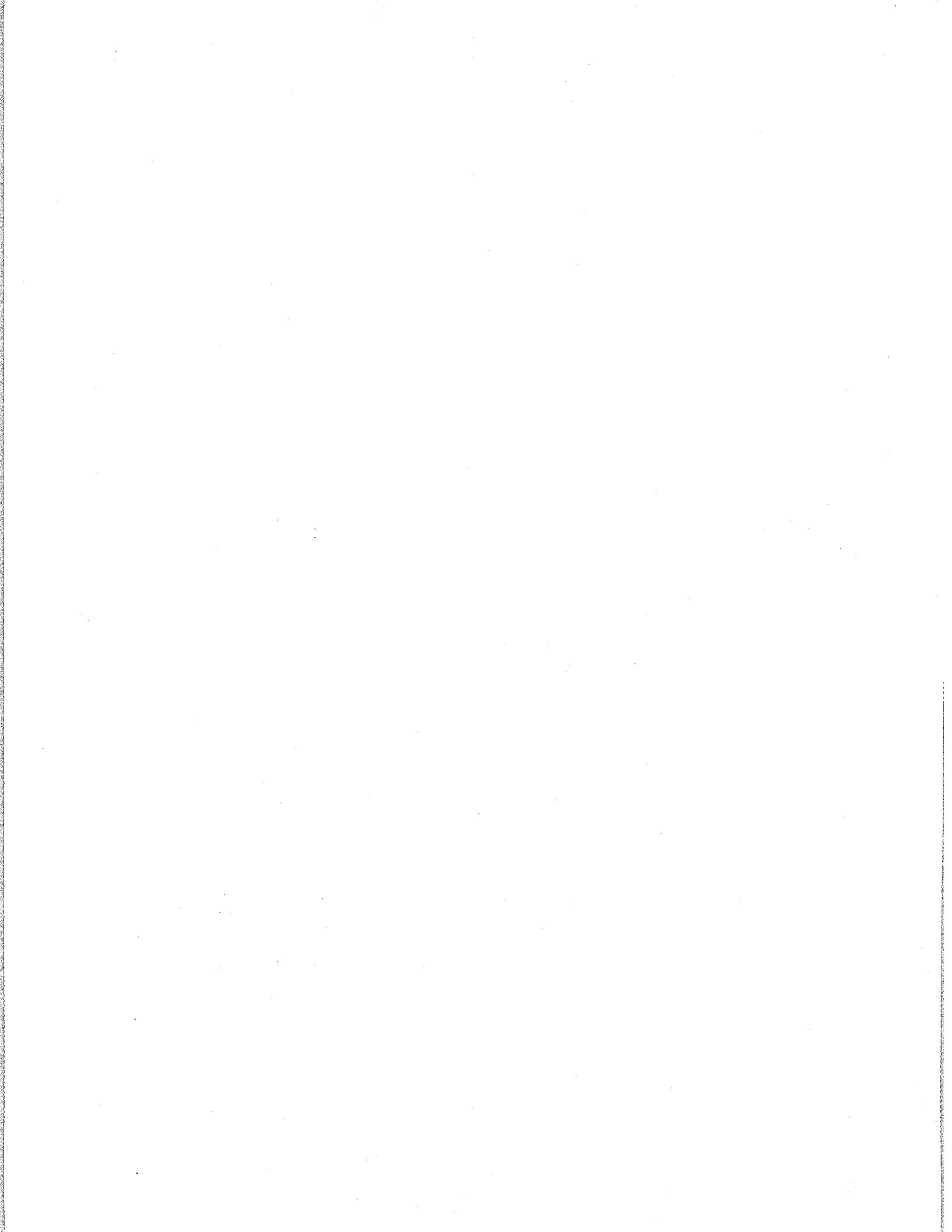


**NORTH DAKOTA ADMINISTRATIVE CODE**

**Supplements 242 through 245**

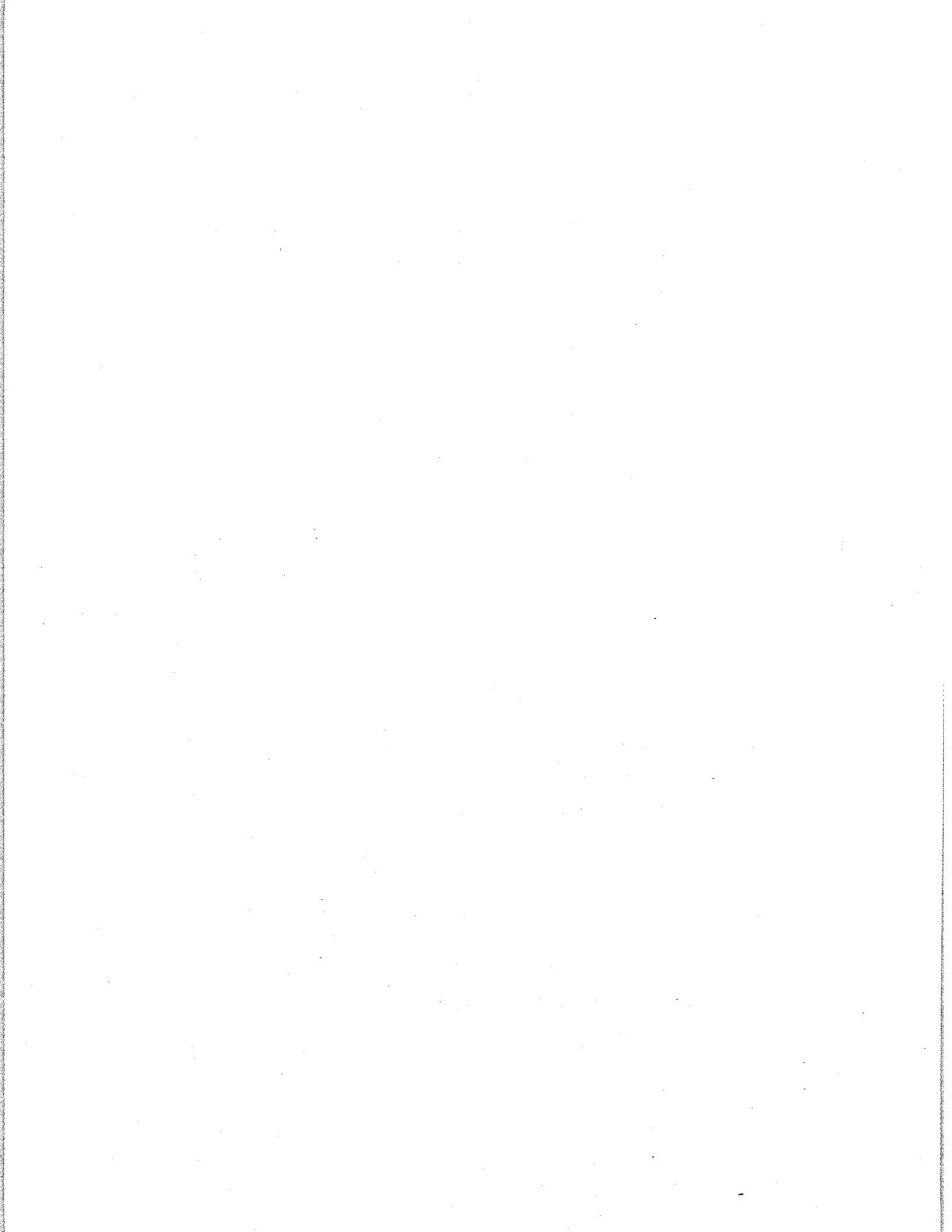
**August 1999  
September 1999  
October 1999  
November 1999**

