
overtime--rules.~~

History: Effective May 1, 1994; amended effective October 1, 1996;
September 1, 1997; March 1, 1998.

General Authority: NDCC 28-32-02(1), 34-06-04

Law Implemented: NDCC 34-06-03, 34-06-09, 34-06-11, 34-06-12

CHAPTER 46-02-08
MOTOR CARRIER EXEMPTION FROM OVERTIME PAY PROVISIONS

[Repealed effective March 1, 1998]

CHAPTER 46-03-01

46-03-01-01. Formulas for determining regular rate and overtime.

1. Determining overtime from an hourly rate:

Hourly rate x 1.5 = Overtime hourly rate of pay

Overtime hourly rate of pay x Number of hours worked in excess of 40 = Amount of overtime due

2. Determining hourly rate and overtime from monthly salary:

$\frac{\text{Monthly salary} \times 12}{52} = \text{Weekly salary}$

$\frac{\text{Weekly salary}}{\text{Total hours worked during that week}} = \text{Rate per hour}$

To calculate overtime from this:

Rate per hour x 1/2 x Number of hours worked in excess of 40 = Amount of overtime due

3. Determining hourly rate and overtime for retail employees paid principally from commissions:

$\frac{\text{Total compensation for one week}}{\text{Total hours worked for that same week}} = \text{Regular rate of pay}$

~~The employer is responsible to ensure that at least four dollars and twenty-five cents per hour is received by the employee either on a straight commission basis, or with a base hourly wage, or with an addition to the straight commission to equal the required four dollars and twenty-five cents. If the employer requires the employee to work more than forty hours in any given week the employer must pay the employee half the regular pay for all hours worked over forty if the employee is earning less than six dollars and thirty-eight cents per hour. If the employee earns six dollars and thirty-eight cents or more per hour the employer is not responsible for additional compensation over forty hours.~~

4. Weighted average method of overtime: When an employee performs two jobs for the same employer, with each job having a different rate of pay, the method of computing overtime is as follows:

Job 1: Rate of pay x Number of hours = Compensation

Job 2: Rate of pay x $\frac{\text{Number of hours}}{\text{Total hours}}$ = $\frac{\text{Compensation}}{\text{Total compensation}}$

$\frac{\text{Total compensation}}{\text{Total hours}}$ = Average per hour

$\frac{\text{Average per hour}}{1/2}$ = Rate of overtime

The rate of overtime multiplied by the number of overtime hours (hours in excess of 40) is the total overtime due.

History: Effective December 1, 1992; amended effective March 1, 1998.

General Authority: NDCC 28-32-02(1), 34-06-04

Law Implemented: NDCC 34-06-11, 34-06-12

TITLE 54
Nursing, Board of

FEBRUARY 1998

CHAPTER 54-02-01

54-02-01-05. Examination results. Examination results will be reported by--mail to individual candidates and recorded on the candidate's permanent record in the board office. The examination results for the successful candidate will include the number of the permanent license that shall be issued to the candidate.

History: Amended effective November 1, 1979; October 1, 1989; December 1, 1991; January 1, 1994; May 1, 1996; February 1, 1998.

General Authority: NDCC 43-12.1-08(5)

Law Implemented: NDCC 43-12.1-09(1)

54-02-01-07. Transcript.

1. An A graduate from another state or territory or an English-speaking Canadian nursing education program must provide an official completed transcript, ~~The transcript must be sent directly from the nursing education program to the board office, will-be-required-to-provide-the-board-with~~ as proof of satisfactory completion of the appropriate nursing education program.

2. An A graduate from a foreign country nursing education program, except for English-speaking Canadian programs, must provide an English translated certified--copy--of--the transcript; ~~providing---evidence---of---completion---of---the appropriate--nursing--education--program-will-be-required-from nursing-education-programs-in-another-country;--A-copy-of--the transcript-submitted-to-the-commission-on-graduates-of-foreign nursing-schools-will-be-accepted-if--sent--directly--from--the~~

commission evaluation of the full nursing education program
academic record from a board-recognized national credential's
evaluation service.

History: Amended effective June 1, 1982; January 1, 1994; February 1, 1998.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09(1)

54-02-01-09. Foreign graduates. The certificate issued by the commission on graduates of foreign nursing schools shall be required of any graduate from a foreign country, except for English-speaking Canadian programs, for admission to the national council licensure examination.

History: Effective November 1, 1979; amended effective June 1, 1982; February 1, 1998.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09(1)

CHAPTER 54-02-05

54-02-05-05. Nonpracticing nurses. Any nurse who has not actively practiced nursing in North Dakota for five years or more must meet the following requirements before a license to practice is issued:

1. Complete the relicensure application.
2. Pay the current renewal fee.
3. Provide to the board with for approval proof of one of the following:
 - a. Practice as a licensed registered nurse or licensed practical nurse which meets or exceeds five hundred hours within the preceding five years in another state, territory, or country. Verification of employment is to be submitted.
 - b. Completion of a refresher course in nursing, in accordance with board guidelines, within the preceding year.
 - c. ~~Proof--of--progression~~ Successful completion of a clinical nursing course in a board-recognized nursing program to further their-education-in nursing education.
 - d. Other evidence the licensee wishes to submit which would provide proof of nursing competence.

History: Amended effective June 1, 1982; May 1, 1996; February 1, 1998.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(9)

CHAPTER 54-02-06

54-02-06-01. Application and fee for license by endorsement.

Applicants for license by endorsement must submit a completed notarized application and pay the endorsement fee of seventy-five dollars. Applicants for licensure by endorsement must have completed a state-approved nursing education program which meets or exceeds those requirements outlined in article 54-03 or, 54-03.1, or 54-03.2 according to the date the applicant enrolled in the nursing education program. Nursing practice to demonstrate continued competency must meet or exceed five hundred hours within the preceding five years.

History: Amended effective November 1, 1979; March 1, 1986; March 1, 1992; May 1, 1996; February 1, 1998.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09(2)

CHAPTER 54-02-07

54-02-07-01.1. Nursing practice - Grounds for discipline. Practice inconsistent with acceptable standards of nursing practice by a licensee or registrant means behavior that may place a client or other person at risk for harm. Inconsistent practice includes incompetence by reason of negligence, patterns of behavior indicating the individual is unfit to practice nursing, as well as any of the following:

1. Failure to provide nursing care because of client diagnosis, age, sex, race, religion, creed, or color.
2. Abuse of a client verbally, physically, emotionally, or sexually.
3. Assign or delegate the responsibility for performance of nursing interventions to unqualified persons.
4. Failure to appropriately supervise persons to whom nursing ~~functions~~ interventions have been assigned or delegated ~~or assigning-unqualified-persons-to-perform-functions-of-licensed nurses.~~
- 4: 5. Practice of nursing without sufficient knowledge, skills, or nursing judgment.
- 5: 6. Performance of nursing ~~tasks-or-functions~~ interventions in a manner inconsistent with acceptable nursing standards.
- 6: 7. Inaccurate or incomplete documentation or recording, or the falsification, alteration, or destruction of client, employee, or employer records.
- 7: 8. Diversion of supplies, equipment, or drugs for personal use or unauthorized use.
- 8: 9. Misuse or betrayal of a trust or confidence.
- 9: 10. Exploitation of a client or client's family for financial or personal gain.

History: Effective December 1, 1995; amended effective July 1, 1996; February 1, 1998.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-02. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 43-12.1, except:

1. "Acts or omissions" that are violations of this chapter or are grounds for discipline, mean patterns of unsafe behavior, nursing practice deficits, failure to comply with acceptable standards of nursing practice, or grounds for discipline identified in chapter 43-12.1 or these rules.
2. "Client" means ~~an individual or group for whom the nurse is providing nursing~~ the recipient of nursing care, which may include an individual, family, group, or a community.
3. "Denial" means the board's refusal to issue a current license or registration upon application.
4. "Major incident" means an act or omission in violation of chapter 43-12.1 or these rules which indicates a licensee's or registrant's continuing to practice poses a risk of harm to the client or another person.
5. "Minor incident" means an act or omission in violation of chapter 43-12.1 or these rules which indicates a licensee's or registrant's continuing to practice does not pose a risk of harm to the client or another person.
6. "Probation" means issuance of a current license or registration marked "encumbered", and identification of specific requirements.
7. "Reprimand" means written communication to the licensee or registrant stating the board's concerns, and public notification of the licensee's or registrant's name, address, and reason for the reprimand.
8. "Revocation" means the board withdraws the license to practice nursing or nurse assistant registration for a specified length of time of no less than one year. If no specified length of time is identified by the board, revocation is perpetual.
9. "Suspension" means the board withholds the license to practice nursing or a nurse assistant registration for a specified length of time.

History: Effective August 1, 1988; amended effective October 1, 1989; March 1, 1992; December 1, 1995; February 1, 1998.

General Authority: NDCC 43-12.1-08(13)

Law Implemented: NDCC 43-12.1-14

54-02-07-10. Nurse assistant without registry status. All persons who provide assistance to the nurse and carry out legally delegated nursing tasks or nursing functions must hold current registry status. ~~Individuals holding current registry status on a board recognized registry meet this requirement. Individuals who are employed to perform nursing tasks or nursing functions delegated by a~~

licensed-nurse-who-have-never-held-registry-status-have-four-months-from
the-date-of-initial-employment-to-achieve--registry--status.---A--lapsed
registry--status--may--be--reinstated--by--submission--of--the--required
competency-verification-by-the-employer-and-payment-of-the-required-fee.
Repealed effective February 1, 1998.

History: Effective-December-1,-1995-

General Authority: NDCC-43-12-1-08

Law Implemented: NDCC-43-12-1-14

CHAPTER 54-02-08.1

54-02-08.1-02.1. Temporary permit. Upon receipt of the application for a transitional license, payment of the fee as set by the board, and evidence that an applicant will meet all the requirements for a transitional license in North Dakota, the board may issue a temporary permit to practice as a licensed registered nurse or licensed practical nurse in this state until the transitional license is issued. The temporary permit expires at the end of ninety days and may be renewed only for reasons satisfactory to the board.

History: Effective February 1, 1998.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(5)(8)

CHAPTER 54-04.1-01

54-04.1-01-01. Nursing education loan program. The board of nursing shall create a nursing education loan program. The program must be funded by:

1. Eight dollars of each registered nurse and licensed practical nurse biennial renewal fee or four dollars of each registered nurse and licensed practical nurse annual renewal fee.
2. Principle and interest payments made toward nursing education loans that do not qualify for repayment by employment.
3. Donations and bequests from individuals wishing to further the intent of the nursing education loan program.
4. Additional funds as may from time to time be designated by the board.

History: Effective October 1, 1987; amended effective November 1, 1990; March 1, 1992; February 1, 1998.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(14)

CHAPTER 54-04.1-03

54-04.1-03-01. Amount of loans. To the extent funds are available, educational loans will be made in the following amounts:

1. ~~Practical--nurse--students--may--receive--a--loan--of--no--more--than--one--thousand--dollars--for--each--year--of--the--nursing--program.~~
2. Licensed Students in a licensed practical nurse students program who plan to complete studies for an associate degree in nursing may receive a loan of no more than one thousand dollars for each of the two years of the nursing program.
3. 2. Registered Students in a registered nurse students--and graduate-nurse-students program who plan to complete studies for a baccalaureate degree in nursing may receive a loan of no more than one thousand dollars for each of the last two years of the nursing program.
4. 3. Graduate nurse students may receive a loan of no more than two thousand five hundred dollars to complete studies for a master's degree in nursing. Graduate nurse students pursuing a doctorate may receive a loan of up to five thousand dollars.
5. ~~Licensed--practical--nurses--or--registered--nurses--may--receive--a--loan--of--no--more--than--one--thousand--dollars--for--study--in--a--nursing--specialty--program.~~
6. 4. Licensed practical nurses or registered nurses may receive a loan of no more than the cost of the course and ~~the--cost--of~~ the textbook for a board-approved nurse refresher course.

History: Effective October 1, 1987; amended effective October 1, 1989; March 1, 1992; February 1, 1998.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(14)

54-04.1-03-03. Disbursements. Disbursements of the loans will be made as follows:

1. For programs leading to initial licensure as a licensed practical nurse or a registered nurse, the total amount of the loan will be divided into equal payments for each academic term needed to complete the program, not to exceed four academic terms.
2. For licensed practical nurses who plan to complete studies for an associate degree and licensed registered nurses who plan to complete studies for a baccalaureate degree, the total amount of the loan will be divided into equal payments for each

academic term needed to complete the program, not to exceed four academic terms.

3. For graduate nurse students, who plan to complete studies leading to a master's degree, the total amount of the loan will be made in one payment. For graduate nurse students who plan to complete studies leading to a doctoral degree, two equal payments will be made. The first payment will be made upon acceptance into the doctoral program, the second payment upon achieving candidacy status.

History: Effective October 1, 1987; amended effective March 1, 1992; February 1, 1998.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(14)

STAFF COMMENT. Chapter 54-05-00.1 contains all new material and is not underscored so as to improve readability.

ARTICLE 54-05
STANDARDS OF PRACTICE

Chapter	
54-05-00.1	Definitions
54-05-01	Standards of Practice for Licensed Practical Nurses
54-05-01.1	Standards of Practice for Licensed Practical Nurses Providing Specialized Nursing Care [Repealed]
54-05-02	Standards of Practice for Registered Nurses
54-05-03	Registered Nurse Practice In Expanded Roles [Repealed]
54-05-03.1	Advanced Practice Registered Nurse
54-0-5-04	Standards for Assignment and Delegation

CHAPTER 54-05-00.1
DEFINITIONS

Section
54-05-00.1-01 Definitions

54-05-00.1-01. Definitions. For the purposes of this article, the following definitions shall apply:

1. "Accountability" means the licensed nurse is responsible for decisions in the context of assignment and delegation and for the action of self, and for the resultant client outcomes.
2. "Assignment" means a licensed nurse designates another person with the responsibility for performance of nursing interventions. Assignment is not the transfer of authority; assignments are made to individuals who already have authority to provide nursing interventions through licensure as a nurse.
3. "Authority" means legal authority to provide nursing care granted through licensure as a registered nurse, licensure as a practical nurse, or through delegation of nursing interventions from the licensed nurse.
4. "Client" means the recipient of nursing care, which may include an individual, family, group, or a community.

5. "Competence" means the state or quality of being capable as a result of having the required knowledge, skills, and ability.
 - a. Licensed nurse competence means the ability of the nurse to apply interpersonal, technical, and decisionmaking skills at the level of knowledge consistent with the prevailing standard for the nurse's current nursing practice role.
 - b. Nurse assistant competence means having the required knowledge, skills, and ability to perform nursing interventions, and includes:
 - (1) Utilizing effective communication;
 - (2) Collecting basic objective and subjective data;
 - (3) Performing selected nursing interventions safely, accurately, and according to standard procedures; and
 - (4) Seeking guidance and direction when appropriate.
6. "Delegation" means the transfer of authority and accountability for the performance of selected nursing interventions from a licensed nurse to a nurse assistant. Delegation decision includes:
 - a. Determining which nursing intervention may be delegated;
 - b. Selecting which competent nurse assistant may provide the delegated intervention;
 - c. Determining the degree of detail and method to be used to communicate the delegation plan; and
 - d. Selecting a method of supervision and evaluation.
7. "Licensed practitioner" means a person lawfully authorized to prescribe medications or treatments under North Dakota Century Code title 43.
8. "Medication administration" means the delivery of medication, by a licensed nurse or an individual directly delegated to and supervised by a licensed nurse, to a client whose use of that medication must be monitored and evaluated applying specialized knowledge, skills, and abilities possessed by a licensed nurse.
9. "Nurse administrator" means a person responsible for organized nursing services and who manages from the perspective of the organization as a whole.

10. "Nursing intervention" means the initiation and completion of client-focused actions necessary to accomplish the goals defined in the plan of care.
11. "Organization policy" means a written plan for the provision of nursing care.
12. "Stable and predictable" means a situation where the client's clinical and behavioral status and nursing care needs are determined by the registered nurse or licensed practitioner to be nonfluctuating and consistent or where the fluctuations are expected and the interventions are planned.
13. "Supervision" means maintaining accountability to determine whether or not nursing care is adequate and delivered appropriately. Supervision includes the assessment and evaluation of the client's condition and responses to the nursing plan of care and evaluation of the competence of the person providing nursing care.

History: Effective February 1, 1998.
General Authority: NDCC 43-12.1-02(6)
Law Implemented: NDCC 43-12.1-08(6)

CHAPTER 54-05-01

54-05-01-02. Licensed practical nurse's contribution to, and responsibility for, the nursing process. The licensed practical nurse assists in implementing the nursing process. The components of the nursing process are assessment, planning, implementation, and evaluation. The licensed practical nurse under the direction of the registered nurse, advanced practice registered nurse, or licensed physician, will:

1. Contribute to the nursing assessment by collecting, reporting, and recording objective and subjective data in an accurate and timely manner.
2. Participate in the development of a nursing plan of care in consultation with other nursing and other health care personnel.
3. Provide nursing care by:
 - a. Caring for clients whose conditions are stable or predictable;
 - b. Assisting with clients whose conditions are critical or unpredictable;
 - c. Implementing nursing care according to the priority of needs and established practices;
 - d. Providing an environment conducive to safety and health;
 - e. Documenting nursing interventions and responses to care; and
 - f. Communicating nursing interventions and responses to care to appropriate members of the health care team.
4. Delegate or assign components of nursing care to other members of the nursing care team.
5. Collaborate in the evaluation of the client's response toward the achievement of the expected outcomes. Repealed effective February 1, 1998.

History: Effective June 1, 1979; amended effective January 1, 1994; May 1, 1996.

General Authority: NDCC-43-12-1-08

Law Implemented: NDCC-43-12-1-08(6)

54-05-01-02.1. Licensed practical nurse's contribution to, and responsibility for, the nursing process. The licensed practical nurse assists in implementing the nursing process. The licensed practical nurse under the direction of the registered nurse, advanced practice registered nurse, or licensed practitioner:

1. Contributes to the assessment of health status of individuals including interactions of individuals with family members or group members, by:
 - a. Collecting basic objective and subjective data from observations, examinations, interviews, and written records. The scope and the depth of data collection is determined by the knowledge, skills, and abilities of the licensed practical nurse and by the client's immediate condition or needs. Data collection will consider:
 - (1) Physical and emotional status;
 - (2) Growth and development;
 - (3) Cultural, spiritual, and socioeconomic background;
 - (4) Health history;
 - (5) Information collected by other health team members;
 - (6) Client understanding of health status and self-care needs;
 - (7) Ability to perform activities of daily living and personal care;
 - (8) Environmental factors (e.g., physical, social, emotional, and ecological);
 - (9) Available and accessible human and material resources; and
 - (10) Such additional data as may be necessary to assess health status.
 - b. Recording and reporting the data.
 - c. Assisting with validating, refining, and modifying the data by utilizing available resources including interactions with the client, family, significant others, and health team members.
2. Contributes to establishing nursing diagnoses that identify the needs of the client by:

- a. Identifying signs and symptoms of deviations from normal health status; and
 - b. Identifying overt learning needs.
3. Participates in the development of the plan of care for individuals which includes:
- a. Recognition of the client's physical, psychological, social, cultural, ethnic, and spiritual needs;
 - b. Recognition of the client's beliefs and rights to choice;
 - c. Contributing to the identification of priorities;
 - d. Contributing to setting goals and outcomes;
 - e. Assisting in identification of measures to maintain comfort;
 - f. Assisting in supporting human functions and response;
 - g. Assisting in maintaining an environment conducive to well-being;
 - h. Consideration of the overt learning needs of the client; and
 - i. Contributing to the identification of community resources for continued care.
4. Participates in implementing the nursing plan of care and the nursing interventions for the client under the licensed practical nurse's care by:
- a. Caring for clients whose conditions are stable or predictable;
 - b. Assisting with clients whose conditions are critical or unpredictable;
 - c. Implementing nursing care according to the priority of needs and established practices;
 - d. Assigning or delegating components of nursing care to other members of the nursing care team as defined in chapter 54-05-04;
 - e. Providing an environment conducive to safety and health;
 - f. Documenting nursing interventions and client responses to care;

- g. Communicating nursing interventions and responses to care to appropriate members of the health care team; and
 - h. Administering medications and treatments prescribed by a licensed practitioner.
5. Contributes to the evaluation of the responses of individuals to nursing interventions by:
- a. Documenting the evaluation data;
 - b. Communicating the evaluation data to appropriate members of the health care team; and
 - c. Assisting in the modification of the plan of care based upon the evaluation.

History: Effective February 1, 1998.

General Authority: NDCC 43-12.1-08

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

54-05-01-03. Licensed practical nurse responsibilities as a member of the health care team. The licensed practical nurse is responsible and accountable for the care provided and assuring the safety and well-being of the clients. The licensed practical nurse's acceptance of assigned nursing responsibilities must be based upon client care needs; the knowledge, skills, and abilities of the practical nurse; and agency organization policy. The licensed practical nurse under the direction of the registered nurse, advanced practice registered nurse, or licensed physician practitioner will:

1. Involve the client and significant others in the client's health restoration, promotion, and maintenance.
2. Utilize established lines of authority and communication to provide care to clients.
3. Participate in client teaching specific to the learning needs by implementing or modifying teaching plans.
4. Manage the environment and resources effectively and efficiently to meet clients' needs and attain expected outcomes.
5. Recognize and utilize the current knowledge base of nursing practice.
6. Recognize and protect clients' rights.
7. Practice within the ethical frameworks and standards of the nursing profession.

8. Evaluate own nursing practice in relation to professional nursing practice standards.
9. Participate in quality improvement measures activities to evaluate and modify practice.
10. Demonstrate knowledge and understanding of the statutes and rules governing nursing and function within the legal boundaries of practical nursing practice.
11. Observe and follow the duly adopted standards, policies, directives, and orders of the board as they may relate to the licensed practical nurse.
12. Retain accountability for tasks interventions assigned or delegated to other members of the nursing care team.
13. Protect confidential information unless obligated by law to disclose the information.
14. Participate in peer review and other evaluation processes.
15. Acquire and maintain current knowledge in nursing practice.

History: Effective January 1, 1994; amended effective May 1, 1996; February 1, 1998.

General Authority: NDCC 43-12.1-08

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

54-05-01-04. Criteria for delegation to licensed practical nurses. ~~Delegation of nursing care to the licensed practical nurse shall comply with the following criteria:~~

- ~~1. The responsibilities must be within the scope of practice delineated by the board and described within agency written policy;~~
- ~~2. The registered nurse, advanced practice registered nurse, or licensed physician must:~~
 - ~~a. Make an assessment of the client's health care needs prior to delegating the responsibilities;~~
 - ~~b. Determine the responsibilities that can be properly and safely performed by the licensed practical nurse; and~~
 - ~~c. Supervise the performance and documentation of the delegated responsibilities by the licensed practical nurse.~~

3. ~~The care provided remains the responsibility of both the delegator and the licensed practical nurse.~~ Repealed effective February 1, 1998.

History: ~~Effective January 1, 1994; amended effective May 1, 1996.~~

General Authority: ~~NDCC-43-12.1-08~~

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

CHAPTER 54-05-02

54-05-02-02. Registered nurse responsibility to implement the nursing process. The registered nurse utilizes the nursing process to assess, diagnose, establish a plan with outcome criteria, intervene, evaluate, and document human responses to actual or potential health problems in nursing practice settings. The registered nurse will:

- 1. Conduct and document nursing assessments of the health status of individuals, groups, and communities;**
- 2. Analyze the data base to establish and document the nursing diagnoses;**
- 3. Develop a nursing plan of care based on assessment and nursing diagnosis that prescribes interventions to attain expected outcomes;**
- 4. Implement the nursing plan of care by:
 - a. Writing nursing orders;**
 - b. Giving direct care;**
 - c. Assisting with care;**
 - d. Delegating care;**
 - e. Providing an environment conducive to safety and health;**
 - f. Documenting nursing interventions; and**
 - g. Communicating responses;****
- 5. Evaluate the responses of individuals, groups, or communities toward achievement of the expected outcomes and modify the nursing plan of care as indicated. Repealed effective February 1, 1998.**

History: Effective June 1, 1979; amended effective January 1, 1994; May 1, 1996.

General Authority: NDCG-43-12-1-08

Law Implemented: NDCG-43-12-1-08(6)

54-05-02-02.1. Registered nurse responsibility to implement the nursing process. The registered nurse utilizes the nursing process to assess, diagnose, establish a plan with outcome criteria, intervene, evaluate, and document human responses to actual or potential health problems in nursing practice settings. The registered nurse:

1. Conducts and documents nursing assessments of health status of individuals, families, groups, and communities by:
 - a. Collecting objective and subjective data from observations, examinations, interviews, and written records. The scope and depth of the nursing assessment is determined by the knowledge, skills, and abilities of the registered nurse and by the client's immediate condition or needs. The assessment will consider:
 - (1) Biophysical and emotional status including patterns of coping and interacting;
 - (2) Growth and development;
 - (3) Cultural, spiritual, and socioeconomic background;
 - (4) Health history;
 - (5) Information collected by other health team members;
 - (6) Client knowledge and perception about health status and potential, or maintaining health status;
 - (7) Ability to perform activities of daily living and personal care;
 - (8) The client's health goals;
 - (9) Environmental factors (e.g., physical, social, emotional, and ecological);
 - (10) Available and accessible human and material resources; and
 - (11) Such additional data as may be necessary to assess health status.
 - b. Sorting, selecting, reporting, and recording the data.
 - c. Validating, refining, and modifying the data by utilizing available resources including interactions with the client, family, significant others, and health care team.
2. Analyzes the assessment data to establish or modify nursing diagnoses to be used as a basis for nursing interventions.
3. Develops a plan of care based on nursing assessment and diagnosis that prescribes interventions to attain expected outcomes. Planning nursing interventions will consider:
 - a. Identification of the physical, psychological, social, cultural, ethnic, and spiritual needs of the client;

- b. Identification of the client's decisions regarding treatment;
 - c. Identification of priorities;
 - d. Collaborating with the client to establish goals and outcomes;
 - e. Identifying measures to maintain comfort;
 - f. Supporting human functions and responses;
 - g. Maintaining an environment conducive to safety and well-being;
 - h. Providing health teaching and counseling;
 - i. Identifying community resources for continued care; and
 - j. Such additional interventions as may be necessary to achieve the expected outcomes.
4. Implements the plan of care and the nursing interventions for the client under the registered nurse's care by:
- a. Writing nursing orders;
 - b. Giving direct care;
 - c. Assisting with care;
 - d. Determining the responsibilities that can properly and safely be assigned or delegated as defined in chapter 54-05-04;
 - e. Providing an environment conducive to safety and health;
 - f. Documenting nursing interventions and client responses to care;
 - g. Communicating interventions and responses to other members of the health team; and
 - h. Executing the regimen prescribed by a licensed practitioner.
5. Evaluates the responses of individuals, families, groups, and communities to nursing interventions. The evaluation data must be:
- a. Documented and communicated to appropriate members of the health care team; and

b. Used as a basis for:

- (1) Reassessing client health status;
- (2) Measuring outcomes and goal attainment;
- (3) Modifying nursing diagnoses;
- (4) Revising strategies of care; and
- (5) Prescribing changes in nursing interventions.

History: Effective February 1, 1998.

General Authority: NDCC 43-12.1-08

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

54-05-02-03. Registered nurse responsibilities as a member of the nursing profession. The registered nurse is responsible and accountable for the care provided and for assuring the safety and well-being of the client. The registered nurse provides care based upon client care needs; the knowledge, skills, and abilities of the registered nurse; and organization policy. The registered nurse functions as a member of a health care team by collaborating with the client and health care providers team in providing client care. The registered nurse will:

1. Assist the client to maximize the client's health through the direct implementation of the nursing plan of care.
2. Maximize the client's health by:
 - a. ~~Delegating to another only those nursing activities which that person is prepared or qualified to perform;~~
 - b. ~~Supervising others to whom nursing activities are delegated or assigned; and~~
 - c. Retaining retaining professional accountability for nursing care when assigning or delegating nursing activities interventions.
3. Facilitate communication between the client, significant others, and health care team.
4. Design and implement a teaching plan specific to the needs of the client.
5. Utilize resources, environments, and programs to maximize client outcomes.
6. Utilize research findings appropriate to nursing practice.
7. Recognize and protect clients' rights.

8. Practice within the ethical frameworks and standards of the nursing profession.
9. Assume a leadership role in health care management.
10. Evaluate the nurse's own nursing practice in relation to professional practice standards.
11. Participate in quality improvement ~~measures~~ activities to evaluate and modify practice.
12. Demonstrate knowledge and understanding of the statutes and rules governing nursing and function within the legal boundaries of registered nursing practice.
13. Observe and follow the duly adopted standards, policies, directives, and orders of the board as they may relate to the registered nurse.
14. Protect confidential information unless obligated by law to disclose the information.
15. Contribute to the professional development of peers, colleagues, and others.
16. Acquire and maintain current knowledge in nursing practice.

History: Effective January 1, 1994; amended effective May 1, 1996; February 1, 1998.

General Authority: NDCC 43-12.1-08

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

STAFF COMMENT. Chapter 54-05-04 contains all new material and is not underscored so as to improve readability.

**CHAPTER 54-05-04
STANDARDS FOR ASSIGNMENT AND DELEGATION**

Section	
54-05-04-01	Statement of Intent
54-05-04-02	Assignment
54-05-04-03	Delegation Process for Nursing Interventions
54-05-04-04	Accountability and Responsibility for Delegation Process
54-05-04-05	Interventions That May Not Be Delegated

54-05-04-01. Statement of intent. These rules govern the provision, administration, and management of nursing care by licensed nurses and by nurse assistants providing nursing services. Licensed nurses provide nursing care through a variety of roles including:

1. The direct provision of care;
2. The indirect provision of care through administering, managing, and supervising the practice of nursing;
3. The teaching of health care practice to individuals, families, and groups; and
4. Collaboration and consultation with other health professionals in the management of health care.

Licensed nurses provide nursing care through acute practice, long-term care practice, and community-based practice. Licensed nurses are directly accountable and responsible to clients for the nature and quality of all nursing care rendered.

Registered nurses practice nursing independently and interdependently through the application of the nursing process. Registered nurses also practice nursing dependently through the execution of diagnostic or therapeutic regimens prescribed by licensed practitioners. The administration and management of nursing by registered nurses is an independent and interdependent practice and includes assigning and delegating nursing interventions that may be performed by others.

Licensed practical nurses practice nursing dependently under the direction of registered nurses, advanced practice registered nurses, or

licensed practitioners through the application of nursing process and the execution of diagnostic or therapeutic regimens prescribed by licensed practitioners. The administration and management of nursing by

licensed practical nurses includes assigning and delegating nursing interventions that may be performed by others.

History: Effective February 1, 1998.

General Authority: NDCC 43-12.1-02(6)

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

54-05-04-02. Assignment. In the administration and management of nursing care, licensed nurses may assign the responsibility for performance of nursing interventions to other persons. Assignments of nursing interventions are made by licensed nurses to others who are authorized to provide nursing care through licensure as a registered nurse or licensed practical nurse.

1. Standards for assignments by a licensed nurse to other licensed nurses include the following:
 - a. The nursing service administrator is responsible to determine that licensed nurses have the required competencies expected for the nurses' current nursing practice roles.
 - b. Registered nurses shall assign the responsibility for supervision of the delegation plan to other licensed nurses only if the conditions of the supervision as defined in section 54-05-00.1-01 have been communicated.
 - c. The licensed nurse shall:
 - (1) Assign only those nursing interventions authorized by the level of nurse licensure;
 - (2) Assign only those nursing interventions for which the nurse receiving the assignment is competent to provide; and
 - (3) Supervise the performance and documentation of the assigned nursing intervention.
2. Standards for licensed nurses accepting assignments include the following:
 - a. Accept only those assignments authorized by the level of nurse licensure;
 - b. Accept only those assignments for which the nurse has the required knowledge, skills, and abilities; and

- c. Acknowledge personal limitations in knowledge and skills, and communicate the need for specialized instruction prior to accepting any assignments.

History: Effective February 1, 1998.

General Authority: NDCC 43-12.1-02(6)

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

54-05-04-03. Delegation process for nursing interventions. A licensed nurse may delegate a nursing intervention to a competent nurse assistant if the licensed nurse utilizes a decisionmaking process to delegate in a manner that protects public health, welfare, and safety. Such a process must include:

1. Assessment of clients and human and material resources by:
 - a. Identifying the needs of the client;
 - b. Consulting the plan of care;
 - c. Considering the circumstances and setting; and
 - d. Assuring the availability of adequate resources, including supervision.
2. Planning for delegation that must include:
 - a. Criteria for nursing interventions that may be delegated and includes:
 - (1) The nature of the specific nursing intervention, its complexity, and the knowledge and skills required to perform the intervention;
 - (2) The results of the intervention are predictable;
 - (3) A determination that the potential risk to client is minimal; and
 - (4) A standard and unchangeable procedure which does not require any exercise of independent nursing judgment.
 - b. Selection and identification of nurse assistants to whom nursing interventions may be delegated. Licensed nurses who assess and identify the nurse assistant's training, experience, and competency to provide a selected nursing intervention shall:
 - (1) Teach the nursing interventions;

- (2) Observe the nurse assistant's demonstration of current competence to perform the nursing intervention; and
 - (3) Document the nurse assistant's competency to perform the nursing intervention.
- c. Selection and identification of the methods of supervision and the licensed nurses responsible to provide supervision. The method of supervision and the frequency of assessment, inspection, and evaluation must be determined by:
- (1) The willingness and ability of the client to be involved in the management of the client's own care;
 - (2) The stability of the client's condition;
 - (3) The experience and competency of the nurse assistant providing the nursing intervention; and
 - (4) The level of nursing judgment required for the delegated nursing intervention.
3. Implementation of the delegated nursing interventions by providing direction and supervision.
- a. Direction must include:
- (1) The nurse assistant's access to written instructions on how the nursing intervention is to be performed including:
 - (a) Reasons why the nursing intervention is necessary;
 - (b) Methods used to perform the nursing intervention;
 - (c) Documentation of the nursing intervention; and
 - (d) Observation of the client's response.
 - (2) The licensed nurse's:
 - (a) Monitoring to assure compliance with established standards of practice and policies; and
 - (b) Evaluating client responses and attainment of goals related to the delegated nursing intervention.

- b. Supervision may be provided by the delegating licensed nurse or by other licensed nurses. The degree and method of supervision required must be determined by the licensed nurse after an evaluation of the appropriate factors involved including:
 - (1) The number of clients for whom nursing interventions are delegated;
 - (2) The stability of the condition of the client;
 - (3) The training and capability of the nurse assistant to whom the nursing intervention was delegated;
 - (4) The nature of the nursing intervention delegated; and
 - (5) The proximity and availability of the licensed nurse when the nursing intervention is performed.
- 4. Evaluation of the delegated nursing interventions through:
 - a. Measurement of the client's response and goal attainment related to the delegated interventions;
 - b. Modification of nursing interventions as indicated by client's response;
 - c. Evaluation of the performance of the intervention by the nurse assistant;
 - d. Feedback from nurse assistant; and
 - e. Provision of feedback to nurse assistant.

History: Effective February 1, 1998.
General Authority: NDCC 43-12.1-02(6)
Law Implemented: NDCC 43-12.1-08(6)

54-05-04-04. Accountability and responsibility for delegation process.

- 1. The nurse administrator shall:
 - a. Select nursing service delivery models for the provisions of nursing care which do not conflict with this chapter.
 - b. Assess the health status of groups of clients, analyze the data, and identify collective nursing care needs, priorities, and necessary resources.
 - c. Establish training and competency requirements of all individuals providing nursing care. The nurse

administrator shall identify nursing personnel by a position title and job description.

- d. Communicate nursing service delivery models and training and competency requirements to nursing personnel.
 - e. Be accountable to provide adequate human and material resources to carry out the delegation process.
2. The registered nurse shall:
- a. Assess client's individual health status, analyze the data, and identify the client's specific goals, nursing care needs, and necessary interventions.
 - b. Instruct using step-by-step directions on how to perform nursing intervention.
 - c. Assess, verify, and identify the nurse assistant's competency on an individual and client specific basis.
 - d. Determine the method of supervision on an individual basis and identify any other licensed nurses who have been assigned the responsibility for supervision.
 - e. Communicate decisions regarding selected interventions and the conditions of supervision to licensed nurses responsible to provide supervision and to nurse assistants responsible to provide nursing interventions as appropriate and on an individual basis.
 - f. Retain accountability for individual delegation decisions and evaluation of the outcomes.
3. The licensed practical nurse shall:
- a. Contribute to the assessment of client's individual health status, nursing care needs, and interventions.
 - b. Assist in instructing nurse assistants on how to perform nursing interventions.
 - c. Assist in assessing, verifying, and identifying the nurse assistant's competency on an individual and client-specific basis.
 - d. Assist in the supervision on an individual basis.
 - e. Communicate decisions regarding selected interventions to the nurse assistant responsible to provide nursing interventions as appropriate and on an individual basis.

- f. Retain accountability for individual delegation decisions and evaluation of the outcomes.

History: Effective February 1, 1998.

General Authority: NDCC 43-12.1-02(6)

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

54-05-04-05. Interventions that may not be delegated. Interventions that require nursing knowledge, skill, and judgment may not be delegated by the licensed nurse to a nurse assistant. These activities include:

1. Physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or followup.
2. Development of nursing diagnosis and care goals.
3. Formulation of the plan of nursing care.
4. Evaluation of the effectiveness of the nursing care provided.
5. Teaching except for that related to promoting independence in activities of daily living.
6. Counseling, except that the nurse assistant may be instructed to recognize and report basic deviations from healthy behavior and communication patterns, and may provide listening, empathy, and support.
7. Coordination and management of care including collaborating, consulting, and referring.
8. Triage.
9. Medication administration may not be delegated unless the nurse assistant has met the requirements of chapter 54-07-05. The exception is when a licensed nurse specifically delegates to a specific nurse assistant the administration of a specific medication for a specific client.

History: Effective February 1, 1998.

General Authority: NDCC 43-12.1-02(6)

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

ARTICLE 54-06

NURSE AIDE REGISTRY

[Repealed effective February 1, 1998]

CHAPTER 54-07-01

54-07-01-01. Statement of intent. The 1991 legislative assembly enacted legislation declaring that it is the policy of this state to regulate through the board of nursing the practice of nursing, those engaged in licensed nursing practice, and those persons who assist in the practice of nursing. Other governmental agencies, through implementation of federal standards and regulations, may also be charged with the regulation of those who assist in the practice of nursing in specific health-care agencies, and it. It is the intent of the board to recognize other state registries that may exist, rather than duplicating those services. When nursing care is delivered by a health-care agency as a specific service to the North Dakota resident, the nursing care must be provided by licensed nurses, or by individuals that are trained, supervised, or directed by licensed nurses These rules govern the provision, administration, and management of nursing interventions by licensed nurses and nursing interventions delegated to nurse assistants. Licensed nurses are accountable and responsible to clients for the nature and quality of nursing interventions. In agency organizations where direct nursing care is not provided as a specific service, the provisions of this article do not apply.

History: Effective November 1, 1992; amended effective February 1, 1998.

General Authority: NDCC 43-12.1-08

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

54-07-01-02. Definitions. The following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

1. "Accountability" means being responsible.
 - a. Licensed nurse accountability means being responsible for decisions in the context of assignment and delegation and for the action of self and for the resultant client outcomes.
 - b. Nurse assistant accountability means being responsible for the action of self.
2. "Activities of daily living" includes transferring, ambulating, repositioning, exercising, toileting, feeding, and assistance with self-administered medications and personal care. Personal care includes bathing, hair care, nail care, shaving, dressing, and oral care.
3. "Authority" means legal authority to provide nursing care granted through licensure as a registered nurse, licensure as

a practical nurse, or through delegation of nursing interventions from the licensed nurse.

4. "Competence" means the nurse assistant having the required knowledge, skills, and ability to perform nursing interventions, includes:

a. Utilizing effective communication;

b. Collecting basic objective and subjective data;

c. Performing selected nursing interventions safely, accurately, and according to standard procedures; and

d. Seeking guidance and direction when appropriate.

5. "Consultative nursing" means that the licensed nurse provides guidance and information as a participant of the interdisciplinary team but is not individually responsible to direct the plan of care for the client.

2- 6. "Delegation" means the assignment-by transfer of authority and accountability for the performance of selected nursing interventions from a licensed nurse to a nurse assistant performance-of-nursing-tasks-in-selected-situations. Delegation-can-be-either-global-or-specific-in-nature.

a. "Global" delegation means the assignment by a licensed nurse to a nurse assistant the performance of the nursing task for all clients or persons to whom the nurse assistant is assigned care responsibilities.

b. "Specific" delegation means the assignment by a licensed nurse to a nurse assistant the performance of the selected nursing task for only the assigned client or person to whom the licensed nurse indicates.

3. "Direct nursing" means that the licensed nurse determines the nature or extent of the nursing care that will be provided for an individual or group of individuals and is responsible and accountable for the care provided that has been delegated to those providing assistance to the nurse.

4. "Nurse assistant" means an individual who works as an assistant to the nurse under the direction of a licensed nurse; provides nursing or nursing-related tasks; meets the requirements of article 54-07; and is listed on the board registry or other state registries acknowledged by the board as meeting or exceeding the requirements of this article.

7. "Licensed nurse" means a person licensed pursuant to North Dakota Century Code chapter 43-12.1 and North Dakota Administrative Code title 54.

8. "Medication administration" means the delivery of medication by a licensed nurse or an individual directly delegated to and supervised by a licensed nurse, to a client whose use of that medication must be monitored and evaluated applying specialized knowledge, skills, and abilities possessed by a licensed nurse.
- 5: 9. "Nurse assistant registry" means a listing of all persons who are authorized by the board or included on another state registry which has been recognized by the board to perform nursing functions--or--nursing--tasks--legally interventions delegated and supervised by a licensed nurse.
- 6.---"~~Nursing task~~"~~-is-a-task-or-function-that-has-been-assigned-to a-nurse-assistant-following-the-determination-of-nursing-needs by-the-licensed-nurse-~~
10. "Nursing intervention" means the initiation and completion of client-focused actions necessary to accomplish the goals defined in the plan of care.
11. "Organization policy" means a written plan for the provision of nursing care.
- 7: 12. "Supervision" means the-provision-of-guidance-or-direction-by the-licensed-nurse-for-the-accomplishment-of-a-nursing-task-or activity--delegated--to-a-nurse-assistant;--The-licensed-nurse is--responsible--for--the--determination--of--the---level---of supervision--required--to--ensure-the-safety-and-well-being-of the-client maintaining accountability to determine whether or not nursing care is adequate and delivered appropriately. Supervision includes the assessment and evaluation of the client's condition and responses to the nursing plan of care and evaluation of the competence of the person providing nursing care.

History: Effective November 1, 1992; amended effective September 1, 1994; February 1, 1998.

General Authority: NDCC 43-12.1-08

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

CHAPTER 54-07-02

54-07-02-01. Nurse assistant registry. The board shall establish and maintain a nurse assistant registry. The board shall enter individual names on the nurse assistant registry upon receipt of information required.

1. An applicant for initial registry status shall submit a completed application and fee that includes an affidavit of training--and competency determination by the employer or licensed nurse. ~~The--affidavit--must--include--validation--of training--and--competency--determination--for--those--tasks--and functions--listed--in--section--54-07-03-03.~~ A national nurse assistant competency evaluation testing program may be used in lieu of the employer or licensed nurse validation of competency.
2. Upon receipt of the required information, and a fee of five ten dollars, an initial registry listing card for a period of twenty-four months will be sent to the nurse assistant.
3. Registry listing is valid for twenty-four months and will be subject to renewal before the last day of the twenty-fourth month. Registry listing renewal requires verification of continued competency by the employer or licensed nurse and proof that the nurse assistant functions under the direction of a licensed nurse.
4. The renewal fee for the nurse assistant will be five ten dollars.

History: Effective November 1, 1992; amended effective September 1, 1994; February 1, 1998.

General Authority: NDCC 43-12.1-08

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

54-07-02-02.1. Nurse assistant registry status.

1. Nurse assistants who carry out delegated nursing interventions must hold current registry status.
2. Individuals holding current registry status on a board-recognized registry meet this requirement.
3. Individuals who are employed to perform nursing interventions delegated by a licensed nurse who have never held registry status have four months from the date of initial employment to achieve registry status.

4. A lapsed registry status may be reinstated by submission of the required competency verification by the employer and payment of the required fee.

History: Effective February 1, 1998.

General Authority: NDCC 43-12.1-08

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

CHAPTER 54-07-03

NURSING TASKS AND NURSING FUNCTIONS

[Repealed effective February 1, 1998]

STAFF COMMENT. Chapter 54-07-03.1 contains all new material and is not underscored so as to improve readability.

**CHAPTER 54-07-03.1
NURSE ASSISTANT COMPETENCE**

Section

54-07-03.1-01	Minimum Competence Requirements for Nurse Assistants
54-07-03.1-02	Process for Teaching Nursing Interventions
54-07-03.1-03	Licensed Nurse Delegation to Nurse Assistants
54-07-03.1-04	Nurse Assistant's Contribution to the Nursing Process

54-07-03.1-01. Minimum competence requirements for nurse assistants. The nurse assistant shall demonstrate competencies in the following areas as appropriate to the job expectations:

1. Infection control.
2. Safety and emergency procedures.
3. Collection and documentation of basic objective and subjective client data.
4. Activities of daily living.
5. Understanding the agency's standards, policies, and procedures.
6. Decisionmaking skills.
7. Client rights.
8. Communication and interpersonal skills.
9. The nurse assistant may not be delegated medication administration unless the nurse assistant has met the requirements of chapter 54-07-05. The exception is when a licensed nurse specifically delegates to a specific nurse assistant the administration of a specific medication for a specific client.

History: Effective February 1, 1998.

General Authority: NDCC 43-12.1-08

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

54-07-03.1-02. Process for teaching nursing interventions. Nursing interventions must be taught to a nurse assistant or to a group of nurse assistants using the following process:

1. Provide step-by-step directions on how to perform the nursing interventions.
2. Demonstrate the proper method used to perform the nursing intervention.
3. Observe the nurse assistant performing the nursing intervention to ensure the nurse assistant performs the intervention safely and accurately.
4. Document the nurse assistant's competency to perform the nursing intervention.
5. Provide written instructions for performance of the nursing intervention for the nurse assistant's use as a reference.

The nurse assistant may not have to be taught a nursing intervention again for each client provided the nurse assistant's knowledge and skill have been maintained and are correct. The licensed nurse shall teach the nurse assistant any difference in a nursing intervention due to idiosyncrasies of the client which may vary the nursing intervention. The nurse assistant shall perform the delegated nursing intervention only on the client for whom the delegation is specified, exactly as taught, and in accordance with the organization's policies.

History: Effective February 1, 1998.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(6)

54-07-03.1-03. Licensed nurse delegation to nurse assistants. A licensed nurse may delegate a nursing intervention to a nurse assistant only if all the conditions for delegation set forth in chapter 54-05-04 and this article are met.

History: Effective February 1, 1998.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(6)

54-07-03.1-04. Nurse assistant's contribution to the nursing process. The nurse assistant as delegated by a licensed nurse:

1. Contributes to the assessment of the health status of clients including interactions of clients with family members or group members by:

- a. Collecting basic subjective and objective data from observations and interviews. The data to be collected is identified by the licensed nurse.
- b. Reporting and recording the collected data.
2. Identifies basic signs and symptoms of deviations from normal health status and provides basic information which licensed nurses use in identification of problems and needs.
3. Contributes to the development of the plan of care for individuals by reporting basic data.
4. Participates in the giving of direct care by:
 - a. Assisting with activities of daily living and encouraging self-care;
 - b. Providing comfort measures and emotional support to the client whose condition is stable and predictable;
 - c. Assisting with basic maintenance and restorative nursing;
 - d. Providing a safe and healthy environment;
 - e. Documenting and communicating completion of delegated nursing interventions and client responses; and
 - f. Seeking guidance and direction when appropriate.
5. Contributes to the evaluation by:
 - a. Documenting and communicating client responses; and
 - b. Assisting with collection of data.

History: Effective February 1, 1998.

General Authority: NDCC 43-12.1-08

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

CHAPTER 54-07-05

54-07-05-01. Statement of intent. North Dakota Century Code chapter 43-12.1 allows the licensed nurse to delegate and supervise nursing ~~tasks--and--nursing--functions~~ interventions to individuals authorized by the board to perform those functions. ~~Included-in-nursing tasks--and--nursing--functions--is--the--provision--for--the--delivery--of routine,--regularly--scheduled--medications--that--in--certain--settings--can safely--be--done--by--a--nurse--assistant--with--appropriate--training--and supervision.~~ Medication administration is a nursing intervention. While ~~the--management--of--the~~ medication regimen administration is the responsibility of licensed nurses and requires the knowledge, skills, and abilities of the licensed nurse to ensure public safety and accountability, nurse assistants with advanced prescribed training in medication administration or with a delegation for the delivery of a specific medication for a specific client may perform the task intervention of giving or applying certain medications to the patient-in specific--settings client when such medications do not require determination of need, drug calculation, or dosage conversion as long as the licensed nurse is available to monitor the patient's client's progress and effectiveness of the prescribed medication regimen. Individuals to whom the task intervention of giving--the--routine, regularly--scheduled medication administration is delegated must complete a prescribed training program or receive a delegation for the delivery of a specific medication to a specific client. ~~The--delivery--of--routine, regularly--scheduled--medications--in--acute--care--settings--or--settings--where the--patient--population--includes~~ Delegation of medication administration in acute care settings or for individuals with unstable or changing nursing care needs is specifically precluded by these rules.

History: Effective September 1, 1994; amended effective February 1, 1998.

General Authority: NDCC 43-12.1-08

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

54-07-05-02. Definitions. The following words and terms, when used in ~~these rules~~ this chapter, have the following meanings, unless the context clearly indicates otherwise:

1. "Medication assistant" means an individual who has a current registration as a nurse assistant and, has successfully completed an approved medication assistant program and, has demonstrated competency in the administration of certain routine, regularly scheduled medications ~~to--individuals--or groups--of--individuals--in--specific--settings~~, and possesses a current registration from the board as a medication assistant.
2. "Medication assistant program" means a program of study and clinical practice in the administration of certain routine,

regularly scheduled medications which meets board requirements.

3. "Routine, regularly scheduled medications" means the components of a legally identified medication regimen of individuals for an individual or groups of individuals with stable, predictable conditions which are administered on a routine basis and do not require drug calculations, determination of need, or dosage conversion.
 - a. Medications included in this definition may include those administered orally, topically, nasally, or instilled within the eye or ear.
 - b. Medications excluded from this definition include any medications to be administered by injection, through a tube, or inserted into another body cavity, except when specifically delegated by a licensed nurse to a specific nurse assistant for a specific patient--according to section 54-07-03-04 client.
 - c. The licensed nurse may make the determination to exclude any medication from this definition.

4. "Stable and predictable" means a situation where the client's clinical and behavioral status and nursing care needs are determined by the registered nurse or licensed practitioner to be nonfluctuating and consistent or where the fluctuations are expected and the interventions are planned.

History: Effective September 1, 1994; amended effective February 1, 1998.

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

54-07-05-03. Medication management regimen. When the licensed nurse is responsible for the management of the medication regimen, ~~either as a direct employee or as a consultant~~, then any delegation must conform to the provisions of this chapter.

History: Effective September 1, 1994; amended effective February 1, 1998.

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

54-07-05-04. Requirements for supervision. The licensed nurse must be on unit and available for immediate direction in a licensed nursing facility; ~~and the licensed nurse must be available by telephone in a licensed basic care facility.~~ In any other setting where the licensed nurse delegates the task intervention of giving medications to another individual, the licensed nurse must establish in writing the

process for providing the supervision in order to provide the recipient of the medication appropriate safeguards.

History: Effective September 1, 1994; amended effective February 1, 1998.

General Authority: NDCC 43-12.1-08

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

54-07-05-05. Initial registration. An application for registration as a medication assistant and ~~the required a twenty dollar~~ fee must be submitted by the applicant to the board office. Successful completion must be documented by the program. Upon receipt of the required materials, a medication assistant registration will be issued to correspond with the applicant's registration as a nurse assistant.

History: Effective September 1, 1994; amended effective February 1, 1998.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09(6)

54-07-05-06. Registration - Reregistration. The medication assistant registration expiration date must correspond to the individual's nurse assistant registration expiration date and must be renewable at the same time that the nurse assistant registration is renewed. Additional information regarding the individual's performance as a medication assistant will be requested by the board in the renewal process as satisfactory performance as a medication assistant must be validated by the employing agency organization prior to the issuance of the renewal registration. ~~Failure--to--receive--the--application--for--renewal--does--not--relieve--the--medication--assistant--of--the--responsibility--of--renewing--the--registration--by--the--expiration--date.~~

History: Effective September 1, 1994; amended effective February 1, 1998.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09(6), 43-12.1-10(2)

54-07-05-08. Removal---of---medication Medication assistant registration disciplinary action. The registration issued to a nurse assistant, including the medication assistant registration, may be revoked, suspended, encumbered, or denied based upon the provisions of chapter 54-02-07.

History: Effective September 1, 1994; amended effective February 1, 1998.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

CHAPTER 54-07-06

54-07-06-01. Medication assistant program. The medication assistant program must include basic principles, techniques, and procedures of medication administration. The curriculum must meet the requirements ~~of North Dakota Century Code section 15-20-1-11~~ established by the board and include, at a minimum:

1. The specific outcome objectives and clinical skill attainment for the course.
2. A minimal timeframe: forty hours theory, eight hours laboratory, and thirty-two hours clinical learning experience or comparable theory, laboratory, or clinical hours acceptable to the board.
3. A competency-based method of evaluation for the theory, laboratory, and clinical learning component.
4. A provision for persons who have prior learning or experience, or both.

Medication training programs conducted prior to July 1, ~~1994~~ 1997, in North Dakota service settings will have twenty-four calendar months to meet the requirements of this section.

History: Effective September 1, 1994; amended effective February 1, 1998.

General Authority: NDCC 43-12.1-08

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

ARTICLE 54-08

**STANDARD FOR LICENSED NURSE DELEGATION OF NURSING TASKS
IN SETTINGS WHERE LICENSED NURSES ARE NOT REGULARLY SCHEDULED**

[Repealed Effective February 1, 1998]

CHAPTER 54-09-02

54-09-02-03. Eligibility.

1. Any nurse who self-refers requesting access to the program or is reported to the board for a violation of the Nurse Practices Act and whose nursing practice may be affected by addiction to or abuse of alcohol or other drugs, or psychiatric or physical disorders will be advised of the opportunity for participation in the monitoring program, unless the board determines that it is in the best interest of the public that participation in the program not be offered.
2. The nurse offered participation in the program will be advised of the program procedures, requirements, and implications of noncompliance with the program. If admitted to participate in the program, the nurse must agree, in writing, to follow all requirements of the program.
3. The consultant may grant participation in the program to a nurse after interviewing the nurse and determining that all requirements for admission to the program have been met by the nurse seeking entrance into the program.
4. The nurse will enter the program after signing the program agreement.
5. The nurse will pay a thirty dollar per month fee to participate in the nurse advocacy program.

History: Effective September 1, 1996; amended effective February 1, 1998.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(12)

54-09-02-05. Confidentiality.

1. All information related to a nurse's treatment for chemical dependency, psychiatric, or physical disorders as well as program monitoring is confidential only as may be permitted by law.
2. After the consultant has determined that a nurse has completed the program requirements, the consultant shall purge and destroy such records pertaining to the nurse's participation in the program, as permitted by law and the board's records retention schedule.
3. Information or records received by the board prior to acceptance of the applicant into the program or which exist

regarding a nurse terminated from the program under subsections 2 and 3 of section ~~54-08-02-04~~ 54-09-02-04 may be utilized by the board in any disciplinary proceedings instituted against the participant.

History: Effective September 1, 1996; amended effective February 1, 1998.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(12)

TITLE 60
Pesticide Control Board

APRIL 1998

STAFF COMMENT. Chapter 60-03-02 contains all new material and is not underscored so as to improve readability.

**CHAPTER 60-03-02
MINOR USE PESTICIDE FUND**

Section	
60-03-02-01	Definitions
60-03-02-02	Purpose
60-03-02-03	Evaluation and Selection Criteria
60-03-02-04	Supplemental Program Information

60-03-02-01. Definitions.

1. "Agricultural commodity" means any distinctive type of agricultural, horticultural, vegetable, or animal product, including products qualifying as organic food products, bees, and honey.
2. "IR-4 program" means interregional research project number four, clearances of chemicals and biologics for minor or special uses, established in 1963 by the cooperative state research service of the United States department of agriculture, the coordinated national program involving land-grant universities and the United States department of agriculture to provide data required for the registration of pesticides needed for the production of minor crops.

3. "Laboratory" means the IR-4 satellite laboratory established at the North Dakota state university.
4. "Minor crop" means an agricultural crop considered to be minor in the national context of registering pesticides.
5. "Minor use" means a pesticide use considered to be minor in the national context of registering pesticides including a use for a special local need.
6. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and any substance or mixture of substances intended for use as a plant regulator, defoliant, or dessicant.
7. "Registration" means use of a pesticide approved by the North Dakota department of agriculture.

History: Effective April 1, 1998.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06.3

60-03-02-02. Purpose. Minor use pesticide funding grants may be used for evaluations, studies, activities, or investigations approved by the pesticide control board to obtain or maintain pesticide registrations for minor uses in North Dakota. These evaluations, studies, activities, or investigations may be conducted by the North Dakota state university IR-4 laboratory or may be secured by the board from other qualified laboratories, researchers, or contractors by contract.

History: Effective April 1, 1998.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06.3

60-03-02-03. Evaluation and selection criteria. Proposals will be evaluated upon a basis of one hundred possible points, according to the following criteria:

1. **Relevance to stated PCB areas of emphasis.** Preference will be given to those proposals that rank high in importance to the state economy, to human health, and to the environment. Up to thirty points may be awarded on this criterion.
2. **Overall merit and quality of proposal.** The board will review each proposal as to its technical and commercial merit as well as the relative competence and technical qualifications of project principals. Up to twenty-five points may be awarded on this criterion.

3. **Feasibility of completing project objectives within stated timeframes.** Preference will be given to proposals demonstrating a high probability of registration within a short timeframe. Up to fifteen points may be awarded on this criterion.
4. **Appropriateness of requested budget.** Priority will be given to those proposals that have a well-documented budget that is adequate and appropriate for the product to be registered. Up to fifteen points may be awarded on this criterion.
5. **Matching funds.** Priority will be given to those proposals that demonstrate a shared commitment for funding from other private or public sources, or from the applicant. Matching funds may be in the form of cash or in-kind services, or both. Disbursement of funds will be contingent upon evidence that matching funds have been allocated to the proposal. Up to fifteen points may be awarded on this criterion.

History: Effective April 1, 1998.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06.3

60-03-02-04. Supplemental program information.

1. The board shall encourage agricultural organizations to assist in providing funding, in-kind services, or materials for laboratory studies and investigations concerning the registration of pesticides for minor crops and minor uses that would benefit the organizations. The board may request a company whose product is registered with the assistance of these funds to pay a reasonable contribution to the minor use pesticide fund.
2. The board shall ensure that prior to approving any residue study that there is written confirmation of registrant support to add the given minor crop to its label including any restrictions or guidelines the registrant intends to impose.
3. The board shall ensure that there is confirmation from the United States environmental protection agency that a tolerance can be established for a use of a pesticide prior to approving any residue study for that pesticide.
4. The board shall establish a format in which proposals should be submitted under this program.
5. **Funding level.** Proposals are not limited to a specific dollar amount. However, the board's grant moneys are finite. The board reserves the right to increase or decrease the award based on its findings and on its level of available funds.

6. Funding period. Proposals may be submitted at any time.
Reviews and grant awards will be made on a quarterly basis.

History: Effective April 1, 1998.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06.3

TITLE 69
Public Service Commission

MARCH 1998

CHAPTER 69-09-05

69-09-05-08. Adoption of regulations. The following parts of title 47, Code of Federal Regulations in effect as of July 17, 1997, are adopted by reference:

Part 54 - Universal Service, Subpart F - Universal Service Support for Schools and Libraries.

Copies of these regulations may be obtained from:

Public Service Commission
State Capitol
Bismarck, North Dakota 58505-0480

History: Effective March 1, 1998.
General Authority: NDCC 28-32-02, 49-02-01
Law Implemented: NDCC 49-21

TITLE 75
Department of Human Services

FEBRUARY 1998

CHAPTER 75-02-01.2

AGENCY SYNOPSIS: The amendments to North Dakota Administrative Code chapter 75-02-01.2 (TEEM), Training, Education, Employment, and Management Program, implement the Temporary Assistance for Needy Families Program, as administered under the Training, Education, Employment, and Management Program, effective July 1, 1997. These changes are consistent with and required by relevant provisions of Pub. L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and by relevant provisions of 1997 House Bill No. 1226. The federal law requires conversion from the Aid to Families With Dependent Children Program to administration of the Temporary Assistance for Needy Families Program under a state family assistance grant, effective no later than July 1, 1997. House Bill No. 1226 is an appropriations measure with an effective date of July 1, 1997, except for sections specifically providing later effective dates.

75-02-01.2-01. Definitions. For the purposes of this chapter:

1. "Aid to families with dependent children" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Social Security Act [42 U.S.C. 601 et seq.] during periods prior to July 1, 1997.
2. ~~"Aid-to-families-with-dependent-children-filing-unit" means any dependent child; the natural or adoptive parent of any dependent child; and all brothers and sisters of any dependent child; whether by whole blood or half blood; or adoption; but not including:~~

a:--Any child; parent of an eligible dependent child; or other caretaker relative who:

(1)--Receives supplemental security income benefits;

(2)--Is an alien who does not meet citizen and alienage requirements;

(3)--Is an alien and is ineligible because of the application of sponsor to alien deeming;

(4)--Is ineligible as a result of the imposition of a sanction; or

(5)--Is ineligible as a result of the imposition of an intentional program violation disqualification.

b:--Roomers or boarders; or

c:--Household members who are not legal dependents of a member of the filing unit.

- 3: "Applicant" means an individual who is seeking a benefit under this chapter.
- 4: 3. "Asset" means any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.
- 5: 4. "Base month" means the month, immediately before the processing month, about which the income and circumstances of the training, education, employment, and management household are evaluated to determine the amount of any training, education, employment, and management benefits to be paid during the benefit month.
- 6: 5. "Benefit month" means the calendar month immediately following the processing month.
- 7:--"Bona fide funeral arrangement" means a written agreement between a member of the training, education, employment, and management household and a funeral service practitioner, licensed funeral establishment, or cemetery association whereby the contractor promises to provide burial services or merchandise to a member of the training, education, employment, and management household in exchange for funds paid by a member of the training, education, employment, and management household, but does not mean any contract of insurance.
- 8:--"Burial plot" means a conventional gravesite, mausoleum, or any other repository customarily and traditionally used for the bodily remains of a deceased individual.

- 9- 6. "Caretaker relative" means the relative so designated by the training, education, employment, and management household who:
- a. Lives with an eligible dependent child;
 - b. Is a pregnant woman, caretaker relative to no dependent child, in the last trimester of her pregnancy; or
 - c. Lives with a dependent child, under age eighteen and receiving supplemental security income benefits, who is the last child in the home.
- 10- 7. "Child support agency" means any entity created by a county agency or any combination of county agencies, in execution of the county agency's duties under subsection 5 of North Dakota Century Code section 50-09-03.
- 11- 8. "County agency" means the county social service board.
- 12- 9. "Department" means the North Dakota department of human services.
- 13- 10. "Dependent child" means a needy child:
- a. Who lives in the home of a relative by birth, marriage, or adoption;
 - b. Who has been deprived of parental support or care by reason of:
 - (1) The continued absence of a parent from the home, other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States;
 - (2) The death of a parent; or
 - (3) ~~The--unemployment--of--the--parent--who--is--the--principal--wage-earner;--or~~
 - (4) The physical or mental incapacity of a parent; and
 - c. Who is:
 - (1) Under the age of eighteen; or
 - (2) Under the age of nineteen and a full-time student in a secondary school or the equivalent (secondary school) level in a vocational school, or technical school, if, before the end of the calendar month in which the student attains age nineteen, the student may reasonably be expected to complete the program of such school.

14: 11. "Earned income" means income currently received as wages, salaries, commissions, or profits from activities in which a training, education, employment, and management household member is engaged through either employment or self-employment. There must be an appreciable amount of personal involvement and effort, on the part of the training, education, employment, and management household, for income to be considered earned.

15: 12. "Eligible caretaker relative" means a caretaker relative who:

- a. If, related to an eligible dependent child as a brother or sister, is not under sixteen years of age;
- b. If deprivation of parental support or care is by reason of the ~~unemployment of the parent who is the principal wage earner or~~ incapacity of a parent, is the ~~unemployed or~~ incapacitated parent or the eligible dependent child's other parent, but not stepparent;
- c. If deprivation of parental support or care is by reason of the death or continued absence of a parent, is the eligible dependent child's other parent, but not stepparent;
- d. Is not a recipient of supplemental security income benefits; and
- e. Is in financial need; or
- f. Is a pregnant woman, in the third trimester of her pregnancy, caretaker relative to no other dependent child, who or whose husband is incapacitated.

16: 13. "Family" includes an individual or group of related individuals within a household whose needs are recognized in a grant of benefits through ~~aid to families with dependent children~~ temporary assistance for needy families, the parents of any dependent child and all brothers and sisters of any dependent child, whether by whole blood, half-blood, or adoption, any child, parent of an eligible dependent child, or other caretaker relative who receives supplemental security income benefits. Family includes an alien who does not meet citizen and alienage requirements, an alien who is ineligible for ~~aid to families with dependent children~~ temporary assistance for needy families benefits because of the application of sponsor-to-alien deeming, an individual who is ineligible for ~~aid to families with dependent children~~ temporary assistance for needy families benefits as the result of the imposition of a sanction, an individual who was eligible for ~~aid to families with dependent children~~ temporary assistance for needy families benefits, but who became ineligible due to the receipt of lump sum income, or an

individual who is a household member who is a legal dependent of a member of the filing unit, but does not include roomers and boarders.

17- 14. "Food stamp filing unit" means all members residing in the household, but not including:

a. Any individual who:

~~(1) is an alien and does not meet citizenship and alienage requirements;~~

~~(2) is an alien and is ineligible because of the application of sponsor to alien deeming;~~

~~(3) is ineligible as a result of the imposition of a sanction; or~~

~~(4) is ineligible as a result of the imposition of an intentional program violation disqualification; purchases and prepares meals separately and is not required by federal law to be a member of the food stamp filing unit; and~~

b. Roomers or boarders.

18- 15. "Full calendar month" means the period that begins at midnight on the last day of the previous month and ends at midnight on the last day of the month under consideration.

19- 16. "Full-time student" means a student who:

a. If in a secondary school, is enrolled in classes which, if completed, will earn the student four or more units of credit;

b. If in a vocational or technical school under state operation, a college, or a university, is enrolled in classes that, if completed, will earn the student twelve or more semester hours of credit during a regular term or six or more semester hours of credit during a summer term at an educational facility operating on a semester system, or twelve or more quarter hours of credit at an educational facility operating on a quarter system;

c. If in a private vocational or technical school, is enrolled in classes which, according to a written statement from school officials, constitutes full-time enrollment;

d. If enrolled in an accredited alternative high school or adult basic education, attends class a minimum of twenty hours per week; or

e. Is an individual participating in job corps, whether an adult or a child.

20- 17. "Ineligible caretaker relative" means a caretaker relative who is not an eligible caretaker relative.

21- 18. "Living in the home of a relative" means a circumstance that arises when a relative assumes and continues responsibility for the day-to-day care and control of a child in a place of residence maintained by the relative (whether one or more) as the relative's own home. It includes situations in which the child or the relative requires medical treatment that requires a special living arrangement. It also includes situations, provided that the child is not absent from the home for a full calendar month, when the child:

a. Physically resides in the home, but is under the jurisdiction of a court and is receiving probation services or protective supervision;

b. Receives education while in an educational boarding arrangement in another community if needed specialized services or facilities are unavailable in the home community or if transportation problems make school attendance near home difficult or impossible;

c. Receives physical or speech therapy at Camp Grassick during the summer months;

d. Receives special education at the school for the deaf or school for the blind, whether as a day student or a boarding student, except that a boarding student's needs are limited to those maintenance items that are not provided by the school; or

e. Receives education at a federal boarding school in another community, provided that the child was not placed in that setting following removal from the child's home by court order following a determination that the child was abused, neglected, or deprived, except that the child is entitled to a clothing and personal needs allowance only if that allowance is made available for the child's use on a regular basis.

22- 19. "Low income home energy assistance filing unit" means all members residing in the household, but not including:

a. ~~Any individual who:~~

~~(1) is an alien who does not meet citizenship and alienage requirements;~~

~~(2) -- Is -- an -- alien -- and -- is -- ineligible -- because -- of -- the application -- of -- sponsor -- to -- alien -- deeming;~~

~~(3) -- Is -- ineligible -- as -- a -- result -- of -- the -- imposition -- of -- a sanction; -- or~~

~~(4) -- Is -- ineligible -- as -- a -- result -- of -- the -- imposition -- of -- an intentional -- program -- violation -- disqualification;~~

b. Roomers or boarders; or

e. b. Residents of a housing unit ~~where the~~ in which:

(1) The cost is subsidized by the federal government and the residents are not responsible for heating costs separate and apart from their rent payment; or

(2) The residents are not required to pay any heating or rental costs.

23: 20. "Make an assistance payment" means, in the context of two-month retrospective budgeting, an activity that occurs on the date the department deposits an assistance payment check in the United States mail.

24: 21. "Monthly income" means income from any source, either earned or unearned, which is computed and reduced to monthly units for the purpose of determining eligibility and benefits. Income may be received weekly, monthly, intermittently, or annually, but is computed and considered monthly.

25: 22. "Needy" means:

a. A training, education, employment, and management household, otherwise eligible under this chapter, whose countable income, less any applicable disregards, is less than the income identified in the basic requirements table for a family of the size and composition of the training, education, employment, and management household;

b. An unwed parent or pregnant woman in the third trimester of her pregnancy, resident of the Open Home, with an income of less than forty-five dollars per month; or

c. A child resident of a boarding school with an income of less than forty-five dollars per month.

26: 23. "Nonlegally responsible relative" means a relative who is not the child's parent.

27: 24. "Parent" means the child's mother or father, whether by birth or adoption, but does not mean:

- a. An individual whose parental rights have been terminated with respect to that child; or
- b. A stepparent.
- 28: 25. "Part-time student" means an individual enrolled in a secondary school, vocational school, technical school, college, or university who is not a full-time student.
- 29: ~~"Principal wage earner" means the parent in a two-parent household who earned the greater amount of verified income over the twenty-four month period immediately preceding the month when application was made for benefits under the aid to families with dependent children program for unemployed parents; or, if both parents have earned identical amounts of income or no income in that twenty-four month period, the parent so designated by the county agency.~~
- 30: 26. "Processing month" means the month, immediately after the base month, and immediately before the benefit month, in which the county agency determines eligibility for, and the amount of, any training, education, employment, and management benefit to be paid during the benefit month.
- 31: 27. "Prospective budgeting" means:
- a. ~~The~~ the determination, made only with respect to the initial month of eligibility and the month immediately after the initial month of eligibility, based on the county agency's best estimate of the income and circumstances of the training, education, employment, and management household in those months, of the amount of any grant of assistance training, education, employment, and management benefits in those two months; and
- b. ~~The determination, made in all months, based on the county agency's best estimate of the circumstances of the training, education, employment, and management household, of whether the circumstances anticipated for the benefit month, and the month immediately following the benefit month, will cause the training, education, employment, and management household to be eligible in those two months.~~
- 32: 28. "Recipient" means an individual who receives a benefit under this chapter.
- 33: ~~"Regulation"; as used in 45 CFR 205.10(a)(4)(i)(B) and (a)(15), includes any written statement of federal or state law or policy, including federal and state constitutions, statutes, regulations, rules, policy manuals or directives, policy letters or instructions, and relevant controlling decisions of federal or state courts.~~

- 34- 29. "Relative by birth, marriage, or adoption" means an individual related to the dependent child by birth, whether by blood or half-blood, by marriage including a marriage that has been terminated by death or divorce, or by adoption, as father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, or first cousin.
- 35- 30. "Retrospective budgeting" means a determination, made by the county agency during the processing month, based on income and circumstances of the training, education, employment, and management household, during the base month, of the amount of any grant of assistance in the benefit month.
- 36- 31. "Standard employment expense allowance" means the twenty-seven percent required by training, education, employment, and management waiver terms and conditions to be first disregarded from the earned income of any child, relative applying for benefits under this chapter, or other individual whose needs are taken into account in determining eligibility under this chapter, but whose earned income is not required to be wholly disregarded as the income of a child who is a full-time student or a part-time student who is not a full-time employee.
- 37- 32. "Stepparent" means a person, ceremonially married to a parent of a child, but who is not also a parent of that child by either birth or adoption.
- 38- 33. "Supplemental security income" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
34. "Temporary assistance for needy families" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Social Security Act [42 U.S.C. 601, et seq.] during periods beginning July 1, 1997.
35. "Temporary assistance for needy families filing unit" means any dependent child, the natural or adoptive parents of any dependent child, and all brothers and sisters of any dependent child, whether by whole blood or half-blood, or adoption, but not including:
- a. Any child, parent of an eligible dependent child, or other caretaker relative who receives supplemental security income benefits;
 - b. Roomers or boarders; or
 - c. Household members who are not legal dependents of a member of the filing unit.

- 39- 36. "The Act" means the Social Security Act [42 U.S.C. 301 et seq.].
- 40- 37. "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].
- 41- 38. "Title IV-A" means title IV-A of the Social Security Act [42 U.S.C. 601 et seq.].
- 42- 39. "Title IV-D" means title IV-D of the Social Security Act [42 U.S.C. 651 et seq.].
- 43- 40. "Training, education, employment, and management benefits" means a single cash grant which consists of ~~aid--to--families with dependent children; food stamps;~~ temporary assistance for needy families and low income home energy assistance program benefits.
- 44- 41. "Training, education, employment, and management household" means an individual or group of individuals who reside together which includes at least one ~~aid-to-families-with dependent children~~ temporary assistance for needy families filing unit and may include a food stamp filing unit and low income home energy assistance filing unit.
- 45- 42. "Unearned income" means income that is not earned income.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-02. Demonstration project - Department to determine participants. The training, education, employment, and management program is was initially a demonstration project, established under waivers authorized by North Dakota Century Code section 50-06-01.8. Individuals within some counties, and some individuals within Cass County, may be required to participate in the training, education, employment, and management program, while individuals in other counties, and other individuals in Cass County, may be permitted to participate only in aid to families with dependent children, food stamp, and low income home energy assistance programs. The department may by order determine the counties ~~in--which--individuals,~~ and the method by which individuals in ~~Cass County~~ those counties, may apply for training, education, employment, and management program benefits. The department may by order determine the order in which cases in each county are converted from participation in aid to families with dependent children,

food stamps, and low income home energy assistance programs to participation in the training, education, employment, and management program.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-06. Selection of primary individual.

1. Each training, education, employment, and management household shall have a primary individual. The primary individual must be identified among the household members, with one of the following relationships to a dependent child member of the household, using the following order of priority:
 - a. A natural or adoptive parent;
 - b. An adult relative, within the fifth degree of kinship;
 - c. A stepparent;
 - d. A spouse of any person identified in subdivision a, b, or c, whether or not that marriage is terminated by death or divorce;
 - e. A minor brother, sister, half-brother, half-sister, stepbrother, or stepsister who is at least sixteen years of age.
2. The primary individual may be eligible or ineligible for the aid-to-families-with-dependent-children temporary assistance for needy families portion of the training, education, employment, and management benefit. An ineligible caretaker who receives supplemental security income benefits must be included in the food-stamp--and low income home energy assistance program portions of the training, education, employment, and management benefit, but may not be included in the aid---to--families--with--dependent--children temporary assistance for needy families portion of that benefit.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-07. Presumptive eligibility.

1. Definitions. As used in this section:
 - a. "Destitute household" means a migrant or seasonal farm worker household:

- (1) Whose only income received during the month of application is received before the date of the request for benefits and is from a terminated source; or
 - (2) Whose only income during the month of application is from a new source and if no more than twenty-five dollars from the new source is received by the tenth calendar day after the date of request for benefits;
- b. "Expedited service" means the issuance of training, education, employment, and management benefits no later than seven days following the request for benefits for households determined eligible for expedited service;
 - c. "Migrant household" means a household that travels away from the household's usual residence on a regular basis to seek employment in an agriculture-related activity, even if a household member secures employment of a nonagricultural nature;
 - d. "Presumptive eligibility" means a household deemed eligible to receive training, education, employment, and management benefits based on waived verifications;
 - e. "Seasonal farm worker" means an individual who:
 - (1) Is employed seasonally, but not on a yearly basis, on farms or ranches;
 - (2) Does not migrate from one area of the country to another seeking that employment;
 - (3) May have income other than from seasonal farm work; and
 - (4) If not currently employed as a seasonal farm worker, has previously been employed as a seasonal farm worker and intends to return to seasonal farm work; and
 - f. "Waived verification" means a selected factor of eligibility criteria not required to be verified for households eligible for expedited service for the first and second benefit months.
2. A household may receive training, education, employment, and management presumptive eligibility determinations and expedited service if:
 - a. It has less than one hundred fifty dollars in monthly gross earned and unearned income when the nonexempt liquid assets do not exceed one hundred dollars;

- b. It consists of a destitute migrant or seasonal farm worker with liquid assets not exceeding one hundred dollars; or
 - c. ~~It--is--a--household--in--which--all--members--are--homeless--and--meet--the--monthly--training,--education,--employment,--and--management--gross--income--test--and--whose--assets--are--within--training,--education,--employment,--and--management--program--limits,--or~~
 - d. It is a household with combined nonexempt monthly gross income and nonexempt liquid assets of less than the household's monthly costs for utilities and rent or mortgage.
3. Training, education, employment, and management presumptive eligibility must be determined for a household meeting any one of the ~~four~~ three criteria in subsection 2 by waiving the following mandatory verification factors for the initial and second benefit month only:
- a. Gross ~~nonexempt~~ earned and unearned income;
 - b. Citizenship or alien status;
 - c. Social security number or proof that an application for social security has been filed;
 - d. Identity for household members other than the primary individual;
 - e. Nonexempt assets; and
 - f. Deductions from earned or unearned income; and
 - g. Student status.
4. A destitute household must have eligibility determined and benefit amount calculated for the month in which the request for benefits is filed by considering only income received between the first day of the month and the date of the request for benefits. Any income from a new source received after the date of the request for benefits may not be counted in determining eligibility and benefit amount.
5. Application procedures must be designed to identify a household eligible for presumptive eligibility determination and expedited service at the time a household completes a request for benefits. The county agency must screen each request for benefits when submitted and each individual inquiry about program eligibility, when made.
6. The household may receive expedited benefits only for the month in which the request for benefits is filed. Benefits

for the initial month must be issued no later than the seventh calendar day following the date of the request for benefits.