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

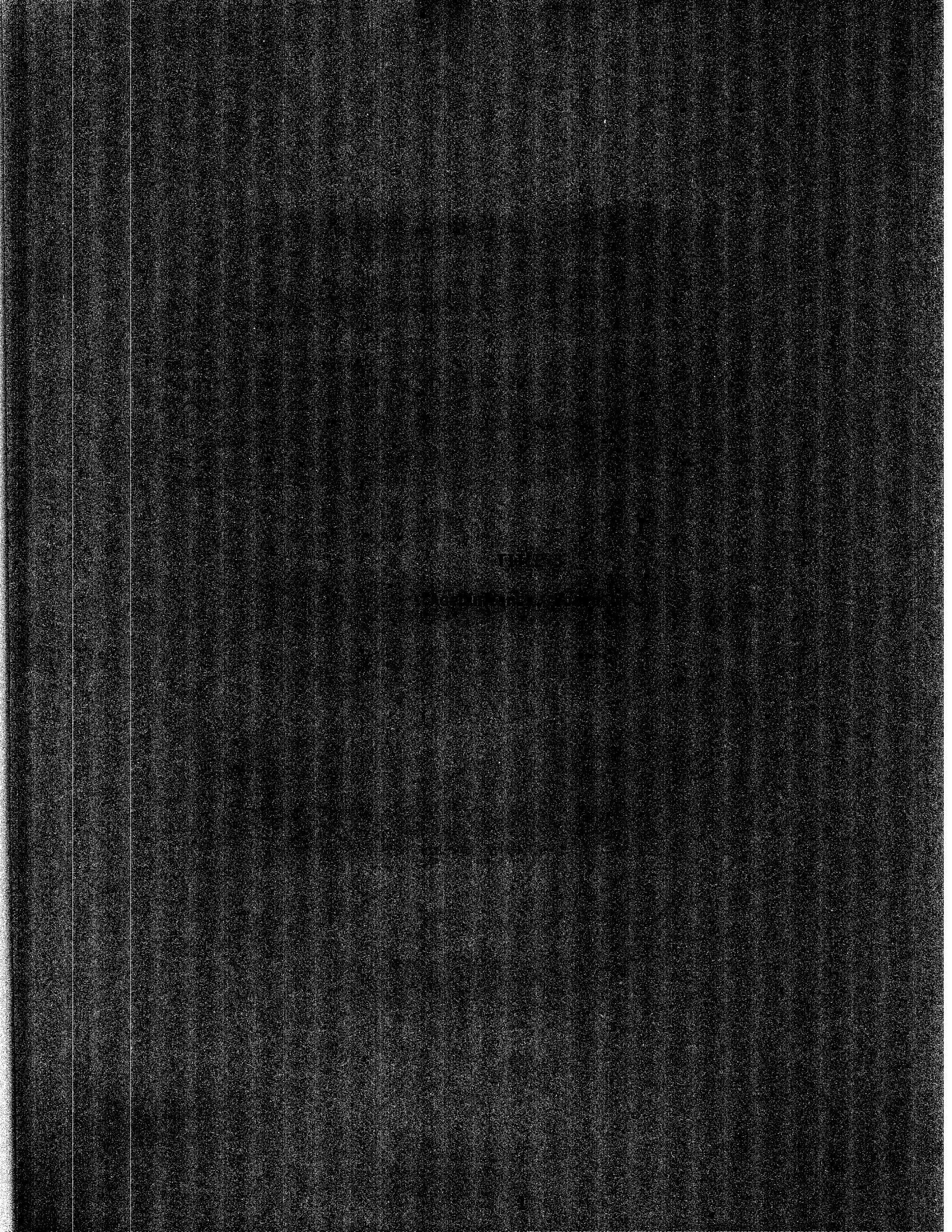


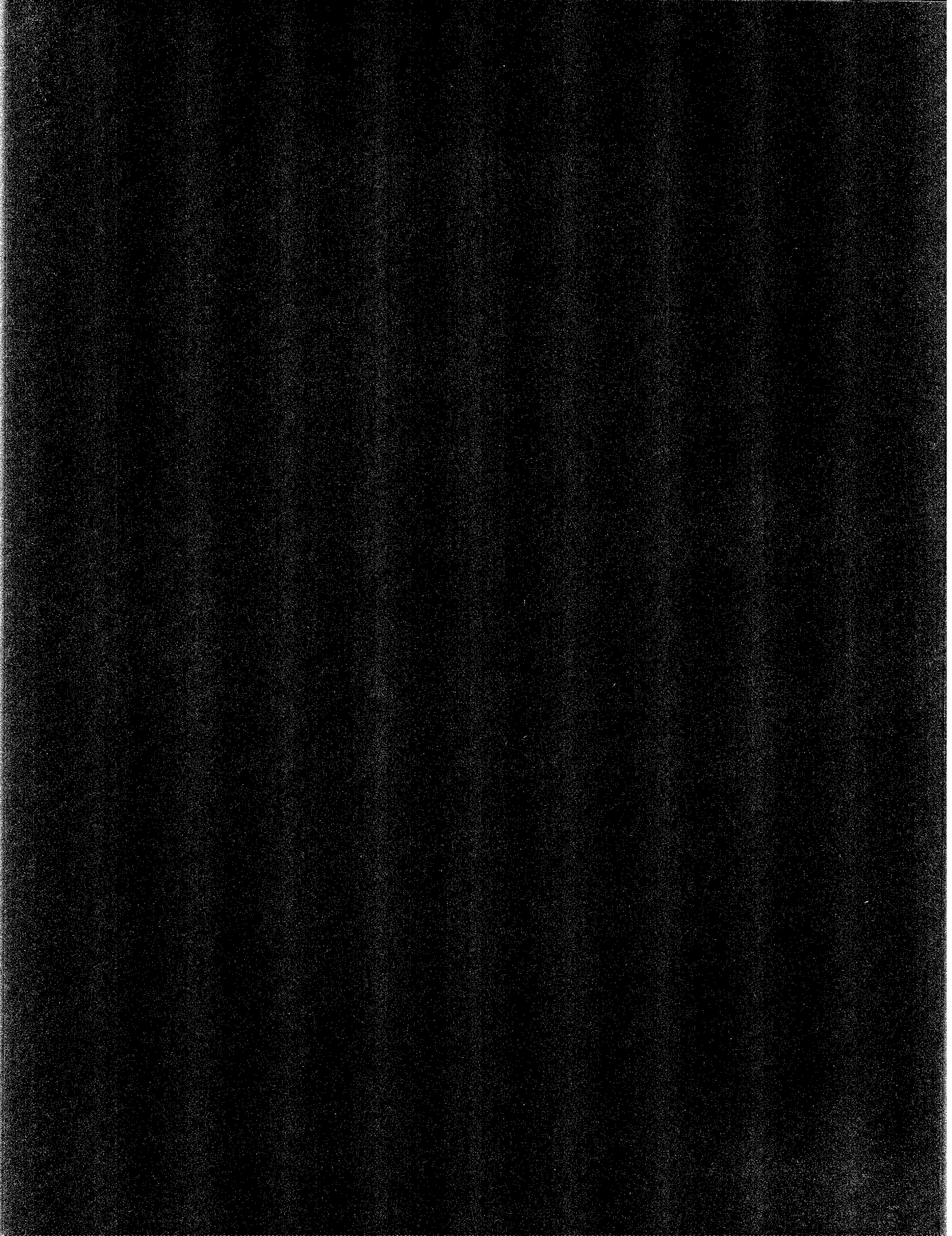
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OCTOBER 1999

CHAPTER 3-01-02

**3-01-02-01. Definitions.** Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "Accountant" means either a certified public accountant (CPA) or a licensed public accountant (LPA).
2. "Accounting concentration" means:
  - a. Through December 31, 1999, thirty semester credits or equivalent of accounting and business law education; and
  - b. After December 31, 1999, twenty-four semester credits or equivalent of accounting education, plus twenty-four credits of other business courses.
3. "AICPA" means the American institute of certified public accountants.
4. "Bookkeeping" means the maintaining of financial records and preparation of tax returns. Bookkeeping does not include the preparation of any financial statement or similar such documents on which language similar to that utilized by certified public accountants or licensed public accountants is placed including compilation and review language.
5. "Client" means the person, persons, or entity that retains an accountant or an accountant's firm, engaged in public accounting, for the performance of professional services.

6. "Enterprise" means any person, persons, or entity, whether or not organized for profit, for which an accountant provides services.
- 7- 6. "Financial statements" means ~~statements, and footnotes related thereto, that purport~~ a presentation of financial data, including any accompanying notes, intended to show financial position that relates to at a point in time or changes in financial position that relate to for a period of time, and statements that use a cash or other basis of accounting in accordance with generally accepted accounting principles or another comprehensive basis of accounting. ~~Balance sheets, statements of income, statements of retained earnings, statements of changes in financial position, and statements of changes in owners' equity are examples of financial statements.~~ Incidental financial data included in management advisory services, reports to support recommendations to a client, and tax returns and supporting schedules ~~do not, for these purposes, constitute~~ are not financial statements. ~~The statement, affidavit, or signature of preparers required on tax returns neither constitutes an opinion on financial statements nor requires a disclaimer of such opinion.~~

7. "NSA" means the national society of accountants.

8. "NASBA" means the national association of state boards of accountancy.

- 8- 9. "Practice of public accounting" does not include reviews conducted under the AICPA or ~~national society of public accountants~~ NSA peer review programs or the AICPA's quality review program or the board's positive review program, or any other similar program approved by this board.

The terms "public practice", "practice", "practice of public accountancy", and "practice public accounting" shall be synonymous with the term "practice of public accounting".

9- ~~"Professional services" means one or more types of services performed in the practice of public accounting.~~

History: Amended effective January 1, 1987; July 1, 1991; March 1, 1995; October 1, 1999.

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-03

## CHAPTER 3-02-01

**3-02-01-01. Examinations - Location.** The Board shall administer all examinations required for licensure in accounting in North Dakota. The written examination administered to applicants for certification as certified public accountants shall be the uniform certified public accountant examination. All successful examination candidates will be required to complete an approved self-study ethics course before they will be issued a certificate. The written examination shall be given twice-a-year at a site or sites selected by the board, on dates specified by the board.

**History:** Amended effective July 1, 1985; March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-04

**3-02-01-02. Examinations - Passing conditions.** If at a given sitting of the examination an applicant passes two or more but not all sections, then the applicant must be given credit for those sections passed and need not sit for reexamination in those sections, provided that:

1. The applicant wrote all sections of the examination at that sitting;
2. The applicant attained a minimum grade of fifty percent on each section not passed at that sitting, but this requirement does not apply to an applicant who has passed three sections at a given sitting;
3. The applicant passes the remaining sections of the examination within the six consecutive examinations given after the one at which the first sections were passed;
4. At each subsequent sitting at which the applicant seeks to pass any additional sections, the applicant writes all sections not yet passed; and
5. In order to receive credit for passing additional sections in any such subsequent sitting, the applicant attains a minimum grade of fifty percent on sections written but not passed on such sitting.

A minimum grade of forty percent is applicable to sections of the examination written prior to July 1, 1999.

**History:** Effective July 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-04

3-02-01-03. Cheating. Cheating by an applicant in applying for or taking the examination may result in the invalidating of examination grades, expulsion from the examination room, disqualification from taking the examination for a specified period of time, and other penalties the board may impose. When the board believes that it has evidence that cheating has occurred, it shall conduct a hearing on the matter.

History: Effective October 1, 1999.

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-04

## CHAPTER 3-02-02

**3-02-02-02. Fee for certificate without examination.** The fee for the issuance of a certificate ~~to a nonresident~~ when the board has waived the examination shall be one hundred forty dollars. The fee for a resident to transfer examination grades shall be one hundred forty dollars. Individuals intending to enter the state under the substantial equivalency provisions of North Dakota Century Code section 43-02.2-04.1 shall register and pay a registration fee of one hundred forty dollars prior to commencing work in this state.

An applicant for a certificate, under subsection 3 of North Dakota Century Code section 43-02.2-04, may be granted a certificate, without meeting all conditions therein, if they have the applicant has had five four years of experience outside of this state in the practice of public accounting after passing the uniform CPA examination, and within the ten years preceding application, or has had substantially equivalent experience in the judgment of the board.

**History:** Amended effective March 1, 1995; September 1, 1997; July 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-04

**3-02-02-04. Certificate and license annual renewal fees --Annual permit-fees.** The annual renewal fee for every CPA and LPA shall be forty forty-five dollars. ~~The annual fee for issuance or renewal of an individual permit to practice public accounting shall be ten dollars.~~ A CPA or LPA who fails to register or pay the applicable ~~annual certificate, license, or permit~~ renewal fees fee by June thirtieth of the board's current fiscal year shall pay a late filing fee of twenty dollars in addition to the regular annual ~~permit~~ fee. Individuals working within the state under the substantial equivalency provisions are required to file an annual renewal form and pay an annual renewal fee of forty-five dollars.

**History:** Amended effective August 1, 1981; October 1, 1982; July 1, 1987; June 1, 1988; July 1, 1991; March 1, 1995; September 1, 1997; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03, 43-02.2-04, 43-02.2-05, 43-02.2-07

**3-02-02-04.1. Fee for annual firm permit to practice.** The annual fee for every a firm engaged ~~in public accounting~~ permit is fifty dollars except that for firms which provide no audit, review, compilation, or examination of prospective financial information services, the fee is ten dollars. A late filing fee of twenty dollars shall also be paid by a firm that fails to register or pay the annual firm permit fee by June thirtieth of the board's current fiscal year. A



~~firm commencing the practice of public accounting~~ shall register and pay a firm permit fee before commencing such ~~practice~~ any activity that requires such a permit. Failure to register and pay the appropriate firm permit fees may result in the board proceeding to revoke, suspend, or refuse to renew the certificates, and licenses, and permits of each of the firm's partners, officers, directors, shareholders, or owners.

**History:** Effective June 1, 1988; amended effective March 1, 1995; September 1, 1997; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03, 43-02.2-06, 43-02.2-07

### **3-02-02-05. Inactive or retired accountants.**

1. Any CPA or LPA who is no longer employed because of disability or retirement may notify the board of that status. In that event, a certificate to practice as a CPA or license to practice as an LPA shall be designated "inactive" and shall remain as such without payment of the annual fees required by this chapter. An inactive certificate holder or licenseholder may not practice in this state but may continue to use the title "certified public accountant" or "licensed public accountant" or the abbreviation "CPA" or "LPA", as applicable. An inactive certificate holder or licenseholder must adhere to the code of ~~professional~~ ethics set forth in article 3-04, but is not required to comply with continuing ~~professional~~ education regulations set forth in article 3-03.
2. An inactive certificate holder or licenseholder may apply for reinstatement to practice at any time and will be reinstated to "active" practice as a CPA or LPA by paying the annual registration fee required for the year of application, and by satisfying the board that all current requirements for continuing education have been met.

**History:** Effective October 1, 1982; amended effective July 1, 1991; March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03



**STAFF COMMENT:** Chapter 3-02-04 contains all new material and is not underscored so as to improve readability.

**CHAPTER 3-02-04  
EXPERIENCE**

Section  
3-02-04-01                      Qualifying Experience

**3-02-04-01. Qualifying experience.** The experience required for initial certification after December 31, 2000, must consist of at least two thousand hours gained within four or fewer calendar years, and must be verified to the satisfaction of the board. The majority of the experience must consist of providing some service or advice involving the use of accounting, attest, management advisory, financial advisory, tax, or consulting skills. Candidates may complete the required examinations before completing any of the experience required for initial certification.

**History:** Effective October 1, 1999.  
**General Authority:** NDCC 43-02.2-03  
**Law Implemented:** NDCC 43-02.2-04

## CHAPTER 3-03-01

**3-03-01-01. Hours or days required.** Continuing professional education reports are due from all CPAs and LPAs, except those on inactive status, by December thirty-first of each year and the any hours submitted must be for that previous twelve months, January first through December thirty-first. At the end of each continuing professional education reporting year, each CPA and LPA ~~required-to-do-so-by--section 3-03-03-01~~ practicing public accountancy or providing management or financial advisory, consulting, bookkeeping, or tax services for a client or an employer's client while holding out as a licensee in this state must have completed one hundred twenty hours of acceptable continuing professional education in the immediate preceding three reporting periods and have-completed a minimum of twenty-four twenty credit hours each year. All other accountants who in any way hold out as a CPA or LPA in this state, except those on inactive status, must have completed sixty hours of acceptable continuing education in the immediately preceding three reporting periods and a minimum of sixteen credit hours each year. At the end of the first full calendar year following receipt of an initial original certificate, an--individual permit holder an accountant must meet the twenty-four-hour applicable per year minimum, and must meet the one-hundred-twenty-hour-over applicable three-year minimum at the end of the third full calendar year.

**History:** Amended effective August 1, 1984; October 1, 1984; July 1, 1991; March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03, 43-02.2-05

### **3-03-01-02. How credits determined.**

1. Continuing professional education programs are measured in full-hour increments only, with one hour of credit awarded for each full fifty minutes of instruction.
2. Only class hours or self-study equivalents, and not preparation hours, are to be counted.
3. Service as a lecturer or discussion leader will receive credit to the extent that it contributes to the individual's professional competence, to a total credit limit equal to twice the program's credit allowance for enrolled participants. Credit for lecturer or discussion leader service is further limited to not more than half the total of all hours claimed for any one reporting year. Repetitious presentations are not to be counted.
4. Courses taken for university or college credit may receive continuing professional education credit at the rate of fifteen hours per semester hour of institutional credit, or

ten hours per quarter hour of institutional credit, subject to a total limit of not more than half the total of all hours claimed for any one reporting year.

5. A CPA or LPA teaching a specific university or college level accounting course for the first time may be granted credit for preparation and instruction to the extent that it contributes to the individual's professional competence, up to a limit of twice the continuing professional education course credit available for CPAs or LPAs taking the course. No credit is available for repetitious teaching of the course or for subsequent teaching of courses with similar content. Total credit for these activities is limited to not more than half the total of all hours claimed for any one reporting year.
6. Total credit for self-study program hours is limited to not more than half the total of all hours claimed for any one reporting year.

**History:** Amended effective July 1, 1987; July 1, 1991; March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03, 43-02.2-05

**3-03-01-03. Effective date.** The continuing professional education requirements first took effect July 1, 1978. For accountants not in public practice, the per-year minimum is first effective for the calendar year 2000 and the three-year minimum is first effective for the period 2000 through 2002.

**History:** Amended effective August 1, 1984; October 1, 1984; March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03, 43-02.2-05

**3-03-01-04. Exceptions.** The board ~~may--make~~ will consider exceptions to the continuing professional education requirements for reasons including health, military service, foreign residency, and retirement, and circumstances beyond the accountant's reasonable control. Nonresident licensees accountants are exempt from the requirements of article 3-03, if they verify that they meet the continuing professional education requirements of their jurisdictions of residence, provided the board considers those continuing professional education requirements to be substantially equivalent to those of this state, and provided that state provides similar exemption to licensees resident accountants who reside in North Dakota. These--holding-a-Nonresident accountants practicing public accountancy in North Dakota public---practice---permit must meet the public practice continuing professional education requirements of their jurisdictions of residence.

**History:** Amended effective March 1, 1995; September 1, 1997; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03, 43-02.2-05

## CHAPTER 3-03-02

**3-03-02-01. General determination.** The overriding consideration in determining if a specific program qualifies as a continuing professional education program is if it is a formal program of learning which contributes directly to professional competence. The program must also meet the specifications delineated below.

**History:** Amended effective July 1, 1987; March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03, 43-02.2-05

### **3-03-02-02. Formal programs.**

1. Formal programs requiring class attendance may qualify only if:
  - a. An outline is prepared in advance and is preserved;
  - b. The program is at least one continuing professional education credit hour in length;
  - c. The program is conducted by a qualified instructor; and
  - d. A record of registration or attendance is maintained.
2. Formal programs not requiring class attendance, subsequently referred to herein as self-study programs, may qualify only if:
  - a. A program syllabus is prepared in advance and is preserved;
  - b. The program is at least one continuing professional education credit hour in length;
  - c. Program materials are prepared by qualified authors;
  - d. The program is offered and administered by an appropriate sponsor; and
  - e. Records of registration and documented completion are maintained.
3. Programs offered by organizations registered in the national association-of-state--boards--of--accountancy NASBA national registry of CPE registry sponsors qualify for continuing professional education.