7. Once expedited benefits have been issued, the household may not again receive expedited benefits until the household establishes eligibility under provisions applicable to cases in which presumptive eligibility does not exist.
8. Holidays, weekends, and other nonwork days may not prevent a household determined presumptively eligible for expedited service from receiving training, education, employment, and management benefits by the seventh calendar day after the date of the request for benefits.
9. Expedited benefits to eligible households may consist of a benefit based only on the training, education, employment, and management standard of need for the appropriate household size and may not include special items of need or job opportunities and basic skills program supportive services. No recoupment of expedited benefits for the initial month may be made if a previous overpayment exists.
10. An overpayment must be established if, subsequent to presumptive eligibility determination and issuance of expedited benefits, a household is determined ineligible for benefits. Intentional program violation must be explored in all instances in which subsequent ineligibility is determined.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-09. Decision and notice.

1. A decision as to eligibility must be made promptly on applications, within thirty days, except in unusual circumstances.
2. A decision as to eligibility on redeterminations must be made within thirty days.
3. Immediately upon an eligibility determination, whether eligibility can be found, ineligibility can be found, or eligibility cannot be determined, training, education, employment, and management program applicants or recipients shall be notified by the county agency. Adequate notice of any decision terminating or reducing training, education, employment, and management benefits must be sent at the time required by section 75-01-03-08 for with respect to aid to families with dependent children.

4. The effective date a case is closed or suspended is the last calendar day of the month identified in the notice. The effective date of a transfer to medicaid-only status is the first day of the next month.
5. Errors made by public officials and delays caused by the actions of public officials do not create eligibility or additional benefits for an applicant or recipient who is adversely affected.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-13. Residence.

1. There is no durational state residence required for eligibility for training, education, employment, and management benefits.
2. No individual who is otherwise eligible may be denied assistance under the training, education, employment, and management program if the individual resides in the state and in a county determined by the department to be a demonstration county under section 75-02-01.2-02.
3. A resident of the state is one who:
 - a. Is living in the state voluntarily with the intention of making the person's home there and not for a temporary purpose; or
 - b. At the time of application, is living in the state, is not receiving assistance from another state, and entered the state with a job commitment or seeking employment in the state, whether or not currently employed.
4. For purposes of establishing the aid--to--families--with dependent-children temporary assistance for needy families filing unit, a child is a resident of the state in which the child is living other than for a temporary basis. For all other purposes of this chapter, a child is a resident of the state in which the child is living.
5. Residence may not depend upon the reason for which the individual entered the state, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose.
6. Residence is retained until abandoned. Temporary absence from the state, with subsequent returns or intent to return when

the purposes of the absence have been accomplished, must not interrupt continuity of residence.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-14. Deprivation of parental support or care. A dependent child must be shown to be both "deprived of parental support or care" and "needy", although a causal relationship between the two need not exist. The phrase encompasses the situation of any child who is in need and otherwise eligible, and whose parent has died, is continually absent from the home, or is physically or mentally incapacitated, ~~or is designated as principal wage earner and is unemployed.~~ The requirement applies whether the parent was the chief breadwinner or devoted himself or herself primarily to the care of the child and whether or not the parents were married to each other. The determination that a child has been deprived of parental support or care is made in relation to the child's natural or adoptive parents.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-15. Continued absence of a parent.

1. For purposes of this chapter:

- a. "Deprived of parental support or care by reason of the continued absence of a parent" means a situation that occurs when all of the following factors are present:
 - (1) The parent is physically absent from the home;
 - (2) The nature of the parent's absence is such as to interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and
 - (3) The known or indefinite duration of the absence precludes relying on the parent to perform the parent's functions in planning for the present support or care of the child.
- b. A "parent's absence is such as to interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child" only if one of these three functions is totally interrupted or finally terminated.

2. A determination that a parent's absence has or has not interrupted or terminated the parent's functioning must be supported by information provided by the applicant or otherwise available to the county agency.
3. Except as provided in subsection 4, if all three of the conditions for showing deprivation by reason of the continued absence of a parent are met, the reason for the parent's absence and the length of the parent's absence is immaterial.
4. A parent who is performing active duty in uniformed service is "absent from the home" only if there is evidence that continued absence would have existed irrespective of the parent's serving in uniformed service. Acceptable evidence that such an absence exists includes proof of legal separation, desertion, or divorce, either final or in process. If there has been no legal action taken, some indication of how the parent came to be absent must be provided.
5. A parent temporarily living apart from the child or children while attending school or vocational training or working or seeking work in another community does not meet the requirements for continued absence as long as the parent continues to function as a parent, even if the level of support or care is deficient or diminished.
6. Types of parental absences frequently giving rise to dependency in children include:
 - a. Divorce. The continued absence of a parent may be established as the result of divorce.
 - b. Separation. Legal separation is an arrangement by which a husband and wife live apart, subject to a court order that may divide the parties' property, provide for spousal or child support, and provide for custody and visitation of children, but remain married. Such court orders may be temporary or permanent. Separation by mutual consent or agreement involves the discontinuance of the marital relationship without legal action. Continued absence of a parent as a result of this arrangement can be established if there is no collusion between the parents to render the family eligible for aid--to--families--with--dependent children temporary assistance for needy families.
 - c. Imprisonment. Imprisonment of a parent is a type of parental absence that creates dependency among children. A parent who is a convicted offender, but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday, is deemed absent from the home. Continued absence exists only if the parent is sentenced

to and serves a thirty-day or longer term of incarceration or community service unless:

- (1) The term actually served is less than the sentence imposed;
 - (2) The term served is shortened by order of the court; and
 - (3) Assistance has been issued before information about the shortened term is received by the county agency.
- d. Unmarried parenthood. A child born out of wedlock is deprived of parental support by reason of continued absence of a parent if the child's parents do not reside together.
- e. Desertion. Desertion is the voluntary and willful abandonment, by a parent, of the parent's child or children without making adequate provision for the care and support of the child or children.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-16. Unemployment of the principal wage earner - Pay after performance.

1.--For purposes of this section:

a.--"Paid employment" means employment for which the employee is paid, at or above the federal minimum hourly wage, at least once each calendar month, in lawful money of the United States or with checks drawn on banks convenient to the place of employment.

b.--"Work", except as the term is used in subsection 6, means on-the-job training, work supplementation, alternative work experience, community work experience, or paid employment or any combination of those activities.

2.--A principal wage earner must verify that the principal wage earner is not unemployed by reason of conduct or circumstances that result or would result in disqualification for unemployment compensation.

3.--Benefits under this section are furnished on a calendar month basis.

4.--Unemployed parent benefits under the aid to families with dependent children program are available only if all aspects

of--eligibility--required--under--this--chapter--are--established. Unemployed--parent--benefits--are--provided--with--a--goal--of encouraging--families--to--become--self-supporting--as--rapidly--as possible.

5.--Unemployed--parent--benefits--are--available--only--if--both--parents are--living--in--the--household.--The--parents--are--not--required--to be--married--to--each--other,--but--at--least--one--child--in--the household--must--be--the--child--of--both--parents.--The--parentage--of that--child--must--be--adjudicated,--established--by--marriage,--or acknowledged--by--the--father.

6.--The--principal--wage--earner--must--have--had--a--prior--connection with--the--labor--force--verified--under--either--subdivision--a--or--b.

a.--Within--a--one--year--period--prior--to--the--date--of--eligibility, the--principal--wage--earner--must--have--received--or--been qualified--for--job--insurance--benefits--under--the--laws--of--the state--or--of--the--United--States.--For--purposes--of--this subdivision,--railroad--unemployment--benefits--are--job insurance--benefits.--A--principal--wage--earner--is--treated--as qualified--for--job--insurance--benefits--if--the--principal--wage earner--would--have--been--eligible--to--receive--benefits--upon application--or--if--the--principal--wage--earner--performed--work which,--had--it--been--covered,--would,--together--with--any covered--work,--have--made--the--principal--wage--earner--eligible for--job--insurance--benefits.--To--determine--if--a--principal wage--earner--was--qualified--for--job--insurance--benefits,--for purposes--of--this--subdivision,--the--total--amount--of--earnings during--the--base--period--must--be--established.--The--base period--is--the--first--four--quarters--in--the--last--five completed--quarters--prior--to--the--quarter--of--application. The--principal--wage--earner--must--have--had--earnings--in--at least--two--quarters--in--the--base--period;--total--base--period earnings--must--be--at--least--one--and--one--half--times--the highest--quarter--earnings--in--the--base--period;--and--base period--earnings--must--be--at--least--two--thousand--seven hundred--ninety--five--dollars.

b.--The--principal--wage--earner--must--have--had--six--or--more quarters--of--work--within--any--thirteen--calendar--quarter period--ending--within--one--year--prior--to--the--quarter--of application--for--benefits.--A--"quarter--of--work"--means--a period--of--three--consecutive--calendar--months--ending--March thirty--first,--June--thirtieth,--September--thirtieth,--or December--thirty--first--in--which--the--principal--wage--earner:

(1)--Received--earned--income--of--not--less--than--fifty dollars,--including--work--study--income;

(2)--Participated--in--a--community--work--experience--program, work--incentive--program,--or--job--opportunities--and

basic---skills---program;---but---not---a---tribal---work
experience-program;---or

(3)---Attended,---full---time,---an---elementary---school,---a
secondary-school,---or---a---vocational---or---training---course
designed---to---prepare---the---individual---for---gainful
employment,---or---participated---in---an---educational---or
training---program---under---the---Job-Training-Partnership
Act-of-1982,---provided---that---no---more---than---four---quarters
of---activity---under---this---paragraph---may---be---treated---as---a
quarter-of-work;

7.---The---principal---wage---earner,---once---designated,---remains---the
principal-wage-earner-for-each-month---the---household---receives
benefits---under---the---program---for---unemployed-parents,---has---such
benefits---suspended,---or---does---not---receive---benefits---solely
because---it---has---already---received---benefits---for---six---months---in---a
twelve-month-period.---If---the---case---is---closed---and---the---household
is---without---such---benefits---for---at---least---one---full---calendar-month,
a---new---application---must---be---made---and---a---new---designation---of---the
principal-wage-earner---is---required;

8.---In---determining---which---parent---is---the---principal-wage-earner,---the
county-agency-shall:

a.---Consider---the---verified---earnings---of---each---parent;

b.---Use---the---best---information---available---to---designate---the
principal-wage-earner---if---reliable---verification---of---earnings
cannot---be---secured;---and

c.---Designate---the---principal-wage-earner---if---both---parents---earned
identical---amounts---of---income---or---earned---no---income;

9.---Eligibility---for---unemployed-parent-benefits---may---be---established
for---no---more---than---six---months---in---any---twelve-month---period.---The
six---months---of---potential---eligibility---need---not---be---consecutive.
For---purposes---of---applying---this---limitation,---a---month---is---a---benefit
month---if:

a.---Eligibility---is---established---at---any---time---during---that---month;

b.---The---household---actually---receives---benefits---even---though---the
family---is---totally---ineligible;

c.---The---household---is---eligible---for---benefits---of---less---than---one
dollar;---or

d.---The---household---is---eligible---but---receives---benefits---in---excess
of---those---for---which---it---was---eligible;

10.---No---aid---to---families---with---dependent-children-filing-unit---may---be
found---eligible---under---this---section---unless,---within---seven---working

days--after--the--county--agency--initiates--a--referral--to--the--job opportunities--and--basic--skills--program;--both--parent--members--of that--unit;

a.--Verify--a--current--application--for--employment--is--on--file--at an--office--of--job--service--North--Dakota;

b.--Verify--application--for--any--unemployment--benefits--that--may be--due--either--parent;

c.--Sign--and--return--to--the--county--agency--a--statement acknowledging--the--parent's--duties--and responsibilities; and

d.--Verify--beginning--and--continuing--a--job--search--satisfactory to--that--parent's--job--opportunities--and--basic--skills program--coordinator.

11.--a.--Except--as--provided--in--subdivision--b,--both--parents--in--a recipient--aid--to--families--with--dependent--children--filing unit--must--comply--with--this--subsection.

{1}--A--parent--engaged--in--paid--employment--at--least thirty--two--hours--per--week--need--not--engage--in--job search--or--unpaid--work.

{2}--A--parent--engaged--in--paid--employment--of--at--least twenty--four--hours--per--week--but--less--than--thirty--two hours--per--week--must--engage--in--at--least--eight--hours--of job--search--per--week.

{3}--A--parent--engaged--in--paid--employment--of--less--than twenty--four--hours--per--week--must--engage--in--at--least eight--hours--of--job--search--per--week;--at--least--eight hours--of--unpaid--work--per--week;--and--a--total--of--at least--forty--hours--per--week--of--a--combination--of--paid employment;--job--search;--and--unpaid--work.

{4}--A--parent--not--engaged--in--paid--employment--must--engage in--at--least--eight--hours--of--job--search--per--week--and--at least--thirty--two--hours--of--unpaid--work--per--week.

{5}--A--parent--under--age--twenty--five--who--has--neither completed--high--school--nor--earned--a--general equivalency--diploma;--and--who--is--making--satisfactory progress--in--either--of--those--educational--activities; may--substitute--that--progress--for--up--to--thirty--two hours--of--unpaid--work--per--week;--but--must--engage--in--at least--eight--hours--of--job--search--per--week.

b.--If--one--parent--complies--fully--with--subdivision--a,--the second--parent--shall--engage--in--unpaid--work;--job--search;--and educational--activities--only--at--times--necessary--child--care

is made available at the expense of the department and is not required to engage in those activities for more than twenty hours per week.

12. a. No benefits under this section may be provided for the calendar month of application until the aid to families with dependent children filing unit complies with subsection 10.

b. No benefits under this section may be provided for the calendar month immediately after the month of application unless:

(1) Benefits are provided in the month of application;

(2) The aid to families with dependent children filing unit continues the job search; and

(3) For any period, beginning seven calendar days after the day notice of approval is issued and ending on the nineteenth day of that month, the aid to families with dependent children filing unit complies with subsection 11.

c. No benefits under this section may be provided for the third and subsequent calendar months after the month of application unless:

(1) Benefits were provided in the month of application and the month immediately following the month of application; and

(2) For a period, beginning on the twentieth day of the month two months before the benefit month and ending on the nineteenth day of the month before the benefit month, the aid to families with dependent children filing unit complies with subsection 11.

13. A parent who is required to perform an activity shall verify either the performance of the required activity or good cause for failure to perform.

14. Good cause for failure to perform the required activity exists only if good cause would exist for failure or refusal to participate in the job opportunities and basic skills program, except:

a. If the parent is too ill to participate or refuses major medical care, the other parent in the household shall perform;

b. -- Good cause may not be based on a claim that the designated work program assignment does not meet appropriate work or training criteria; and

e. -- A claim of good cause must be such as would preclude any reasonable employee, of ordinary ability and responsibility, from working, considering the totality of circumstances, and particularly considering the efforts of the parent to overcome the obstacle to participation.

15. -- If the principal wage earner fails to perform activities required under this section, shows good cause for that failure to perform, or establishes an exemption under subdivisions b through d of subsection 1 of section 75-02-01.1-81, the second parent must perform the required activities, subject to all provisions of this section, and may not show good cause or establish an exemption.

16. -- A household is entitled to adequate notice of a determination that a parent failed without good cause to perform activities required under this section. The notice must inform the household that it may be reinstated if an appeal of the decision described in the notice is made within ten days of the date of the notice.

17. -- Household members subject to this section who are native Americans residing in the service area of a tribal job opportunities and basic skills program, and who are, or upon application would be, eligible for services through that program, must verify participation in all activities required under this section that are made available through that program. Repealed effective July 1, 1997.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-17. **Death of a parent.** A child, if otherwise eligible for aid to families with dependent children temporary assistance for needy families, may be deprived of parental care by reason of the death of a parent. The applicant shall verify that the deceased individual is the parent of the child.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-18. **Incapacity of a parent.**

1. A child, if otherwise eligible for aid to families with dependent children temporary assistance for needy families, is

deprived of parental support or care when the child's parent has a physical or mental defect, supported by current competent medical testimony, of such a debilitating nature as to reduce substantially or eliminate the parent's capacity either to earn a livelihood or to discharge the parent's responsibilities as a homemaker and provider of child care for a period of thirty days or more. In making a determination of incapacity to earn a livelihood, the department shall take into account the limited employment opportunities of disabled persons.

2. The incapacity must be such that it reduces substantially or eliminates employment in the parent's usual occupation or another occupation to which a parent may be able to adapt. The fact that a parent may have to change occupation or work location does not establish incapacity or limited employment opportunities for a disabled parent. It does not matter whether a parent was employed or fulfilled the role of homemaker prior to the onset of the asserted incapacity. Incapacity is established either when the person is unable to earn a livelihood or to act as a homemaker. A parent may also establish incapacity by demonstrating that the parent has reached age sixty-five.
3. A determination that a parent is disabled or blind, made by the social security administration, constitutes adequate substantiation of incapacity for purposes of this section.
4. A parent continues to be incapacitated, for purposes of this section, if the incapacity is not reasonably subject to remediation, or if the parent makes reasonable progress towards remediation of the incapacity. For purposes of this section, reasonable progress towards remediation of the incapacity means cooperation with medical practitioners who prescribe a course of treatment intended to remediate or limit the effect of the incapacity, including physical therapy, counseling, use of prosthesis, drug therapy and weight loss, cooperation with vocational practitioners, cooperation with vocational and functional capacity evaluations, and reasonable progress in a course of training or education intended to qualify the parent to perform an occupation which, with that training or education, the parent would have the capacity to perform.
5. A parent who engages in activities inconsistent with the claimed incapacity may be determined to not be incapacitated.

6. The department may require a parent to demonstrate reasonable progress towards remediation of the incapacity, and may set reasonable deadlines for the demonstrations.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-19. Legal custody. Courts may enter orders in child custody matters that place legal custody of a child with either parent or with both parents (joint custody), and may provide for visitation between a parent and child, which results in the visiting parent and child occupying the same place of residence. While intended to help children maintain relationships with both parents, these arrangements sometimes complicate the ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families eligibility determination process. For example, courts may order custody to shift from one parent to the other in alternating weeks, months, or other prescribed periods or that the child live with a given parent only on weekends or during the summer months. On occasion, the child's home may remain fixed and the parents take turns in occupying that home with the child. Such orders have little or no bearing on whether or not a child is deprived as the result of a parent's absence from the home. It is the child's physical presence, rather than legal custody, that is relevant. The facts of each situation must be carefully evaluated. If deprivation is found to exist, one residence must be established for purposes of determining eligibility. The child's caretaker relative is the relative in whose home the child ordinarily spends the greater time. Both parents may not be certified as caretaker relatives for the same child for the same period of time. The state's policy and practice are not intended to interfere with the absent parent's wish to maintain a continuing relationship with the absent parent's children. On the contrary, reasonable visits are to be encouraged. Visitations between absent parent and child can occasionally be so frequent as to raise doubts about whether there has been a disruption of parental functioning.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-20. Eligibility throughout month.

1. In the first month in which eligibility is established, based on any one application, the benefit amount is that pro rata portion of the monthly benefit amount equal to the percentage of the month remaining after the later of the first day of eligibility or the date of application, except:
 - a. In the case of a family that has entered North Dakota from a state which issues grants twice a month, the benefit

amount is that pro rata portion of the monthly benefit amount equal to the percentage of the month remaining after the later of the date coverage in the other state ends or the date of application;

- b. The benefit amount may be adjusted to correct an underpayment or overpayment arising out of previous periods of eligibility; and
- c. In the case of a training, education, employment, and management household which includes members who were eligible for and receiving medicaid benefits at the time the unit requests aid-to-families-with-dependent--children temporary assistance for needy families, if the training, education, employment, and management household provides all necessary verification and a completed application within forty-five days or by the end of the month following the month of request, whichever is less, the benefit amount in the month of request is that pro rata portion of month remaining after the date of request.

2. In the second and subsequent months in which eligibility is established, based on any one application, if the monthly reporting requirements are met, and, ~~where applicable, the requirements of section 75-02-01.1-16, concerning unemployed parent cases are met~~, the household continues to be eligible throughout the month if eligible for any portion of the month.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-21. Asset considerations.

1. a. All assets that are actually available must be considered. Assets are actually available when at the disposal of a member of the training, education, employment, and management household; when a member of the training, education, employment, and management household has a legal interest in a liquidated sum and has the legal ability to make the sum available for support or maintenance; or when a member of the training, education, employment, and management household has the lawful power to make the asset available or to cause the asset to be made available. A determination that an asset is deemed available is a determination that the asset is actually available.
- b. Assets must be reasonably evaluated.
- c. All assets owned individually or jointly by members of a training, education, employment, and management household

are deemed available to the household. Assets owned by a training, education, employment, and management household member who is not included in the aid-to-families-with dependent-children temporary assistance for needy families filing unit must be counted when determining eligibility for the ~~food-stamp-and~~ low income home energy assistance program ~~portions~~ portion of the training, education, employment, and management benefit, but not the aid-to families--with-dependent-children temporary assistance for needy families portion.

- d. Assets owned jointly by a member of the training, education, employment, and management household and an individual who is a member of a separate household, but has a legal obligation to support a member of the training, education, employment, and management household, are presumed available to the training, education, employment, and management household unless the applicant can show that the assets are in fact not available.
- e. If the training, education, employment, and management household can demonstrate that only a portion of an asset is available, only that portion may be considered.
- f. An asset is not available if it cannot be practically subdivided or sold.
- g. A stepparent's assets, whether owned exclusively by the stepparent or jointly with the parent, are deemed available in their entirety to the parent. Because the aid--to--families--with---dependent---children temporary assistance for needy families filing unit must include the parent, if technically eligible, the equity value of all assets, including the stepparent's assets, must fall within program asset limitations or the unit is ineligible.
- h. An asset may be temporarily unavailable while the training, education, employment, and management household is taking reasonable measures to overcome a legal impediment.
- i. Assets ordinarily available to the training, education, employment, and management household may be rendered temporarily unavailable to members of such a unit who are being served by shelters for abused persons and families while the legal ramifications of the circumstances that led to the need for such services are explored.
- j. As in all instances in which there is a question of ownership, the training, education, employment, and management household must be given the opportunity to present evidence in rebuttal of the presumption that a

joint account is an available asset. A successful rebuttal may result in a finding that the funds in the joint account are in fact not owned by the training, education, employment, and management household. For example, when the funds are clearly available to the family only in the event of the coowner's death, access is restricted and the funds are therefore not an asset. The funds are likewise not an asset to the family if withdrawals from the account are possible only with the surrendering of the passbook, which is not accessible to the applicant or recipient, or with dual signatures and the coowner may not sign.

- k. An asset may be sold or exchanged for another asset. An asset acquired in an exchange or with the proceeds from a sale continues to be treated as an asset subject to the asset limits, exemptions, and exclusions applicable to the type of asset acquired. This subdivision does not supersede other provisions of this chapter which describe or require specific treatment of assets, or which describe specific circumstances that require a particular treatment of assets.
2. The financial responsibility of any individual for any applicant or recipient of aid--to--families--with--dependent children temporary assistance for needy families is limited to members of the aid--to--families--with--dependent--children temporary assistance for needy families filing unit. Such responsibility is imposed upon applicants or recipients as a condition of eligibility. Except as otherwise provided in this section, the assets of the members of the aid-to-families with--dependent---children temporary assistance for needy families filing unit are deemed available to an applicant or recipient, even if those assets are not actually contributed. For purposes of this subsection, biological and adoptive parents, but not stepparents, are treated as parents.
3. Training, education, employment, and management benefits, and any income, earned or unearned, which is taken into account in determining the amount of a grant for a particular month, may not be treated as an asset in that month.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-22. Asset limits. No person member of a training, education, employment, and management household may be found eligible for training, education, employment, and management benefits or food stamp benefits unless the value of the training, education, employment, and management household's assets, not specifically excluded under this chapter, does not exceed five thousand dollars for a training,

education, employment, and management household consisting of one person, or eight thousand dollars for training, education, employment, and management households consisting of two or more persons. In all instances, including determination of equity, property must be realistically evaluated in accord with current market value. Any reasonable costs associated with liquidation of excess assets must be taken into account.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-24. Lump sums received by a member of the training, education, employment, and management household.

1. All nonrecurring lump sum payments must be considered as an asset beginning the second month following the month of receipt. For that month, the remaining lump sum amount is included with all other nonexempt assets in determining eligibility.
2. For purposes of this section, "lump sum income or payment" includes retroactive monthly benefits provided under title II of the Social Security Act and other retroactive monthly benefits, payments in the nature of windfall, such as lottery or gambling winnings or inheritances, judgments, or settlements for injuries to person or property to the extent that the payment is not earmarked and used for the purpose for which it was paid such as burial costs, and repair or replacement of lost or damaged assets, and workers' compensation awards.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-26. Disqualifying transfers.

1. The transfer of an asset, without adequate consideration, disqualifies the training, education, employment, and management household from receipt of benefits for a period beginning with the month in which the transfer took place and continuing for a number of months equal to the result of dividing the training, education, employment, and management household's total equity value in the transferred asset by the standard of need applicable to the training, education, employment, and management household.
2. Notwithstanding subsection 1, a transfer is not disqualifying if:

a.---It it is made by a person, who is not a responsible relative, by removing the name of a member of the training, education, employment, and management household from a jointly owned account to which no member of the training, education, employment, and management household contributed, provided that the name of the household member is removed:

{1} a. If the existence of the account is discovered by the county agency while the training, education, employment, and management household is in the process of applying for assistance, before the initial payment is certified; or

{2} b. If the existence of the account is discovered by the county agency while the training, education, employment, and management household is receiving training, education, employment, and management benefits, within thirty days after that discovery; ~~or.~~

~~b.---When---transferred---the---asset---was---excluded---for---any---reason---other---than---a---good---faith---effort---to---sell---real---property.~~

3. If the training, education, employment, and management household member who caused the household's ineligibility due to a disqualifying transfer leaves the household, the remaining household members are no longer subject to the disqualification penalty only if the transferred asset was owned solely by the departing household member. Effective the month day following the month day in which the individual left the training, education, employment, and management household, the remaining members may apply for training, education, employment, and management benefits. If the transferred asset was jointly owned with any remaining member of the training, education, employment, and management household, the disqualification period must continue as initially calculated.

4. ~~If---the---training,---education,---employment,---and---management household member who caused the disqualification moves to another---training,---education,---employment,---and---management household, the previous period of ineligibility does not remain---in---effect.~~ When an individual who ~~incurred~~ caused a disqualification due to transferring an asset caused a household's ineligibility due to a disqualifying transfer moves to a different training, education, employment, and management household, the new household may be disqualified from the receipt of benefits for a period beginning with the month in which the ~~original transfer took place~~ individual became a member of the new household and continuing for a number of months equal to the result of dividing:

a. Reducing the individual's total equity value in the transferred asset by an amount equal to the number of months of disqualification imposed upon the previously

disqualified household times the standard of need applicable to that household; and

- b. Dividing that result by the standard of need applicable to the new training, education, employment, and management household.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-28. Eligibility for aliens who arrived before August 22, 1996.

1. Except as provided in subsection 3, an alien who arrived before August 22, 1996, and who is lawfully admitted for permanent residence under color of law is eligible for training, education, employment, and management benefits if all other requirements for eligibility are met.
2. An alien may be lawfully admitted for a temporary or specific period of time. Such aliens are not eligible for training, education, employment, and management benefits because they do not meet the requirement that residence be permanent. Examples include aliens with student visas, visitors, tourists, some workers, and diplomats.
3. a. A sponsored alien is ineligible for training, education, employment, and management benefits for a three-year period, beginning with the alien's entry into the United States, unless the sponsor:
 - (1) No longer exists; or
 - (2) Is unable to meet the alien's financial needs.
- b. A sponsored alien who applies for training, education, employment, and management benefits within three years following entry into the United States shall, as a condition of eligibility, provide the county agency with information and verification sufficient to determine the portion of the sponsor's income and assets that may be deemed available to the alien.
- c. The sponsor and the sponsored alien are both liable for the amount of any overpayment of training, education, employment, and management benefits that results from the failure of either to provide information and verification sufficient to allow the county agency to correctly determine the portion of the sponsor's income and assets that may be deemed available to the alien.

d. For purposes of this section:

- (1) "Sponsor" means an individual, public organization, or private organization who executed an affidavit of support or similar agreement on behalf of an alien, who is not the child of the sponsor or the sponsor's spouse, as a condition of the alien's entry into the United States.
- (2) "Sponsored alien" means an alien whose entry into the United States was conditioned on the execution of an affidavit of support or similar agreement by a sponsor who is not a parent or the spouse of a parent of the alien.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-28.1. Eligibility for aliens who arrived on or after August 22, 1996.

1. This section applies only to immigrants who arrived in the United States on or after August 22, 1996.
2. Except as provided in subsection 3, no noncitizen immigrant is eligible for training, education, employment, and management benefits for the first five years of that immigrant's residence in the United States.
3. An otherwise eligible noncitizen immigrant may be provided training, education, employment, and management benefits:
 - a. After that immigrant has resided in the United States for five years, provided that the income and assets of the immigrant's sponsor must be deemed available to the immigrant;
 - b. After that immigrant has established forty quarters of work history for social security benefit purposes, without deeming of the income or assets of the immigrant's sponsor;
 - c. If the immigrant is:
 - (1) A refugee, asylee, or has been granted withholding of deportation;
 - (2) A veteran of United States military service, a person on active military duty, or a spouse or dependent of such a veteran or person on active military duty; or

(3) A Cuban or Haitian entrant entitled to refugee and entrant assistance; or

d. If this state is required by federal law to provide that immigrant benefits under its temporary assistance for needy families state plan.

4. An otherwise eligible citizen immigrant may be provided training, education, employment, and management benefits.

History: Effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-30. Limitation on benefits to pregnant women.

1. A pregnant woman, not made ineligible by any other provision of this chapter, who is caretaker relative to no child, may receive aid--to--families--with--dependent-children temporary assistance for needy families based upon the standard of need for one adult, without consideration of any additional pregnancy-related needs, no earlier than the sixth month of pregnancy. In addition to medical verification of the pregnancy, the applicant shall verify the approximate date on which the pregnant woman is expected to deliver.
2. An--individual--may--be--eligible--for--the--early--intervention program--during--the--first--two--trimesters--of--the--pregnancy. Early--intervention--program--eligibility--does--not--constitute--aid to--families--with--dependent--children--eligibility--and--does--not make---the---individual---eligible--for--training;--education; employment;--and--management--unless--the--individual--is--living with--other--aid--to--families--with--dependent--children--eligible household--members.
3. If--the--individual--eligible--for--the--early--intervention--program is--living--in--a--training;--education;--employment;--and--management household;---the---individual's--income--and--assets--must--be considered--for--the--food--stamp--and--low--income--home--energy assistance---program---portion--of--the--training;--education; employment;--and--management--benefit.---The--early--intervention program--benefit--to--the--individual--must--be--paid--separately--from the--training;--education;--employment;--and--management--benefit; but--must--be--considered--as--unearned--income--for--the--food--stamp and--low--income--home--energy--assistance--program--portion--of--the training;---education;---employment;--and--management--benefit calculation.
4. Beginning--in--the--sixth--month--of--the--verified--pregnancy;--the early--intervention--program--case--may--be--converted--to---a training;---education;---employment;---and---management--case. Training;--education;--employment;--and--management--benefits--must

~~begin--the--first--day--of--the--sixth--month--of--the--verified pregnancy--two-month-retrospective-budgeting-may-continue--if there-is-no-break-in-assistance-of-at-least-one-benefit-month.~~

5. The individual shall complete the training, education, employment, and management case assessment process and a training, education, employment, and management contract within two months of the beginning of training, education, employment, and management benefits.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-31. Age of parent - Effect on eligibility.

1. For purposes of this section:
 - a. "Adult parent" means a parent who is not a minor parent.
 - b. "Minor parent" means an individual, under the age of eighteen years, who has never been married and who:
 - (1) Is the parent of a dependent child living in the same household; or
 - (2) Is eligible as a pregnant woman in the third trimester of her pregnancy who is a caretaker relative to no child.
2. A minor parent who lives with the minor parent's own parent (~~grandparent~~) ~~or~~ ~~legal~~ ~~guardian~~ parents (grandparents) is eligible only if eligibility may be established after consideration of the income, but not the assets, of any ~~grandparent~~ the grandparents, with whom the minor parent lives, applying the following disregards:
 - a. The first twenty-seven percent of earned income of each employed grandparent, for work expenses.
 - b. An amount equal to the ~~aid-to-families-with-dependent children~~ temporary assistance for needy children portion of the training, education, employment, and management standard of need, not including special allowances, applicable to a household consisting of the ~~grandparent~~ ~~or~~ grandparents and any other individuals living in the household, who are or could be claimed as dependents of the grandparents for federal income tax purposes, but who are not members of the ~~aid-to-families-with-dependent children~~ temporary assistance for needy families filing unit;

- c. Amounts paid by the ~~grandparent--or~~ grandparents, to support individuals who are not members of the household or the ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families filing unit, who are or could be claimed as dependents of the ~~grandparent-or~~ grandparents for federal income tax purposes;
 - d. Amounts paid by the ~~grandparent-or~~ grandparents, as child support or spousal support, to individuals who are not members of the household or the ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families filing unit.
3. An adult parent, who lives with the adult parent's own parent (grandparent) or legal guardian, if eligible, is eligible without consideration of the income or assets of any grandparent with whom the adult parent lives, except that regular contributions of money made by such grandparent to any member of the ~~aid--to--families--with--dependent---~~ children temporary assistance for needy families filing unit must be considered.
 4. For purposes of this section, a minor parent who becomes an adult parent while living with the minor parent's own parents or legal guardian is treated as an adult parent, effective the first day of the month in which the minor parent reaches age eighteen.
 5. For purposes of this section, a minor parent who ends residency with the minor parent's own parent (grandparent) is treated as having ended residency on the first day of the month in which the minor parent left the grandparent's home.
 6. For purposes of this section, a minor parent who resumes residency with the minor parent's own parent (grandparent) is treated as having resumed that residency on the first day of the month after the month in which the minor parent resumed residency with the grandparent.
 7. A minor parent who does not live with either of the minor parent's own parents (grandparents), if eligible, is eligible without consideration of the income or assets of the grandparents except that regular contributions of money made by a grandparent to any member of the ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families filing unit must be considered. The grandparents remain legally responsible for the minor parent's support. The matter must be referred to the child support agency for the purpose of securing support from the grandparents for the minor parent as well as for the purpose of securing support for the minor parent's child from the child's absent parent.

8. No ~~aid---to---families--with--dependent--children~~ temporary assistance for needy families filing unit may include the child of a minor parent, living with that minor parent, during any time when the minor parent is living in a foster home or child care institution and receiving a foster care maintenance benefit. Any amount reasonably necessary to the maintenance of such a child of the minor parent is included in the minor parent's foster care maintenance benefit.
9. Except as provided in subsection 10, a minor parent must live in the home of the minor parent's own parent (grandparent), legal guardian, or other adult relative, or in an a state-approved adult supervised supported living arrangement.
10. A minor parent may show there is good cause to live in a place other than required in subsection 9. Good cause exists if, based on evidence provided to the county agency:
 - a. The minor parent has no living parent or legal guardian;
 - b. No parent or legal guardian of the minor parent will allow the minor parent to live in the home of the parent or legal guardian;
 - c. The physical or emotional health or safety of the minor parent or the minor parent's child would be jeopardized if they lived with the minor parent's parent or legal guardian;
 - d. The minor parent lived apart from the minor's parent or legal guardian for at least one year before the earlier of the birth of the dependent child or the minor parent's application for ~~aid-to-families--with--dependent--children~~ temporary assistance for needy families;
 - e. The minor parent has earned a high school diploma or general equivalency diploma and is participating in postsecondary education under an approved job opportunities and basic skills program employability plan; or
 - f. ~~Some--other--reason--exists--which,-in-the-judgment-of-the county-agency,-makes-independent-living-more-conducive--to the--well-being-of-the-minor-parent-and-the-minor-parent's child--than--does--living--in--a--place---required---under subsection-9~~ After reasonable search, the whereabouts of the minor parent's parents or legal guardian are unknown.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-32. Value of benefit.

1. The reasonable value of the physical and custodial care or support that has been furnished to the child or children of a noncustodial parent by the training, education, employment, and management program is, for each month such child or children are eligible, the amount of the aid-to-families-with dependent-children temporary assistance for needy families benefit received multiplied by the number of children of the noncustodial parent in the aid--to--families--with--dependent children temporary assistance for needy families filing unit and divided by the total number of children in the aid--to families--with--dependent--children temporary assistance for needy families filing unit.
2. Stepparents cannot be legally required to support their stepchildren, but when they are able and willing to do so, should be encouraged to support to the extent of their ability.
3. In cases where a stepparent is eligible to receive training, education, employment, and management program benefits, the reasonable value of the physical and custodial care or support which has been furnished to the child or children of a noncustodial parent by the training, education, employment, and management program is, for each month such child or children are eligible, the amount of the aid-to-families-with dependent-children temporary assistance for needy families benefit received multiplied by the number of children of the noncustodial parent in the aid--to--families--with--dependent children temporary assistance for needy families filing unit and divided by one plus the total number of children in the aid--to--families-with-dependent-children temporary assistance for needy families filing unit.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-33. Assignment of right to support.

1. The child support agency must be notified, no later than two working days after the mailing of the initial training, education, employment, and management benefit to a training, education, employment, and management household, of any child who is a member of the training, education, employment, and management household and whose eligibility for benefits is based on the continued absence of the child's parent from the home.
2. The applicant and, upon request, any member of the training, education, employment, and management household for whom aid

to--families--with-dependent-children temporary assistance for needy families is requested, as a condition of eligibility shall:

- a. Execute all necessary documents to protect the right of any member of the aid-to-families-with-dependent--children temporary assistance for needy families filing unit, and the agency, to child support from the absent parent of such member;
 - b. Cooperate in obtaining support and in establishing paternity of any child in the aid--to--families--with dependent-children temporary assistance for needy families filing unit with respect to whom paternity has not been established.
3. The requirement for the assignment of rights to support from absent parents continues through the month in which the latest of the following occurs:
- a. The child reaches age eighteen.
 - b. The child graduates from high school, provided that graduation does not occur after the month of the child's nineteenth birthday.
 - c. Child support obligations, imposed by a court for periods after the child reaches age eighteen, are terminated.
4. For purposes of this section:
- a. "Cooperate in obtaining support and in establishing paternity" includes:
 - (1) Appearing at a state or local office designated by the department or county agency to provide information or evidence relevant to the case;
 - (2) Appearing as a witness at a court or other proceeding;
 - (3) Providing credible information, or credibly attesting to lack of information,--under-penalty-of-perjury;
 - (4) Paying to the department any support funds received that are covered by the assignment of rights; and
 - (5) Taking any other reasonable steps to assist in establishing paternity and securing child support.
 - b. A child support agency shall determine if the applicant, recipient, or any member of the training, education, employment, and management household, who is required to

cooperate in obtaining support and establishing paternity, has done so. In making that determination, the child support agency shall consider if any information provided, or attestation to lack of information, is corroborated by relevant circumstances and is credible. Information provided, or an attestation to lack of information, is not presumed correct.