**History:** Amended effective July 1, 1987; March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03, 43-02.2-05

**3-03-02-05. Board may seek assistance.** The board may look to the North Dakota society of certified public accountants, the North Dakota society of licensed public accountants, the ~~national-society-of-public accountants~~ NSA, the AICPA, or the ~~national-association-of-state-boards of-accountancy~~ NASBA for assistance in interpreting the acceptability of, and credit to be allowed for, individual continuing professional education courses.

**History:** Amended effective July 1, 1987; March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03, 43-02.2-05

## CHAPTER 3-03-03

**3-03-03-01. Coverage of requirement.** The continuing professional education requirements promulgated by the board will apply to all CPAs and LPAs ~~in--public-practice-either-full-time-or-part-time,-whether-or-not-on-their-own-account,-in-North-Dakota.--CPAs-or-LPAs-not--in--public-practice-full-time-or-part-time-in-North-Dakota-are-not-required-to-meet-continuing-professional-education-requirements--except--that--they--must-file--annual-continuing-professional-education-reports-but-they-need-not-list-any-education-credits.--in-the-event-they-decide~~ except those on inactive status. In order to enter public practice either full-time or part-time in North Dakota, they an accountant must at that time meet the continuing professional education requirements as specified in section 3-03-01-01, and furnish evidence of familiarity with current accounting and-auditing procedures and practices in the service areas they intend to practice.

A late filing fee of twenty dollars will be imposed on any CPA or LPA whose continuing professional education reports are not received by the date indicated on the reporting form.

**History:** Amended effective July 1, 1991; March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03, 43-02.2-05

**3-03-03-02.1. Temporary permit practice.** The board may allow the temporary practice of public accounting ~~under-a-temporary-permit~~ if the CPA or LPA has acquired at least sixty hours of approved continuing professional education within the preceding three years and agrees in writing to complete, within one hundred-eighty-days year of commencing public practice, the remaining continuing professional education hours necessary to total one hundred twenty hours. ~~If--the--CPA-or-LPA-completes-the-remaining-continuing-professional-education--hours--within-the--one--hundred--eighty--days,--a--regular--permit--to-practice-public-accounting-will-be-granted.~~ If the remaining continuing professional education hours are not completed within the one hundred-eighty-days year, the CPA or LPA must immediately cease practicing public accounting ~~and-return-the-temporary-permit-to-the-board.--Temporary-permits-may-not-be-renewed.~~

**History:** Effective July 1, 1991; amended effective March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03, 43-02.2-05

**3-03-03-04. Documentation.** Formal evidence of course registrations and written records of course sponsorships, titles, dates, times, locations, and instructors must be maintained by permit holders

~~accountants~~ for all continuing professional education credit hours claimed ~~for-participation-in-formal-courses-and-programs.~~

All documentations must be maintained for a period of at least five calendar years beyond the year of participation.

History: Amended effective July 1, 1987; March 1, 1995; October 1, 1999.

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-03, 43-02.2-05

**3-03-03-05. Compliance monitors.** Continuing professional education reporting forms filed by ~~individual-permit holders~~ individuals must be examined annually by the state board of accountancy or an appointed agent thereof, on a sampling basis, to confirm eligibility of credit hours claimed. ~~Individual--permit holders~~ Individuals claiming ineligible hours will be notified, and the hours will be disqualified. Flagrant violations of reporting standards, and situations where bad faith in compliance appears likely, will be reviewed for possible action as noncompliance.

History: Effective July 1, 1987; amended effective March 1, 1995; October 1, 1999.

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-03, 43-02.2-05



## CHAPTER 3-04-01

**3-04-01-02. Applicability.** ~~This code of ethics applies to all services performed in the practice of public accounting, except where specifically stated otherwise.~~ An accountant engaged in the practice of public accounting must observe all of the provisions of the code of ethics. An accountant not engaged in the practice of public accounting must observe only sections 3-04-01-05, 3-04-01-06, 3-04-02-02, 3-04-03-01, 3-04-04-02, 3-04-06-01, and 3-04-06-03 since all other provisions of the code of ethics relate solely to the practice of public accounting. An accountant practicing outside of North Dakota will not be subject to discipline for departing from any of the provisions of the code of ethics so long as the accountant's conduct is in accord with the rules of the organized accounting profession in the state in which the accountant is practicing, as interpreted by the accountancy board of that state.

**History:** Amended effective July 1, 1991; March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03

**3-04-01-03. Associates.** An accountant may be held responsible for compliance with the code of ethics by all persons associated with the accountant in the practice of public accounting who are either under the accountant's supervision, or who are fellow partners or shareholders or owners in the practice with the accountant.

**History:** Amended effective March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03

**3-04-01-04. Nonpractitioners.** ~~An accountant engaged in the practice of public accounting must observe all of the provisions of the code of ethics. An accountant not engaged in the practice of public accounting must observe only sections 3-04-01-05, 3-04-01-06, 3-04-02-02, and 3-04-06-01 since all other provisions of the code of ethics relate solely to the practice of public accounting.~~ Repealed effective October 1, 1999.

**History:** Amended effective July 1, 1991;

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03

**3-04-01-07. Dividing fees with noncertified public accountant or nonlicensed public accountant.** ~~A CPA or CPA firm or CPA firm shall not share fees derived from compilation, review, audit, or other attest services with a noncertified or nonlicensed person, except that:~~

1. An agreement by a CPA or LPA with one's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the accountant's death to the accountant's estate or to one or more specified persons.
2. A CPA or LPA, or CPA firm or LPA firm who undertakes to complete unfinished business of a deceased CPA or LPA may pay to the estate of the deceased that portion of the total compensation which fairly represents the services rendered by the deceased.
3. A CPA or LPA, or CPA firm or LPA firm may include nonlicensed employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement. Repealed effective October 1, 1999.

**History:** Effective October 1, 1982; amended effective March 1, 1995; September 1, 1997.

**General Authority:** NDCG-43-02.2-03

**Law Implemented:** NDCG-43-02.2-03

**3-04-01-08. Avoiding influence by noncertified public accountants or nonlicensed public accountants.** A CPA or LPA shall not practice with or in the form of a professional corporation or other entity if any of the entity's activities consist of compilation, review, audit, or other attest services, if A minority of the ownership of a firm practicing public accountancy within this state may be held by individuals who are not CPAs or LPAs, but each such owner:

1. A noncertified public accountant or nonlicensed public accountant owns any interest therein, except that a fiduciary representative of the estate of a CPA or LPA may hold the stock or interest of the CPA or LPA for a reasonable time during administration Must be an individual;
2. A noncertified public accountant or nonlicensed public accountant is a corporate director, or officer thereof Must not serve as the principal executive officer of the firm; or
3. A noncertified public accountant or nonlicensed public accountant has the right to direct or control the professional judgment of the CPA or LPA; Must not exercise authority over the performance of audit, review, compilation, or other attest services; and
4. Must not aid in the unauthorized practice of public accounting, or knowingly misrepresent facts, or commit any act discreditable to the accounting profession.

When any such owner fails to meet one of these conditions, or is convicted of a felony or other crime involving fraud or dishonesty, or is disciplined by a regulatory agency, that person's ownership in the

firm must be fully divested within six months thereafter, unless the board shall determine otherwise.

**History:** Effective October 1, 1982; amended effective March 1, 1995; September 1, 1997; October 1, 1999.

**General Authority:** NDCC 43-02.2-04

**Law Implemented:** NDCC 43-02.2-03

## CHAPTER 3-04-02

**3-04-02-01. Independence.** An accountant or a firm of which the accountant is a partner or a shareholder shall not express an opinion on financial statements of an enterprise unless the accountant and the accountant's firm are independent with respect to such enterprise. Independence will be considered to be impaired if, for example:

1. During the period of the accountant's professional engagement, or at the time of expressing the opinion, either the accountant or the firm:
  - a. Had or was committed to acquire any direct or material indirect financial interest in the enterprise; or
  - b. Was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the enterprise; or
  - c. Had any joint closely held business investment with the enterprise or any officer, director, or principal stockholder thereof that was material in relation to the accountant's or the firm's net worth; or
  - d. Had any loan to or from the enterprise or any officer, director, or principal stockholder thereof except as permitted by Interpretation 101-5 of the AICPA Code of Professional Conduct, as of July 1, 1994 1999.
2. During the period covered by the financial statements, during the period of the professional engagement or at the time of expressing an opinion, the accountant or the firm:
  - a. Was connected with the enterprise as a promoter, underwriter, or voting trustee, a director or officer, or in any capacity equivalent to that of a member of management or of an employee; or
  - b. Was a trustee for any pension or profit-sharing trust of the enterprise.

The examples set out in this section are not intended to be all inclusive.

**History:** Amended effective March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03

**3-04-02-02. Integrity and objectivity.** An accountant shall not knowingly misrepresent facts, and when engaged in the practice of public accounting, including or the rendering of consulting or tax and services, or management or financial advisory services, shall not subordinate the accountant's judgment to that of others.

**History:** Amended effective July 1, 1991; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03

## CHAPTER 3-04-03

**3-04-03-01. General standards.** An accountant in-public-practice shall comply with the following standards as interpreted by the board.