5. An individual shall cooperate in establishing paternity of a child born out of wedlock for whom the individual can legally assign rights, and obtaining child support and payments for the individual and any other individual for whom the individual can legally assign rights, unless cooperation is waived by the county agency for good cause.
6. The custodian who refuses to cooperate in obtaining support, including establishing paternity, is ineligible to receive training, education, employment, and management. If the custodian continues to refuse to cooperate, the entire household shall become ineligible for training, education, employment, and management.
 - a. The first time the custodian fails to cooperate, that individual's needs must be removed from the benefit calculation for a minimum period of one month. The sanctioned individual is ineligible for all training, education, employment, and management benefits. The sanctioned individual may cure the noncooperation and have benefits restored at any time after the minimum one-month period of ineligibility by participating as required under the terms of the training, education, employment, and management contract. If at the end of six months of the sanction the sanctioned individual continues to refuse to cooperate, the entire training, education, employment, and management household is ineligible for training, education, employment, and management. A household found ineligible for training, education, employment, and management benefits as a result of a sanction may apply for food stamp, medicaid, child care assistance, or low income home energy assistance program benefits.
 - b. The second time the custodian fails to cooperate, that individual's needs must be removed from the benefit calculation for a minimum period of two months. The sanctioned individual shall lose eligibility for all training, education, employment, and management benefits. The sanctioned individual may cure the noncooperation and have benefits restored at any time after the minimum two-month period of ineligibility by participating as required under the terms of the training, education, employment, and management contract. If at the end of four months of the sanction the sanctioned individual continues to refuse to cooperate, the entire training,

education, employment, and management household is ineligible for training, education, employment, and management. A household found ineligible for training, education, employment, and management benefits as a result of a sanction may apply for food stamp, medicaid, child care assistance, or low income home energy assistance program benefits.

- c. The third and subsequent times the custodian fails to cooperate, that individual's needs must be removed from the benefit calculation for a minimum period of three months. The sanctioned individual shall lose eligibility for all training, education, employment, and management benefits. The sanctioned individual may cure the noncooperation and have benefits restored at any time after the minimum three-month period of ineligibility by participating as required under the terms of the training, education, employment, and management contract. If at the end of four months of the sanction the sanctioned individual continues to refuse to cooperate, the entire training, education, employment, and management household is ineligible for training, education, employment, and management. A household found ineligible for training, education, employment, and management benefits as a result of a sanction may apply for food stamp, medicaid, child care assistance, or low income home energy assistance program benefits.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-35.1. Time limit on certain benefits - Exceptions. Except as otherwise provided in this section, no temporary assistance for needy families filing unit may be provided a training, education, employment, and management benefit that includes a temporary assistance for needy families benefit if that filing unit includes an adult who has received assistance under a temporary assistance for needy families program provided by any state or Indian tribe for sixty months, whether or not consecutive, after the date that program commenced, or, in the case of such a filing unit with an adult member who has resided in North Dakota less than twelve months, if that adult member formerly resided in a state, or received benefits under a tribal temporary assistance for needy families program, that imposes a limit of less than sixty months, such lesser number of months as provided for in the state or tribal service area in which that adult member formerly resided.

1. In determining the number of months an adult received temporary assistance for needy families, the county agency shall disregard any month in which the adult was a minor child and not, at the same time, a head of household or married to a head of household.

2. In determining the number of months an adult received temporary assistance for needy families, the county agency shall disregard any month in which the adult lived in Indian country if, during the month, at least fifty percent of the adults living in that Indian country were unemployed. The department shall determine the percentage of unemployed adults living in Indian country by any means the department determines to be appropriate and reliable, provided that the means chosen are consistent with requirements imposed under federal law.
3. This section may not be applied to preclude eligibility for members of a temporary assistance for needy families filing unit if:
 - a. The eligible adult caretaker in the filing unit reaches the age of sixty years on or before the sixty-first month in which that individual receives temporary assistance for needy families benefits;
 - b. The eligible adult caretaker is determined to be incapacitated; or
 - c. The filing unit includes an individual who has been battered or subject to extreme cruelty.
4. For purposes of this section:
 - a. An adult caretaker may be treated as "incapacitated" if the individual is incapacitated or treated as incapacitated under section 75-02-01.2-18;
 - b. An individual "has been battered or subjected to extreme cruelty" if the individual has been subjected to:
 - (1) Physical acts that resulted in, or threatened to result in, physical injury to the individual;
 - (2) Sexual abuse;
 - (3) Sexual activity involving a dependent child;
 - (4) Being forced, as the caretaker relative of a dependent child, to engage in nonconsensual sexual acts or activities;
 - (5) Threats of, or attempts at, physical or sexual abuse;
 - (6) Mental abuse; or
 - (7) Neglect or deprivation of medical care; and
 - c. "Indian country" means:

- (1) All lands within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation;
- (2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and
- (3) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

History: Effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-36. Determining membership in training, education, employment, and management household. The training, education, employment, and management household includes the members of a family and may include others who live under the same roof, provided at least one member is in receipt of aid-to-families-with-dependent-children temporary assistance for needy families. The training, education, employment, and management household includes all other household members who would be eligible for food stamp or low income home energy assistance program benefits, based on sections 75-02-01.2-38 and 75-02-01.2-39. The training, education, employment, and management benefit is a single cash payment for aid-to-families-with-dependent-children, food-stamp, temporary assistance for needy families and low income home energy assistance program benefits. Aid-to-families-with-dependent-children Temporary assistance for needy families eligibility and benefit amount is determined by counting the income and assets of those members of the household included in the aid-to-families-with-dependent-children temporary assistance for needy families filing unit, based on section 75-02-01.2-37. Food-stamp--and--low **Low** income home energy assistance program eligibility and benefit amounts are based on the income and assets of all persons residing-in-the-household who live under the same roof. Food stamp eligibility and benefit amounts are based on the income and assets of all persons who are members of the food stamp filing unit.

1. If the primary individual in the training, education, employment, and management household does not provide all pertinent data necessary for the county agency to make an eligibility determination, the entire household is ineligible for training, education, employment, and management. if-an ineligible, nonlegally-responsible-individual-chooses--not--to participate---in--the--training,--education,--employment,--and management-project,--no-individual-in-the-household-may-receive the--food--stamp--or--low-income-home-energy-assistance-program

~~portion of the training, education, employment, and management benefit.~~

2. Individuals required to be members of the ~~aid-to-families-with dependent-children, food stamp,~~ temporary assistance for needy families or low income home energy assistance program filing units within the training, education, employment, and management household, but whose needs are deleted from the unit because of a sanction, are not eligible for ~~training, education, employment, and management~~ benefits otherwise available to members of those units. The income and assets of sanctioned household members must be considered in determining eligibility and benefits for the remaining members of the training, education, employment, and management household.
3. If a household identified as a training, education, employment, and management household elects not to participate in training, education, employment, and management, the household may apply for food stamp, low income home energy assistance program, and child care assistance benefits, but may not apply for ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families benefits.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-37. Determining membership of the ~~aid-to-families-with dependent-children~~ temporary assistance for needy families filing unit.

1. The ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families filing unit must include at least one eligible child unless:
 - a. The only child receives supplemental security income benefits; or
 - b. The ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families filing unit includes a pregnant woman in the last trimester of her pregnancy.
2. Any parent of a dependent child who resides in the home must be included in the ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families filing unit.
3. If the ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families filing unit includes a parent and a needy dependent child, any other child who resides in the home, for whom assistance is sought, and to whom the parent is a relative by birth, marriage, or adoption, must be included in the ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families filing unit.

4. If the training, education, employment, and management household includes a parent and the parent's nonneed dependent child or children, any other needy dependent child or children to whom the parent is a relative by birth, marriage, or adoption, must be included in an-aid-to-families with-dependent-children a temporary assistance for needy families filing unit which consists only of the needy dependent child or children.
5. If the training, education, employment, and management household includes a parent, the parent's needy dependent child or children, and other dependent children to whom the parent is a relative by birth, marriage, or adoption, an-aid-to-families-with-dependent-children a temporary assistance for needy families filing unit must include the parent and the parent's needy dependent child or children, and may include any needy dependent child or children to whom the parent is a relative by birth, marriage, or adoption, but exclude any nonneed dependent child or children who is not the parent's child but to whom the parent is a relative by birth, marriage, or adoption, and who is not a brother or sister, whether by the whole or half-blood or by adoption, to a needy dependent child.
6. A minor parent who lives in the home of a parent of the minor parent is treated as a dependent child in an-aid-to-families with-dependent-children a temporary assistance for needy families filing unit that includes a parent of the minor parent unless:
 - a. The minor parent is married or formerly married and divorced, but not formerly married in an annulled marriage;
 - b. The minor parent has resided with the other parent of the minor parent's child; or
 - c. The minor parent has lived separately and apart from the minor parent's parent or lawful guardian, with the consent or acquiescence of the minor parent's parent or lawful guardian, while managing the minor's own financial affairs regardless of the source of income, so long as it is not from any activity declared to be a crime by the laws of North Dakota or the United States.
7. Training, education, employment, and management household members who are receiving supplemental security income benefits may not be included in the aid-to-families-with dependent-children temporary assistance for needy families filing unit.
8. Training, education, employment, and management household members who are ineligible for aid-to-families-with-dependent

~~children~~ temporary assistance for needy families benefits because of a sanction imposed under this chapter must be included in the ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families filing unit for the purpose of consideration of income and assets of the sanctioned training, education, employment, and management household member.

9. Training, education, employment, and management household members who are ineligible for ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families benefits because they do not meet citizenship or alienage requirements imposed under this chapter must be included in the ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families filing unit for the purpose of consideration of income and assets of those training, education, employment, and management household members.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-38. Determining membership of the food stamp filing unit.

1. ~~The--food--stamp--filing--unit--shall--include--all--individuals residing--in--the---training,---education,---employment,---and management-household.~~
2. Training, education, employment, and management household members who are ineligible for food stamps because of a sanction or disqualification imposed under this chapter must be included in the food stamp filing unit for the purpose of considering the income and assets of the sanctioned training, education, employment, and management household member.
3. 2. Training, education, employment, and management household members who are ineligible for food stamps because they do not meet citizenship or alienage requirements imposed under this chapter must be included in the food stamp filing unit for the purpose of consideration of income and assets of those training, education, employment, and management household members.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-40. Combined supplemental security income and aid-to ~~families-with-dependent-children~~ temporary assistance for needy families households.

1. With respect to the same month, no individual may receive benefits through both the supplemental security income program and the aid-to-families-with-dependent-children temporary assistance for needy families program.
2. An individual who is receiving supplemental security income benefits may be a member of a training, education, employment, and management household that includes members who are also members of an aid-to-families-with-dependent-children a temporary assistance for needy families filing unit, and may be an ineligible caretaker relative for a child in an aid-to-families-with-dependent-children a temporary assistance for needy families filing unit.
3. Assets or income owned solely by the recipient of supplemental security income benefits, including that portion of income disregarded in determining eligibility for supplemental security income benefits, may not be considered available to the members of the aid-to-families-with-dependent-children temporary assistance for needy families filing unit.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-44. Income described.

1. All income that is actually available must be considered. Income is actually available when it is at the disposal of an applicant or recipient; when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make the sum available for support or maintenance; or when the applicant or recipient has the lawful power to make the income available or to cause the income to be made available. In specific circumstances, income available to persons other than the applicant or recipient is deemed available. This subsection does not supersede other provisions of this chapter which describe or require specific treatment of income, or which describe specific circumstances that require a particular treatment of income.
2. Income may be earned, unearned, or deemed. It may be received regularly, irregularly, or in lump sums. Income may be counted or excluded. It may be disregarded for some purposes, but not for others. Other sections of this chapter explain those treatments.
3. Each training, education, employment, and management program household member must accept any unemployment compensation benefits to which entitled. Each training, education, employment, and management program household member must provide verification, from job service North Dakota, as to

whether the training, education, employment, and management program household member is qualified for unemployment compensation benefits; and, if qualified, must make application for unemployment compensation benefits. ~~Assistance must be denied to the entire--training,--education, employment,--and--management--household for any month in which the principal wage earner in an unemployed--parent--case--is eligible--for--unemployment compensation, but refuses to apply for or accept such benefits.~~

4. Earned income includes:
 - a. Wages, salaries, commissions, bonuses, or profits received as a result of holding a job or being self-employed;
 - b. Earnings from on-the-job training provided by the Job Training Partnership Act or the job opportunities and basic skills program;
 - c. Wages received as the result of participation in the mainstream and green thumb programs;
 - d. Earnings of recipients employed by schools under title I of the Elementary and Secondary Schools Act [20 U.S.C. 236 et seq.];
 - e. Wages received from sheltered workshop employment;
 - f. Sick leave pay or loss-of-time private insurance paid for the loss of employment due to illness or injury;
 - g. Compensation for jury duty;
 - h. Tips;
 - i. Income from boarders;
 - j. Income from room rentals;
 - k. Income from participation in job corps; and
 - l. Income from internship or stipends.
5. Unearned income includes:
 - a. Social security, veterans benefits of any kind, private pensions, pensions provided to former employees of public entities, workers' compensation, unemployment benefits, union compensation during strikes, and military allotments;
 - b. Rents paid without an appreciable amount of personal involvement and effort provided as a service to the

tenant, mineral lease rentals, bonus payments and royalties, dividends, and interest paid;

- c. Cash contributions from relatives provided to training, education, employment, and management household for living expenses;
 - d. Cash gifts;
 - e. Poor relief or general assistance payments made to any member of the training, education, employment, and management household by a county agency or the bureau of Indian affairs;
 - f. Refugee assistance payments;
 - g. Early intervention program benefits; or
 - h. Any other form of income that is not earned income.
6. Deemed income includes:
- a. In the case of income deemed from a stepparent or alien parent, that stepparent's or alien parent's entire gross income less:
 - (1) The twenty-seven percent standard employment expense allowance;
 - (2) An additional amount for the support of the stepparent or alien parent and any other individuals living in the home whose needs are not taken into account in making the eligibility determination and who are or could be claimed by the stepparent or alien parent as dependents for federal income tax purposes, but not including any sanctioned individuals or individuals who are required to be included in the training, education, employment, and management household, but have failed to cooperate, equal to the standard of need amount for a family group of the same composition and size as the stepparent or alien parent and those other individuals described in this paragraph;
 - (3) Spousal support and child support payments actually being made to or on behalf of persons not living in the home; and
 - (4) Amounts actually being paid to individuals not living in the home who are or could be claimed by the stepparent or alien parent as dependents for federal income tax purposes.

b. In the case of income deemed from the sponsor of a sponsored alien, the entire gross income of the sponsor and the sponsor's spouse, less:

- (1) Twenty percent of the total monthly earned income of the sponsor and the sponsor's spouse or one hundred seventy-five dollars, whichever is less;
- (2) An amount equal to the training, education, employment, and management standard of need amount for a family group of the same composition and size as the sponsor and those other individuals living in the sponsor's household who are or could be claimed by the sponsor as dependents for federal income tax purposes, but whose needs are not taken into account in making an eligibility determination under this chapter;
- (3) Spousal support and child support payments actually being made by the sponsor to or on behalf of individuals not living in the sponsor's household; and
- (4) Amounts actually being paid by the sponsor to individuals not living in the sponsor's household who are or could be claimed by the sponsor as a dependent for federal income tax purposes.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-48. Net income test. If the gross income test is passed, the applicant or applicant household is subject to a net income test. The net income test compares the training, education, employment, and management standard of need, personal needs allowance for out-of-home aid---to---families---with---dependent--children eligible individuals, and special items of need to the adjusted net income. If the adjusted net income is less than the training, education, employment, and management standard of need, personal needs allowance, and special items of need, the household passes the net income test and the benefit amount is calculated.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-51. Disregarded income.

1. The department shall establish an employment incentive, and an employment incentive limit, to reasonably encourage training,

education, employment, and management household members to earn income.

2. If permitted under subsection 3, income must be disregarded, as an employment incentive, in determining the training, education, employment, and management benefit.
 - a. Twenty-seven percent of the household's monthly gross earned income, except earnings of any child who is a full-time elementary or high school student, is disregarded as a standard work expense. The amount remaining is net earned income.
 - b. Any net earned income that exceeds the income incentive limit is treated as countable earned income.
 - c. A portion of net earned income that is equal to or less than the income incentive limit may be disregarded, under this subdivision, in determining countable earned income.
 - (1) If an applicant has earned income in the month of application or the month after the month of application, at least fifty percent of the net earned income that is equal to or less than the income incentive limit may be disregarded for eight months beginning the month in which the ~~applicant first~~ applicant first has earned income is first budgeted prospectively.
 - (2) If a recipient has earned income, at least fifty percent of the net earned income that is equal to or less than the income incentive limit may be disregarded for eight months beginning the month earned income is first budgeted retrospectively.
 - (3) If a recipient has earned income, at least thirty percent of the net earned income that is equal to or less than the income incentive limit may be disregarded for the ninth and tenth months after the month earned income is first budgeted retrospectively.
 - (4) If a recipient has earned income, at least ten percent of net earned income that is equal to or less than the income incentive limit may be disregarded for the eleventh and twelfth months after the month earned income is first budgeted retrospectively.
 - (5) If a recipient has earned income, no net earned income may be disregarded under this subdivision after the twelfth month after the month earned income is first budgeted retrospectively.

(6) If a former training, education, employment, and management household member reapplies after receiving no training, education, employment, and management benefits for at least twelve consecutive months, disregards under this section are determined in the same manner as for such a member who is first receiving training, education, employment, and management benefits.

- d. An employed training, education, employment, and management household member who ~~is-receiving~~ receives an employment incentive disregard ~~and-who-becomes-unemployed~~ for a period of at least four consecutive months is, ~~--upon~~ upon ~~reemployment,~~ provided employment incentive disregards of at least fifty percent for the first eight months after ~~reemployment~~ the month in which the income is first budgeted, at least thirty percent for months nine and ten, at least ten percent for months eleven and twelve, and none thereafter.
- e. An employed training, education, employment, and management household member who ~~is-receiving~~ receives an employment incentive disregard ~~and-who-becomes-unemployed~~ for a period of less than four consecutive months is, upon reemployment, provided the employment incentive disregards the member would have received if the first month of reemployment ~~followed-immediately-after-the-last-month-of-the-previous-employment~~ was the first month income is budgeted retrospectively.
- f. If an employed training, education, employment, and management household member, who is receiving the employment incentive disregard, voluntarily terminates employment and is unable to show good cause for failure or refusal to participate, the employment incentive disregard cycle continues as if the training, education, employment, and management household member was employed.
- g. If any nondisregarded income remains, a medicare premium, if applicable may be disregarded.
- h. If any nondisregarded income remains, child and dependent care costs may be disregarded as follows:
- (1) For aid-to-families-with-dependent-children temporary assistance for needy families filing units, only employment-related child or adult dependent care costs; and
 - (2) For ~~food-stamp-and~~ low income home energy assistance program filing units, employment and school or training-related child and adult dependent care costs.

3. An income disregard is available only if:
 - a. The training, education, employment, and management household passes the gross income test without benefit of the income disregards; or
 - b. The eligible employed individual previously received training, education, employment, and management benefits, but has not completed the twelve-month earned income employment incentive disregard cycle, including months in which the earned income disregard was unavailable because:
 - (1) No payment was made because the calculated training, education, employment, and management benefit was less than one dollar;
 - (2) The training, education, employment, and management household voluntarily requested termination of assistance for the primary purpose of avoiding completion of the earned income employment incentive disregard cycle or any part of that cycle;
 - (3) The training, education, employment, and management household failed, without good cause, to file a signed and completed monthly report form by the fifteenth day of the month in which the report was due;
 - (4) A member of the training, education, employment, and management household terminated or reduced employment, without good cause, in the thirty days preceding the month in which the earned income employment incentive disregard was unavailable; or
 - (5) A member of the training, education, employment, and management household refused a bona fide job offer, without good cause, in the thirty days preceding the month in which the earned income employment incentive disregard was unavailable.
4. If, in any month, additional income received from a recurring source causes the training, education, employment, and management household to be suspended as ineligible for one month, the month of suspension does not count as a month for purposes of this section.
5. Nonhousehold member deduction for stepparent and minor parent budgeting, if applicable, may be made.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-52. Voluntary quit or refusal of employment. No training, education, employment, and management household member, except a dependent child, may refuse a bona fide offer of employment or training for employment, or terminate employment, without good cause, within thirty days before the date of application.

1. If an offer of employment or training was made through job service North Dakota, job service North Dakota shall determine if a bona fide offer was made and if there was good cause for refusing it.
2. If an offer of employment or training was made other than through job service North Dakota, the county agency shall determine if a bona fide offer was made and if there was good cause for refusing it, considering the following factors:
 - a. Whether there was a definite offer of employment at wages meeting any applicable minimum wage requirements and that are customary for such work in the community;
 - b. Whether there were any questions as to the physical or mental ability of the training, education, employment, and management household member to engage in the offered employment or training for employment;
 - c. Whether there were any questions of the working conditions such as risks to health, safety, or lack of workers' compensation protection;
 - d. Whether the training, education, employment, and management program household member had a way to get to or from the particular job, including evidence the training, education, employment, and management program household member reasonably attempted to arrange for transportation;
 - e. Whether, as a condition of being employed, the training, education, employment, and management program household member would be required to join a company union, or to resign or refrain from any bona fide labor organization, or would be denied the right to retain membership in and observe the lawful rules of any such organization;
 - f. Whether the position offered is vacant directly due to a strike, lockout, or other labor dispute;
 - g. Whether the work is at an unreasonable distance from the training, education, employment, and management program household member's residence, provided one-way traveltime of one hour or less may not be treated as an unreasonable distance;
 - h. Whether gross wages are less than the allowable employment expense and child care or adult dependent care; and

- i. Whether an individual's substantially continuous presence in the household is necessary to care for another individual in the household to whom the individual owes a legal duty to provide care, who has a condition, verified by reliable medical evidence, which does not permit self-care or care by another household member.
3. If it is determined that a bona fide offer of employment or training was refused by a training, education, employment, and management program household member without good cause:
 - a. In the case of a recipient training, education, employment, and management household, the member who voluntarily refuses a bona fide offer of employment or training for employment is ineligible for the benefit month in which the refusal occurred; and
 - b. In the case of an applicant training, education, employment, and management household, the filing unit containing the member is ineligible in each of the thirty days following the actual date of refusal or termination of employment.
4. If it is determined that a recipient training, education, employment, and management household member voluntarily quits employment without good cause, that member is ineligible in the benefit month in which the job quit occurred, and may not receive the twenty-seven percent standard employment expense allowance, or any employment incentive disregard, or any child or adult dependent care deduction, in the month the job quit occurred, and in the month the income is budgeted.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-53. Deduction for dependent care.

1. A deduction for a member of an ~~aid-to-families-with-dependent children~~ a temporary assistance for needy families filing unit who is an employed caretaker relative or for a caretaker relative of a ~~feed-stamp-or~~ low income home energy assistance program filing unit who is employed or attending school or training may be made for the cost of necessary care of a child or incapacitated adult who is a member of the training, education, employment, and management household, living in the home, and receiving benefits.
2. The deduction may not be made for the cost of dependent care provided by the caretaker relative's child or stepchild who is under twenty-one years of age, unless:

- a. The provider of dependent care does not live in the home occupied by the training, education, employment, and management household;
 - b. The provider of dependent care is eighteen years of age;
 - c. The provider of dependent care was not claimed as a dependent on the most recent federal income tax return filed by the caretaker relative;
 - d. A bona fide relationship of employer and employee exists between the caretaker relative and the provider of dependent care; and
 - e. The provider of dependent care is not a member of the caretaker relative's training, education, employment, and management household.
3. The deduction may not be made for the cost of dependent care provided to a child by that child's stepparent or parent who lives in the home occupied by the training, education, employment, and management household.
 4. The deduction is for the actual cost of care limited to:
 - a. In the case of a child under age two, two hundred dollars per month;
 - b. In the case of an incapacitated adult, two hundred dollars per month; or
 - c. In the case of a child two years of age or older, one hundred seventy-five dollars per month.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-55. Reinstatement following suspension or case closing.

1. If training, education, employment, and management benefits are reinstated after a suspension of one month, all factors of eligibility must be considered to determine eligibility. If eligibility exists, the amount of the training, education, employment, and management benefit is determined based on two-month retrospective budgeting.

2. If the aid-to-families-with-dependent-children temporary assistance for needy families filing unit is for any reason ineligible in the month following the month of a suspension, the case must be closed.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-56. Computing payment for first and second months of eligibility.

1. If an applicant training, education, employment, and management household has not received aid-to-families-with-dependent-children-benefits-or-food-stamp temporary assistance for needy families benefits in the preceding calendar month:
 - a. Benefits for the aid-to-families-with-dependent-children and-food-stamp temporary assistance for needy families filing units unit must be prorated based on the date of request or the date of eligibility, whichever is later; and
 - b. The county agency shall compute benefits for the aid-to-families-with-dependent-children-and-food-stamp temporary assistance for needy families filing units unit for the initial month of eligibility and the month following using prospective budgeting. The county agency shall otherwise compute benefits for the temporary assistance for needy families filing unit using retrospective budgeting.
2. ~~If---the---applicant---training,--education,--employment,--and management-household-received-aid-to-families--with--dependent children--benefits-and-food-stamp-benefits-in-another-state-in the-preceding-calendar-month:~~
 - a. ~~Benefits--for--the-aid-to-families-with-dependent-children and-food-stamp-filing-units-must-be--determined--effective the-first-day-of-the-month-of-request-or-prorated-from-the date-of-eligibility,--whichever-is-later,--and~~
 - b. ~~The--county--agency--shall-compute-benefits-for-the-aid-to families-with-dependent-children--and--food--stamp--filing units--for--the-initial-month-of-eligibility-and-the-month using-prospective-budgeting.~~
3. If the applicant training, education, employment, and management household received aid to families with dependent children benefits and-food-stamp-benefits in North Dakota in only the preceding calendar month:

a. ~~Benefits for the aid to families with dependent children and food stamp filing units must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later; and~~

b. ~~The~~ the county agency shall compute benefits for the aid to families with dependent children and food stamp temporary assistance for needy families filing units unit for the initial month of eligibility and the month following by continuing the aid to families with dependent children budget methodology which was used in the preceding month using prospective budgeting and thereafter using retrospective budgeting.

4. 3. If the applicant training, education, employment, and management household received aid to families with dependent children benefits, ~~but not food stamp benefits~~, in another state North Dakota in the preceding month:

a. ~~Benefits for the aid to families with dependent children filing unit must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later, unless:~~

(1) ~~The other state pays aid to families with dependent children benefits two times each month;~~

(2) ~~One half of the aid to families with dependent children benefit has been paid by the other state during the month of request; and~~

(3) ~~The applicant household is determined eligible by the sixteenth day of the month;~~

~~In which case, aid to families with dependent children benefits in North Dakota must be paid at a one half pro rata share for the initial month of eligibility; and~~

b. ~~Benefits for the food stamp filing unit must be prorated based on the date of request or date of eligibility, whichever is later~~ two or more calendar months, the county agency shall compute benefits for the temporary assistance for needy families filing unit using retrospective budgeting.

5. ~~If the applicant training, education, employment, and management household received food stamp benefits, but not aid to families with dependent children benefits, in another state in the preceding calendar month:~~

a. ~~Benefits for the aid to families with dependent children filing unit must be prorated based on the date of request or the date of eligibility, whichever is later;~~

b. Benefits for the food stamp filing unit must be determined effective the first day of the month of request or the date of eligibility, whichever is later; and

e. The county agency shall compute benefits for the aid to families with dependent children and food stamp filing units for the initial month of eligibility and the month following by using prospective budgeting.

6. If the applicant training, education, employment, and management household received aid to families with dependent children benefits, but not food stamp benefits, in North Dakota in the preceding calendar month:

a. Benefits for aid to families with dependent children filing unit must be determined effective the first day of the month of request or the date of eligibility, whichever is later;

b. Benefits for the food stamp filing unit must be prorated based on the date of request or the date of eligibility, whichever is later; and

e. The county agency shall compute benefits for the aid to families with dependent children and food stamp filing units for the initial month of eligibility and the month following by continuing the aid to families with dependent children budget methodology which was used in the preceding month.

7. If the applicant training, education, employment, and management household received food stamp benefits, but not aid to families with dependent children benefits in North Dakota in the preceding calendar month:

a. Benefits for the aid to families with dependent children filing unit must be prorated based on the date of request or date of eligibility, whichever is later;

b. Benefits for the food stamp filing unit must be determined effective the first day of the month of request or date of eligibility, whichever is later; and

e. The county agency shall compute benefits for the aid to families with dependent children and the food stamp filing units for the initial month of eligibility and the month following by using prospective budgeting.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-57. Computing payment for months following the second month of eligibility. The county agency shall compute payment training, education, employment, and management benefits for months following the second month of eligibility through two-month retrospective budgeting.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-58. Computing payment where individuals are added to the training, education, employment, and management household.

1. If the individual being added to a training, education, employment, and management household did not receive training, education, employment, and management benefits in the previous month, benefits for the added individual are based on the pro rata portion of the additional monthly benefit amount increase equal to the percentage of the month remaining after:
 - a. The date of birth of a newborn, provided that the request for the newborn is made within ten days of the date of birth and the newborn's social security number or application for social security number is furnished within thirty days of the request; and
 - b. In all other cases, the later of the date of the request or the date the individual becomes eligible.
2. If the individual being added to an existing training, education, employment, and management household has not received aid--to--families--with-dependent-children temporary assistance for needy families benefits or food stamp benefits in the preceding calendar month:
 - a. The added individual's aid--to--families-with-dependent-children temporary assistance for needy families and food stamp benefits must be prorated based on the date of request or the date of eligibility, whichever is later; and
 - b. The county agency shall compute the added individual's aid to-families-with-dependent-children temporary assistance for needy families and food stamp benefits for the added individual for the initial month of eligibility and the month following using prospective budgeting.
3. If the individual being added to an existing training, education, employment, and management household received aid to--families--with-dependent-children temporary assistance for needy families and food stamp benefits in another state in the preceding calendar month:

- a. The added individual's aid--to--families-with-dependent children temporary assistance for needy families and food stamp benefits must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later; and
 - b. The county agency shall compute the added individual's aid to-families-with-dependent-children temporary assistance for needy families and food stamp benefits for the initial month of eligibility and the month using prospective budgeting.
4. If the individual being added to an existing training, education, employment, and management household received aid to--families--with-dependent-children temporary assistance for needy families and food stamp benefits in North Dakota in the preceding calendar month:
- a. The added individual's aid--to--families-with-dependent children temporary assistance for needy families and food stamp benefits must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later; and
 - b. The county agency shall compute the added individual's aid to-families-with-dependent-children temporary assistance for needy families and food stamp benefits for the initial month of eligibility and the month following by continuing the aid--to--families--with--dependent-children temporary assistance for needy families budget methodology which was used in the preceding month.
5. If the individual being added to an existing training, education, employment, and management household received aid to--families--with-dependent-children temporary assistance for needy families benefits, but did not receive food stamp benefits in another state in the preceding month:
- a. The added individual's aid--to--families-with-dependent children temporary assistance for needy families benefits must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later, unless:
 - (1) The other state pays aid-to-families-with-dependent children temporary assistance for needy families benefits two times each month;
 - (2) One-half of the aid--to--families--with--dependent children temporary assistance for needy families benefit has been paid by the other state during the month of request; and

- (3) The added individual is determined eligible by the sixteenth day of the month;

In which case, aid--to-families-with-dependent-children temporary assistance for needy families benefits in North Dakota must be paid at a one-half pro rata share for the initial month of eligibility for the added individual; and

- b. The added individual's food stamp benefits must be prorated based on the date of request or date of eligibility, whichever is later.
6. If the individual being added to an existing training, education, employment, and management household received food stamp benefits, but not aid--to--families--with--dependent-children temporary assistance for needy families benefits in another state in the preceding calendar month:
- a. The added individual's aid--to--families-with-dependent-children temporary assistance for needy families benefits must be prorated based on the date of request or the date of eligibility, whichever is later;
- b. The added individual's food stamp benefits must be determined effective the first day of the month of request or the date of eligibility, whichever is later; and
- c. The county agency shall compute the added individual's aid to-families-with-dependent-children temporary assistance for needy families and food stamp benefits for the initial month of eligibility and the month following by using prospective budgeting.
7. If the individual being added to an existing training, education, employment, and management household received aid to--families--with-dependent-children temporary assistance for needy families benefits, but not food stamp benefits in North Dakota in the preceding calendar month:
- a. The added individual's aid--to--families-with-dependent-children temporary assistance for needy families benefits must be determined effective the first day of the month of request or the date of eligibility, whichever is later;
- b. The added individual's food stamp benefits must be prorated based on the date of request or the date of eligibility, whichever is later; and
- c. The county agency shall compute the added individual's aid to-families-with-dependent-children temporary assistance for needy families and food stamp benefits for the initial month of eligibility and the month following by continuing the aid--to--families--with--dependent-children temporary

assistance for needy families budget methodology which was used in the preceding month.

8. If the individual being added to the existing training, education, employment, and management household received food stamp benefits, but not aid--to--families--with--dependent children temporary assistance for needy families benefits in North Dakota in the preceding calendar month:
 - a. The added individual's aid--to--families-with-dependent children temporary assistance for needy families benefits must be prorated based on the date of request or date of eligibility, whichever is later;
 - b. The added individual's food stamp benefits must be determined effective the first day of the month of request or date of eligibility, whichever is later; and
 - c. The county agency shall compute the added individual's aid to-families-with-dependent-children temporary assistance for needy families and food stamp benefits for the initial month of eligibility and the month following by using prospective budgeting.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-60. Computing payment where stepparent or alien parent income is deemed.

1. The amount of an--aid-to-families-with-dependent-children a temporary assistance for needy families benefit must be reduced by the deemed income of a stepparent or an alien parent who lives in the home occupied by the aid--to--families with---dependent---children temporary assistance for needy families filing unit, but who is not a member of the aid--to families--with--dependent--children temporary assistance for needy families filing unit.
2. To encourage marriage among single-parent families and assist those families when the primary individual in a training, education, employment, and management household marries, the income of the stepparent whose needs were not previously included in the aid--to--families--with--dependent-children temporary assistance for needy families filing unit must be disregarded in determining the aid-to-families-with-dependent children temporary assistance for needy families portion of the training, education, employment, and management benefit for the first six months, effective the month of the marriage. The stepparent's income is counted in determining the food stamp and low income home energy assistance program portion of

the training, education, employment, and management benefit. This subsection applies to training, education, employment, and management recipients only, but not to applicants. No six-month disregard of stepparent income is allowed in situations where a primary individual marries before receiving training, education, employment, and management benefits.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-62. Computing payment for a child in boarding school.

1. If a child leaves the residence occupied by the ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families filing unit to attend boarding school, the child is treated as having left on the first day of the month following the month in which the child actually left.
2. If a child returns from boarding school to the residence occupied by the ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families filing unit and the caretaker relative notifies the county agency of the return or anticipated return by the fifth day of the month of actual return, the child is treated as having returned on the first day of the month of actual return, but is otherwise treated as having returned on the first day of the month following the month of actual return.
3. Payment for any month in which a child who is a member of the ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families filing unit is in boarding school, or is treated as in boarding school, is, with respect to that child, limited to an allowance for clothing and personal needs.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-63. Budgeting in unusual circumstances.

1. Except as provided in subsection 3, if an eligible child lives in the home of a relative who is not the child's parent, the relative is ineligible if the relative's spouse also lives in the home.
2. If an eligible child lives in the home of a relative who is not the child's parent, and the spouse of that relative does not also live in the home, the relative:

- a. Must be excluded from the aid-to-families-with-dependent children temporary assistance for needy families filing unit if the relative's income and assets would cause the aid-to-families-with-dependent-children temporary assistance for needy families filing unit to be ineligible; and
 - b. May be included in the aid-to-families-with-dependent children temporary assistance for needy families filing unit if the relative requests inclusion in the aid-to families-with-dependent-children temporary assistance for needy families filing unit and the relative's income and assets do not cause the aid-to-families-with-dependent children temporary assistance for needy families filing unit to be ineligible.
3. Except as provided in subsection 5, if an eligible child lives in the home of a relative who is not the child's parent, but who is, and could in the absence of that child be, a member of an aid-to-families-with-dependent-children a temporary assistance for needy families filing unit which includes the spouse of the relative, the eligible child must be added as a member of the aid-to-families-with-dependent-children temporary assistance for needy families filing unit of the relative.
 4. Except as provided in subsection 5, if two or more eligible children are living in the home of an ineligible relative who is not a parent of either child, all eligible children must be included in a single aid-to-families-with-dependent children temporary assistance for needy families filing unit.
 5. An individual who is a caretaker relative in an aid-to families-with-dependent-children a temporary assistance for needy families filing unit may act as a temporary payee for a child who is a member of another aid-to-families-with dependent-children temporary assistance for needy families filing unit and with respect to whom the individual is a relative, while that child lives temporarily with the individual, to preserve the child's usual living arrangement with that child's caretaker relative who is:
 - a. Hospitalized; or
 - b. Incarcerated for ninety days or less.
 6. If two or more relatives, who are each eligible caretakers for one or more children but who are not married to each other and who have no children in common living in the household, live together, each caretaker and the child or children with respect to whom that caretaker is a relative must be budgeted as an aid-to-families-with-dependent-children a temporary assistance for needy families filing unit.

7. If a child lives with a relative who receives supplemental security income benefits, budgeting is based on the number of eligible individuals in the aid-to-families-with-dependent-children temporary assistance for needy families filing unit.
8. If a child lives with a parent whose needs are deleted from the aid-to-families-with-dependent-children temporary assistance for needy families filing unit due to the parent's failure to cooperate in obtaining support and in establishing paternity or in the job opportunities and basic skills program, the parent's income and assets must be considered in determining eligibility for the remaining members of the aid-to-families-with-dependent-children temporary assistance for needy families filing unit. The income of the parent is subject to any applicable income disregards.
9. If an eligible caretaker leaves a child in the care of another individual while the caretaker pursues an educational program in another community, budgeting for the aid-to-families-with-dependent-children temporary assistance for needy families filing unit must be done as if the unit resided together.
10. a. If a member of a training, education, employment, and management household is hospitalized or residing in a halfway house, and there is a medical plan that the individual may return to the training, education, employment, and management household:
 - (1) No benefit reduction may be made for the first three months if the individual receives an aid-to-families-with-dependent-children a temporary assistance for needy families portion of the training, education, employment, and management benefit, but the needs of the individual must be reduced thereafter;
 - (2) Effective the first day of the month following admission to a hospital or halfway house, the needs of an individual who receives only the food stamp stamps and the low income home energy assistance program portions portion of the training, education, employment, and management benefit must be reduced; and
 - (3) Effective the first day of the month following the date of admittance to the institution, the needs of a training, education, employment, and management household member admitted to a veterans administration hospital, the North Dakota state hospital, or any other state institution must be deleted.
- b. If the needs of a primary individual are reduced or deleted from the training, education, employment, and

management household, the case must be closed and a new primary individual may reapply on behalf of the household.

- c. For periods when the needs of an individual must be reduced, the patient's share of the training, education, employment, and management benefit is limited to the amount for clothing and personal needs, effective with the first month the benefit reduction may be made. This budgeting arrangement must continue as long as the medical plan calls for the individual to return to the training, education, employment, and management household.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-64. Essential services.