1. **Professional competence.** An accountant shall undertake only those professional services which the accountant or the accountant's firm can reasonably expect to complete with professional competence.
2. **Due professional care.** An accountant shall exercise due professional care in the performance of professional services.
3. **Planning and supervision.** An accountant shall adequately plan and supervise the performance of professional services.
4. **Sufficient relevant data.** An accountant shall obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.
5. **Forecasts.** An accountant shall not permit the accountant's name to be used in conjunction with any forecast of future transactions in a manner which may lend to the belief that the accountant vouches for the achievability of the forecast.

**History:** Amended effective November 1, 1982; July 1, 1991; March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03

## CHAPTER 3-04-04

**3-04-04-02. Contingent fees.** An accountant in-public-practice may not:

1. Perform for a contingent fee any professional services for, or receive such a fee from, a client for whom the accountant or accountant's firm performs:
  - a. An audit or review of a financial statement; or
  - b. A compilation of a financial statement when the accountant expects, or reasonably might expect, that a third party will use the financial statement and the accountant's compilation report does not disclose a lack of independence; or
  - c. An examination of prospective financial information; or
2. Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.

The prohibition in subsection 1 applies during the period in which the accountant or the accountant's firm is engaged to perform any of the services listed above as well as the period covered by any historical financial statements involved in any such listed services.

For purposes of this section, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service.

A member's fees may vary depending, for example, on the complexity of services rendered. Fees are not regarded as being contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.

**History:** Amended effective July 1, 1991; March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03

## CHAPTER 3-04-06

**3-04-06-03. Commission and referral fees.** An accountant in public practice may not for receive or pay a commission ~~recommend or refer to a client any product or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when the accountant or the accountant's firm also performs for that client~~ or referral fee in connection with:

1. An audit or review of a financial statement;
2. A compilation of a financial statement when the accountant expects, or reasonably might expect, that a third party will use the financial statement and the accountant's compilation report does not disclose a lack of independence; or
3. An examination of prospective financial information.

~~This prohibition applies during the period in which the accountant is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in such listed services.~~

An accountant in public practice who is not prohibited by this section from performing services for a commission or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the accountant recommends or refers a product or service to which the commission relates.

Any accountant who accepts a referral fee for recommending or referring any service of a CPA or LPA to any person or entity or who pays a referral fee to obtain a client shall disclose such acceptance or payment to the client.

**History:** Amended effective July 1, 1991; March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03

**3-04-06-04. Incompatible occupations.** ~~An accountant engaged in the practice of public accounting shall not concurrently engage in any business or occupation that would create a conflict of interest in rendering professional services.~~ Repealed effective October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03



**3-04-06-05. Form of practice - Name. A-partner-or-shareholder surviving-the-death-or-withdrawal-of-all-other-partners-or--shareholders may--continue--to-practice-public-accounting-under-a-name-which-includes the-name-of-past-partners-or-shareholders-for--up--to--two--years--after becoming-a-sole-practitioner. Repealed effective October 1, 1999.**

**History: Amended-effective-July-1,-1991;-March-1,-1995-**

**General Authority: NDGG-43-02-2-03**

**Law Implemented: NDGG-43-02-2-03,-43-02-2-12**

## CHAPTER 3-05-01

**3-05-01-02. Appointment of positive review program committee.**  
The state board of accountancy shall may maintain a positive review program committee to assist in the implementation and administration of the program. ~~The positive review program committee will consist of two or more board members, all appointed by the board.~~

**History:** Effective June 1, 1988; amended effective March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-06

## CHAPTER 3-05-02

**3-05-02-03. Format of report.** Any documents submitted in accordance with section 3-05-02-01 may have the name of the client, the client's address, and other identifying factors omitted, provided that the omission does not render the type or nature of the enterprise undeterminable. ~~For example, the client name, address, or federal identification number may be omitted, but reference to the type of organization, such as a financial institution, school district, hospital, etc., may not be omitted.~~

**History:** Effective June 1, 1988; amended effective March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-06

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

**History:** Effective June 1, 1988; amended effective March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-06

**3-05-02-05. Confidentiality of information in report.** The identities of the sources of financial statements and reports received by the board or the positive review program committee its agents from other than the firm that issued the reports must be preserved in confidence. Reports and other materials submitted to the board or the positive review program committee its agents pursuant to sections 3-05-02-01, 3-05-02-01.1, 3-05-02-02, and 3-05-02-04 and comments of reviewers, the positive review program committee, and the board on such reports or other materials relating thereto, must also be preserved in confidence except to the extent that they are communicated by the board to the registrant who issued the reports, and except to the extent that the open records law of North Dakota is not violated.

**History:** Effective June 1, 1988; amended effective July 1, 1991; March 1, 1995; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-06

## CHAPTER 3-05-03

**3-05-03-01. Review of reports.** Each year, reviewers shall review these reports submitted in accordance with sections 3-05-02-01 and 3-05-02-04 and such reports as may be referred by the board. Repealed effective October 1, 1999.

**History:** Effective June 1, 1988; amended effective July 1, 1991;  
**General Authority:** NDCC 43-02.2-03  
**Law Implemented:** NDCC 43-02.2-06

**3-05-03-02. Scope of review.** The positive review program committee documents submitted in accordance with sections 3-05-02-01 and 3-05-02-04 shall be reviewed, to determine, with respect to each report:

1. Whether the report is in general conformity with applicable professional standards;
2. If not, in what respect the report is substandard (meaning materially inaccurate or misleading) or marginal (meaning containing serious deficiencies but not materially inaccurate or misleading); and
3. Any recommendations it may have concerning improvement of the quality of the report.

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

**History:** Effective June 1, 1988; amended effective July 1, 1991; September 1, 1997; October 1, 1999.  
**General Authority:** NDCC 43-02.2-03  
**Law Implemented:** NDCC 43-02.2-06

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

**History:** Effective June 1, 1988; amended effective July 1, 1991; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-06

**3-05-03-05. Review of peer reviews.** ~~Reports--and--letters-of~~ ~~comments~~ Documents submitted in accordance with section 3-05-02-01.1 and 3-05-02-02 must be reviewed, and resultant findings and recommendations must be given to the board and ~~the--board--shall--take~~ for appropriate action, which may include similar actions to those in section 3-05-04-01.

**History:** Effective July 1, 1991; amended effective March 1, 1995; September 1, 1997; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-06

## CHAPTER 3-05-04

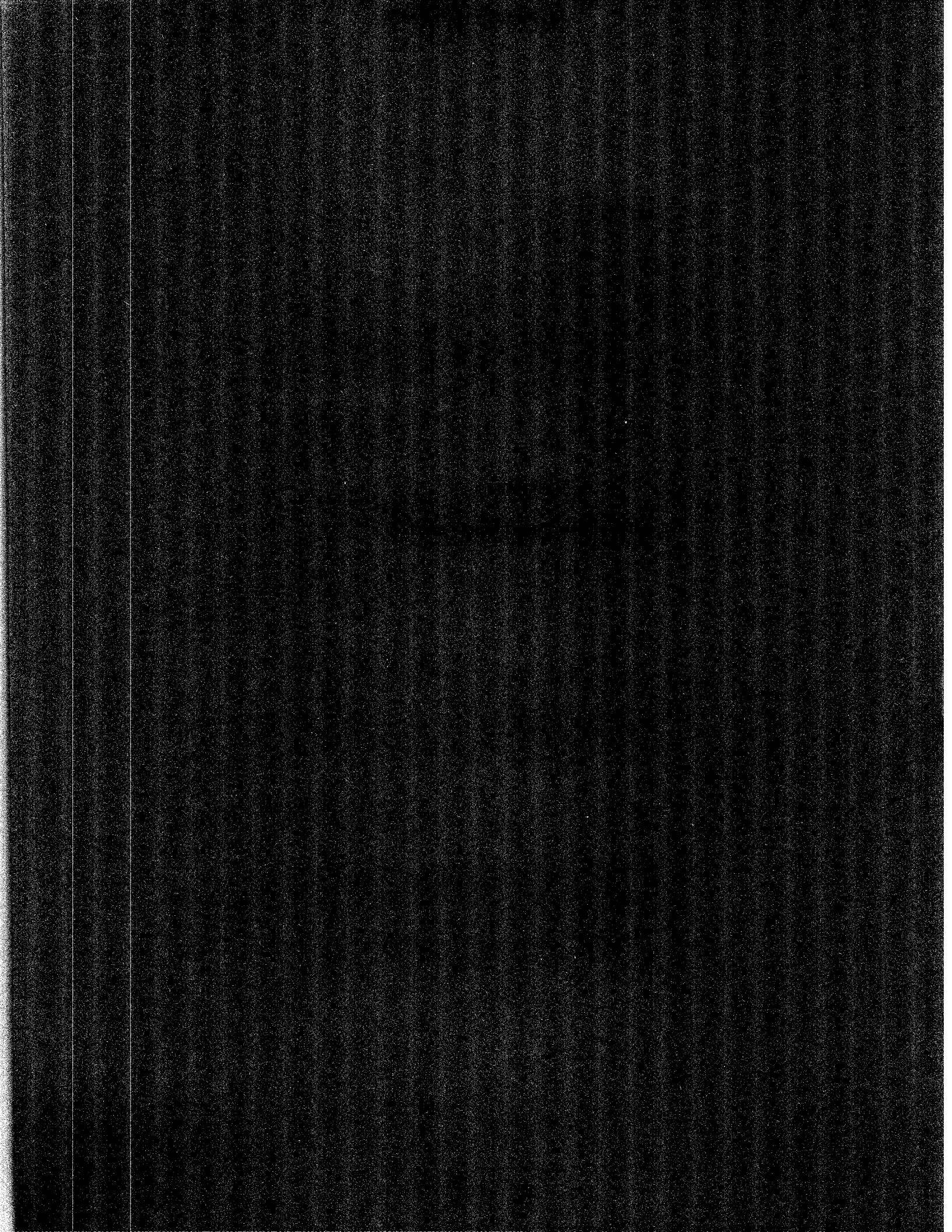
**3-05-04-01. Deficient reports and board action.** If the board determines that a report referred-to-the-board-by--the--positive--review program--committee is deficient or marginal with respect to applicable professional standards, the board may take any one of the following actions:

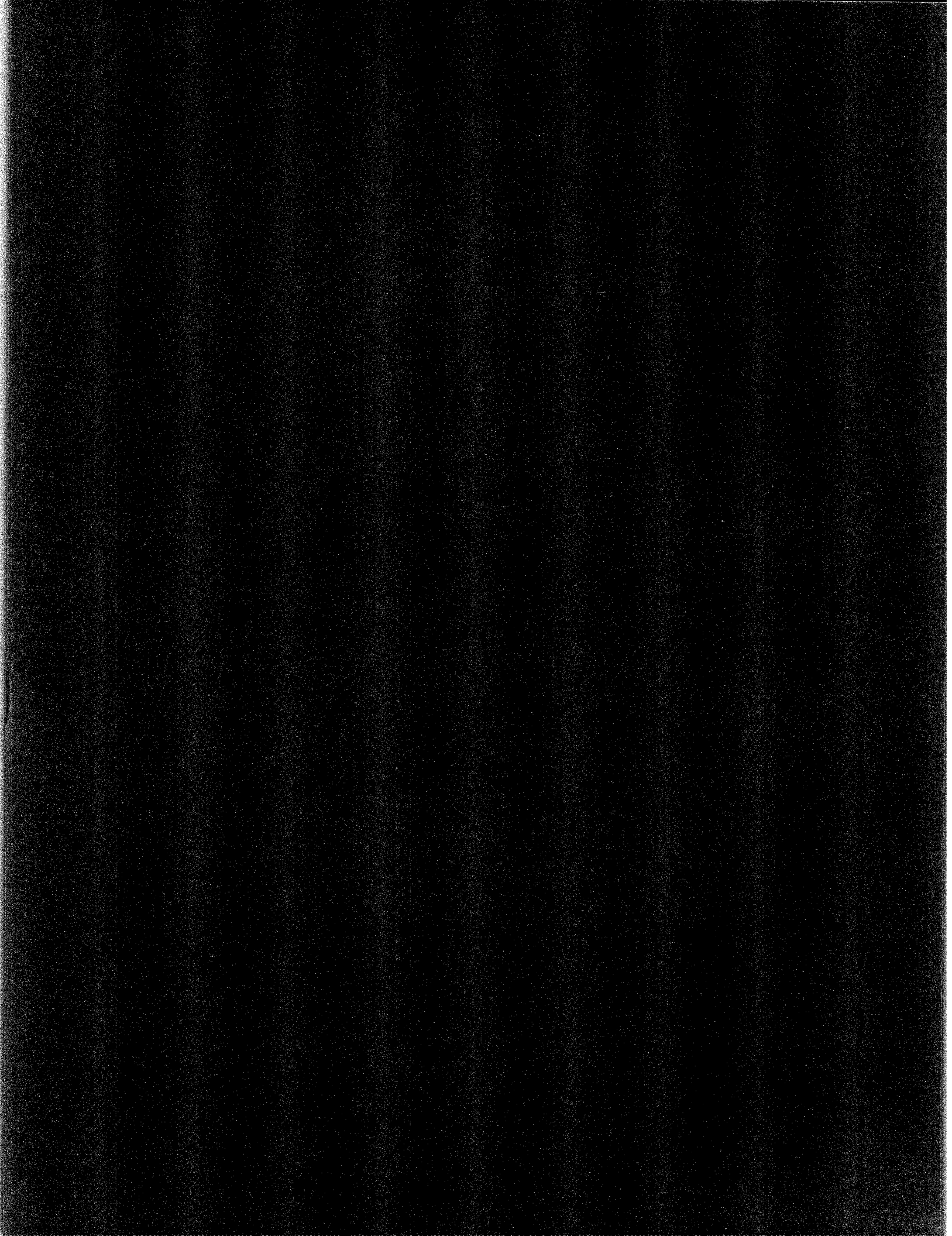
1. The board may submit a letter of comment to the firm detailing the deficiencies noted in connection with the review and requiring the firm to detail the steps which it will take to ensure that similar occurrences will not recur. A response from the firm will be required within thirty days of the mailing of the board's letter and-may-be-subject--to--followup review.
2. The board may require any individual who had responsibility for issuance of the report or who substantially participated in preparation of the report or the related workpapers, or both, to successfully complete continuing education as specified by the board. ~~The-cost-of-the-course-or-courses must-be-borne-by-such-registrant.~~
3. The board may require that the office responsible for the deficient report submit all or specified categories of its reports for a preissuance review in a manner and for a duration prescribed by the board.
4. If it appears that the professional conduct reflected in the deficient report is so serious as to warrant consideration of possible disciplinary action, the board may initiate an investigation pursuant to North Dakota Century Code sections 43-02.2-03, 43-02.2-09, and 43-02.2-10.

**History:** Effective June 1, 1988; amended effective July 1, 1991; March 1, 1995; September 1, 1997; October 1, 1999.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03, 43-02.2-06, 43-02.2-09







**AUGUST 1999**

**CHAPTER 33-07-01.1**

**33-07-01.1-01. General provisions - Definitions.**

1. Institutions covered by medical hospital licensure laws. The following types of institutions are covered by North Dakota Century Code chapter 23-16 for the purpose of rules and are deemed to come within the provisions of North Dakota Century Code section 23-16-01 which provides for licensure of any institution that maintains and operates organized facilities for the diagnosis, treatment, or care of two or more nonrelated persons suffering from illness, injury, or deformity or where obstetrical or other care is rendered over a period exceeding twenty-four hours:
  - a. General acute, primary care, and specialized hospitals, including rehabilitation and psychiatric hospitals.
  - b. Skilled nursing facilities and nursing facilities.
  - c. Outpatient facilities, including surgical centers and trauma centers, excluding physicians' clinics.
  - d. Maternity homes that receive more than one patient in six months.
2. Institutions not covered by medical hospital licensure laws. The following types of institutions that provide some medical or nursing service are deemed not to come within the provisions of North Dakota Century Code chapter 23-16:

- a. Any institutions that are regularly licensed by the social service board of North Dakota, such as homes for unmarried mothers.
  - b. Federal and state institutions. For state institutions, the primary purpose of which is the provision of medical care, the department has the responsibility for inspection on the same basis as those institutions that are covered by North Dakota Century Code chapter 23-16. Upon the findings of such inspections, recommendations will be formulated by the department.
  - c. Chiropractic hospitals licensed under North Dakota Century Code chapter 23-17.
  - d. Homes in which the only persons receiving nursing care are those related to the householder by blood or marriage.
  - e. Homes in which only one person receives care at any one time.
3. An institution shall hold licensure in the same category for which it seeks federal certification.
  4. The following terms are defined for purposes of this chapter and North Dakota Century Code chapter 23-16:
    - a. "Abuse" includes mental, physical, sexual, and verbal abuse which would result in temporary or permanent mental or physical injury, harm, or ultimately death. Mental abuse includes humiliation, harassment, threats of punishment, or deprivation. Physical abuse includes hitting, slapping, pinching, and kicking. It also includes controlling behavior through corporal punishment. Sexual abuse includes sexual harassment, sexual coercion, sexual contact, or sexual assault. Verbal abuse includes any use of oral, written, or gestured language that includes disparaging and derogatory terms to patients or their families used within their hearing distance to describe the patients, regardless of their age, ability to comprehend, or disability.
    - b. "Acute care" means care for an episode of illness, injury, deformity, or pregnancy which may have a rapid onset or be severe in nature or have a short duration which requires medical treatment and continuous nursing care in a hospital setting.
    - c. "Authentication" means identification of the individual who made the medical record entry by that individual in writing, and verification that the contents are what the individual intended.

d. "Bed capacity" is bed space designed for inpatient care, including space originally designed or remodeled for inpatient beds even though temporarily not used for such purposes. The number of beds to be counted in any patient room is the maximum number for which adequate floor area is provided. In measuring the floor area of patient rooms for the purpose of determining bed capacity, only the net usable space in the room may be considered. Space in toilet rooms, washrooms, closets, vestibules, and corridors may not be counted.

(1) Areas to be included:

(a) Bed space in all nursing units, including:

[1] Intensive care or cardiac care units.

[2] Minimal or self-care units.

(b) Isolation units.

(c) Pediatrics units, including:

[1] Pediatric bassinets.

[2] Incubators located in the pediatrics department.

(d) Observation units equipped and staffed for overnight use.

(e) All space designed for inpatient bed care even if currently closed or assigned to easily convertible, nonpatient uses such as storage.

(f) Space in areas originally designed as solarium, waiting rooms, offices, conference rooms, classrooms, and such which have necessary fixed equipment (nurse's call, lighting, etc.) and are accessible to a nurse's station exclusively staffed for inpatient bed care.

(g) Bed space under construction if planned for immediate completion (not an unfinished "shell" floor).

(2) Areas to be excluded:

(a) Newborn nurseries in the obstetrical department.

(b) Labor and delivery rooms.

(c) Recovery rooms.

- (d) Emergency units.
  - (e) Preparation or anesthesia induction rooms.
  - (f) Rooms designed for diagnostic or treatment procedures.
  - (g) Hospital staff sleeping quarters, including accommodations for oncall staff.
  - (h) Corridors.
  - (i) Solaria, waiting rooms, offices, conference rooms, classrooms, and such which are not readily equipped and staffed for inpatient bed care.
  - (j) Unfinished shell space. An area which is finished except for movable equipment shall not be considered unfinished space.
- e. "Department" means the North Dakota state department of health and ~~consolidated laboratories~~.
- f. "Governing body" means the individual or group in whom the ultimate authority and legal responsibility is vested for the conduct of the institution.
- g. "Hospital" means a facility that provides continuous nursing services, the principal activity or business of which is the reception of a person for diagnosis, medical care, and treatment of human illness to meet the needs of the patient served.
- (1) "General acute hospital" means a facility with physician services available, permanent facilities that include inpatient beds, and continuous registered nurse staffing on a twenty-four-hour basis for treatment or care for illness, injury, deformity, abnormality, or pregnancy.
- (a) In addition to medical staff and nursing services, the hospital shall regularly maintain either directly or through agreement the following services to meet the needs of the patients served:
- [1] Dietary services.
  - [2] Medical records services.
  - [3] Pharmaceutical services.

- [4] Laboratory services.
- [5] Radiology services.
- [6] Emergency services.
- [7] Social services.
- [8] Basic rehabilitation services.
- [9] Housekeeping and related services including laundry.
- [10] Central services.

(b) Complementary services are optional services which the hospital may provide and include:

- [1] Nuclear medicine services.
- [2] Surgical services.
- [3] Recovery services.
- [4] Anesthesia services.
- [5] Respiratory care services.
- [6] Obstetrical services.
- [7] Specialized rehabilitation services.
- [8] Psychiatric services.

(2) "Primary care hospital" means a facility that has available twenty-four-hour licensed health care practitioner and nursing services, provides inpatient care to ill or injured persons prior to their transportation to a general acute hospital, or provides inpatient care to persons needing acute-type care for a period of no longer than an average of ninety-six hours, excluding persons participating in a federal swing-bed program.

(a) In addition to medical staff and nursing services, the hospital shall regularly maintain either directly or through agreement the following services to meet the needs of the patients served:

- [1] Dietary services.
- [2] Medical records services.

- [3] Pharmaceutical services.
- [4] Laboratory services.
- [5] Radiology services.
- [6] Emergency services.
- [7] Social services.
- [8] Basic rehabilitation services.
- [9] Housekeeping and related services including laundry.
- [10] Central services.

(b) Complementary services are optional services which--the--hospital--may--provide--and--include respiratory-care-services.

(3) "Specialized hospital" means a facility with hospital characteristics which provides medical care for persons with a categorical illness or condition.

(a) In addition to medical staff and nursing services, the hospital shall regularly provide directly or through agreement the following services to meet the needs of the patients served:

- [1] Dietary services.
- [2] Medical records services.
- [3] Pharmaceutical services.
- [4] Laboratory services.
- [5] Radiology services.
- [6] Emergency services.
- [7] Social services.
- [8] Basic rehabilitation services.
- [9] Housekeeping and related services including laundry.
- [10] Central services.

(b) Complementary services are optional services which the hospital may provide and include:

[1] Nuclear medicine services.

[2] Surgical services.

[3] Recovery services.

[4] Anesthesia services.

[5] Respiratory care services.

[6] Obstetrical services.

(c) Hospitals meeting the definition of a specialized hospital shall be licensed as such and may include the following:

[1] "Rehabilitation hospital" means a facility or unit providing specialized rehabilitation services to patients for the alleviation or amelioration of the disabling effects of illness or injury. Specialized rehabilitation services are characterized by the coordinated delivery of interdisciplinary care intended to achieve the goals of maximizing the self-sufficiency of the patient. A rehabilitation hospital is a facility licensed to provide only specialized rehabilitation services or is a distinct unit providing only specialized rehabilitation services located in a general acute hospital. A rehabilitation hospital must arrange to provide the services identified in section 33-07-01-35.

[2] "Psychiatric hospital" means a facility or unit providing psychiatric services to patients with a diagnosis of mental illness. A psychiatric hospital is a hospital licensed to provide only psychiatric services or is a distinct unit providing only psychiatric services located in a general acute hospital. Psychiatric hospitals must provide services consistent with section 33-07-01-36.

h. "Licensee" means an individual, officer, or member of the governing body of a hospital or related institution.

- i. "Licensed health care practitioner" means an individual who is licensed or certified to provide medical, medically related, or advanced registered nursing care to individuals in North Dakota.
- j. "Medical staff" in general acute and specialized hospitals means a formal organization of physicians (and dentists) and may include other licensed health care practitioners with the delegated authority and responsibility to maintain proper standards of patient care and to plan for continued improvement of that care. Medical staff in primary care hospitals means one or more licensed health care practitioners with the delegated authority and responsibility to maintain proper standards of medical care and to plan for continued improvement of that care.
- k. "Misappropriation of patient property" means the deliberate misplacement, exploitation, or wrongful temporary or permanent taking or use of a patient's belongings or money, or both.
- l. "Neglect" includes one severe incident or a pattern of incidents of willful failure to carry out patient services as directed or ordered by the licensed health care practitioner, willful failure to give proper attention to patients, or failure to carry out patient services through careless oversight.
- m. "Nursing facilities" are the following:
  - (1) "Basic care facility" means a facility consistent with North Dakota Century Code chapter 23-09.3 and North Dakota Administrative Code chapter 33-03-24.
  - (2) "Nursing facility" means a facility consistent with North Dakota Century Code chapter 23-16 and North Dakota Administrative Code chapters 33-07-03.1 and 33-07-04.1.
- n. "Outpatient facility" (including ambulatory surgical centers and trauma centers - excluding physicians' clinic) means a facility, located in or apart from a hospital; providing community service for the diagnosis or diagnosis and treatment of ambulatory patients (including ambulatory inpatients) in need of physical or mental care (see chapter 33-03-01):
  - (1) Which is operated in connection with a hospital; or
  - (2) Which offers to patients not requiring hospitalization the services of licensed health care practitioners in various medical specialties, and which makes provision for its patients to receive a



reasonably full range of diagnostic and treatment services; and

(3) Which is subject to the requirements of chapter 33-03-01.

- o. "Qualified activities coordinator" means a qualified therapeutic recreation specialist who is eligible for registration as a therapeutic recreation specialist by the national therapeutic recreation society (branch of national recreation and park association) under its requirements; is a qualified occupational therapist as defined in North Dakota Century Code chapter 43-40; is certified as an occupational therapist assistant; or has two years of experience in a social or recreational program within the last five years, one year of which was full-time employee in a patient activities program in a health care setting; or has completed a training course approved by the department.
- p. "Separate license for building on separate premises" means, in the case of a hospital or related institution where two or more buildings are used in the housing of patients, a separate license is required for each building. Separate licenses are required even though the buildings may be operated under the same management.
- q. "Signature" means the name of the individual written by the individual or an otherwise approved identification mechanism used by the individual which may include the approved use of a rubber stamp or an electronic signature.
- r. "Writing" means the use of any tangible medium for entries into the medical record, including ink or electronic or computer coding, unless otherwise specifically required.

**History:** Effective April 1, 1994; amended effective August 1, 1999.

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

**Law Implemented:** NDCC 23-16-06, 31-08-01.2, 31-08-01.3

### **33-07-01.1-16. Nursing services.**

- 1. The general acute hospital shall have a plan of administrative authority with delineation of responsibilities and duties for nursing personnel, including written job descriptions.
  - a. Nursing services must be under the direction of a nurse executive (director of nursing) who is a registered nurse licensed to practice in North Dakota. The nurse executive must have written administrative authority, responsibility, and accountability for the integration and coordination of nursing services consistent with the

overall hospital plan and philosophy of patient care. The nurse executive shall retain overall responsibility for:

- (1) Development, maintenance, and periodic review of a nursing service philosophy, objectives, standards of practice, policies and procedures, and job descriptions for each level of nursing service personnel.
- (2) Whenever the nurse executive is not available in person or by phone, the nurse executive shall designate in writing a specific registered nurse to be available in person or by phone to direct nursing services.

b. There must be sufficient qualified nursing personnel to meet the nursing care needs of the patients.

- (1) At least one registered nurse must be on duty per shift twenty-four hours per day seven days per week when a patient is present. The nurse executive or other registered nurse designated as the nurse executive's alternate must be on call and available within twenty minutes at all times.
- (2) In hospitals providing obstetrical or surgical services, additional nursing staff must be available to care for these patients as determined necessary dependent on facility policy and patient needs.