1. The county agency may determine that a service, which the family cannot perform independently because of infirmity or illness, is essential to the well-being of the ~~aid-to-families with dependent children~~ temporary assistance for needy families filing unit.
2. "Essential service" includes housekeeping services and child care during a caregiver's illness or hospitalization, attendant services, and extraordinary costs of accompanying a member of the family to a distant medical or rehabilitation facility, arising out of a special need or condition of a member of the ~~aid-to-families with dependent children~~ temporary assistance for needy families filing unit or an ineligible caretaker who is not a parent of a child in the ~~aid to families with dependent children~~ temporary assistance for needy families filing unit and who is not receiving supplemental security income benefits.
3. The cost of essential services:
 - a. May be provided for in the training, education, employment, and management benefit only if the cost has been established through negotiations with the provider of the services; and
 - b. Must be budgeted and paid retrospectively or by supplemental payments.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-65. Catastrophic events. The county agency may authorize vendor payments for the replacement of food, clothing, furniture, household equipment, and supplies, at a level comparable to that maintained by the aid-to-families-with-dependent-children temporary assistance for needy families filing unit prior to a flood, fire, storm, or other disaster, if:

1. The availability of replacements, at no or nominal cost to the aid-to-families-with-dependent-children temporary assistance for needy families filing unit, from sources such as the American red cross, has been determined and assistance with replacements coordinated; and
2. The loss of items for which replacement is sought has been determined.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-66. Medical insurance premiums.

1. The county agency may authorize payment for the cost of premiums for health insurance carried by the aid--to--families with---dependent---children temporary assistance for needy families filing unit. Payment may be made for only one policy of health insurance. If the policy covers individuals who are not members of the aid-to--families--with--dependent--children temporary assistance for needy families filing unit, payment is limited to:
 - a. If the aid-to-families-with-dependent-children temporary assistance for needy families filing unit or insurer provides information that describes the manner in which the insurance company allocates premium charges between the insureds, the allocation attributable to the members of the aid-to-families-with-dependent--children temporary assistance for needy families filing unit; or, if that allocation is unavailable;
 - b. The total premium amount, divided by the number of individuals covered, and then multiplied by the number of covered members of the aid--to-families-with-dependent children temporary assistance for needy families filing unit.
2. For purposes of this section, "premiums for health insurance" includes payments made for insurance, health care plans, or nonprofit health service plan contracts that provide benefits for hospital, surgical, and medical care, but do not include payments made for coverage that is:

- a. Limited to disability or income protection coverage;
 - b. Automobile medical payment coverage;
 - c. Supplemental to liability insurance;
 - d. Designed solely to provide payments on a per diem basis, daily indemnity, or nonexpense-incurred basis;
 - e. Credit accident and health insurance; or
 - f. Dental or vision insurance.
3. Payment for the cost of premiums for health insurance:
- a. May be provided in the training, education, employment, and management benefit only if the cost or pro rata cost has been established; and
 - b. Must be budgeted and paid in the month in which the county agency is informed of the insurance and receives verification of the cost.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-67. Child restraint systems. The county agency may authorize payment for members of the ~~aid--to--families--with--dependent children~~ temporary assistance for needy families filing unit for the verified cost of an approved child restraint system designed to secure a child while riding in a passenger vehicle.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-68. Presidential high school graduate incentive payment. The county agency may authorize a one-time payment of five hundred dollars to each teen parent in the ~~aid--to--families--with--dependent--children~~ temporary assistance for needy families filing unit upon completion of high school or receipt of general education development diploma. For purposes of this section, a parent is a teen parent through the month of that parent's twentieth birthday.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-69. Unrestricted payment of benefits - Exceptions.

1. The usual method of providing benefits under this chapter is through payments in cash, check, or warrant, immediately redeemable at par, made to the caretaker relative or legal guardian at regular intervals, with no restrictions on the use of the funds. This practice is followed because recipients of benefits do not, by virtue of their need for benefits, lose the capacity to select how or when the needs of the training, education, employment, and management household must be met. If the caretaker relative or other members of the household manage funds in a manner that is clearly detrimental to members of the training, education, employment, and management household, or if the caretaker relative is subject to sanction for nonconformance to program requirements, protective payments may be used to assist the training, education, employment, and management household in financial management.
2. a. A determination that there is a detrimental mismanagement of funds may be based on:
 - (1) Continued failure to plan for and make necessary expenditures during periods for which benefits are provided;
 - (2) Continued failure to provide children in the aid-to-families-with-dependent-children temporary assistance for needy families filing unit with proper food, clothing, or housing so as to threaten the chances of those children for healthy growth and development;
 - (3) Persistent failure to pay the cost of rent, food, utilities, school supplies, or other essentials;
 - (4) Repeated loss of housing due to nonpayment of housing costs; or
 - (5) Repeated failure to pay debts that result in attachments of or levies against current income.
- b. The fact that debts are not paid on a timely basis may not be the sole basis for a determination that there is detrimental mismanagement of funds unless relevant factors, including the following, have been considered:
 - (1) Whether the family has experienced an emergency or extraordinary event that reasonably required the expenditure of funds ordinarily used to meet the needs of the aid-to-families-with-dependent--children temporary assistance for needy families filing unit;
 - (2) Whether reasonable payments on necessarily incurred debt exceeds the family's income; or

- (3) Whether the family has withheld payment on a debt as a part of a legitimate dispute concerning the amount of the debt or the terms or performance of a contract out of which the debt arises.
3. a. The county agency may select, appoint, and remove a protective payee to receive and manage an assistance unit's benefits. In making a selection, the county agency shall consider any individual nominated by the caretaker relative.
- b. The protective payee is a fiduciary responsible for assuring that the benefits are expended to achieve the maximum reasonable benefit for the assistance and for working cooperatively with the county agency.
- c. The protective payee may be furnished information about the ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families filing unit, from the county agency's records, sufficient to allow the protective payee's role to be carried out. The information furnished to the protective payee under this section remains confidential information subject to the provisions of North Dakota Century Code section 50-06-15.
- d. The status of a training, education, employment, and management household for which a protective payee has been appointed must be reviewed by the county agency as often as necessary, but no less often than every six months, to determine if:
- (1) The protective payee is performing satisfactorily;
 - (2) The ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families filing unit should be restored to unrestricted money payment status; and
 - (3) Some other arrangement should be sought for the care of children who are members of the ~~aid-to-families-with-dependent-children~~ temporary assistance for needy families filing unit.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-72. Intentional program violation - Disqualification penalties.

1. For purposes of this section:

a. "Intentional program violation" means an individual's intentional action or failure to act which consists of:

(1) Making a false or misleading statement or misrepresenting, concealing, or withholding facts; or

(2) Violating provisions of North Dakota Century Code chapter 50-09, this chapter, or any state statute relating to the acquisition or use of benefits provided under North Dakota Century Code chapter 50-09 or this chapter; and

b. An individual intends all results reasonably foreseeable from the actions the individual takes or fails to take.

2. An individual who, on any basis, is found to have committed an intentional program violation by a state administrative disqualification proceeding or by a federal or state court must be subject to the penalties provided in this section.

2- 3. An individual who waives the individual's right to appear at an intentional program violation hearing must be subject to the penalties provided in this section.

3- 4. During any period of disqualification:

a. The individual's needs may not be taken into account when determining the training, education, employment, and management household's need and amount of assistance;

b. All assets and income of the disqualified individual, including gross earned income, must be considered available to the training, education, employment, and management household;

c. Income disregards may be provided for the disqualified individual when determining if the remaining household members are eligible; and

d. The overpayment is recovered through a reduction, at the rate of twenty percent of the training, education, employment, and management standard of need, including special items of need.

4- 5. The duration of the penalty described in this section must be:

a. ~~Six-months~~ One year for the first offense;

b. ~~Twelve-months~~ Two years for the second offense; and

c. Permanent for the third and any subsequent offense.

- 5: 6. Any period of disqualification must remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction, but in no event may the duration of the period for which the penalty was imposed be subject to review.
- 6: 7. In cases where a disqualification penalty and other sanctions or penalties apply:
- a. The disqualification penalties in this section must be in addition to, and may not be substituted for, any other sanctions or penalties that may be imposed for the same offense; and
 - b. The disqualification penalties imposed under this section affect only the individual concerned and cannot substitute for other sanctions imposed under this chapter.
- 7: 8. A disqualification penalty imposed on an individual by another state may be continued in this state and may be used to determine the appropriate duration of a disqualification penalty imposed under this section.
- 8: 9. A disqualification penalty period must begin no later than the first day of the second month that follows the date of notice of imposition of the penalty.
- 9: 10. The department shall issue a written notice informing the individual of the period of disqualification and the amount of assistance the training, education, employment, and management household may receive during the disqualification period.
- 10: 11. Overpayments must be recovered from the assistance unit which was overpaid, any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or any individual members of the overpaid assistance unit whether or not currently a recipient.

~~11:--If--a--court--has--ordered--an--amount--of--recovery--different--than--that--provided--under--this--section;--the--amount--ordered--by--the--court--must--be--the--amount--recovered.---If--the--court--orders--restitution--in--an--amount--that--is--less--than--the--total--overpayment;--the--court's--order--must--be--followed.~~

History: Effective December 9, 1996; amended effective July 1, 1997.
General Authority: NDCC 50-06-01.8
Law Implemented: NDCC 50-06-01.8

75-02-01.2-73. Health tracks.

1. All members of a training, education, employment, and management household, under age twenty-one, must participate in health tracks screening services at the time of application and at least annually thereafter, unless excepted under subsection 2. Failure to participate results in a seven percent reduction in the net training, education, employment, and management benefit after recoupments have been calculated. This reduction in benefits is effective the first month after the month the failure to participate is determined and remains in effect until health tracks requirements in the training, education, employment, and management contract are met.
2. An eligible member need not participate in the health tracks requirements if the member:
 - a. Is a caretaker under age twenty-one who is at least age twenty years, ten months;
 - b. Is an individual who has received a complete screening within the last ~~six~~ twelve months performed by an enrolled health tracks provider; or
 - c. Establishes good cause for not participating in health tracks.
3. Good cause for failure or refusal to participate in health tracks exists if:
 - a. The child and the child's caretaker are believers in a faith with a clergy verified doctrinal opposition to participation in health tracks; or
 - b. The child or the child's caretaker suffers from a medically verified acute illness.
4. Good cause for not participating in health tracks screening must be the responsibility of the health tracks program service manager. The health tracks program service manager must be responsible to determine good cause, must set the end dates for good cause, and must be responsible for conciliation.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-76. Initial contract.

1. The initial training, education, employment, and management contract must be completed and signed by the end of the ~~second~~ fourth benefit month. The contract must be signed by the primary individual in the training, education, employment, and

management household and the training, education, employment, and management program manager. Ten days before the end of the ~~second~~ fourth benefit month, a written statement must be sent reminding the training, education, employment, and management household that the household is ineligible for a ~~third~~ fifth month's benefits if a training, education, employment, and management contract is not signed.

2. If a training, education, employment, and management household becomes ineligible under subsection 1 because the contract is not signed and reapplies within a one-year period from their original training, education, employment, and management application date, a training, education, employment, and management cash benefit may not be issued until the household completes a training, education, employment, and management assessment and signs a training, education, employment, and management contract.
3. For purposes of this section:
 - a. If a training, education, employment, and management household becomes ineligible under subsection 1 because the contract is not signed and reapplies more than one year after the household's last training, education, employment, and management application date, the ~~application~~ reapplication may be treated as a new application; and
 - b. If a training, education, employment, and management household becomes ineligible for a reason other than failure to sign a contract as required under subsection 1, the reapplication may be treated as a new application.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-78. Mandatory contract requirements. Unless an exemption or good cause is determined, the training, education, employment, and management contract must require:

1. Cooperation with child support enforcement when appropriate deprivation reasons exist;
2. Cooperation with the health tracks program;
3. Cooperation with job opportunities and basic skills program for targeted members of the ~~aid--to--families--with--dependent children~~ temporary assistance for needy families filing unit; and

4. Cooperation with work registration for eligible training, education, employment, and management household members not a part of the aid-to-families-with-dependent-children temporary assistance for needy families filing unit.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-79. Sanctions under the training, education, employment, and management program contract.

1. Training, education, employment, and management participants must sign and comply with a training, education, employment, and management contract as a condition of eligibility. Each household member may be required to comply with certain requirements under the contract. Failure to comply or cooperate with the requirements of the contract may result in a sanction being applied against the responsible individual.
 - a. All sanctions under the training, education, employment, and management contract are first imposed against the responsible individual. If the individual does not cure the sanction ~~by cooperating or participating as required under the contract~~, the sanction may progress to include the entire training, education, employment, and management household.
 - b. Except as provided in subdivision c, if the individual sanction progresses to the training, education, employment, and management household, the household is ineligible for training, education, employment, and management until the responsible individual cures the sanction.
 - c. If the sanction is imposed due to noncooperation with the health tracks program requirement, the household may be eligible for, but subject to a seven percent reduction in, the net training, education, employment, and management benefit until the requirements are met.
2. A household found ineligible for training, education, employment, and management may apply for regular food stamps, low income home energy assistance program benefits, medicaid, or child care assistance, but is ineligible for aid-to-families-with-dependent-children temporary assistance for needy families.
3. Training, education, employment, and management household members who fail, without good cause, to comply with the terms of the training, education, employment, and management

contract, are subject to the sanctions described in this subsection.

- a. For the first sanction, the individual who has not cooperated is ineligible for a period of one month for all training, education, employment, and management benefits. After this required period of ineligibility, the sanctioned individual may cure the ~~noncooperation--by participating-as-required-under-the--training,--education, employment,--and--management-contract~~ sanction. If at the end of the sixth month of the sanction the individual continues to refuse to cooperate, the entire training, education, employment, and management household becomes ineligible for training, education, employment, and management.
- b. For the second sanction, the individual who has not cooperated is ineligible for all training, education, employment, and management benefits for a minimum of two months. After this required period of ineligibility, the sanctioned individual may cure the ~~noncooperation--by participating-as-required-under-the--training,--education, employment,--and--management-contract~~ sanction. If at the end of the fourth month of the sanction the individual continues to refuse to cooperate, the entire training, education, employment, and management household becomes ineligible for training, education, employment, and management.
- c. For the third and subsequent sanctions, the individual who has not cooperated is ineligible for all training, education, employment, and management benefits for a minimum of three months. After this required period of ineligibility, the sanctioned individual may cure the ~~noncooperation-by--participating--as--required--under--the training,--education,--employment,--and--management-contract~~ sanction. If at the end of the fourth month of the sanction the individual continues to refuse to cooperate, the entire training, education, employment, and management household becomes ineligible for training, education, employment, and management.
- d. If a sanctioned individual cures a sanction during a minimum sanction period, the individual is eligible for training, education, employment, and management, provided all other factors of eligibility are met, effective the first day of the benefit month following the minimum sanction period.
- e. If a sanctioned individual cures a sanction at any time following a minimum sanction period, but before the sanction has progressed to household ineligibility, the individual is eligible for training, education,

employment, and management, provided all other factors of eligibility are met:

~~{1}--Effective effective the first day of the month of the cure if the cure occurs before the sixteenth day of the month; and~~

~~{2}--Effective--the--first--day--of--the--month--following--the--month--of--the--cure--if--the--cure--occurs--on--or--after--the--sixteenth--day--of--the--month.~~

4. A sanction may be imposed for no more than twelve months. The individual whose noncooperation caused the sanction may demonstrate cooperation within twelve months from the sanction start date to regain training, education, employment, and management eligibility for the household. After twelve months, a reapplication for training, education, employment, and management benefits made on behalf of the household is treated as a new application.
5. Sanctions under training, education, employment, and management follow a noncooperating individual who moves from one training, education, employment, and management county to another training, education, employment, and management county. The sanction remains in effect for the specified sanction period or until cured by the responsible individual. Job opportunities and basic skills program sanctions may not follow a sanctioned individual from a training, education, employment, and management county to an aid to families with dependent children county or from an aid to families with dependent children county to a training, education, employment, and management county, but the progressive sanction number must be counted.
6. A sanction is cured only when the responsible individual demonstrates, to the satisfaction of the county agency, that the failure to cooperate or participate, as required under the contract, has been corrected for at least ten days.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-81. Timely--notice Good cause for failure to complete training, education, employment, and management program contract. Failure of the primary individual to sign or cooperate in the development of the training, education, employment, and management contract, without good cause, by the last day of the second benefit month of training, education, employment, and management eligibility may result in case closure. An individual who has good cause for not signing or cooperating in the development of the training, education, employment, and management contract may continue to receive training,

education, employment, and management benefits after the initial two months if all other factors of eligibility are met. The individual shall complete the training, education, employment, and management contract as soon as the good cause reason is no longer applicable. Good cause for not completing the development or for not signing the training, education, employment, and management contract exists only if the individual:

1. Has a medical condition that precludes the individual from leaving home as verified by a licensed physician's statement; or
2. Is hospitalized or institutionalized.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-82. Job opportunities and basic skills program - Definitions. For purposes of the job opportunities and basic skills program:

1. "Coordinator" means the job opportunities and basic skills program staff person responsible for directing and monitoring a participant's planning and activities that relate to the job opportunities and basic skills program. The coordinator functions as a case manager in the development and execution of an employability plan.
2. "Minimum required hours" means the number of hours per week during which a participant must be engaged in an allowed work activity which must be twenty hours per week for periods before October 1, 1998, twenty-five hours per week for periods beginning October 1, 1998, and ending September 30, 1999, and thirty hours per week for periods beginning after September 30, 1999.
3. "Participant" means a member of an--aid--to-families-with dependent-children a temporary assistance for needy families filing unit who is not exempt from participating in the job opportunities and basic skills program or who, if exempt, has volunteered to participate in that program.

- 3- 4. "Satisfactory progress" in any postsecondary education or training program means the participant is maintaining the greater of a "C" 2.5 grade point average or progress minimally sufficient to allow continuation of the course of study or training under the standards of the education or training facility.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-83. Job opportunities and basic skills program and work registration - Basic requirements. To the extent resources permit, all nonexempt adult members of a training, education, employment, and management household who are members of an--aid--to--families--with dependent-children a temporary assistance for needy families filing unit shall participate in the job opportunities and basic skills program. All nonexempt adult members of a training, education, employment, and management household who are not members of an--aid--to--families--with dependent-children a temporary assistance for needy families filing unit shall participate in work registration. The program combines education, training, and employment components. Its purpose is to place participants in nonsubsidized employment as soon as possible. The training, education, employment, and management program manager shall:

1. Determine eligibility for training, education, employment, and management benefits and determine whether each person is a member of an--aid--to--families--with--dependent--children a temporary assistance for needy families filing unit within the training, education, employment, and management household;
2. Determine whether the recipient is exempt from participating in the job opportunities and basic skills program or work registration; and
3. Refer nonexempt members of the aid-to-families-with-dependent children temporary assistance for needy families filing unit to the job opportunities and basic skills program and refer nonexempt training, education, employment, and management household members not in an-aid-to-families-with-dependent children a temporary assistance for needy families filing unit to work registration.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-84. Job opportunities and basic skills program - Participation-requirements-in--households--receiving--unemployed--parent benefits Satisfactory participation.

1. Each nonexempt parent in a family receiving unemployed parent benefits shall participate or be available for participation in an approved work program component for a total of at least thirty-two hours per week. Except as otherwise provided in this section, each eligible caretaker, and each child age sixteen and older who has not completed high school or received a general equivalency diploma and who is not currently attending school, shall comply with work requirements no fewer than the minimum required hours each week. Work activity may be required in addition to the minimum required hours in an allowable work activity.

2. An individual participating in a work experience program for at least thirty-two hours per week must be treated as a participant in the job opportunities and basic skills program. A parent of a child under age six, who does not reside with the other parent of any of the first parent's children, is deemed to comply with subsection 1 if engaged in an allowable work activity an average of at least the minimum required hours per week during each month.

3. If a participant receiving unemployed parent benefits is under age twenty-five and has not received a high school diploma or a general equivalency diploma, the employability plan must include high school attendance or general equivalency diploma program attendance in lieu of other participation requirements, if the participant is involved in education or training no less than twelve hours per week, and makes satisfactory progress. A custodial parent, under twenty years of age, who has not earned a high school diploma or its equivalent, but who attends and makes satisfactory progress in school, is deemed to comply with subsection 1.

4. If the principal wage earner is exempt, the second parent must meet the participation requirements for the family. If a nonexempt principal wage earner is sanctioned for failure to participate in the program, the second parent shall meet the participation requirements for the family. If the second parent fails to meet the participation requirements, the family is not eligible for aid to families with dependent children. The second parent is subject to all participation requirements of a principal wage earner, and may not show good cause for failure or refusal to participate.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.2-85. Job opportunities and basic skills program - Components Work requirements.

1. The components work activities of the job opportunities and basic skills program include:

- 1.--Educational--activities--related-to-secondary-education,-basic and-remedial-education,-or-education-in-English-proficiency;
- 2.--Job-skills-training;
- 3.--Job-readiness-activities;
- 4.--Job-search;
- 5.--Job-development-and-job-placement-activity;
- 6.--Postsecondary-education-activities;
- 7.--Self-initiated-education-activities;
- 8.--Community-work-experience;
- 9.--Alternate-work-experience;
- 10.--On-the-job-training;-and
- 11.--Work-supplementation-program-
 - a. Unsubsidized employment;
 - b. Subsidized public or private sector employment;
 - c. On-the-job training;
 - d. Public or private work experience;
 - e. Job search and job readiness;
 - f. Community service;
 - g. Vocational training;
 - h. Education directly related to employment for a participant who has not completed high school or received a general equivalency diploma;
 - i. Secondary school or a course of study leading to a general equivalency diploma;
 - j. Provision of child care services to another participant engaged in a community service program;
 - k. Job skills training directly related to employment; and
 - l. Work readiness activities.

2. Work requirements include participation in work activities for periods of time necessary to allow a participant to complete tasks that will move the participant directly into employment, but no less than the minimum required hours.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-86. Job opportunities and basic skills program - Tribal native employment work program. Tribal job--opportunities--and basic--skills native employment work programs are available to native Americans who are members of aid-to--families--with--dependent--children filing--units enrolled or enrollable members of tribes who live in that tribe's service area, who receive temporary assistance for needy families benefits, and who reside in a county within which there is a tribal job--opportunities--and--basic--skills native employment work program. An individual who participates in a tribal native employment work program shall meet all work requirements described in this chapter. The county agency shall:

1. Refer nonexempt eligible individuals to the tribal native employment work program based on referral criteria established by agreement between the tribe and the department;
2. Provide child care payments to authorized tribal native employment work program participants, for activities which may be approved under the state child care and development fund plan submitted under the Child Care and Development Block Grant Act of 1996 [42 U.S.C. 9858], based on information furnished by the tribal program; and
3. Upon notification from the tribal program, consider sanctioning individuals for failure or refusal to participate in the program without good cause.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-87. Job opportunities and basic skills program and work-registration - Exemptions from participation.

1. An individual is exempt from participation in the job opportunities and basic skills program and work registration if the individual is:
 - a. 1. A native-American-who-resides-in-the-service-area-of-a-tribal job--opportunities--and--basic--skills--program--and--meets--the requirements---of---that--program parent or other eligible caretaker relative age sixty or older;

- b. 2. A dependent child who is under age sixteen or a dependent child who is age sixteen or over and who is enrolled or has been accepted for enrollment as a full-time student for the next school term in an elementary or secondary school or in a vocational or technical school that is equivalent to secondary school, unless the dependent child is a custodial teen parent; or
- e. 3. A parent or other eligible caretaker relative of a child under age ~~two~~ four months who is personally caring for the child full time ~~unless:~~

~~{1}--A--teen--parent--is--under--twenty--years--of--age,--has--not--received--a--high--school--diploma--or--its--equivalent,--and--is--attending--school--full--time;~~

~~{2}--A--parent--is--under--twenty--years--of--age,--has--not--completed--a--high--school--education--or--its--equivalent,--or--is--an--early--intervention--program--experimental--participant;--or~~

~~{3}--Child--care--is--guaranteed;--or~~

~~d. --A--full--time--volunteer--serving--under--the--volunteer--in--service--to--America--pursuant--to--title--I--of--the--Domestic--Volunteer--Act--of--1973.~~

~~2. --A--dependent--child--who--is--age--sixteen--or--over--and--not--enrolled--as--a--full--time--student--for--the--next--school--term--in--an--elementary--or--secondary--school--or--in--a--vocational--or--technical--school--that--is--equivalent--to--secondary--school,--and--not--otherwise--exempt,--must--be--referred--to--the--job--opportunities--and--basic--skills--program--or--work--registration.~~

~~3. --Participation--for--more--than--twenty--hours--per--week--is--not--required--for--one--parent--in--an--aid--to--families--with--dependent--children--unemployed--parent--family--who--provides--care--for--a--child--age--two,--three,--four,--or--five--years.~~

~~4. --Exemptions--described--in--subsection--1--apply--to--the--parents--in--an--aid--to--families--with--dependent--children--filing--unit--if--both--parents--are--members--of--that--filing--unit,--but--neither--parent--may--claim--an--exemption--for--personally--caring--for--a--child,--under--age--three,--on--a--full--time--basis.~~

History: Effective December 9, 1996; amended effective July 1, 1997.
General Authority: NDCC 50-06-01.8
Law Implemented: NDCC 50-06-01.8

75-02-01.2-88. Job opportunities and basic skills program - Referral.

1. Any individual not exempt from the job opportunities and basic skills program and anyone who volunteers must be referred to the program. Referrals may be made only after the individual is determined eligible for training, education, employment, and management benefits as a member of an-aid-to-families-with dependent-children a temporary assistance for needy families filing unit or as an applicant member of such a filing unit while in applicant diversion.
2. The referred individual shall contact the coordinator within seven days of the referral date to set up an appointment for program orientation, assessment, and employability planning and shall make a good faith effort to complete program orientation, initial assessment, and employability planning within thirty days of the referral date.
3. Upon referral, the county agency may authorize supportive services, ~~limited-to-child-care-and-transportation--allowance,~~ solely for the first thirty days after the referral date and ~~solely when necessary to allow the individual to complete the planning process.~~

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-89. Job opportunities and basic skills program - Orientation, assessment, and employability planning. The coordinator shall complete a general program orientation. The coordinator shall, ~~together~~ in consultation with the participant, make an initial assessment of employability work skills and work experience and, on the basis of that assessment, develop an-employability a plan ~~in connection~~ with that, to the greatest extent possible, is designed to move the participant into whatever employment the participant is capable of handling as quickly as possible. The cooperation, assistance, and consultation of the participant is important to the accuracy of the assessment and the appropriateness of the plan, but is not required if the participant seeks to use participation as a means of blocking or delaying entry into the work force. No employability plan is effective unless approved by the department.

1. ~~General---program---orientation---includes---a---preliminary identification-of-the-participant's-needs-and-of-the--barriers to--the--participant's--entry--into--the--work--force--and--an explanation-of:~~
 - a. ~~Program-activities;~~
 - b. ~~Available-supportive-services;~~
 - c. ~~The---relationship--between--the--department,--the--county agency,--and-the-coordinator's-employer;~~

- d. --How--other--cooperating--programs--coordinate--activities--with participants;
- e. --The--participant's--rights--and--responsibilities;--and
- f. --Procedures--for--handling--disputes.

2. The initial assessment of employability is based on:

- a. The participant's educational,--training,--child-care,--and other--supportive--service--needs work skills;
- b. The participant's proficiencies,--skills--deficiencies,--and prior work experience;
- c. A--review--of--the--family--circumstances--that--may--include--the needs--of--any--child--of--the--participant;
- d. --The---participant's---interests,---personal---traits,---and leisure--time--activities;
- e. The participant's mental and physical limitations affecting employability; and
- f. d. Other factors that may affect the participant's potential for employment.

3. 2. The employability plan must:

- a. Contain an employment goal for to move the participant immediately into employment;
- b. Describe the supportive services to be provided to enable the participant to obtain and maintain employment; and
- c. Describe the program--components--to--be--undertaken steps to be taken by the participant to achieve the employment goal;.
- d. --Describe--any--other--needs,--identified--in--the--review--of family--circumstances,--that--might--be--met--through--the program;--and
- e. --Take--into--account:
 - {1}--Resources--available--to--the--participant;
 - {2}--The--participant's--supportive--service--needs;
 - {3}--The--participant's--skills--levels--and--aptitudes;
 - {4}--Local--employment--opportunities;--and

(5) -- To the maximum extent reasonably possible, the preferences of the participant.

4. 3. The employability plan is not a contract and may not be so interpreted, considered, or applied.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-90. Job opportunities and basic skills program - Supportive services.

1. Within the limits described in this section, supportive services may be made available to a participant who, but for supportive service, would be unable to enter into or remain in an approved job opportunities and basic skills program allowable work activity. No supportive service may be provided with respect to an activity that is not an approved program activity or on behalf of anyone who is not participating satisfactorily in the program.
 2. ~~No supportive services may be provided prior to the start of an approved program activity except:~~
 - a. ~~For up to two weeks on behalf of a participant waiting to enter an approved program activity; or~~
 - b. ~~For up to one month if necessary to avoid the loss of the supportive service; and if the approved program activity begins within that period.~~
 3. Supportive services, ~~excluding child care,~~ may be provided for up to three months after termination of aid to families with dependent children temporary assistance for needy families benefits provided for in the employability plan due to employment.
4. 3. Supportive services include only:
- a. Relocation assistance provided to a participant with moving expenses in order to achieve permanent employment with earnings sufficient to preclude aid to families with dependent children temporary assistance for needy families eligibility, provided that:
 - (1) ~~Payment is made to the vendor of the moving service provider or, if to the participant, is limited under subsection 5; and~~

- (2)--The the participant demonstrates that the most economical reasonably available means of relocation was used.
- b. A monthly transportation allowance provided to participants currently-enrolled in an approved program work activity, if necessary to for continued participation.
- c. Child care expense reimbursement ~~of--up--to--the--limit established--under--subsection--5,--provided--that--no--child care--expense--reimbursement--may--be--provided--where:~~
- (1)--~~The--partieipant's--approved--program--activities--fall within--the--child's--school--hours;~~
- (2)--~~There--are--individuals--in--the--household--whose--needs are--met--on--the--basis--of--their--responsibility--for earing--for--a--child--in--the--home;--or~~
- (3)--~~There--is--another--legally--responsible--adult--in--the home--who--is--not--incapacitated--and--who--is--not suspected--of--child--abuse--or--neglect in amounts consistent with the provisions of the state child care and development fund plan submitted under the Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9858].~~
- d. Assistance in the purchase of care for an incapacitated or disabled adult member of the participant's household, to whom the participant owes a legal duty to provide care, provided:
- (1) There is no other person in the household who can provide the care; and
- (2) The incapacitated or disabled adult cannot provide self-care.
- e. Assistance in the purchase of employment-related clothing or personal needs determined by the coordinator to be reasonable and necessary for the participant to enter employment.
- f. Assistance in the purchase of tools or equipment determined by the coordinator to be required for the participant to accept employment.
- g. Assistance in the cost of repairs determined by the coordinator to be reasonable and necessary to return a participant's vehicle to operable condition, provided:
- (1) ~~No--feasible--public--transportation--is--available;~~

- (2) The vehicle is registered to a member of the training, education, employment, and management household; and
 - (3) (2) The general condition and value of the vehicle justifies repairs.
- h. Assistance for defraying the cost of books, tuition, and fees associated with training-the-participant an allowable work activity, provided:
- (1) ~~Available funds are further limited to the total cost of books, tuition, and fees, reduced by the total amount of educational grants and scholarships available to the participant~~ Other educational fund sources have been explored and are exhausted; and
 - (2) The participant is a member of ~~an aid to families with dependent children~~ a temporary assistance for needy families filing unit and eligible for training, education, employment, and management benefits at the time funds are paid or obligated; and
 - ~~(3) No payment may be made for tuition, books, or fees secured for self-initiated education or training.~~
- i. Assistance with payment for professional license fees and professional examination fees, where there is no other available source of funding, including fee waivers, and the professional license or examination is necessary to achieve an employment-related goal.
- j. Assistance with expenses determined by the coordinator to be reasonable and necessary for employment interviews, including transportation, lodging, grooming, and clothing.
5. The maximum expenditures permitted for supportive services, or for any type of supportive services, under any employability plan, are limited to amounts identified in the approved state plan established under title IV-F of the Social Security Act [42 U.S.C. 681, et seq.] in effect on June 30, 1997, or such greater amounts as the department may by order determine.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-91. Job opportunities and basic skills program - Educational activities related to secondary education, basic and remedial education, or education in English proficiency.

1. If a custodial parent, age twenty or older, has not earned a high school diploma or its equivalent, the employability plan must include activities under this section unless:
 - a. ~~The the individual demonstrates a basic literacy level above the 8.9 grade level;~~
 - b. ~~The long-term employment goal of the individual does not require a high school diploma or its equivalent;~~
 - c. ~~After assessment by the educational institution, the individual is determined to not have the potential to secure a general equivalency diploma or high school diploma, or to make a significant improvement in reading skills, in a reasonable length of time; or~~
 - d. ~~The individual fails to make satisfactory progress.~~

2. If a custodial parent, under twenty years of age, has not earned a high school diploma or its equivalent, the employability plan must include high school attendance unless:
 - a. After, after assessment by the educational institution, the individual is determined to not have the potential to secure a general equivalency diploma or high school diploma, or to make a significant improvement in reading skills, in a reasonable length of time; ~~or~~
 - b. ~~The individual fails to make satisfactory progress.~~

3. For purposes of this section:
 - a. A "reasonable length of time" means a time determined by the coordinator, based on recommendations of an individual's instructors, for completion of education activities while consistently participating in those activities on a regular basis as a full-time student in a high school program or as a part-time student in a high school program if the coordinator determines that circumstances beyond the individual's control limits attendance to less than full time; and
 - b. "Activities under this section" include high school, alternative high school, adult learning center programs, general equivalency diploma programs, and basic or remedial education programs.

4. If the employability plan of a custodial parent, under age twenty who does not have a high school diploma or general equivalency diploma, does not include high school attendance, it must include alternative educational activities or training activities ~~no less than twelve hours per week.~~

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-92. Job opportunities and basic skills program - Jobs skills training directly related to employment. ~~Job skills training is formal training, provided by an organized school or training facility, designed and intended to lead to the participants' unsubsidized employment, in the shortest reasonable time.~~

- ~~1. The training program must be recognized by the state board of vocational education.~~
- ~~2. The participant shall be a full-time trainee pursuing the course of training at a rate intended to achieve the training goal by the end of the first school term that begins before, and ends after, a day twenty-four months after approval of the participant's initial employability plan.~~
- ~~3. The trainee shall verify that the trainee is making satisfactory progress, and taking classes or training required by the employability plan, through class schedules and grade reports for each school term or training period. Job skills training includes paid or unpaid activities that enhance skills for employment or training. Job skills training directly related to employment includes apprenticeships and the development of basic job skills through adult basic education in English proficiency, basic computer skills, communication and computational skills, or Phoenix vocational preparation. A custodial parent, age twenty or older, who participates in job skills training directly related to employment shall, in addition, participate in allowable work activity for the minimum number of hours required under section 75-02-01.2-84.~~

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-93. Job opportunities and basic skills program - Job readiness activities Unsubsidized employment. ~~Job readiness activities help prepare participants for work by assuring that participants are familiar with general workplace expectations and are able to exhibit work behavior and attitudes necessary to compete successfully in the labor market. These activities include self-assessment, goal setting,~~

developing---a---personal---marketing---strategy,---developing---self-image, learning-interview-techniques-and-basic-sales-techniques,---and-developing appropriate---work---behavior---and---attitudes---necessary---to---compete successfully-in-the-labor-market. Unsubsidized employment means work in the private or public sector for which wages, or wages and tips, are paid that equal or exceed the federal hourly minimum wage. Unsubsidized employment includes self-employment. For purposes of determining the number of countable hours a participant is self-employed in unsubsidized employment, the participant's net monthly income is divided by the federal minimum wage. For purposes of this section, net monthly income is gross revenue less the costs of doing business.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-94. Job opportunities and basic skills program - Job search and job readiness.

1. Participants may be required by the coordinator to make an individual work search for up to eight four consecutive weeks or six nonconsecutive weeks in each twelve months of continuous eligibility for training, education, employment, and management benefits by---any---family---member,---Upon reapplication-for-such-benefits--after--any--termination,--the participant--may--again-be-required-to-make-an-individual-work search-for-up-to-eight-weeks,--even-if-twelve--months--has--not elapsed--since--the--beginning--of--an--individual-work-search previously-required.
2. In periods after a participant has engaged in job search and job readiness activities for the maximum time permitted under subsection 1, the coordinator may require the participant to engage in extended job search in addition to engaging in the minimum required hours in other allowable work activities.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-96. Job opportunities and basic skills program - Postsecondary Vocational education. Vocational education may be approved as an allowable work activity. Vocational education offers an organized sequence of coursework directly related to preparation of the participant for employment in a current or emerging occupation.

1. Vocational education may be approved as an allowable work activity only if the participant demonstrates:
 - a. A lack of marketable job skills;

- b. That the training will result in a marketable skill;
 - c. The functional capacity and ability to complete the vocational education and become employed in a job applying that vocational education; and
 - d. An understanding of the requirements of the job for which the vocational training is intended to prepare the participant and a willingness to meet those requirements, including, where applicable:
 - (1) Shift work;
 - (2) Relocation;
 - (3) Work-related travel;
 - (4) Licensure or certification; and
 - (5) Prevailing wage rates.
2. A participant in the job opportunities and basic skills program, who has made the demonstration required under subsection 1, may undertake postsecondary vocational education if:
- a. The employability plan identifies a clearly identified goal of employment in a specific occupation;
 - b. The curriculum is recognized by the--board--of-higher education a statutorily sanctioned education authority as leading to qualification for employment in the specific occupation identified in the employability plan;
 - c. The--postsecondary--education--is--not--for--the--purpose--of--achieving--any--degree--more--advanced--than--a--bachelor's degree;
 - d. The participant does not already possess a bachelor's degree unless:
 - (1) The participant, by reason of incapacity or substantiated lack of employment, in North Dakota, in the field for which the participant was prepared, cannot be employed in North Dakota; and
 - (2) The department, exercising its reasonable discretion, approves the employability plan;
 - e. d. The participant is a full-time student;
 - f. e. The selection of a course of study is guided by demand in specific occupations or, upon approval by the coordinator,

a course of study in another occupation for which the participant provides substantial justification of demand;

g- f. The participant applies for a Pell grant and all other reasonably available sources of grants and scholarships, which become the first source of payments for books, tuition, and fees;

h- g. The participant verifies that the participant is maintaining satisfactory progress, and taking classes required by the employability plan, through class schedules and grade reports that demonstrate the participant will conclude the curriculum before the end of the employability plan or within twenty-four months from the approval of the employability plan, whichever is sooner; and

h. During any participant's lifetime, no employability plan beginning on or after July 1, 1997, and no combination of such plans, may include more than twelve months, which need not be consecutive months, during which vocational education may be the participant's exclusive work activity, and no more than twelve additional months, which need not be consecutive, during which the participant engages in another work activity, in addition to vocational education, for at least the minimum participation hours unless:

(1) The participant, by reason of incapacity or substantiated lack of employment, in North Dakota, in the field for which the participant was prepared, cannot be employed in North Dakota; and

(2) The department, exercising its reasonable discretion, approves the employability plan; and

i. The employability plan is reviewed and, if necessary, revised at least-annually-except--for--child--care--needs; which--must--be--reviewed--at the beginning of each school term.

2- 3. Except--as--provided-in-subsection-3,-a A participant enrolled in postsecondary approved for vocational education may receive any supportive service for which a need can be demonstrated.

3- 4. Recipients of aid--to--families--with--dependent--children temporary assistance for needy families enrolled in any course of postsecondary vocational education study at the time they become participants may seek approval of an employability plan which continues that course of study. Approval may not be granted if the participant is presently qualified for available full-time employment. Any approved employability plan is subject to review. Other---program Nonapproved

educational activities in which the participant participates may not interfere with the self-initiated--education---or training approved work activity so long as the employability plan continues to be approved. Upon review, approval of the employability plan may be terminated, and the participant may be required to seek employment. A participant enrolled in an approved self-initiated course of postsecondary vocational education may receive any supportive service for which a need can be demonstrated, except payment for defraying the cost of books, tuition, or fees.

4. Postsecondary education may not be included in an approved employability plan unless, with satisfactory progress, the course of study will be completed by the end of the first school term that begins before, and ends after, a day twenty-four months after approval of the participant's initial employability plan.

5. A coordinator shall consider, in determining whether to approve a participant's proposed employability plan that meets all other requirements of this section:

a. The graduation and job placement rates of the education or training facility;

b. The cost of the education or training facility services, combined with the cost of necessary supportive services, as compared to other education or training facilities offering a similar course of study; and

c. The anticipated length of time to complete training as compared to other education or training facilities offering a similar course of study.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.2-97. Job opportunities and basic skills program - Self-initiated-education-activities Provision of child care services to another participant engaged in a community service program. Self-initiated-education-activities-are-subject-to-all-requirements-of education--activities--otherwise-planned-for-under-the-job-opportunities and-basic-skills-program. A participant may provide child care services to another participant to allow that other participant to engage in a community service program if the participant providing child care:

1. Is adequately trained in providing child care;

2. Is determined competent to provide child care;

3. Is licensed or registered as an early childhood services provider, as required or permitted by North Dakota Century Code chapter 50-11.1, and rules adopted thereunder; and
4. Assures that child care will be provided in a safe environment.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-98. Job opportunities and basic skills program - Community-work Work experience and community service program.

1. ~~The---community---work~~ Work experience program--offers--the performance-of-public-service-work--in--exchange--for--aid--to families--with-dependent-children and community service offers work, based on a forty-hour workweek, that includes work expectations found in unsubsidized employment. Work experience and community service is provided for the minimum required hours per week. Job search activities may be required in addition to work experience and community service. ~~its~~ The goal of work experience and community service is to improve a participant's employability through supervised work in order to enable the participant to obtain permanent, unsubsidized employment. A participant does not receive a wage for participating in work experience and community service.
2. ~~A--participant's--work--obligation--is--the--number--of--hours determined-by-subtracting-any-child-support-received-from--the aid--to--families--with--dependent--children--portion--of--the training,-education,-employment,-and-management-benefit-amount received--by--the-participant's-family-and-dividing-the-result by-the-current-federal-hourly-minimum-wage-~~
3. ~~Community-work~~ Work experience and community service worksites must-be-limited-to are usually those provided by public or private, nonprofit public service organizations, tribal governments, nursing homes, and hospitals, or at projects that serve a useful public purpose and provide appropriate working conditions.
4. 3. A workday worksite placement must be designed to provide a participant with a basic understanding of work and productive work habits, establish positive work references, provide training to a work experience participant, and otherwise encourage the participant to become economically self-sufficient.

5. 4. Workers' compensation coverage must be provided for community work experience and community service program participants.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

**75-02-01.2-99. Job opportunities and basic skills program -
Alternate-work-experience Work readiness activities.**

1. ~~Alternate work experience offers work, based on a forty-hour workweek, that includes work expectations found in unsubsidized employment, provided at private nonprofit or public worksites. Alternate work experience is provided for up to thirty-two hours per week in conjunction with structured job search activities the remaining eight hours per week.~~

2. ~~A parent under age twenty-five who has neither completed high school nor earned a general equivalency diploma, and who is maintaining satisfactory progress in either of those educational activities, may substitute that educational activity for alternate experience.~~

3. ~~If a family is eligible for aid to families with dependent children due to the unemployment of the parent who is the principal wage earner, each parent in that family must participate in alternate work experience for at least thirty-two hours per week.~~

4. ~~Workers' compensation coverage must be provided to alternate work experience participants. Work readiness activities include activities intended to prepare a participant for work that are determined necessary by the coordinator in conjunction with the participant. Work readiness activities include alcohol and drug evaluation and treatment, psychological assessment and counseling, vocational rehabilitation assessment and counseling, and up to thirty days of work preparation workshop.~~

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

**75-02-01.2-100. Job opportunities and basic skills program -
On-the-job training.** On-the-job training provides, through a negotiated agreement, payment to an employer for the costs of training and lower productivity normally associated with a new employee. The agreement is intended to place a participant in an occupational position that requires training. The training is intended to lead to permanent employment with that employer or one that is similar in its training requirements.

1. The agreement must be for a fixed price that does not exceed fifty percent of the average wage paid by the employer to the participant during the training period.
2. The starting wage of an on-the-job training participant must be at least equal to the federal minimum wage rate.
3. On-the-job training participants must be compensated at the same rates, and receive the same benefits, as other individuals similarly employed by the employer.
4. Wages paid to an on-the-job training participant must be treated as earned income for purposes of this chapter.
5. If an on-the-job training participant becomes ineligible for training, education, employment, and management benefits because of earned income:

a. ~~That,~~ that person shall remain a participant for the duration of the on-the-job training and may be eligible for those supportive services available to other similarly situated participants; ~~and~~

b. ~~If that participant would have been eligible for transitional child care, under a program furnishing such care pursuant to 45 CFR part 256, at the time the ineligibility for training, education, employment, and management benefits occurred, the participant may:~~

(1) ~~Remain eligible for transitional child care, after the on-the-job training ends, for the number of months that remain in the twelve-month period following the month in which the participant became ineligible for training, education, employment, and management benefits; or~~

(2) ~~Receive child care as a supportive service to a participant if the person otherwise meets the requirements to be a participant.~~

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-101. Job opportunities and basic skills program - Work supplementation program Subsidized public or private sector employment. Subsidized public or private sector employment includes employment in which the employer is paid a cash subsidy for a portion of the wages paid to a participant for a specified period of time for the purpose of assisting the participant to obtain employment. Subsidized employment may include work supplementation.

1. ~~Public---and---private---employers---may---receive---payment---for~~ extraordinary costs of training intended to assist a recipient to obtain unsubsidized employment. The payment is diverted from, the temporary assistance for needy families portion of the participant's training, education, employment, and management benefit and limited to, a negotiated amount that cannot exceed the ~~aid---to---families---with---dependent---children~~ portion of the recipient's training, education, employment, and management benefit amount lesser of three hundred dollars or fifty percent of the temporary assistance for needy families portion of the training, education, employment, and management benefit. A work supplementation program participant must be considered a regular employee, and receive benefits and enjoy working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.
2. Work supplementation program payments may be made only pursuant to a contract signed by the employer, the work supplementation program participant, and the coordinator.
3. The length of the contract is limited to the training time required for the recipient to learn the necessary job skills and may not exceed six months.
4. ~~The initial work supplementation program contract may be up to six months in length. The contract may be extended, where necessary, provided that the total length of all work supplementation program contracts or extensions, entered into with respect to a particular recipient, may not exceed nine months.~~
5. If a work supplementation participant becomes ineligible for training, education, employment, and management benefits because of earned income:
 - a. ~~That~~, that person shall remain a participant for the duration of the work supplementation contract and may be eligible for those supportive services available to other similarly situated participants; and
 - b. ~~If that participant would have been eligible for transitional child care, under a program furnishing such care pursuant to 45 CFR part 256, at the time the ineligibility for training, education, employment, and management benefits occurred, the participant may:~~
 - (1) ~~Remain eligible for transitional child care, after the work supplementation ends, for the number of months that remain in the twelve month period following the month in which the participant became ineligible for training, education, employment, and management benefits; or~~

{2}--Receive--child--care--as--a--supportive--service--to--a--
participant--if--the--person--otherwise---meets---the
requirements--to--be--a--participant;

6.--Workers!---compensation--coverage--must--be--provided--for--work
supplementation-program-participants.

History: Effective December 9, 1996; amended effective July 1, 1997.
General Authority: NDCC 50-06-01.8
Law Implemented: NDCC 50-06-01.8

75-02-01.2-102. Job opportunities and basic skills program - Failure or refusal to participate. A failure or refusal to participate in the job opportunities and basic skills program occurs any time the participant:

1. Misses a scheduled appointment for any program activity;
2. Is absent from a workday worksite when scheduled to be there;
3. States an unwillingness to participate in any program activity or workday worksite activity;
4. Fails to contact the coordinator, within seven days of referral, to set up an appointment for program orientation;
5. Refuses, despite apparent ability, to maintain satisfactory progress in any program activity; or
6. Fails to conform to the requirements of the participant's employability plan.

History: Effective December 9, 1996; amended effective July 1, 1997.
General Authority: NDCC 50-06-01.8
Law Implemented: NDCC 50-06-01.8

75-02-01.2-103. Job opportunities and basic skills program - Work registration - Good cause for failure or refusal to participate.

1. All nonexempt training, education, employment, and management household members must participate in the job opportunities and basic skills program or work registration unless good cause is granted by the training, education, employment, and management program team manager. Good cause for failure or refusal to participate in the job opportunities and basic skills program and work registration exists when:
 - a. ~~The household member is over sixty years of age;~~
 - b. The household member is incapacitated with a medically determinable physical or mental impairment verified by

reliable medical evidence which, by itself or in conjunction with age, prevents the individual from working or participating in any job opportunities and basic skills program or work registration activity;--including-a--period of--recovery--after--childbirth--if--prescribed--by--the woman's-physician;

e. b. A person whose substantially continuous presence in the household is necessary to care for another member of the household, to whom the individual seeking exemption owes a legal duty to provide care, who has a condition, verified by reliable medical evidence, which does not permit self-care, care by another household member, or care provided as supportive services;

d.--A--woman--is--pregnant;--beginning--in--the--fourth--month--of--a pregnancy--verified--by;--and--with--a--delivery--date--estimated by;--a--licensed--physician;--physician's--assistant;--nurse practitioner;--or--nurse--midwife;

e.--Unless--there--is--a--generally--accepted--community--standard for--commuting--that--exceeds--two--hours;--a--round--trip--of--more than--two--hours--by--available--transportation;--exclusive--of the--time--necessary--to--transport--children--to--and--from--a child--care--facility--that--would--be--required--for--a--normal work--or--training--day;

f. c. A person has an illness or injury, verified by reliable medical evidence and reviewed every thirty days, which is serious enough to temporarily prevent entry into employment or participation in any job opportunities and basic skills program or work registration activity; and

g.--A--person--is--working--not--less--than--an--average--of--thirty hours--a--week--in--unsubsidized--employment;--or--is--on--a temporary--break--from--such--employment--not--exceeding--ten working--days--in--length;--and--the--employment--is--expected--to last--a--minimum--of--thirty--days--provided--gross--earned--income equals--or--exceeds--thirty--hours--times--the--current--federal minimum--wage--and--monthly--net--income--from--self--employment equals--or--exceeds--97.5--times--the--federal--hourly--minimum wage;

d. In the case of a parent of a child under age six, who does not reside with the other parent of any of the first parent's children, the first parent demonstrates an inability to obtain needed child care for one or more of the following reasons:

(1) Child care is unobtainable at a location such that the usual commuting time from the parent's home to the location at which child care is provided, and on to the parent's worksite, is one hour or less;

(2) Suitable child care is unobtainable either from a relative, from a child care provider licensed or registered under North Dakota Century Code chapter 50-11.1, or from a child care provider not required to be licensed or registered under North Dakota Century Code chapter 50-11.1; or

(3) Child care is unobtainable, from a child care provider licensed or registered under North Dakota Century Code chapter 50-11.1, at a rate equal to or less than 1.1 times the market survey average rate for child care provided to children of the age of the parent's child in the region in which the parent lives.

2. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.1-09 75-02-01.2-12.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-104. County administration and share of assistance cost.

1. Except as provided in subsection 2, the county agency of the county where the training, education, employment, and management household is physically present must be responsible for the administration of the program with respect to that unit.
2. Where a family unit receiving assistance moves from one county to another, the outgoing county continues to be responsible for the administration of the program with respect to that unit until the last day of the month after the month in which the unit assumes physical residence in an incoming county.
3. For purposes of apportioning each county's share of assistance costs in the aid to families with dependent children program, a fraction must be formed for each county. Each county's assistance expenses, in the year ending June 30, 1983, is the numerator, and the total of all county's assistance expenses, in that year, is the denominator. For periods beginning July 1, 1984, and ending December 31, 1997, each county's share of the amount expended, statewide, for aid to dependent children, must be determined by multiplying that county's fraction times the total of all county's assistance expenses.

4. ~~For purposes of this section, "county's assistance expense" means the total amount, in dollars, expended from each county's funds, for aid to dependent children, but excluding~~

child-support-collection-expenses-and-expenses--for--dependent
children--defined--in--subdivision-b--of-subsection-4-of-North
Dakota-Century-Code-section-50-09-01.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

MARCH 1998

CHAPTER 75-02-01.1

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-02-01.1, Aid to Families with Dependent Children, implementing the Temporary Assistance for Needy Families Program, as administered under Aid to Families With Dependent Children, effective July 17, 1997. The changes implement changes required by Pub. L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and 1997 House Bill No. 1226. The federal and state acts both require these changes to go into effect for eligibility determinations made on or after July 1, 1997.

75-02-01.1-01. Definitions. For the purposes of this chapter:

1. "Aid to families with dependent children" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Social Security Act [42 U.S.C. 601 et seq.].
2. "Applicant" means an individual who is seeking a benefit under this chapter.
3. "Asset" means any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.
4. "Assistance unit" means an individual or group of related individuals within a household whose needs are recognized in a grant of benefits through aid to families with dependent children, including the parents of any dependent child and all

brothers and sisters of any dependent child, whether by whole blood, half-blood, or adoption, but not including:

a. Any child, parent of an eligible dependent child, or other caretaker relative who:

{1}--Receives receives supplemental security income benefits;

{2}--Is--an--alien--who--does--not--meet--citizen--and--alienage requirements;

{3}--Is--an--alien--and--is--ineligible--for--aid--to--families with--dependent--children--benefits--because--of--the application--of--sponsor--to--alien--deeming;

{4}--Is--ineligible--for--aid--to--families--with--dependent children--benefits--as--the--result--of--the--imposition--of a--sanction;--or

{5}--Was--eligible--for--aid--to--families--with--dependent children--benefits;--but--who--became--ineligible--due--to the--receipt--of--jump--sum--income;--provided--that--at least--one--dependent--child;--not--ineligible--due--to--the receipt--of--jump--sum--income;--remains--in--the--household.

b. Roomers and boarders; or

c. Household members who are not legal dependents of a member of the assistance unit.

5. "Base month" means the month, immediately before the processing month, about which the income and circumstances of the assistance unit are evaluated to determine the amount of any aid to families with dependent children to be paid during the benefit month.

6. "Benefit month" means the calendar month immediately following the processing month.

7. "Bona fide funeral arrangement" means a written agreement between a member of the assistance unit and a funeral service practitioner, licensed funeral establishment, or cemetery association whereby the contractor promises to provide burial services or merchandise to a member of the assistance unit in exchange for funds paid by a member of the assistance unit, but does not mean any contract of insurance.

8. "Burial plot" means a conventional gravesite, mausoleum, or any other repository customarily and traditionally used for the bodily remains of a deceased individual.

9. "Caretaker relative" means the relative so designated by the assistance unit who:
 - a. Lives with an eligible dependent child;
 - b. Is a pregnant woman, caretaker relative to no dependent child, in the last trimester of her pregnancy; or
 - c. Lives with a dependent child, under age eighteen and receiving supplemental security income benefits, who is the last child in the home.
10. "Child support agency" means any entity created by a county agency or any combination of county agencies, in execution of the county agency's duties under subsection 5 of North Dakota Century Code section 50-09-03.
11. "County agency" means the county social service board.
12. "Department" means the North Dakota department of human services.
13. "Dependent child" means a needy child:
 - a. Who lives in the home of a relative by birth, marriage, or adoption;
 - b. Who has been deprived of parental support or care by reason of:
 - (1) The continued absence of a parent from the home, other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States;
 - (2) The death of a parent; or
 - (3) The physical or mental incapacity of a parent; and
 - c. Who is:
 - (1) Under the age of eighteen; or
 - (2) Under the age of nineteen and a full-time student in a secondary school or the equivalent (secondary school) level in a vocational school, or technical school, if, before the end of the calendar month in which the student attains age nineteen, the student may reasonably be expected to complete the program of such school.
14. "Earned income" means income currently received as wages, salaries, commissions, or profits from activities in which an

individual or family is engaged through either employment or self-employment. There must be an appreciable amount of personal involvement and effort, on the part of the individual or family, for income to be considered "earned".

15. "Eligible caretaker relative" means a caretaker relative who:
 - a. If, related to an eligible dependent child as a brother or sister, is not under sixteen years of age;
 - b. If deprivation of parental support or care is by reason of the incapacity of a parent, is the incapacitated parent or the eligible dependent child's other parent (but not stepparent);
 - c. If deprivation of parental support or care is by reason of the death or continued absence of a parent, is the eligible dependent child's other parent (but not stepparent);
 - d. Is not a recipient of supplemental security income benefits; and
 - e. Is in financial need; or
 - f. Is a pregnant woman, caretaker relative to no other dependent child, who or whose husband is incapacitated.
16. "Family" includes an individual or group of related individuals within a household whose needs are recognized in a grant of benefits through aid to families with dependent children, the parents of any dependent child and all brothers and sisters of any dependent child, whether by whole blood, half-blood, or adoption, any child, parent of an eligible dependent child, or other caretaker relative who receives supplemental security income benefits. Family includes an alien who does not meet citizen and alienage requirements, an alien who is ineligible for aid to families with dependent children benefits because of the application of sponsor-to-alien deeming, an individual who is ineligible for aid to families with dependent children benefits as the result of the imposition of a sanction, an individual who was eligible for aid to families with dependent children benefits, but who became ineligible due to the receipt of lump sum income, or an individual who is a household member who is a legal dependent of a member of the assistance unit, but does not include roomers and boarders.
17. "Full calendar month" means the period that begins at midnight on the last day of the previous month and ends at midnight on the last day of the month under consideration.
18. "Full-time student" means a student who:

- a. If in a secondary school, is enrolled in classes which, if completed, will earn the student four or more units of credit;
 - b. If in a vocational or technical school under state operation, a college, or a university, is enrolled in classes which, if completed, will earn the student twelve or more semester hours of credit during a regular term or six or more semester hours of credit during a summer term at an educational facility operating on a semester system, or twelve or more quarter hours of credit at an educational facility operating on a quarter system; or
 - c. If in a private vocational or technical school, is enrolled in classes which, according to a written statement from school officials, constitutes full-time enrollment.
19. "Ineligible caretaker relative" means a caretaker relative who is not an eligible caretaker relative.
20. "Living in the home of a relative" means a circumstance that arises when a relative assumes and continues responsibility for the day-to-day care and control of a child in a place of residence maintained by the relative (whether one or more) as the relative's own home. It includes situations in which the child or the relative requires medical treatment that requires a special living arrangement. It also includes situations, provided that the child is not absent from the home for a full calendar month, when the child:
- a. Physically resides in the home, but is under the jurisdiction of a court and is receiving probation services or protective supervision;
 - b. Receives education while in an educational boarding arrangement in another community, ~~including--the--Anne Garlsen-school-hospital~~; if needed specialized services or facilities are unavailable in the home community or if transportation problems make school attendance near home difficult or impossible;
 - c. Receives physical or speech therapy at Camp Grassick during the summer months;
 - d. Receives special education at the school for the deaf or school for the blind, whether as a day student or a boarding student, except that a boarding student's needs are limited to those maintenance items that are not provided by the school; or
 - e. Receives education at a federal boarding school in another community, provided that the child was not placed in that

setting following removal from the child's home by court order following a determination that the child was abused, neglected, or deprived, except that the child is entitled to a clothing and personal needs allowance only if that allowance is made available for the child's use on a regular basis.

21. "Make an assistance payment" means, in the context of two-month retrospective budgeting, an activity that occurs on the date the department deposits an assistance payment check in the United States mail.
22. "Monthly income" means income from any source, either earned or unearned, which is computed and reduced to monthly units for the purpose of determining eligibility and benefits. Income may be received weekly, monthly, intermittently, or annually, but is computed and considered monthly.
23. "Needy" means:
 - a. An assistance unit, otherwise eligible under this chapter, whose countable income, less any applicable disregards, is less than the income identified in the basic requirements table for a family of the size and composition of the assistance unit;
 - b. An unwed parent or pregnant woman in the third trimester of her pregnancy, resident of the Oppen Home, with an income of less than forty-five dollars per month; or
 - c. A child resident of a boarding school with an income of less than forty-five dollars per month.
24. "Nonlegally responsible relative" means a relative who is not the child's parent.
25. "Parent" means the child's mother or father, whether by birth or adoption, but does not mean:
 - a. An individual whose parental rights have been terminated with respect to that child; or
 - b. A stepparent.
26. "Part-time student" means an individual enrolled in a secondary school, vocational school, technical school, college, or university who is not a full-time student.
27. "Processing month" means the month, immediately after the base month, and immediately before the benefit month, in which the county agency determines eligibility for, and the amount of, any aid to families with dependent children to be paid during the benefit month.

28. "Prospective budgeting" means:
- a. The determination, made only with respect to the initial month of eligibility and the month immediately after the initial month of eligibility, based on the county agency's best estimate of the income and circumstances of the assistance unit in those months, of the amount of any grant of assistance in two months; and
 - b. The determination, made in all months, based on the county agency's best estimate of the income and circumstances of the assistance unit, of whether the income and circumstances anticipated for the benefit month, and the month immediately following the benefit month, will cause the assistance unit to be eligible in those two months.
29. "Recipient" means an individual who receives a benefit under this chapter.
30. "Regulation", as used in 45 CFR 205.10(a)(4)(i)(B) and (a)(15), includes any written statement of federal or state law or policy, including federal and state constitutions, statutes, regulations, rules, policy manuals or directives, policy letters or instructions, and relevant controlling decisions of federal or state courts.
31. "Relative by birth, marriage, or adoption" means an individual related to the dependent child by birth, whether by blood or half-blood, by marriage including a marriage that has been terminated by death or divorce, or by adoption, as father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, or first cousin.
32. "Retrospective budgeting" means a determination, made by the county agency during the processing month, based on income and circumstances of the assistance unit, during the base month, of the amount of any grant of assistance in the benefit month.
33. "Standard employment expense allowance" means the amount required by federal law to be first disregarded from the earned income of any child, relative applying for benefits under this chapter, or other individual whose needs are taken into account in determining eligibility under this chapter, but whose earned income is not required to be wholly disregarded as the income of a child who is a full-time student or a part-time student who is not a full-time employee.
34. "Stepparent" means a person, ceremonially married to a parent of a child, but who is not also a parent of that child by either birth or adoption.

35. "Supplemental security income" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
36. "The Act" means the Social Security Act [42 U.S.C. 301 et seq.].
37. "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].
38. "Title IV-A" means title IV-A of the Social Security Act [42 U.S.C. 610 et seq.].
39. "Title IV-D" means title IV-D of the Social Security Act [42 U.S.C. 651 et seq.].
40. "Unearned income" means income which is not earned income.

History: Effective March 1, 1995; amended effective July 1, 1997; July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-24. Eligibility for aliens who arrived before August 22, 1996.

1. Except as provided in subsection 3, an alien who arrived before August 22, 1996, and who is lawfully admitted for permanent residence under color of law is eligible for aid to families with dependent children if all other requirements for eligibility are met.
2. An alien may be lawfully admitted for a temporary or specific period of time. Such aliens are not eligible for aid to families with dependent children because they do not meet the requirement that residence be permanent. Examples include aliens with student visas, visitors, tourists, some workers, and diplomats.
3. a. A sponsored alien is ineligible for aid to families with dependent children for a three-year period, beginning with the alien's entry into the United States, unless the sponsor:
 - (1) No longer exists; or
 - (2) Is unable to meet the alien's financial needs.
- b. A sponsored alien who applies for aid to families with dependent children within three years following entry into the United States shall, as a condition of eligibility, provide the county agency with information and

verification sufficient to determine the portion of the sponsor's income and assets that may be deemed available to the alien.

- c. The sponsor and the sponsored alien are both liable for the amount of any overpayment of aid to families with dependent children benefits that results from the failure of either to provide information and verification sufficient to allow the county agency to correctly determine the portion of the sponsor's income and assets that may be deemed available to the alien.
- d. For purposes of this section:
 - (1) "Sponsor" means an individual, public organization, or private organization who executed an affidavit of support or similar agreement on behalf of an alien, who is not the child of the sponsor or the sponsor's spouse, as a condition of the alien's entry into the United States.
 - (2) "Sponsored alien" means an alien whose entry into the United States was conditioned on the execution of an affidavit of support or similar agreement by a sponsor who is not a parent or the spouse of a parent of the alien.

History: Effective March 1, 1995; amended effective July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-24.1. Eligibility for aliens who arrived on or after August 22, 1996.

1. This section applies only to immigrants who arrive in the United States on or after August 22, 1996.
2. Except as provided in subsection 3, no noncitizen immigrant is eligible for aid to families with dependent children benefits for the first five years of that immigrant's residence in the United States.
3. An otherwise eligible noncitizen immigrant may be provided aid to families with dependent children benefits:
 - a. After that immigrant has resided in the United States for five years, provided that the income and assets of the immigrant's sponsor must be deemed available to the immigrant;
 - b. After that immigrant has established forty quarters of work history for social security benefit purposes, without

deeming of the income or assets of the immigrant's sponsor;

c. If the immigrant is:

(1) A refugee, asylee, or has been granted withholding of deportation;

(2) A veteran of United States military service, a person on active military duty, or a spouse or dependent of such a veteran or person on active military duty; or

(3) A Cuban or Haitian entrant entitled to refugee and entrant assistance; or

d. If this state is required by federal law to provide that immigrant benefits under its temporary assistance for needy families state plan.

4. An otherwise eligible citizen immigrant may be provided aid to families with dependent children benefits.

History: Effective July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-27. Age of parent - Effect on eligibility.

1. For purposes of this section:

a. "Adult parent" means a parent who is not a minor parent.

b. "Minor parent" means an individual, under the age of eighteen years, who has never been married and who:

(1) Is the parent of a dependent child living in the same household; or

(2) Is eligible as a pregnant woman in the third trimester of her pregnancy who is a caretaker relative to no child.

2. A minor parent who lives with the minor parent's own parent (grandparent) or legal guardian is eligible only if eligibility may be established after consideration of the income, but not the assets, of the grandparents, with whom the minor parent lives, applying the following disregards:

a. The first ninety dollars of earned income of each employed grandparent, for work expenses.

- b. An amount equal to the standard of need, not including special allowances, applicable to a household consisting of the grandparent---or grandparents and any other individuals living in the household, who are or could be claimed as dependents of the grandparent-or grandparents for federal income tax purposes, but who are not members of the assistance unit;
 - c. Amounts paid by the grandparent--or grandparents, to support individuals who are not members of the household or the assistance unit, who are or could be claimed as dependents of the grandparent-or grandparents for federal income tax purposes;
 - d. Amounts paid by the grandparent-or grandparents, as child support or spousal support, to individuals who are not members of the household or the assistance unit.
3. An adult parent, who lives with the adult parent's own parent (grandparent) or legal guardian, if eligible, is eligible without consideration of the income or assets of the grandparents with whom the adult parent lives, except that regular contributions of money made by the grandparents to any member of the assistance unit must be considered.
4. For purposes of this section, a minor parent who becomes an adult parent while living with the minor parent's own parent or legal guardian is treated as an adult parent, effective the first day of the month in which the minor parent reaches age eighteen.
5. For purposes of this section, a minor parent who ends residency with the minor parent's own parents (grandparents) is treated as having ended residency on the first day of the month in which the minor parent left the grandparent's home.
6. For purposes of this section, a minor parent who resumes residency with the minor parent's own parents (grandparents) is treated as having resumed that residency on the first day of the month after the month in which the minor parent resumed residency with the grandparents.
7. A minor parent who does not live with the minor parent's own parents (grandparents), if eligible, is eligible without consideration of the income or assets of the grandparents except that regular contributions of money made by the grandparents to any member of the assistance unit must be considered. The grandparents remain legally responsible for the minor parent's support. The matter must be referred to the child support agency for the purpose of securing support from the grandparents for the minor parent as well as for the purpose of securing support for the minor parent's child from the child's absent parent.

8. No assistance unit may include the child of a minor parent, living with that minor parent, during any time when the minor parent is living in a foster home or child care institution and receiving a foster care maintenance benefit. Any amount reasonably necessary to the maintenance of such a child of the minor parent is included in the minor parent's foster care maintenance benefit.
9. Except as provided in subsection 10, a minor parent must live in the home of the minor parent's own parent (grandparent), legal guardian, or other adult relative, or in an a state-approved, adult-supervised supported living arrangement.
10. A minor parent may show there is good cause to live in a place other than required in subsection 9. Good cause exists if, based on evidence provided to the county agency:
 - a. The minor parent has no living parent or legal guardian;
 - b. No parent or legal guardian of the minor parent will allow the minor parent to live in the home of the parent or legal guardian;
 - c. The physical or emotional health or safety of the minor parent or the minor parent's child would be jeopardized if they lived with the minor parent's parent or legal guardian;
 - d. The minor parent lived apart from his or her parent or legal guardian for at least one year before the earlier of the birth of the dependent child or the minor parent's application for aid to families with dependent children;
 - e. The minor parent has earned a high school diploma or general equivalency diploma and is participating in postsecondary education under an approved job opportunities and basic skills program employability plan; or
 - f. ~~Some--other--reason--exists--which,--in-the-judgment-of-the county-agency,--makes-independent-living-more-conducive--to the--well-being-of-the-minor-parent-and-the-minor-parent's child--than--does--living--in--a--place---required---under subsection-9~~ After reasonable search, the whereabouts of the minor parent's parents or legal guardian are unknown.

History: Effective March 1, 1995; amended effective January 1, 1997; July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-64. Intentional program violation - Disqualification penalties.

1. For purposes of this section:
 - a. "Intentional program violation" means an individual's intentional action or failure to act which consists of:
 - (1) Making a false or misleading statement or misrepresenting, concealing, or withholding facts; and
 - (2) Violating provisions of North Dakota Century Code chapter 50-09, this chapter, or any state statute relating to the acquisition or use of benefits provided under North Dakota Century Code chapter 50-09 or this chapter; and
 - b. An individual intends all results reasonably foreseeable from the actions the individual takes or fails to take.
2. An individual who, on any basis, is found to have committed an intentional program violation by a state administrative disqualification proceeding or by a federal or state court must be subject to the penalties provided in this section.
- 2: 3. An individual who waives the individual's right to appear at an intentional program violation hearing must be subject to the penalties provided in this section.
- 3: 4. During any period of disqualification:
 - a. The individual's needs may not be taken into account when determining the assistance unit's need and amount of assistance; and
 - b. All assets and income of the disqualified individual, including gross earned income, must be considered available to the assistance unit.
- 4: 5. The duration of the penalty described in this must be:
 - a. Six-months One year for the first offense;
 - b. Twelve-months Two years for the second offense; and
 - c. Permanent for the third and any subsequent offense.
- 5: 6. Any period of disqualification must remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction, but in no

event may the duration of the period for which the penalty was imposed be subject to review.

- 6: 7. In cases where a disqualification penalty and other sanctions or penalties apply:
- a. The disqualification penalties in this section must be in addition to, and may not be substituted for, any other sanctions or penalties that may be imposed for the same offense; and
 - b. The disqualification penalties imposed under this section affect only the individual concerned and cannot substitute for other sanctions imposed under this chapter.
- 7: 8. A disqualification penalty imposed on an individual by another state may be continued in this state and may be used to determine the appropriate duration of a disqualification penalty imposed under this section.
- 8: 9. A disqualification penalty period must begin no later than the first day of the second month that follows the date of notice of imposition of the penalty.
- 9: 10. The department shall issue a written notice informing the individual of the period of disqualification and the amount of assistance the assistance unit may receive during the disqualification period.

History: Effective March 1, 1995; amended effective December 1, 1996; July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-65. Job opportunities and basic skills program - Definitions. For purposes of the job opportunities and basic skills program:

- 1. "Conciliation" means a meeting between a participant and agents of the department for the purpose of resolving disagreements over the employability plan and related services or when the participant's attendance at a program activity has been insufficient.
- 2. "Coordinator" means the job opportunities and basic skills program staff person responsible for directing and monitoring a participant's planning and activities that relate to the job opportunities and basic skills program. The coordinator functions as a case manager in the development and execution of an employability plan.

3. "Minimum required hours" means the number of hours per week during which a participant must be engaged in an allowed work activity which must be twenty hours per week for periods before October 1, 1998, twenty-five hours per week for periods beginning October 1, 1998, and ending September 30, 1999, and thirty hours per month for periods beginning after September 30, 1999.
4. "Participant" means a recipient of aid to families with dependent children who is not exempt from participating in the job opportunities and basic skills program or who, if exempt, has volunteered to participate in that program.
- 4- 5. "Satisfactory progress" in any postsecondary education or training program means the participant is maintaining the greater of a "C" 2.5 grade point average or progress minimally sufficient to allow continuation of the course of study or training under the standards of the education or training facility.

History: Effective March 1, 1995; amended effective July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-67.1. Job opportunities and basic skills program - Satisfactory participation.

1. Except as otherwise provided in this section, each eligible caretaker, each teen parent, and each child age sixteen and older who has not completed high school or received a general equivalency diploma and who is not currently attending school, shall comply with work requirements no fewer than the minimum required hours each week. Work activity may be required in addition to the minimum required hours in an allowable work activity.
2. A parent of a child under age six, who does not reside with the other parent of any of the first parent's children, is deemed to comply with subsection 1 if engaged in an allowable work activity an average of at least twenty hours per week during each month.
3. A custodial parent, under twenty years of age, who has not earned a high school diploma or its equivalent, but who attends and makes satisfactory progress in school, is deemed to comply with subsection 1.

History: Effective July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-68. Job opportunities and basic skills program -
Components Work requirements.

1. The components work activities of the job opportunities and basic skills program include:

1. ~~---Educational---activities---related-to-secondary-education,--basic and-remedial-education,--or-education-in-English-proficiency;~~
2. ~~---Job-skills-training;~~
3. ~~---Job-readiness-activities;~~
4. ~~---Job-search;~~
5. ~~---Job-development-and-job-placement-activity;~~
6. ~~---Postsecondary-education-activities;~~
7. ~~---Self-initiated-education-activities;~~
8. ~~---Community-work-experience;~~
9. ~~---Alternate-work-experience;~~
10. ~~---On-the-job-training;--and~~
11. ~~---Work-supplementation-program:~~

a. Unsubsidized employment;

b. Subsidized public or private sector employment;

c. On-the-job training;

d. Public or private work experience;

e. Job search and job readiness;

f. Community service;

g. Vocational training;

h. Education directly related to employment for a participant who has not completed high school or received a general equivalency diploma;

i. Secondary school or a course of study leading to a general equivalency diploma;

j. Provision of child care services to another participant engaged in a community service program;

- k. Job skills training directly related to employment; and
- l. Work readiness activities.
- 2. Work requirements include participation in work activities for periods of time necessary to allow a participant to complete tasks that will move the participant directly into employment, but no less than the minimum required hours.

History: Effective March 1, 1995; amended effective July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-69. Job opportunities and basic skills program - Tribal native employment works program. Tribal job--opportunities--and basic--skills native employment works programs are available to native Americans enrolled or enrollable members of tribes who live in that tribe's service area who are recipients of aid to families with dependent children and who reside in a county within which there is a tribal job--opportunities--and--basic--skills native employment works program. An individual who participates in a tribal native employment works program shall meet all work requirements described in this chapter. The county agency shall:

- 1. Refer nonexempt eligible individuals to the tribal native employment works program based on referral criteria established by agreement between the tribe and the department;
- 2. Provide child care payments to authorized tribal native employment works program participants, for activities which may be approved under the state child care and development fund plan submitted under the Child Care and Development Block Grant Act of 1996 [42 U.S.C. 9858], based on information furnished by the tribal program; and
- 3. Upon notification from the tribal program, consider sanctioning individuals for failure or refusal to participate in the program without good cause.

History: Effective March 1, 1995; amended effective July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-70. Job opportunities and basic skills program - Exemptions from participation. An individual is exempt from participation in the job opportunities and basic skills program if the individual is:

- 1. A native-American-who-resides-in-the-service-area-of-a-tribal job-opportunities-and--basic--skills--program--and--meets--the

requirements---of---that--program parent or other eligible caretaker relative age sixty or older;

2. Suffering--from--a--temporary--illness--or--injury,--verified--by--reliable--medical--evidence,--which--temporarily--prevents--entry--into--employment--or--training;
3. --Age--sixty--or--older;
4. --Incapacitated--with--a--physical--or--mental--impairment,--verified--by--reliable--medical--evidence,--which,--by--itself---or---in--conjunction--with--age,--prevents--entry--into--employment--or--training;
5. --An--individual--whose--substantially--continuous--presence--in--the--household--is--necessary--to--care--for--another--individual--in--the--household,--to--whom--the--individual--seeking--exemption--owes--a--legal--duty--to--provide--care,--who--has--a--condition,--verified--by--reliable--medical--evidence,--which--does--not--permit--self--care,--care--by--another--household--member,--or--care--provided---as--supportive--services;
6. --A--dependent--child,--age--fifteen--or--younger,--who--is--not--also--a--custodial--parent;
7. A dependent child; who is under age sixteen or a dependent child who is age sixteen or older,--who--is--not--also--a--custodial--parent; and who is enrolled or has been accepted for enrollment as a full-time student for the next or--current school term in an elementary school; or secondary school; or in a vocational school; or technical school that is equivalent to a secondary school, unless the dependent child is a custodial teen parent; or
8. --Employed--in--unsubsidized--employment--for--not--less--than--an--average--of--thirty--hours--per--week,--at--a--salary--or--wage--equaling--or--exceeding--the--federal--hourly--minimum--wage,--at--employment--expected--to--last--at--least--thirty--days,--and--who,--if--self--employed,--is--earning--a--weekly--gross--income--from--self--employment--equaling--or--exceeding--thirty--times--the--federal--hourly--minimum--wage--and--a--monthly--net--income--from--self--employment,--as--calculated--under--section--75-02-01:1-41,--equaling--or--exceeding--ninety--seven--and--one-half--times--the--federal--hourly--minimum--wage;
9. --Pregnant,--in--the--fourth--or--later--month--of--a--pregnancy,--verified--by--a--licensed--physician,--physician's--assistant,--nurse--practitioner,--or--midwife,--whose--verification--includes--the--estimated--delivery--date;
10. 3. A parent who,--if--age--nineteen--or--younger,--has--completed--a--high--school--education--or--its--equivalent; or other eligible caretaker relative of a child under-age-three,--or,--effective

January 1, 1996, under age two, who is personally caring for that child on a full-time basis; or, for a period ending at the end of the month during which the child reaches four months of age

~~11--A--full-time-volunteer-serving-in-the-volunteers-in-service-to America-program.~~

History: Effective March 1, 1995; amended effective July 1, 1997; July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-71. Job opportunities and basic skills program - Referral.

1. Any individual not exempt from the job opportunities and basic skills program and anyone who volunteers must be referred to the program. Referrals may be made only after:
 - a. After the individual is determined eligible for aid to families with dependent children;
 - b. During a trial participation period following a period of ineligibility imposed as a sanction on the individual; or
 - c. For an applicant member of an assistance unit while in applicant diversion.
2. The referred individual shall contact the coordinator within seven days of the referral date to set up an appointment for program orientation, assessment, and employability planning and shall make a good faith effort to complete program orientation, initial assessment, and employability planning within thirty days of the referral date.
3. Upon referral, the county agency may authorize supportive services; ~~limited-to-child-care-and-transportation--allowance;~~ solely for the first thirty days after the referral date and ~~solely-when-necessary-to-allow-the-individual-to-complete--the~~ planning process.

History: Effective March 1, 1995; amended effective July 1, 1997; July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-72. Job opportunities and basic skills program - Orientation, assessment, and employability planning. The coordinator shall complete a general program orientation. The coordinator shall, together in consultation with the participant, make an initial

assessment of employability work skills and work experience and, on the basis of that assessment, develop an employability a plan in connection with that, to the greatest extent possible, is designed to move the participant into whatever employment the participant is capable of handling as quickly as possible. The cooperation, assistance, and consultation of the participant is important to the accuracy of the assessment and the appropriateness of the plan, but is not required if the participant seeks to use participation as a means of blocking or delaying entry into the work force. No employability plan is effective unless approved by the department.

1. General program orientation includes a preliminary identification of the participant's needs and of the barriers to the participant's entry into the work force and an explanation of:

a. Program activities;

b. Available supportive services;

c. The relationship between the department, the county agency, and the coordinator's employer;

d. How other cooperating programs coordinate activities with participants;

e. The participant's rights and responsibilities; and

f. Procedures for handling disputes.

2. The initial assessment of employability is based on:

a. The participant's educational, training, child care, and other supportive service needs work skills;

b. The participant's proficiencies, skills deficiencies, and prior work experience;

c. A review of the family circumstances that may include the needs of any child of the participant;

d. The participant's interests, personal traits, and leisure time activities;

e. The participant's mental and physical limitations affecting employability; and

f. d. Other factors that may affect the participant's potential for employment.

3. 2. The employability plan must:

- a. Contain an employment goal for to move the participant immediately into employment;
- b. Describe the supportive services to be provided to enable the participant to obtain and maintain employment; and
- c. Describe the program-components-to-be-undertaken steps to be taken by the participant to achieve the employment goal;
- d. ~~Describe any other needs, identified in the review of family circumstances, that might be met through the program; and~~
- e. ~~Take into account:~~
 - ~~{1} Resources available to the participant;~~
 - ~~{2} The participant's supportive service needs;~~
 - ~~{3} The participant's skills levels and aptitudes;~~
 - ~~{4} Local employment opportunities; and~~
 - ~~{5} To the maximum extent reasonably possible, the preferences of the participant.~~

4. 3. The employability plan is not a contract and may not be so interpreted, considered, or applied.

History: Effective March 1, 1995; amended effective July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-73. Job opportunities and basic skills program - Supportive services.

- 1. Within the limits described in this section, supportive services may be made available to a participant who, but for supportive service, would be unable to enter into or remain in an approved--job--opportunities--and--basic--skills---program allowable work activity. No supportive service may be provided with respect to an activity that is not an approved program---activity or on behalf of anyone who is not participating satisfactorily in the program.
- 2. ~~No--supportive--services--may--be--provided--prior--to--the--start--of--an--approved--program--activity--except:~~
 - a. ~~For--up--to--two--weeks--on--behalf--of--a--participant--waiting--to--enter--an--approved--program--activity;--or~~

~~b. For up to one month if necessary to avoid the loss of the supportive service, and if the approved program activity begins within that period.~~

3. Supportive services, ~~excluding child care,~~ may be provided for up to three months after termination of aid to families with dependent children benefits ~~provided for in the employability plan~~ due to employment.

4. 3. Supportive services include only:

a. Relocation assistance provided to a participant with moving expenses in order to achieve permanent employment with earnings sufficient to preclude aid to families with dependent children eligibility, provided that:

~~{1} Payment is made to the vendor of the moving service provider or, if to the participant, is limited under subsection 5; and~~

~~{2} The the participant demonstrates that the most economical reasonably available means of relocation was used.~~

b. A monthly transportation allowance provided to participants ~~currently enrolled in an approved program~~ work activity, if necessary to for continued participation.

c. Child care expense reimbursement ~~of up to the limit established under subsection 5; provided that no child care expense reimbursement may be provided where:~~

~~{1} The participant's approved program activities fall within the child's school hours;~~

~~{2} There are individuals in the household whose needs are met on the basis of their responsibility for caring for a child in the home; or~~

~~{3} There is another legally responsible adult in the home who is not incapacitated and who is not suspected of child abuse or neglect in amounts consistent with the provisions of the state child care and development fund plan submitted under the Child Care and Development Block Grant Act of 1996 [42 U.S.C. 9858].~~

d. Assistance in the purchase of care for an incapacitated or disabled adult member of the participant's household, to whom the participant owes a legal duty to provide care, provided:

- (1) There is no other person in the household who can provide the care; and
 - (2) The incapacitated or disabled adult cannot provide self-care.
- e. Assistance in the purchase of employment-related clothing or personal needs determined by the coordinator to be reasonable and necessary for the participant to enter employment.
 - f. Assistance in the purchase of tools or equipment determined by the coordinator to be required for the participant to accept employment.
 - g. Assistance in the cost of repairs determined by the coordinator to be reasonable and necessary to return a participant's vehicle to operable condition, provided:
 - (1) ~~No-feasible-public-transportation-is-available;~~
 - {2} The vehicle is registered to a member of the assistance unit; and
 - {3} (2) The general condition and value of the vehicle justifies repairs.
 - h. Assistance for defraying the cost of books, tuition, and fees associated with training-the-participant an allowable work activity, provided:
 - (1) ~~Available-funds-are-further-limited-to-the-total-cost-of-books,-tuition,-and-fees,-reduced-by-the-total-amount-of-educational-grants-and-scholarships-available-to-the-participant~~ Other educational fund sources have been explored and are exhausted; and
 - (2) The participant is eligible for aid to families with dependent children at the time funds are paid or obligated; and
 - {3} ~~No-payment-may-be-made-for-tuition,-books,-or-fees-secured-for-self-initiated-education-or-training.~~
 - i. Assistance with payment for professional license fees and professional examination fees, where there is no other available source of funding, including fee waivers, and the professional license or examination is necessary to achieve an employment-related goal.
 - j. Assistance with expenses determined by the coordinator to be reasonable and necessary for employment interviews, including transportation, lodging, grooming, and clothing.

5. The maximum expenditures permitted for supportive services, or for any type of supportive services, under any employability plan, are limited to amounts identified in the approved state plan established under title IV-F of the Social Security Act [42 U.S.C. 681, et seq.] in effect on June 30, 1997, or such greater amounts as the department may by order determine.

History: Effective March 1, 1995; amended effective July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-74. Job opportunities and basic skills program - Educational activities related to secondary education, basic and remedial education, or education in English proficiency.

1. If a custodial parent, age twenty or older, has not earned a high school diploma or its equivalent, the employability plan ~~must~~ may include activities under this section ~~unless:~~
 - a. ~~The individual demonstrates a basic literacy level above the 8.9 grade level;~~
 - b. ~~The long-term employment goal of the individual does not require a high school diploma or its equivalent;~~
 - c. ~~After assessment by the educational institution, the individual is determined to not have the potential to secure a general equivalency diploma or high school diploma, or to make a significant improvement in reading skills, in a reasonable length of time; or~~
 - d. ~~The individual fails to make satisfactory progress.~~
2. If a custodial parent, under twenty years of age, has not earned a high school diploma or its equivalent, the employability plan ~~must~~ include high school attendance ~~unless:~~
 - a. ~~After, after~~ assessment by the educational institution, the individual is determined to not have the potential to secure a general equivalency diploma or high school diploma, or to make a significant improvement in reading skills, in a reasonable length of time; ~~or~~
 - b. ~~The individual fails to make satisfactory progress.~~
3. For purposes of this section:
 - a. A "reasonable length of time" means a time determined by the coordinator, based on recommendations of an individual's instructors, for completion of education activities while consistently participating in those activities on a regular basis as a full-time student in a

high school program or as a part-time student in a high school program if the coordinator determines that circumstances beyond the individual's control limits attendance to less than full time; and

b. "Activities under this section" include high school, alternative high school, adult learning center programs, general equivalency diploma programs, and basic or remedial education programs.

4. If the employability plan of a custodial parent, under age twenty who does not have a high school diploma or general equivalency diploma, does not include high school attendance, it must include alternative educational activities or training activities ~~no less than twelve hours per week.~~

History: Effective March 1, 1995; amended effective July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-75. Job opportunities and basic skills program - Job skills training directly related to employment. ~~Job skills training is formal training, provided by an organized school or training facility, designed and intended to lead to the participant's unsubsidized employment, in the shortest reasonable time.~~

~~1. The training program must be recognized by the state board of vocational education.~~

~~2. The participant shall be a full-time trainee pursuing the course of training at a rate intended to achieve the training goal by the end of the first school term that begins before, and ends after, a day twenty-four months after approval of the participant's initial employability plan.~~

~~3. The trainee shall verify that the trainee is making satisfactory progress, and taking classes or training required by the employability plan, through class schedules and grade reports for each school term or training period. Job skills training includes paid or unpaid activities that enhance skills for employment or training. Job skills training directly related to employment includes apprenticeships and the development of basic job skills through adult basic education in English proficiency, basic computer skills, communication and computational skills, or Phoenix vocational preparation. A custodial parent, age twenty or older, who participates in job skills training directly related to~~

employment shall, in addition, participate in allowable work activity for the minimum number of hours required under section 75-02-01.1-67.1.

History: Effective March 1, 1995; amended effective July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-76. Job opportunities and basic skills program - Job readiness-activities Unsubsidized employment. Job-readiness--activities help--prepare--participants--for--work-by-assuring-that-participants-are familiar-with-general-workplace-expectations-and--are--able--to--exhibit work--behavior--and--attitudes--necessary-to-compete-successfully-in-the labor-market.--Those-activities-include-self-assessment;--goal--setting; developing---a---personal--marketing--strategy;--developing--self-image; learning-interview-techniques-and-basie-sales-techniques;--and-developing appropriate---work---behavior---and---attitudes---necessary--to--compete successfully-in-the-labor-market. Unsubsidized employment means work in the private or public sector for which wages, or wages and tips, are paid that equal or exceed the federal hourly minimum wage. Unsubsidized employment includes self-employment. For purposes of determining the number of countable hours a participant is self-employed in unsubsidized employment, the participant's net monthly income is divided by the federal minimum wage. For purposes of this section, net monthly income is gross revenue less the costs of doing business.

History: Effective March 1, 1995; amended effective July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-77. Job opportunities and basic skills program - Job search and job readiness.

1. Participants may be required by the coordinator to make an individual work search for up to eight four consecutive weeks or six nonconsecutive weeks in each twelve months of continuous eligibility for aid to families with dependent children benefits by--any-family-member.--Upon-reapplication for-such-benefits-after-any-termination;--the--participant--may again--be-required-to-make-an-individual-work-search-for-up-to eight-weeks;--even-if-twelve-months-has-not-elapsed--since--the beginning-of-an-individual-work-search-previously-required.

2. In periods after a participant has engaged in job search and job readiness activities for the maximum time permitted under subsection 1, the coordinator may require the participant to engage in extended job search in addition to engaging in the minimum required hours in other allowable work activities.

History: Effective March 1, 1995; amended effective July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-79. Job opportunities and basic skills program - Postsecondary Vocational education. Vocational education may be approved as an allowable work activity. Vocational education offers an organized sequence of coursework directly related to preparation of the participation for employment in a current or emerging occupation.

1. Vocational education may be approved as an allowable work activity only if the participant demonstrates:
 - a. A lack of marketable job skills;
 - b. That the training will result in a marketable skill;
 - c. The functional capacity and ability to complete the vocational education and become employed in a job applying that vocational education; and
 - d. An understanding of the requirements of the job for which the vocational training is intended to prepare the participant and a willingness to meet those requirements, including, where applicable:
 - (1) Shift work;
 - (2) Relocation;
 - (3) Work-related travel;
 - (4) Licensure or certification; and
 - (5) Prevailing wage rates.
2. A participant in the job opportunities and basic skills program, who has made the demonstration required under subsection 1, may undertake postsecondary vocational education if:
 - a. The employability plan identifies a clearly identified goal of employment in a specific occupation;
 - b. The curriculum is recognized by the--board--of-higher education a statutorily sanctioned education authority as

leading to qualification for employment in the specific occupation identified in the employability plan;

- c. ~~The postsecondary education is not for the purpose of achieving any degree more advanced than a bachelor's degree;~~
- d. The participant does not already possess a bachelor's degree unless:
 - (1) The participant, by reason of incapacity or substantiated lack of employment, in North Dakota, in the field for which the participant was prepared, cannot be employed in North Dakota; and
 - (2) The department, exercising its reasonable discretion, approves the employability plan;
- e. d. The participant is a full-time student;
- f. e. The selection of a course of study is guided by demand in specific occupations or, upon approval by the coordinator, a course of study in another occupation for which the participant provides substantial justification of demand;
- g. f. The participant applies for a Pell grant and all other reasonably available sources of grants and scholarships, which become the first source of payment for books, tuition, and fees;
- h. g. The participant verifies that the participant is maintaining satisfactory progress, and taking classes required by the employability plan, through class schedules and grade reports that demonstrate the participant will conclude the curriculum before the end of the employability plan or within twenty-four months from the approval of the employability plan, whichever is sooner; and
- h. During any participant's lifetime, no employability plan beginning on or after July first, and no combination of such plans, may include more than twelve months, which need not be consecutive months, during which vocational education may be the participant's exclusive work activity, and no more than twelve additional months, which need not be consecutive, during which the participant engages in another work activity, in addition to vocational education, for at least the minimum participation hours unless:
 - (1) The participant, by reason of incapacity or substantiated lack of employment, in North Dakota, in

the field for which the participant was prepared, cannot be employed in North Dakota; and

(2) The department, exercising its reasonable discretion, approves the employability plan; and

- i. The employability plan is reviewed and, if necessary, revised at least annually except for child-care needs, which must be reviewed at the beginning of each school term.
- 2: 3. Except as provided in subsection 3, a participant enrolled in postsecondary approved for vocational education may receive any supportive service for which a need can be demonstrated.
- 3: 4. Recipients of aid to families with dependent children enrolled in any course of postsecondary vocational education study at the time they become participants may seek approval of an employability plan which continues that course of study. Approval may not be granted if the participant is presently qualified for available full-time employment. Any approved employability plan is subject to review. Other program Nonapproved educational activities in which the participant participates may not interfere with the self-initiated education or training approved work activity so long as the employability plan continues to be approved. Upon review, approval of the employability plan may be terminated, and the participant may be required to seek employment. A participant enrolled in an approved self-initiated course of postsecondary vocational education may receive any supportive service for which a need can be demonstrated, except payment for defraying the cost of books, tuition, or fees.
4. Postsecondary education may not be included in an approved employability plan unless, with satisfactory progress, the course of study will be completed by the end of the first school term that begins before, and ends after, a day twenty-four months after approval of the participant's initial employability plan.
5. A coordinator shall consider, in determining whether to approve a participant's proposed employability plan that meets all other requirements of this section:
 - a. The graduation and job placement rates of the education or training facility;
 - b. The cost of the education or training facility services, combined with the cost of necessary supportive services, as compared to other education or training facilities offering a similar course of study; and

c. The anticipated length of time to complete training as compared to other education or training facilities offering a similar course of study.

History: Effective March 1, 1995; amended effective July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-80. Job opportunities and basic skills program - Self-initiated-education-activities Provision of child care services to another participant engaged in a community service program. Self-initiated-education-activities-are-subject-to-all-requirements-of education--activities--otherwise-planned-for-under-the-job-opportunities and-basie-skills-program. A participant may provide child care services to another participant to allow that other participant to engage in a community service program if the participant providing child care:

1. Is adequately trained in providing child care;
2. Is determined competent to provide child care;
3. Is licensed or registered as an early childhood services provider, as required or permitted by North Dakota Century Code chapter 50-11.1, and rules adopted thereunder; and
4. Assures that child care will be provided in a safe environment.

History: Effective March 1, 1995; amended effective July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-81. Job opportunities and basic skills program - Community-work Work experience and community service program.

1. The---community---work Work experience program--offers--the performance-of-public-service-work--in--exchange--for--aid--to families--with-dependent-children and community service offers work, based on a forty-hour workweek, that includes work expectations found in unsubsidized employment. Work experience and community service is provided for the minimum required hours per week. Job search activities may be required in addition to work experience and community service. Its The goal of work experience and community service is to improve a participant's employability through supervised work in order to enable the participant to obtain permanent, unsubsidized employment. A participant does not receive a wage for participating in work experience and community service.

2. A participant's work obligation is the number of hours determined by subtracting any child support received in excess of fifty dollars from the aid to families with dependent children grant amount received by the participant's family and dividing the result by the current federal hourly minimum wage.
3. Community work Work experience and community service worksites must be limited to are usually those provided by public or private, nonprofit public service organizations, tribal governments, nursing homes, and hospitals, or at projects that serve a useful public purpose and provide appropriate working conditions.
4. 3. A worksite placement must be designed to provide a participant with a basic understanding of work and productive work habits, establish positive work references, provide training to work experience participants, and otherwise encourage the participant to become economically self-sufficient.
5. 4. Workers' compensation coverage must be provided for community work experience and community service program participants.

History: Effective March 1, 1995; amended effective July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

**75-02-01.1-82. Job opportunities and basic skills program -
Alternate-work-experience Work readiness activities.**

1. Alternate-work-experience offers work, based on a forty-hour workweek, that includes work expectations found in unsubsidized employment, provided at private nonprofit or public worksites. Alternate-work-experience is provided for up to thirty-two hours per week in conjunction with structured job-search activities the remaining eight hours per week.
2. A parent under age twenty-five who has neither completed high school nor earned a general equivalency diploma, and who is maintaining satisfactory progress in either of these educational activities, may substitute that educational activity for alternate experience.
3. Workers' compensation coverage must be provided to alternate work-experience participants. Work readiness activities include activities intended to prepare a participant for work that are determined necessary by the coordinator in conjunction with the participant. Work readiness activities include alcohol and drug evaluation and treatment, psychological assessment and counseling, vocational

rehabilitation assessment and counseling, and up to thirty days of work preparation workshop.

History: Effective March 1, 1995; amended effective July 1, 1997; July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-83. Job opportunities and basic skills program - On-the-job training. On-the-job training provides, through a negotiated agreement, payment to an employer for the costs of training and lower productivity normally associated with a new employee. The agreement is intended to place a participant in an occupational position that requires training. The training is intended to lead to permanent employment with that employer or one that is similar in its training requirements.

1. The agreement must be for a fixed price that does not exceed fifty percent of the average wage paid by the employer to the participant during the training period.
2. The starting wage of an on-the-job training participant must be at least equal to the federal minimum wage rate.
3. On-the-job training participants shall be compensated at the same rates, and receive the same benefits, as other individuals similarly employed by the employer.
4. Wages paid to an on-the-job training participant must be treated as earned income for purposes of this chapter.
5. If an on-the-job training participant becomes ineligible for aid to families with dependent children benefits because of earned income or:

a. ~~That,~~ that person shall remain a participant for the duration of the on-the-job training and may be eligible for those supportive services available to other similarly situated participants; ~~and~~

b. ~~If that participant would have been eligible for transitional child care, under a program furnishing such care pursuant to 45 CFR part 256, at the time the ineligibility for aid to families with dependent children benefits occurred, the participant may:~~

(1) ~~Remain eligible for transitional child care, after the on-the-job training ends, for the number of months that remain in the twelve-month period following the month in which the participant became ineligible for aid to families with dependent children benefit; or~~

(2) -- Receive child care as a supportive service to a participant if the person otherwise meets the requirements to be a participant.

History: Effective March 1, 1995; amended effective July 1, 1997; July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-84. Job opportunities and basic skills program - Work supplementation program Subsidized public or private sector employment. Subsidized public or private sector employment includes employment in which the employer is paid a cash subsidy for a portion of the wages paid to a participant for a specified period of time for the purpose of assisting the participant to obtain employment. Subsidized employment may include work supplementation.

1. Public and private employers may receive payment for extraordinary costs of training intended to assist a recipient to obtain unsubsidized employment. The payment is diverted from, the aid to families with dependent children grant and limited to, a negotiated amount that cannot exceed the recipient's lesser of three hundred dollars or fifty percent of the aid to families with dependent children grant. A work supplementation program participant must be considered a regular employee, and receive benefits and enjoy working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.
2. Work supplementation program payments may be made only pursuant to a contract signed by the employer, the work supplementation program participant, and the coordinator.
3. The length of the contract is limited to the training time required for the recipient to learn the necessary job skills and may not exceed six months.
4. The initial work supplementation program contract may be up to six months in length. The contract may be extended, where necessary, provided that the total length of all work supplementation program contracts or extensions, entered into with respect to a particular recipient, may not exceed nine months.
5. If a work supplementation participant becomes ineligible for aid to families with dependent children benefits because of earned income or:

a. That, that person shall remain a participant for the duration of the work supplementation contract and may be

eligible for those supportive services available to other similarly situated participants; and

b. -- If that participant would have been eligible for transitional child care, under a program furnishing such care pursuant to 45 CFR part 256, at the time the ineligibility for aid to families with dependent children benefits occurred, the participant may:

(1) -- Remain eligible for transitional child care, after the work supplementation ends, for the number of months that remain in the twelve-month period following the month in which the participant became ineligible for aid to families with dependent children benefits; or

(2) -- Receive child care as a supportive service to a participant if the person otherwise meets the requirements to be a participant.

6. -- Workers' compensation coverage must be provided for work supplementation program participants.

History: Effective March 1, 1995; amended effective July 1, 1997; July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-86. Job opportunities and basic skills program - Good cause for failure or refusal to participate.

1. Good cause for failure or refusal to participate in the job opportunities and basic skills program exists when:

a. -- The participant is too ill to participate or is incapacitated;

b. -- The participant is incarcerated or is required by court order or subpoena to be in a location that precludes participation;

c. -- A family crisis or change in circumstances precludes participation;

d. -- A breakdown in transportation with no readily accessible alternative means of transportation precludes participation;

e. -- Weather conditions preclude participation;

f. -- A breakdown in a child care arrangement with no readily available alternative child care precludes participation;

g.---Child--care--or--care--for--an--incapacitated--individual--living
in--the--same--home--as--a--dependent--child;--which--is--necessary
for--the--participant--to--participate--or--continue
participation--in--the--program--or--accept--employment;--is--not
available--and--the--department--fails--to--provide--that--care;

h.---The--planned--employment--would--result--in--the--family--of--the
participant--experiencing--a--net--loss--of--cash--income;

i.---Services---necessary---to---permit---participation---are
unavailable;

j.---The--assignment--does--not--meet--appropriate--work--and--training
criteria;

k.---The--individual--is--the--parent--or--other--relative--personally
providing--care--for--a--child--under--age--three--and--the
employment--would--require--that--individual--to--work--more--than
twenty--hours--per--week;--or

l.---The--individual--refuses--major--medical--care;--even--if--that
refusal--precludes--participation.

2.---A--net--loss--of--cash--income--results--if--the--family's--gross
income;--including--all--earned--and--unearned--income--and--cash
assistance;--less--necessary--work--related--expenses;--is--less--than
the--cash--assistance--the--individual--was--receiving--at--the--time
an--offer--of--employment--was--made;---Necessary--work--related
expenses--include--only--transportation;--day--care;--taxes;
license;--fees;--and--other--costs--when--it--can--be--established--that
the--costs--are--necessary--for--employment--and--the--same--costs
would--not--be--incurred--if--the--individual--were--not--employed All
nonexempt members of the assistance unit must participate in
the job opportunities and basic skills program unless good
cause is found by the county agency. Good cause for failure
or refusal to participate in the job opportunities and basic
skills program exists when:

a. The individual is incapacitated with a medically
determinable physical or mental impairment verified by
reliable medical evidence which, by itself or in
conjunction with age, prevents the individual from working
or participating in any job opportunities and basic skills
program or work activity;

b. An individual whose substantially continuous presence in
the household is necessary to care for another member of
the household, to whom the individual seeking exemption
owes a legal duty to provide care, who has a condition,
verified by reliable medical evidence, which does not
permit self-care, care by another household member, or
care provided as supportive services;

- c. An individual has an illness or injury, verified by reliable medical evidence and reviewed every thirty days, which is serious enough to temporarily prevent entry into employment or participation in any job opportunities and basic skills program or work registration activity; and
- d. In the case of a parent of a child under age six, who does not reside with the other parent of any of the first parent's children, the first parent demonstrates an inability to obtain needed child care for one or more of the following reasons:
- (1) Child care is unobtainable at a location such that the usual commuting time from the parent's home to the location at which child care is provided, and on to the parent's worksite, is one hour or less;
 - (2) Suitable child care is unobtainable either from a relative, from a child care provider licensed or registered under North Dakota Century Code chapter 50-11.1, or from a child care provider not required to be licensed or registered under North Dakota Century Code chapter 50-11.1; or
 - (3) Child care is unobtainable, from a child care provider licensed or registered under North Dakota Century Code chapter 50-11.1, at a rate equal to or less than 1.1 times the market survey average rate for child care provided to children of the age of the parent's child in the region in which the parent lives.

3- 2. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.1-09.

History: Effective March 1, 1995; amended effective July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-89. County administration and share of assistance cost.

1. Except as provided in subsection 2, the county agency of the county where the aid to families with dependent children unit is physically present must be responsible for the administration of the program with respect to that unit.
2. Where a family unit receiving assistance moves from one county to another, the outgoing county continues to be responsible for the administration of the program with respect to that unit until the last day of the month after the month in which the unit assumes physical residence in an incoming county.

3. For purposes of apportioning each county's share of assistance costs in the aid to families with dependent children program, a fraction must be formed for each county. Each county's assistance expenses, in the year ending June 30, 1983, is the numerator, and the total of all county's assistance expenses, in that year, is the denominator. For periods beginning July 1, 1984, and ending December 31, 1997, each county's share of the amount expended, statewide, for aid to dependent children, must be determined by multiplying that county's fraction times the total of all county's assistance expenses.

4. ~~For purposes of this section, "county's assistance expense" means the total amount, in dollars, expended from each county's funds, for aid to dependent children, but excluding child support collection expenses and expenses for dependent children defined in subdivision b of subsection 4 of North Dakota Century Code section 50-09-01.~~

History: Effective March 1, 1995; amended effective July 17, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

TITLE 75.5
Social Work Examiners, Board of

APRIL 1998

CHAPTER 75.5-01-01

75.5-01-01-01. Organization and functions of the board of social work examiners.

1. **History.** The 1983 legislative assembly passed comprehensive licensing legislation for the social work profession. This Act has been codified as North Dakota Century Code chapter 43-41. The governor appoints a six-member board, with the members serving staggered three-year terms.

Between 1983 and 1985, persons proving to be practicing social work or determined to be a past or future employee doing social work as affirmed by an employer were allowed a waiver of the baccalaureate degree or licensure requirements. Eligible persons were North Dakota residents practicing social work in North Dakota or another state, and non-North Dakota residents engaged in the practice of social work in another state but offered a social work position in North Dakota.

2. **Functions.** The board of social work examiners or its authorized representative is responsible for licensing qualified applicants ~~for--the~~ to practice of social work and ~~for-ensuring~~ to ensure that licensees comply with the laws and regulations governing that practice.
3. **Inquiries.** Information Request for information concerning the licensing of social workers may--be--obtained--from;---and submissions-and-requests may be made to:

North Dakota Board of Social Work Examiners
P.O. Box 6145 914
Bismarck, ND 58506-6145 58502-0914
Telephone: (701) 222-0255
Facsimile: (701) 224-9824

History: Effective January 1, 1987; amended effective January 1, 1992;
June 1, 1994; April 1, 1998.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

CHAPTER 75.5-02-01

75.5-02-01-01. Social work practice. License-applicants shall demonstrate that they meet the statutory definition of social work practice set forth in North Dakota Century Code section 43-41-01 in the context of actually providing specified social work services or the involvement of specified social work practice areas, along with demonstrated knowledge of human development and behavior, of social, economic, and cultural institutions, and of the interaction of all of these factors.

Because the law is subject to being interpreted very broadly so as to encompass almost all persons employed in a professional capacity by a social service organization (if not specifically exempted from the mandatory licensure requirement), and because the basic intent of the law is to protect clients from unscrupulous or incompetent service practitioners or providers, the following eligibility conditions will be applied:

1. Supervisors. License eligibility is limited to those supervisors who either provide a direct social work service to clients or client groups, or directly provide case supervision to social workers who then provide the direct client services. Social work supervisors who do not regularly provide direct services to clients or client groups and who do not regularly provide direct case supervision may not be considered to be engaged in the practice of social work.
2. Educators. License eligibility is limited to those educators who teach or supervise students in courses that are identified as social work courses and taught by faculty of a department or school of social work.
3. Researchers. License eligibility is limited to those persons who engage in research relating to social work practice or policy issues and engage in such research on a continuing and regular basis.
4. Generally, license eligibility is limited to those persons who not only provide tangible services, but also provide some or all of the intangible services identified in the law.
Repealed effective April 1, 1998.

History: Effective January 1, 1987.
General Authority: NDCC-43-41-09
Law Implemented: NDCC-43-41-01

75.5-02-01-02. Accredited college or university. With regard to the statutory requirement set forth in North Dakota Century Code section 43-41-04, that an applicant for a social work license have must earn a

degree from a college or university accredited by the council on social work education.

1. The following statutes shall be defined as meeting programs meet the accreditation requirement:

- a. 1. Programs currently accredited.
- b. 2. Programs in initial accreditation review status.
- c. 3. Programs in approved candidacy status.
- d. 4. Programs in conditional accreditation status.

2. The following statutes shall be defined as not meeting the accreditation requirements:

- a. Programs that have been rejected for candidacy status.
- b. Programs that have been denied candidacy status.
- c. Programs that have been denied initial accreditation.
- d. Programs that have been denied reaccreditation.

History: Effective January 1, 1987; amended effective June 1, 1991; April 1, 1998.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-04

CHAPTER 75.5-02-02

**WAIVER OF BACCALAUREATE DEGREE AND LICENSE
EXAMINATION REQUIREMENTS**

[Repealed effective April 1, 1998]

CHAPTER 75.5-02-03

75.5-02-03-01. Application. At least three written responses from references provided by the applicant must be received by the board, each of which shall provide evidence that the applicant meets the requirements for professional conduct and competence required under the licensing act. Two of these references must be from social workers at the applicant's level of licensure or above. The references must be familiar with the applicant's work. One of the references must be from a social work faculty member if the applicant is a recent graduate. For all others, one reference must be from the current social work supervisor.

Requests for application forms must be made with the executive secretary. The type of license requested must be specified. The application must be completed, signed, notarized, and submitted to the executive secretary, together with the following:

1. Academic social work transcripts or proof of receipt of at least a baccalaureate degree and completion of a social work program, where applicable.
2. Where applicable, a statement of recent work history (past three years), including: A minimum of three written references providing evidence of the applicant meeting the requirements for professional conduct and competence required under the licensing act. Graduates never having worked as a social worker must submit one reference from a social work faculty member, one reference from a field placement supervisor, and one reference from a licensed social worker. A social worker who has practiced social work in North Dakota or in another state must submit three references - two from social workers at the applicant's level of licensure or higher, and one from a work supervisor. All providers of references must be familiar with the applicant's work.

a. Names and addresses of employers.

b. Dates of employment.

c. Job description.

d. Approximate hours per week in social work activities.

3. A notarized statement from the applicant indicating that the applicant has not been found in violation of any of the causes for denial of a license.

4. A notarized statement from the applicant affirming the applicant's intent to adhere to the code of ethics.

5- 3. The full amount of the fee.

In addition to the completed, notarized application, references, and fees, all applicants for the licensed independent clinical social work level of licensure shall provide the board with a completed clinical practice supervision verification form. It is the applicant's responsibility to distribute the forms to the appropriate individuals.

The executive secretary shall may contact previous employers to verify actual social work practice where ~~licensing is sought under the waiver provisions~~, and shall may inquire into the existence of ethical or legal violations or other hinderances to practice.

History: Effective January 1, 1987; amended effective April 1, 1998.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-04

75.5-02-03-02. License examination.

1. The license examination must be ~~the examination~~ approved by the board; ~~The examination must be~~ and administered in North Dakota at least ~~two times a year~~ twice yearly. A passing examination score is valid only if the licensure application is postmarked within six months from the date of the examination. The board shall certify the eligibility of all applicants ~~to take the examination~~ and shall determine uniform passing and failing cutoff points. Students currently enrolled and in good standing in accredited social work programs may apply for and take the appropriate examination during the semester or quarter in which they will graduate; ~~however, a.~~ A license may not be granted until satisfactory proof of graduation is received by the board.
2. ~~Only those~~ With the exception of students in good standing in the last semester or quarter of an accredited social work program, only applicants who meet the educational requirements of a ~~bachelor's baccalaureate or master's graduate~~ degree in social work or social welfare from an accredited school ~~of social work or who satisfy the waiver conditions with respect to such requirement;~~ program may be permitted to take the qualifying examination.
3. ~~Applicants are entitled to written notification of the results of the examination. Written notification must be sent to the applicant within fourteen days of the date on which the board receives the examination results. If the examination results are delayed for longer than ninety days after the examination date, the applicant is entitled to written notification from the board regarding the reason for the delay.~~
4. ~~An applicant who is denied a license is entitled to notification that includes the specific reason the applicant~~

was denied; the right to request reconsideration of the application; and an explanation of appeal procedures. When the board determines an applicant is not eligible for licensure, the board shall provide notice of intent to deny the application. The notice must include the specific reasons for the intended denial and advise the applicant of the right to request reconsideration of the board's decision.

5. 4. An applicant may request, in writing to the executive secretary, reconsideration of the application if the board has determined that the applicant does not meet the board requirements for licensure or relicensure. The request for reconsideration must be received by the executive secretary within thirty days of the date on the denial notice. The applicant is entitled to notification in writing of the board's decision on reconsideration of the application. An applicant may submit a written request for reconsideration to the executive secretary or legal counsel within thirty days of the date of the notice of intent to deny application. A request for reconsideration must specifically state why the applicant believes the board's intent to deny the application is in error. The request may also include additional information or documents. A request for reconsideration is not a prerequisite for requesting an administrative hearing. The applicant shall be notified in writing of the board's decision.

5. An applicant may request an administrative hearing within thirty days of the date of the notice of intent to deny application or notice of the board's decision on reconsideration. The hearing must be held pursuant to North Dakota Century Code chapter 28-32.

6. An applicant who fails an examination may take retake the examination again at the next scheduled examination date upon tender of the examination fee after thirty days from the initial examination date. Failure to retake the examination within six months deactivates the applicant's file unless a written request for an extension is received by the executive secretary and approved by the board chair. An extension may not exceed one year from the initial examination date.

7. Licensees who received their license during the grandparenting period or who were registered for private practice and who did not take the licensing examination may take such examination as is appropriate to their level of practice. Licensing status will not be affected by the results of this examination but such results will be filed in the licensee's record.

History: Effective January 1, 1987; amended effective June 1, 1991; April 1, 1998.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-04, 43-41-09

75.5-02-03-03. License fees. All applicants for a license shall submit a one hundred dollar initial licensure fee. Applicants who are denied a license or withdraw their application for a license prior to issuance of the license will be refunded all but twenty-five dollars of that fee, which must be retained to cover the costs of processing. The board shall have the discretion of refunding the full amount in those instances where it is determined that no administrative costs were incurred.

All licensees applying for a renewal of the license shall submit a renewal fee of forty dollars.

Licensees requesting a change in name on a license or upgrading a license as a licensed social worker or licensed certified social worker shall pay a fee of twenty-five dollars.

All licensees applying for registration for private practice shall submit a fifty dollar application fee. Applicants who are denied registration for private practice or withdraw their application for registration prior to issuance of the registration must be refunded all but twenty-five dollars of that fee, which must be retained to cover the costs of processing. The board shall have the discretion of refunding the full amount in those instances where it is determined that no administrative costs were incurred.

All licensees submitting an application for program approval (board form 1) to record continuing education hours shall submit a processing fee of ten dollars.

Increases in fees will be subject to a public hearing prior to implementation. Notice of the hearing will be made through the board's publication at least thirty days prior to the hearing.

The board adopts the following fee schedule:

New applicants	\$ 25 deposit; \$75 balance at licensing
Renewals	\$ 40
Late renewal fee	\$ 60
<u>(includes renewal fee)</u>	

Penalty for nonrenewal (includes renewal fee)	\$120
Licensure upgrade fee	\$ 25

History: Effective January 1, 1987; amended effective June 1, 1991; April 1, 1998.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-03-04. Provisional licenses. ~~Provisional licenses are temporary licenses the board may issue in the following circumstances:~~

- ~~1. To applicants who are eligible for the waiver provisions of North Dakota Century Code section 43-41-06. The provisional license must be replaced by a regular license when the board is able to verify that the applicant has met the two years of social work practice requirement. The time period for which the provisional license is valid will be determined by the board at the time the provisional license is issued.~~
- ~~2. To individuals who can provide satisfactory documentation of an offer of employment in North Dakota but who must first pass the North Dakota licensure examination. A provisional license may be issued until the board receives the examination results from the next available test administration. Failure to take or pass the next available examination following submission of the application will result in the automatic expiration of the provisional license. If the next available examination following application is passed, the provisional license continues to be in effect until a regular license is issued or the application is denied.~~
- ~~3. To individuals presently residing in another state who provide satisfactory documentation of an offer of social work employment in North Dakota and who seek licensure through a reciprocity agreement with another state. A provisional license may be granted until such time as the board is able to determine whether the applicant qualifies for regular licensure through the reciprocity provision. Repealed effective April 1, 1998.~~

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-03-05. License renewal. Licenses All licenses expire biennially every odd-numbered year on the thirty-first day of December. The renewal deadline is November fifteenth of every odd-numbered year. Any applications not postmarked by the United States postal service on or before the renewal deadline date will be assessed a late or a penalty fee. At least thirty days before the expiration renewal deadline date

of the license, a licenseholder will be given sent written notification to the licensee's address on file of the date of expiration of the license renewal deadline date, the fee fees for renewal, and any continuing education requirements which must be met necessary for renewal, and any other information the board deems necessary. Before the date of expiration, the licenseholder shall apply for renewal of the license, pay all applicable fees, and provide documentation of approved continuing education requirements not already on file in the board office.

If a request for renewal is not received within six months of the expiration date, postmarked by the United States postal service on or before the expiration date, the applicant will be subject to a penalty fee and may not practice social work until the license is renewed. If a request for renewal is not postmarked by the United States postal service on or before June thirteenth of the even-numbered year any person seeking to be relicensed shall must reapply for licensing, and is required to pass the examination as a prerequisite to relicensing must satisfy all current licensure requirements.

The board may extend the renewal deadline for any applicant having proof of medical or other hardship rendering the applicant unable to meet the renewal deadline.

History: Effective January 1, 1987; amended effective April 1, 1998.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-12

75.5-02-03-06. Procedure for inactive licenses. A licensee who is no longer residing in the state of North Dakota and who is not involved, or can be reasonably expected to not be involved, in the practice of social work with residents of the state of North Dakota will be placed on inactive status. The following procedures will be followed:

1. Applicants for license renewal will indicate their place of professional practice and whether that practice involves clients residing in the state of North Dakota.
2. Applicants for license renewal who meet the criteria for license renewal and inactive status set out in this section will be granted a license renewal of an inactive status as noted by the seal that will be returned to them with their renewal notice.
3. During the licensing period for which an inactive status license has been issued, a return to active status will be granted upon proof that the licensee either resides in the state of North Dakota or is involved in the practice of social work with clients residing in the state of North Dakota.

Renewal of licenses for licensees under inactive status will occur under the same criteria as other licensees in good standing. Repealed effective April 1, 1998.

History: Effective June 1, 1991.
General Authority: NDCC-43-41-09
Law Implemented: NDCC-43-41-12

75.5-02-03-07. Continuing education requirements. A social worker licensed in North Dakota must complete twenty continuing education hours for each licensing period in order to maintain licensure in North Dakota. Documentation for continuing education hours must be received by the executive secretary and postmarked by the United States postal service on or before the licensure expiration date.

Failure to meet the continuing education requirements by the deadline will result in nonrenewal of the license. Any applicant who does not meet the continuing education requirement on or before the expiration date, will be subject to a penalty fee and may not practice social work until the hours are completed. If the continuing education requirement is not met within six months of the date of expiration, the person seeking to be relicensed shall reapply for licensure and satisfy current licensure requirements. Continuing education hours may only be applied to one licensing period.

The board may extend the continuing education deadline for applicants with proof of medical or other hardship rendering them unable to meet the deadline. Any social worker licensed between January first and June thirteenth of an odd-numbered year is required to complete ten continuing education hours for that licensing period with twenty continuing education hours for each subsequent licensing period.

Any social worker licensed on or after July first of an odd-numbered year has no continuing education requirement until the following licensing period when the licensee is required to complete twenty continuing education hours for that and each subsequent licensing period.

History: Effective April 1, 1998.
General Authority: NDCC 43-41-09.
Law Implemented: NDCC 43-41-09, 43-41-12

CHAPTER 75.5-02-04

75.5-02-04-01. Activities constituting the private practice of social work. ~~For the purpose of determining whether an applicant for registration to~~ Only those individuals licensed in North Dakota at the licensed independent clinical social work level may engage in the private practice of social work is qualified for registration pursuant. Pursuant to North Dakota Century Code section 43-41-05, the following criteria will be applied:

1. A private practitioner of social work ~~is one who,~~ on either a full- or part-time basis, is responsible for that person's own practice, exercises sole responsibility for the client, establishes conditions of exchange with clients, and identifies oneself as a social worker in offering services.
2. ~~A social worker is considered in private practice if such person provides social work services and exercises sole responsibility for the client, regardless of the organizational structure in which the services are provided.~~
3. Services that are provided by a social worker are not considered to constitute private practice unless those services are provided independent of any supervising or sponsoring organization, or are provided within a private agency framework ~~in which~~ where the social worker is a partner or shareholder, and a fee is collected from or on behalf of the client.
4. ~~3.~~ If the social worker provides a continuation of services following termination of services to the client by the ~~social worker's~~ employing agency, the social worker must be considered as engaging to be in the private practice of social work unless the ~~follow-on~~ followup service is expressly designated as part of the social worker's responsibilities and the sponsoring agency or organization retains responsibility for the ~~social work~~ services that are provided.

History: Effective January 1, 1987; amended effective April 1, 1998.
General Authority: NDCC 43-41-09
Law Implemented: NDCC 43-41-05

75.5-02-04-02. Application for registration. ~~A licensed certified social worker who wishes to be registered for private practice shall make a formal application to the board. This application must include:~~

1. ~~A description of the types of services that will be provided in the private practice; and~~

2. The names of licensed certified social workers or persons eligible for licensure as licensed certified social workers who provided supervision to the applicant for a minimum of three years after the applicant received the master's degree in social work.

The board shall verify that the applicant has met the three-year post-master's supervision requirement prior to registering such applicant to engage in the private practice of social work. Repealed effective April 1, 1998.

History: Effective January 1, 1987.

General Authority: NDCC-43-41-09

Law Implemented: NDCC-43-41-05

CHAPTER 75.5-02-05

75.5-02-05-01. Procedure for issuance of licenses by reciprocity. An applicant for a license under the reciprocity provisions of North Dakota Century Code section 43-41-07 shall submit the following items to the board:

1. A photostatic copy of the applicant's current license.
2. A copy of the licensure law of the other state or territory ~~along with any additional information requested by the board~~ indicating the basis for awarding a social work license in that state at the time the license was issued.
3. The names and addresses of previous social work employers.
4. The name and address of the licensing board in the other state or territory.
5. Any additional information requested by the board.

The executive secretary shall verify that the license is in good standing, that at the time the license was issued the licensing state imposes substantially the same requirements as North Dakota currently imposes, and that there is no other reason constituting good cause for refusing to issue such license.

History: Effective January 1, 1987; amended effective April 1, 1998.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

CHAPTER 75.5-02-06

CODE OF ETHICS

[Repealed effective April 1, 1998]

STAFF COMMENT: Chapter 75.5-02-06.1 contains all new material but is not underscored so as to improve readability.

**CHAPTER 75.5-02-06.1
CODE OF ETHICS**

Section	
75.5-02-06.1-01	Ethical Responsibilities to Clients
75.5-02-06.1-02	Ethical Responsibilities to Colleagues
75.5-02-06.1-03	Ethical Responsibilities in Practice Settings
75.5-02-06.1-04	Ethical Responsibilities as Professionals
75.5-02-06.1-05	Ethical Responsibilities to the Social Work Profession

75.5-02-06.1-01. Ethical responsibilities to clients.

1. **Commitment to clients.** Social workers' primary responsibility is to promote the well-being of clients. In general, clients' interests are primary. However, social workers' responsibility to the larger society or specific legal obligations may on limited occasions supersede the loyalty allowed clients, and clients shall be so advised.
2. **Self-determination.** Social workers respect and promote the right of clients to self-determination and assist clients in their efforts to identify and clarify their goals. Social workers may limit clients' rights to self-determination when, in the social workers' professional judgment, clients' actions or potential actions pose a serious, foreseeable, and imminent risk to themselves or others.
3. **Informed consent.**
 - a. Social workers shall provide services to clients only in the context of a professional relationship based, when appropriate, on valid informed consent.
 - b. In instances when clients are not literate or have difficulty understanding the primary language used in the practice setting, social workers shall take steps to ensure clients' comprehension.
 - c. In instances when clients lack the capacity to provide informed consent, social workers shall protect clients' interests by seeking permission from an appropriate third party, informing clients consistent with the clients' level of understanding.

- d. In instances when clients are receiving services involuntarily, social workers shall provide information about the nature and extent of services and about the extent of clients' right to refuse service.
 - e. Social workers who provide services via electronic media such as computer, telephone, radio, and television shall inform recipients of the limitations and risks associated with such services.
 - f. Social workers shall obtain clients' informed consent before audiotaping or videotaping clients or permitting observation of services to clients by a third party.
4. **Competence.** Social workers shall provide services and represent themselves as competent only within the boundaries of their education, training, license, certification, consultation received, supervised experience, or other relevant professional experience.
5. **Cultural competence and social diversity.** Social workers shall have a knowledge base of their clients' cultures and be able to demonstrate competence in the provision of services that are sensitive to clients' cultures and to differences among people and cultural groups.
6. **Conflicts of interest.**
- a. Social workers shall be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment. Social workers shall inform clients when a real or potential conflict of interest arises and take reasonable steps to resolve the issue in a manner that makes the clients' interests primary and protects clients' interests to the greatest extent possible.
 - b. Social workers shall not take unfair advantage of any professional relationship or exploit others to further their personal, religious, political, or business interests.
 - c. Social workers shall not engage in dual or multiple relationships with clients or former clients in which there is a risk of exploitation or potential harm to the client.
 - d. When social workers provide services to two or more people who have a relationship with each other (for example, couples, family members), social workers shall clarify with all parties which individuals will be considered clients and the nature of social workers' professional

obligations to the various individuals who are receiving services.

7. Privacy and confidentiality.

- a. Social workers shall respect clients' rights to privacy. Social workers shall not solicit private information from clients unless it is essential to providing services or conducting social work evaluation or research. Once private information is shared, standards of confidentiality apply.
- b. Social workers may disclose confidential information when appropriate with valid consent from a client or a person legally authorized to consent on behalf of a client.
- c. Social workers shall protect the confidentiality of all information obtained in the course of professional service, except for compelling professional reasons. The general expectation that social workers will keep information confidential does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or other identifiable person or when laws or regulations require disclosure without a client's consent. In all instances, social workers shall disclose the least amount of confidential information necessary to achieve the desired purpose; only information that is directly relevant to the purpose for which the disclosure is made shall be revealed.
- d. Social workers shall inform clients, to the extent possible, about the disclosure of confidential information and the potential consequences, when feasible before the disclosure is made.
- e. Social workers shall discuss with clients and other interested parties the nature of confidentiality and limitations of clients' right to confidentiality.
- f. When social workers provide counseling services to families, couples, or groups, social workers shall seek agreement among the parties involved concerning each individual's right to confidentiality and obligation to preserve the confidentiality of information shared by others.
- g. Social workers shall inform clients involved in family, couples, marital, or group counseling of the social worker's, employer's, and agency's policy concerning the social worker's disclosure of confidential information among the parties involved in the counseling.

- h. Social workers shall not disclose confidential information to third-party payers unless clients have authorized such disclosure.
- i. Social workers shall not discuss confidential information in any setting unless privacy can be ensured.
- j. Social workers shall protect the confidentiality of clients during legal proceedings to the extent permitted by law.
- k. Social workers shall protect the confidentiality of clients when responding to requests from members of the media.
- l. Social workers shall protect the confidentiality of clients' written and electronic records and other sensitive information.
- m. Social workers shall take precautions to ensure and maintain the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology.
- n. Social workers shall transfer or dispose of clients' records in a manner that protects clients' confidentiality.
- o. Social workers shall take reasonable precautions to protect client confidentiality in the event of the social worker's termination of practice, incapacitation, or death.
- p. Social workers shall not disclose identifying information when discussing clients for teaching or training purposes unless the client has consented to disclosure of confidential information.
- q. Social workers shall not disclose identifying information when discussing clients with consultants unless the client has consented to disclosure of confidential information or there is a compelling need for such disclosure.
- r. Social workers shall protect the confidentiality of deceased clients consistent with the preceding standards.

8. Access to records.

- a. Social workers shall provide clients with reasonable access to records concerning the clients.

- b. When providing clients with access to their records, social workers shall take steps to protect the confidentiality of other individuals identified or discussed in such records.

9. Sexual relationships.

- a. Social workers shall under no circumstances engage in sexual activities or sexual contact with current clients, whether such contact is consensual or forced.
- b. Social workers shall not engage in sexual activities or sexual contact with clients' relatives or other individuals with whom clients maintain a close personal relationship when there is a risk of exploitation or potential harm to the client.
- c. Social workers shall not engage in sexual intimacies with former clients within a minimum of two years after terminating the client-worker relationship. Social workers who engage in such a relationship after two years following termination have the responsibility to thoroughly examine and document that such relations did not have an exploitative nature, based on factors such as duration of client-worker relationship, amount of time since the client-worker relationship, termination circumstances, client's personal history and mental status, adverse impact on the client, and actions by the social worker suggesting a plan to initiate a sexual relationship with the client after termination.
- d. Social workers shall not provide clinical services to individuals with whom they have had a prior sexual relationship.

10. Physical contact. Social workers shall not engage in physical contact with clients when there is a possibility of psychological harm to the client as a result of the contact.

11. Sexual harrassment. Social workers shall not sexually harass clients. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

12. Derogatory language. Social workers shall not use derogatory language in their written or verbal communications to or about clients. Social workers shall use accurate and respectful language in all communications to and about clients.

13. Payment for services.

- a. When setting fees, social workers shall ensure that the fees are fair, reasonable, and commensurate with the services performed.
 - b. Social workers shall not solicit a private fee or other remuneration for providing services to clients who are entitled to such available services through the social workers' employer or agency.
14. **Clients who lack decisionmaking capacity.** When social workers act on behalf of clients who lack the capacity to make informed decisions, social workers shall take reasonable steps to safeguard the interests and rights of those clients.

History: Effective April 1, 1998.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-06.1-02. Ethical responsibilities to colleagues.

1. Respect.

- a. Social workers shall treat colleagues with respect and shall represent accurately and fairly the qualifications, views, and obligations of colleagues.
- b. Social workers shall cooperate with social work colleagues and with colleagues of other professions when such cooperation serves the well-being of clients.

2. Confidentiality. Social workers shall respect confidential information shared by colleagues in the course of their professional relationships and transactions.

3. Disputes involving colleagues.

- a. Social workers shall not take advantage of a dispute between a colleague and an employer to obtain a position or otherwise advance the social workers' own interests.
- b. Social workers shall not exploit clients in disputes with colleagues or engage clients in any inappropriate discussion of conflicts between social workers and their colleagues.

4. Consultation. Social workers shall seek the advice and counsel of colleagues whenever such consultation is in the best interests of clients.

5. Referral for services.

- a. Social workers shall refer clients to other professionals when the other professionals' specialized knowledge or expertise is needed to serve clients fully or when social workers believe they are not being effective or making reasonable progress with clients and additional service is required.
- b. Social workers are prohibited from giving or receiving payment for a referral when no professional service is provided by the referring social worker.

6. Sexual relationships.

- a. Social workers who function as supervisors or educators shall not engage in sexual activities or contact with supervisees, students, trainees, or other colleagues over whom they exercise professional authority.
- b. Social workers shall not engage in sexual relationships with colleagues when there is potential for a conflict of interest. Social workers who become involved in, or anticipate becoming involved in, a sexual relationship with a colleague have a duty to transfer professional responsibilities, when necessary, to avoid a conflict of interest.

7. Sexual harassment. Social workers shall not sexually harass supervisees, students, trainees, or colleagues. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

8. Impairment of colleagues. Social workers who have direct knowledge that a social work colleague's impairment interferes with practice effectiveness and that the colleague has not taken adequate steps to address the impairment shall make a report to the North Dakota board of social work examiners.

9. Incompetence of colleagues. Social workers who have direct knowledge that a social work colleague is incompetent and has not taken adequate steps to address the incompetence shall make a report to the North Dakota board of social work examiners.

10. Unethical conduct of colleagues.

- a. Social workers shall take adequate measures to discourage, prevent, expose, and correct the unethical conduct of colleagues.

- b. The social worker who has direct knowledge of a social work colleague's unethical behavior shall make a written report to the North Dakota board of social work examiners.

History: Effective April 1, 1998.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-06.1-03. Ethical responsibilities in practice settings.

1. Supervision and consultation.

- a. Social workers shall not engage in any dual or multiple relationships with supervisees in which there is a risk of exploitation of or potential harm to the supervisee.
- b. Social workers who provide supervision shall evaluate supervisees' performance in a manner that is fair and respectful.

2. Education and training.

- a. Social workers who function as educators or field instructors for students shall evaluate students' performance in a manner that is fair and respectful.
- b. Social workers who function as educators or field instructors for students shall take reasonable steps to ensure that clients are routinely informed when services are being provided by students.
- c. Social workers who function as educators or field instructors for students shall not engage in any dual or multiple relationships with students in which there is a risk of exploitation or potential harm to the student.

- 3. Performance evaluation.** Social workers who have responsibility for evaluating the performance of others shall fulfill such responsibility in a fair and considerate manner and on the basis of clearly stated criteria.

- 4. Client records.** Social workers shall take reasonable steps to ensure documentation in records is accurate, timely, and reflects the services provided.

5. **Billing.** Social workers shall establish and maintain billing practices that accurately reflect the nature and extent of services provided and that identify who provided the service in the practice setting.

History: Effective April 1, 1998.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-06.1-04. Ethical responsibilities as professionals.

1. **Discrimination.** Social workers shall not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, or mental or physical disability.
2. **Private conduct.** Social workers shall not permit their private conduct to interfere with their ability to fulfill their professional responsibilities.
3. **Dishonesty, fraud, and deception.** Social workers shall not participate in, condone, or be associated with dishonesty, fraud, or deception.
4. **Impairment.** Social workers whose personal problems, psychosocial distress, legal problems, substance abuse, or mental health difficulties interfere with their professional judgment and performance shall immediately seek consultation and take appropriate remedial action by seeking professional help, making adjustments in workload, terminating practice, or taking any other steps necessary to protect clients and others.
5. **Misrepresentation.**
 - a. Social workers shall make clear distinctions between statements made and actions engaged in as a private individual and as a representative of the social work profession, a professional social work organization, or the social worker's employing agency.
 - b. Social workers shall ensure that their representations to clients, agencies, and the public of professional qualifications, credentials, education, competence, affiliations, services provided, or results to be achieved are accurate.
6. **Solicitations.**
 - a. Social workers shall not engage in uninvited solicitation of potential clients who, because of their circumstances,

are vulnerable to undue influence, manipulation, or coercion.

- b. Social workers shall not engage in solicitation of testimonial endorsements, including solicitation of consent to use a client's prior statement as a testimonial endorsement, from current clients or from other people who, because of their particular circumstances, are vulnerable to undue influence.
7. **Acknowledging credit.** Social workers shall take responsibility and credit, including authorship credit, only for work they have actually performed and to which they have contributed.

History: Effective April 1, 1998.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-06.1-05. Ethical responsibilities to the social work profession.

1. **Integrity of the profession.** Social workers shall act to prevent the unauthorized and unqualified practice of social work.
2. **Evaluation and research.**
 - a. Social workers engaged in evaluation or research shall carefully consider possible consequences and shall follow guidelines developed for the protection of evaluation and research participants. Appropriate institutional review boards shall be consulted.
 - b. Social workers engaged in evaluation or research shall obtain voluntary and written informed consent from participants, when appropriate, without any implied or actual deprivation or penalty for refusal to participate; without undue inducement to participate; and with due regard for participants' well-being, privacy, and dignity. Informed consent shall include information about the nature, extent, and duration of the participation requested and disclosure of the risks and benefits of participation in the research.
 - c. When evaluation or research participants are incapable of giving informed consent, social workers shall provide an appropriate explanation to the participants, obtain the participants' assent to the extent they are able, and obtain written consent from an appropriate proxy.

- d. Social workers shall never design or conduct evaluation or research that does not use consent procedures, such as certain forms of naturalistic observation and archival research, unless rigorous and responsible review of the research has found it to be justified because of its prospective scientific, educational, or applied value and unless equally effective alternative procedures that do not involve waiver of consent are not feasible.
- e. Social workers shall inform participants of their right to withdraw from evaluation and research at any time without penalty.
- f. Social workers shall take appropriate steps to ensure that participants in evaluation and research have access to appropriate supportive services.
- g. Social workers engaged in evaluation or research shall protect participants from unwarranted physical or mental distress, harm, danger, or deprivation.
- h. Social workers engaged in the evaluation of services shall discuss collected information only for professional purposes and only with people professionally concerned with this information.
- i. Social workers engaged in evaluation or research shall ensure the anonymity or confidentiality of participants and of the data obtained from them. Social workers shall inform participants of any limits of confidentiality, the measures that will be taken to ensure confidentiality, and when any records containing research data will be destroyed.
- j. Social workers who report evaluation and research results shall protect participants' confidentiality by omitting identifying information unless proper consent has been obtained authorizing disclosure.
- k. Social workers shall report evaluation and research findings accurately. They shall not fabricate or falsify results and shall take steps to correct any errors later found in published data using standard publication methods.
- l. Social workers engaged in evaluation or research shall be alert to and avoid conflicts of interest and dual relationships with participants, shall inform participants when a real or potential conflict of interest arises, and shall take steps to resolve the issue in a manner that makes participants' interests primary.

- m. Social workers shall educate themselves, their students, and their colleagues about responsible research practices.

History: Effective April 1, 1998.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-041-09

STAFF COMMENT: Chapter 75.5-02-07 contains all new material but is not underscored so as to improve readability.

**CHAPTER 75.5-02-07
DISCIPLINARY ACTION**

Section
75.5-02-07-01 Release of Sanctions

75.5-02-07-01. Release of sanctions. When the board places on probation, suspends, or revokes a license, the board shall provide a public notice of such actions in order to further the cause of consumer protection. Such public notice must specify the name of the licensee, action taken and code violations. Public notice must include publication in the official newsletter of the board, notification of the known licensee's employers, notification of DARS, and a news release issued to the major regional newspaper where the licensee maintains an office.

History: Effective April 1, 1998.
General Authority: NDCC 43-41-09
Law Implemented: NDCC 43-41-09

TITLE 97
Board of Counselor Examiners

FEBRUARY 1998

CHAPTER 97-02-01

97-02-01-01. Requirements to become a licensed professional counselor. In order for an applicant to become a licensed professional counselor, an individual must make application to the board, supplying, at a minimum, the following information:

1. A copy of a master's degree transcript from an accredited school or college that meets the academic standards set forth in section 97-02-01-02.
2. Three recommendations as follows:
 - a. One from the counselor educator who provided direct supervision in the applicant's counseling practicum or internship;
 - b. One from an employer who provided general supervision of the applicant's work since receipt of the master's degree; and
 - c. One from the professional who provided direct supervision of the applicant's counseling experience.
3. Certification that the individual has a minimum of two years of supervised experience under a licensed professional counselor or its equivalent. Equivalency has been determined to be a duly credentialed human service professional or other individual approved by the board for supervision. The supervision must include individual, face-to-face meetings that occur at regular intervals over a two-year period. Supervision in a group setting may also be provided, such as

in the case of a conference among members of a professional staff or other arrangement. A total of one hundred hours over the two-year period of supervision through individual and group methods must be documented. At least ~~twenty-five~~ sixty hours must be individual face-to-face supervision.

4. Provides a statement of intent to practice, describing proposed use of the license, the intended client population, and the counseling procedures that the applicant intends to use in serving the client population.
5. Showing successful completion of the national counselor examination as distributed and administered under the auspices of the national board of certified counselors.

History: Effective June 1, 1991; amended effective February 1, 1995; February 1, 1998.

General Authority: NDCC 43-47-03

Law Implemented: NDCC 43-47-06

97-02-01-01.1. Fees. The following fees have been established by the board for the licensed professional counselor:

1. Application fee, one hundred fifty dollars.
2. Renewal fee, one hundred dollars.

History: Effective February 1, 1998.

General Authority: NDCC 28-32-02, 43-47-03

Law Implemented: NDCC 43-47-03, 43-47-06

97-02-01-02. Academic programs. Academic programs are programs identified specifically as counseling programs in the graduate bulletin of the accredited school or college. These programs include counseling, counselor education, counseling and guidance, and counseling and development. In addition to the master's degree in counseling, the applicant's graduate transcript must indicate coursework in the following areas: counseling methods, group counseling, counseling theories, counseling practicum, individual appraisal or testing, and statistics or research methods. Effective July 1, 1995, in addition to the master's degree, the applicant's graduate transcript must indicate a minimum of forty-eight semester credits (or seventy-two quarter hours), including coursework in the following areas: counseling theories, counseling methods, group counseling, individual appraisal or testing, statistics or research methods, human growth and development, social and cultural foundations, career and lifestyle development, professional orientation and ethics, and counseling practicum or internship.

Graduates from master's degree programs in other human services fields may also meet the academic and training standards for licensure. In addition to the master's degree, the applicant's transfer must

indicate coursework that is equivalent to the coursework in the following areas: counseling methods, group counseling, counseling theories, counseling practicum, individual appraisal or testing, and statistics or research methods. Effective July 1, 1995, in addition to the master's degree, the applicant's graduate transcripts must indicate a minimum of forty-eight semester credits (or seventy-two quarter credits hours), including coursework in the following areas: counseling theories, counseling methods, group counseling, individual appraisal or testing, statistics or research methods, human growth and development, social and cultural foundations, career and lifestyle developments, professional orientation and ethics, and counseling practicum or internship.

History: Effective June 1, 1991; amended effective February 1, 1995; February 1, 1998.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-47-06

97-02-01-03. Requirements to become a licensed associated associate professional counselor. In order for an applicant to become a licensed associated associate professional counselor, an individual must make application to the board, supplying, at a minimum, the following information:

1. A copy of a master's degree from an accredited school or college that meets the academic standards set forth in section 97-02-01-02.
2. Three recommendations as follows:
 - a. One from the practicum agency contact person;
 - b. One from the applicant's master's degree program advisor; and
 - c. One from an additional counselor educator.
3. A written plan which at a minimum must include an estimated number of client contact hours per week and must specify the supervision received. The supervision must include individual, face-to-face meetings that occur at regular intervals over the two-year period. Supervision in a group setting may also be provided such as in case conference among members of a professional staff or other arrangement. A total of one hundred hours over the two-year period of supervision through individual and group methods must be documented. At least twenty-five sixty hours must be individual face-to-face supervision.

4. Showing successful completion of the national counselor examination as distributed and administered under the auspices of the national board of certified counselors.

History: Effective June 1, 1991; amended effective February 1, 1995; February 1, 1998.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-47-06

97-02-01-03.1. Fees. The following fees have been established by the board for the licensed associate professional counselor:

1. Application fee, one hundred fifty dollars.

2. Renewal fee, one hundred dollars.

History: Effective February 1, 1998.

General Authority: NDCC 28-32-02, 43-47-03

Law Implemented: NDCC 43-47-03, 43-47-06

97-02-01-05. Renewal of license. A professional counselor may renew his license every two years by use of the prescribed form and documentation of thirty hours of continuing education requirements for a two-year period. One continuing education hour will be based upon a fifty-minute hour. Notification of renewals will be made in the month prior to the anniversary date of each license and each applicant will be given thirty days to respond.

~~In--the-case-of-a-lapse-of-license,-the-applicant-must-apply-for-a new-license-~~

History: Effective June 1, 1991; amended effective February 1, 1998.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-47-03, 43-47-06

97-02-01-05.1. Late renewal. A license that has not been renewed because of the failure to pay the annual license fee must be reinstated and the license renewed if within one year from the date of nonrenewal the licenseholder pays the amount of annual license fee in default and a late fee of one hundred dollars. If a license is not renewed within one year from the date of nonrenewal, the applicant must apply for a new license.

History: Effective February 1, 1998.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-47-06, 43-47-06.2

97-02-01-07. Grandfather provisions. The board shall issue, upon the application submitted prior to July 6, 1991, a license as a licensed professional counselor, if the applicant:

1. Supplies a copy of a master's degree from an accredited school or college and which meets all the other requirements as listed in section 97-02-01-02.
2. Documents work in the counseling field for pay, for two of the last five years. This documentation must show employment for a minimum of four thousand one hundred and sixty hours in the previous five years.
3. Supplies documentation of supervision or continued professional growth as listed in sections 97-02-01-01 and 97-02-01-06.
4. Successfully completes the examination as required in section 97-02-01-01. The examination approved by the board is the national counselor examination. This examination is waived for national certified counselors, national certified career counselors, certified clinical mental health counselors, and holder of the doctorate in counseling. These applicants must submit proof of their certificate of degree. Repealed effective February 1, 1998.

History: Effective June 1, 1991.
General Authority: NDCG-28-32-02
Law Implemented: NDCG-43-47-06

CHAPTER 97-02-03

97-02-03-01. Code of ethics. The board adopts the ethical standards of the American counseling association (as revised by the American association of counseling and development governing counsel, March-1988 April 1997) as its code of ethics for the practice of counseling. A copy of the ethical standards of the American counseling association may be obtained from the board.

History: Effective February 1, 1995; amended effective February 1, 1998.

General Authority: NDCC 28-32-02, 43-47-03

Law Implemented: NDCC 43-47-03

TITLE 98
Office of Administrative Hearings

APRIL 1998

CHAPTER 98-02-02

98-02-02-02. Proceedings other than a complaint and against a specific-named respondent -Notice---of---hearing. [Reserved] See subsection 3 of North Dakota Century Code section 28-32-05 for statutory requirements.

- 1.---This---section---does---not---apply---to---proceedings---pursuant---to---subsection-1-of-North-Dakota-Century-Code-section-28-32-05,---or---proceedings-complying-with-another-statute-or-rule-of-practice-or-procedure-adopted-pursuant-to-statute-by-an-administrative agency.
- 2.---No-hearing-may-be-held-unless-all-the-parties-have-been-served notice-of-the-hearing-at-least-twenty-days-before-the-hearing.
- 3.---In-an-emergency-a-hearing-officer,-in-the-hearing-officer's discretion,-may-give-notice-of-hearing-by-giving-less-than twenty-days'-notice.---Every-party-to-an-emergency-hearing-must be-given-a-reasonable-time-to-prepare-for-the-hearing,---which may-be-extended-by-the-hearing-officer-upon-good-cause-being shown.
- 4.---The-hearing-officer-shall-designate-the-time-and-place-for-the hearing.---Service-of-the-notice-must-be-by-certified-mail-or personally.---Service-may-be-waived-in-writing-by-a-party,-and the-parties-may-agree-on-a-definite-time-and-place-for-hearing with-the-consent-of-the-agency-having-jurisdiction.
- 5.---The-notice-for-hearing-must-state-the-time-and-place-for-the hearing,-the-name-and-address-of-the-hearing-officer,-and shall-generally-inform-the-parties-about-the-nature-of-the

hearing--in-lieu-of,-or-in-addition-to,-a-general-explanation about--the--nature-of-the-hearing-contained-in-the-notice,-the hearing-officer-may-attach-to-the-notice--other--pleadings--or documents-which-adequately-inform-the-parties-about-the-nature of-the-hearing.

History: Effective January 1, 1992; amended effective January 1, 1994; April 1, 1998.

General Authority: NDCC 54-57-05

Law Implemented: NDCC 28-32-05

98-02-02-03. Service and filing. All pleadings, notices, written motions, requests, petitions, and briefs, ~~memoranda, and~~ correspondence relating to a proceeding must be served on all parties and filed with the agency. When a proceeding has been assigned to a hearing officer outside the agency, the agency shall inform the parties of the designated hearing officer's name and address, and filing must be with the designated hearing officer at the address of the hearing officer. Unless otherwise provided by law, filing is complete upon actual receipt by the agency or the hearing officer, if one outside the agency has been designated, or upon mailing, unless the agency or hearing officer requires actual receipt by a time certain. The date of service is the day when the document is deposited in the United States mail or is delivered in person, the day of facsimile transmission, or the date of publication if service by publication is allowed or required, except that the date of service of a document ~~required--to-be~~ served by certified mail is the date of its delivery, or of its attempted delivery, if refused. When a party has appeared by an attorney or an authorized representative, service must be upon the attorney or the duly authorized representative, unless service upon the party is ordered by the hearing officer. The serving party must be prepared to furnish satisfactory proof of service.

History: Effective January 1, 1992; amended effective April 1, 1998.

General Authority: NDCC 54-57-05

Law Implemented: NDCC 28-32-05, 28-32-08.5, 54-57-04

98-02-02-04. Time. In computing any period of time under this title, the time begins with the day following the act or event, or default from which the designated period of time begins to run, and includes the last day of the period, unless the last day is a Saturday, Sunday, or ~~state--or-federal~~ legal holiday, in which event it includes the next following day which is not a Saturday, Sunday, or legal holiday. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period of time after service of a document upon the party and the document is served upon the party by mail, other than certified mail, three days must be added to the prescribed period of time. Service by facsimile transmission is not

service by mail for purposes of computing any period of time under this section.

History: Effective January 1, 1992; amended effective April 1, 1998.

General Authority: NDCC 54-57-05

Law Implemented: NDCC 28-32-05, 28-32-08.5, 54-57-04, 54-57-05

98-02-02-06. Discovery.

1. **General.** Parties may obtain discovery by oral deposition, written interrogatories, production of documents or things, inspection of property or premises, physical or mental examinations, or requests for admissions in accordance with the North Dakota Rules of Civil Procedure. ~~With the exception of requests for admissions, a~~ A party, ~~except an administrative agency,~~ seeking to undertake discovery from an administrative agency shall first submit a written petition for approval to conduct discovery to the hearing officer. The petition must identify the type of discovery sought, must name the person to be examined, or identify with particularity the documents or property to be inspected, as the case may be, and must explain how the information sought is relevant to the issues. If the hearing officer finds that the requesting party has demonstrated that the information sought is relevant to the the issues in dispute, is reasonable in scope, is needed for the proper presentation of the party's case, and is not for the purposes of delay, the request must be approved. The hearing officer shall recognize all privileged information or communications which are recognized by law.
2. ~~Depositions and interrogatories. Depositions and interrogatories must be taken in the manner provided by the North Dakota Rules of Civil Procedure.~~
3. ~~Discovery of documents which are public records. Requests for the production of documents which are public records will not be approved unless it is first shown that the requesting party has made diligent and good faith efforts to review such documents under the existing general law procedures for inspection of public records and access has been denied.~~
4. **Identification of witnesses.** The hearing officer may require a party to disclose the names and addresses of all witnesses that the party intends to call at the hearing. All witnesses unknown at the time of that disclosure must be disclosed as soon as they become known. Any party failing to make disclosure required by this section without good cause may, at the discretion of the hearing officer, be foreclosed from presenting evidence at the hearing through witnesses not disclosed.

5. Requests for admissions. A party may serve upon any other party a written request for the admission of the truth of relevant statements or opinions of fact, or of the application of law to fact, including the genuineness of any document. The request must be served at least fifteen days prior to the hearing and it must be answered in writing by the party to whom the request is directed within ten days of receipt of the request. The written answer must either admit or deny the truth of the matters contained in the request or must make a specific objection thereto. Failure to make a timely written answer results in the subject matter of the request being deemed admitted.

6. 3. Failure to comply with discovery order. The provisions of rule 37 of the North Dakota Rules of Civil Procedure regarding failure to make or cooperate in discovery, and sanctions do not apply in adjudicative proceedings except as provided in this section. Upon failure of a party to reasonably comply with an administrative agency's a discovery request or the hearing officer's order approving discovery order, the hearing officer may take one of the following actions:

- a. Make a further order concluding that the subject matter of the order approving discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order; or
- b. Make an order which recognizes the failure of the party to comply and refuse to allow that party to support or oppose designated claims or defenses, or prohibit the party from introducing designated matters into evidence;
- c. Make an order striking out pleadings, or parts thereof, or staying further proceedings until the order is obeyed;
- d. When the hearing officer is the final decisionmaker, make an order dismissing the action or proceeding, or any part thereof, or make a default order against the party; or
- e. When the hearing officer is not the final decisionmaker, make a recommended order dismissing the action or proceeding, or any part thereof, or make a recommended default order against the party.

7. 4. Protective orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the hearing officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden and expense. The order may provide that discovery be denied, be limited, be had only on specified conditions, or be disclosed only in a designated way. Protective orders may be obtained from the hearing

officer in accordance with the North Dakota Rules of Civil Procedure, but a hearing officer may not award expenses in regard to a motion for a protective order.

History: Effective January 1, 1992; amended effective April 1, 1998.

General Authority: NDCC 54-57-05

Law Implemented: NDCC 28-32-09

98-02-02-07. Subpoenas. The hearing officer shall issue a subpoena to require the attendance and testimony of a witness at proceedings or a subpoena for the production of documentary evidence only upon the written petition request or motion of a party requesting it. The request or motion for a subpoena to require the attendance and testimony of a witness at proceedings must specifically identify the witness and state the complete address at which the witness may be served. The petition request or motion for a subpoena for the production of documentary evidence must specifically sufficiently identify or describe the document or other object subpoenaed, must specifically identify the person who is to produce the documentary evidence, and must state the complete address at which that person may be served. The party requesting the subpoena is responsible for its timely service, as well as payment of all fees, in accordance with the North Dakota Rules of Civil Procedure. Any attorney representing a party to the proceedings may issue a subpoena to require the attendance and testimony of a witness at proceedings or a subpoena for the production of documentary evidence. Upon motion promptly made, the hearing officer may quash or modify a subpoena if it is found to be unreasonable or oppressive. The provisions of rule 45(c) and (d) of the North Dakota Rules of Civil Procedure regarding protection of persons subject to subpoenas and duties in responding to subpoenas apply in adjudicative proceedings except as provided in this section. A hearing officer may not impose a monetary or contempt sanction under this section.

History: Effective January 1, 1992; amended effective April 1, 1998.

General Authority: NDCC 54-57-05

Law Implemented: NDCC 28-32-09

98-02-02-18. Withdrawal of attorneys.

1. Before the issuance of a notice of hearing, an attorney may withdraw an appearance for a party by filing a notice of withdrawal with the agency and, if the proceeding has been assigned to a hearing officer outside the agency, with the hearing officer. The notice must also be served upon the party at the party's last reasonably ascertainable post-office address.
2. After the issuance of a notice of hearing, an attorney may withdraw an appearance for a party only upon leave of the presiding hearing officer. To withdraw an appearance under

this subsection, an attorney must give reasonable written notice of the time and place for presentation of a motion for leave to withdraw by personally serving on the party or by mailing to the party, using any form of mail requiring a signed receipt, addressed to the party at the party's last reasonably ascertainable post-office address, a copy of the notice and motion. The attorney must also file the notice and motion with the presiding hearing officer. All motions for leave to withdraw will be decided on briefs unless oral argument is specifically requested. The hearing officer may allow or require oral argument or testimony on the motion. All briefs must be filed with the hearing officer no later than the time noticed for presentation of the motion, unless, prior to that time, the hearing officer grants an extension of time for filing briefs. If oral argument or testimony is allowed or required, the hearing officer may hear it by telephone conference at the time noticed for presentation of the motion or at another time as may be scheduled by the hearing officer.

History: Effective April 1, 1998.

General Authority: NDCC 54-57-05

Law Implemented: NDCC 28-32-08.5, 28-32-11.1, 54-57-05

CHAPTER 98-02-03

98-02-03-06. Exhibits. Evidence other than witness testimony must be submitted in the form of exhibits. All documentary exhibits must be on paper of good quality, plainly legible, and durable, and may not exceed eight and one-half by eleven inches [21.59 by 28.21 centimeters]. If approval of the hearing officer is obtained, documentary exhibits need not be on paper, if they are plainly legible and durable, and may exceed the size limit. If a documentary exhibit exceeds the size limit, it is acceptable if it can be folded to conform to the size requirement. Whenever possible, copies of exhibits must be furnished to all parties. In any event, all parties must be afforded an opportunity to examine the exhibit. The hearing officer may require that the parties mark exhibits in advance of the hearing. When the evidence offered through the exhibit is embodied in a book, document, or other material of such volume as to needlessly encumber the record, an authenticated copy of the relevant excerpt may be entered, or the excerpt may be read into the record, in the discretion of the hearing officer.

History: Effective January 1, 1992; amended effective April 1, 1998.

General Authority: NDCC 54-57-05

Law Implemented: NDCC 28-32-06, 28-32-11.1

CHAPTER 98-02-04

98-02-04-01. Posthearing briefs and proposed findings. At the conclusion of the hearing, any party may request an opportunity to submit proposed findings of fact and conclusions of law, and briefs, or memoranda. The hearing officer may direct the parties to submit proposed findings of fact and conclusions of law, and briefs, or memoranda. The hearing officer shall fix the time for filing and service and the order of filing, and may direct that ~~memoranda or~~ briefs be filed simultaneously or sequentially. When it is ordered that proposed findings of fact and conclusions of law, and briefs, or memoranda be filed and served by the party initiating the proceeding, and that party fails to comply, the hearing officer may recommend to the agency head that the proceeding be dismissed. ~~Neither--memoranda--nor briefs~~ Briefs may not incorporate evidentiary materials through appendices or other attachments unless those items were received in evidence during the course of the hearing.

History: Effective January 1, 1992; amended effective April 1, 1998.

General Authority: NDCC 54-57-05

Law Implemented: NDCC 28-32-11.1, 54-57-04

98-02-04-06. Final orders, decisions on appeal. If a recommended order is issued by a hearing officer outside the agency, the agency shall provide to that hearing officer a signed copy of the final order, as soon after its issuance as possible, as well as a copy of the findings of fact and conclusions of law on which the final order is based, if different than the recommended findings of fact and conclusions of law of the hearing officer. If a recommended order is issued by a hearing officer outside the agency and the agency's final order is appealed, the agency shall provide to that hearing officer a copy of any decision issued by the court on appeal, as soon after its issuance as possible.

History: Effective April 1, 1998.

General Authority: NDCC 54-57-05

Law Implemented: NDCC 28-32-13, 28-32-15, 28-32-17, 28-32-19, 28-32-21, 54-57-05