2. Primary care hospitals shall provide twenty-four-hour licensed nursing services whenever a patient is in the hospital and meet the following standards:

a. Nursing services must be under the direction of a nurse executive (director of nursing) who is a registered nurse licensed to practice in North Dakota. The nurse executive must have written administrative authority, responsibility, and accountability for the integration and coordination of nursing services consistent with the overall hospital plan and philosophy of patient care. The nurse executive shall retain overall responsibility for:

- (1) Development, maintenance, and periodic review of nursing service philosophy, objectives, standards of practice, policies and procedures, and job descriptions for each level of nursing service personnel.
- (2) Determine and schedule adequate numbers of licensed registered nurses, licensed practical nurses, and other personnel to provide nursing care as needed.

- b. ~~Registered-nurse-staffing-must-be-on-duty-at-least-sixteen hours-per-day-when-a-patient-is-in-the-hospital-with licensed-nursing-coverage-for-the-remainder-of-the twenty-four-hour-period. The-nurse-executive-or-another registered-nurse-designated-as-the-nurse-executive's alternate-must-be-on-call-and-available-within-twenty minutes-at-all-times. A registered nurse must provide or assign to other personnel the nursing care of each patient, including patients at a skilled nursing facility level of care in a swingbed. The care must be provided in accordance with the patient's needs and the specialized qualifications and competence of the staff available. When a registered nurse is not on duty, the nurse executive or another registered nurse designated as the nurse executive's alternate must be on call and available within twenty minutes at all times.~~  
c. When no patients are in the facility, staffing must include at least a licensed nurse with a registered nurse on call and available within twenty minutes to respond immediately to patient needs.
3. Specialized hospitals are subject to the nursing services requirements for general acute hospitals in this section.

**History:** Effective April 1, 1994; amended effective August 1, 1999.

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

**Law Implemented:** NDCC 23-16-06

#### **33-07-01.1-24. Nuclear medicine services.**

1. If the acute hospital provides nuclear medicine services, the services must be provided to meet the needs of the patients and in a safe and effective manner.
  - a. The hospital shall have available written verification of compliance with article 33-10.
  - b. The hospital shall have evidence of licensure to handle radioactive materials.
  - c. The physician responsible for the direction of the nuclear medicine services must be a physician who is qualified to provide nuclear medicine services and who is a member of the medical staff.
  - d. Nuclear medicine services may be ordered only by a licensed health care practitioner whose qualifications and medical staff privileges allow such referrals.
  - e. Personnel employed in nuclear medicine services must meet the qualification and training requirements, perform the

functions, and carry out the responsibilities specified by the director and approved by the medical staff.

- f. The diagnostic procedures must be interpreted by a licensed health care practitioner who has been approved by the medical staff to do so. The licensed health care practitioner shall document, sign, and date reports of procedures, interpretations of procedures, and consultations.
  - g. The hospital shall retain copies of nuclear medicine reports consistent with current standards of practice.
  - h. The nuclear medicine services shall develop and implement policies in accordance with standards of practice specific for the services provided, and consistent with chapter 61-05-01, including:
    - (1) Handling, maintenance, and inspection of equipment.
    - (2) Protection of patients and personnel from radiation hazards.
    - (3) Testing of equipment for radiation hazards.
    - (4) Maintenance of personnel radiation monitoring devices.
    - (5) Preparation and administration of radio-pharmaceutical.
    - (6) Documentation of receipt, storage, use, and disposal of radioactive materials.
2. Primary--care--hospitals--may--not--provide--nuclear--medicine services. If the primary care hospital provides nuclear medicine services, the hospital shall comply with nuclear medicine services requirements for general acute hospitals in this section.
3. Specialized hospitals providing nuclear medicine services are subject to the nuclear medicine services requirements for general acute hospitals in this section.

**History:** Effective April 1, 1994; amended effective August 1, 1999.

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

**Law Implemented:** NDCC 23-16-06

### **33-07-01.1-29. Surgical services.**

- 1. The general acute hospital that provides surgical services shall have effective policies and procedures regarding

surgical privileges, maintenance of the operating rooms, and evaluation of the surgical patient.

- a. Surgical services must be provided in a manner sufficient to meet the surgical needs of the patients. The surgical service must have a defined organization, must be integrated with other departments and services of the hospital, and must be governed by current written policies and procedures.
- b. Surgical services must be directed by a physician who is qualified by training and experience and approved by the medical staff and governing body.
- c. A roster of physicians, specifying the surgical privileges of each, must be maintained and available to staff in the surgical services area and in the files of the hospital administration.
- d. The operating rooms must be supervised by a qualified registered nurse.
  - (1) A licensed practical nurse or a surgical technician may be used as "scrub nurse" under the supervision of the registered nurse.
  - (2) A registered nurse may perform circulating duties in the operating room in accordance with applicable state law. Licensed practical nurses and surgical technicians may assist in circulating duties under the supervision of a registered nurse who is immediately available to respond to emergencies.
- e. The following equipment must be available for use in the surgical services area: call-in system, cardiac monitor, resuscitator, defibrillator, aspirator, tracheotomy tray, and such other instruments or equipment available for lifesaving measures.
- f. The surgical services area must be located so that traffic in and out can be and is controlled and there is no through traffic.
- g. All infections of clean surgical cases must be recorded and reported to administration and medical staff. A written procedure must be established for the investigation of such cases.
- h. The operating room register must be maintained as identified by hospital policy and procedure.
- i. There must be a complete history and physical examination, including any indicated laboratory and X-ray examination

reports, in the medical record of every patient prior to surgery, except in life-threatening emergencies. If this has been transcribed, but not yet recorded in the patient's record, there must be a statement to that effect, an admission note identifying any abnormal findings, and the preoperative diagnosis in writing by the physician in the patient's medical record.

- j. An operative report describing techniques, findings, and tissue removed or altered must be dictated or written immediately after the surgery and signed by the surgeon.
- k. There must be a properly executed informed consent form consistent with hospital policies for operation in the patient's medical record prior to surgery, except in life-threatening emergencies.
- l. If outpatient surgical services are offered by a hospital, the quality of the services must be consistent with the inpatient surgical services in accordance with the complexity of the services.
2. Primary--care-hospitals-may-not-provide-surgical-services. If the primary care hospital provides surgical services, the hospital shall comply with surgical services requirements for general acute hospitals in this section.
3. If a specialized hospital provides surgical services, the specialized hospital is subject to the surgical services requirements for general acute hospitals in this section.

**History:** Effective April 1, 1994; amended effective August 1, 1999.

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

**Law Implemented:** NDCC 23-16-06

### **33-07-01.1-30. Recovery services.**

1. Postoperative recovery services must be provided by all general acute hospitals in which surgery is performed.
  - a. Recovery services must be provided in a room where patients who have undergone surgical procedures can be immediately observed, receive specialized care by selected and trained personnel, and when necessary, prompt emergency care can be initiated.
  - b. The services of the postoperative recovery room may be utilized for postpartum if the delivery room or place of delivery is in close proximity to the postoperative recovery room. Postpartum patients, after appropriate observation, must be returned to the obstetrical service area.

- c. A physician shall be responsible for the conduct of the recovery services and for the establishment of admission and discharge policies and procedures.
  - d. A registered nurse who has education and experience in postoperative recovery services shall supervise all personnel performing nursing service functions.
    - (1) A licensed nurse shall be in attendance at all times when patients are in the recovery room.
    - (2) There must be sufficient nursing personnel to provide the specialized care required for the postsurgical patient.
  - e. Known contaminated cases must be returned to the isolation room or a private room.
  - f. A member of the medical staff shall provide initial orders for the care of each patient upon admission to the recovery services.
    - (1) A member of the medical staff shall be responsible for the patient's discharge from the recovery services.
    - (2) Patients under or recovering from anesthesia, and those who have received sedatives or analgesics, must remain under continuous, direct nursing supervision until vital signs have stabilized. Any nurse performing this duty must have been instructed in the management of postanesthetic patients, must have no other clinical duties while supervising such patients, and must have immediate recourse to the attending surgeon or anesthesiologist, or certified registered nurse anesthetist, present in the hospital.
    - (3) Side rails must be attached to movable carts and beds and raised above mattress level when occupied by anesthetized patients. Cribs must be provided for the anesthetized or postsurgical child.
  - g. Personnel with communicable diseases must be excluded from the recovery services.
  - h. Drugs, supplies, and equipment must be immediately and continually accessible in the unit during postoperative care, including emergencies. These include cardiac-respiratory resuscitation materials.
2. Primary--care-hospitals-may-not-provide-recovery-services: If the primary care hospital provides recovery services, the

hospital shall comply with recovery services requirements for general acute hospitals in this section.

3. If a specialized hospital provides surgical services, the hospital is required to provide recovery services consistent with the recovery services requirements for general acute hospitals in this section.

**History:** Effective April 1, 1994; amended effective August 1, 1999.

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

**Law Implemented:** NDCC 23-16-06

**33-07-01.1-32. Anesthesia services.**

1. General acute hospitals providing surgical services shall provide anesthesia services to meet the needs of the patients served and shall ensure the following:
  - a. The anesthesia service must be under the direction of a qualified physician who is a member of the medical staff.
  - b. The anesthesia service must be organized under current written policies and procedures regarding staff qualifications, the administration of anesthetics, the maintenance of safety controls, and required electronic monitoring of patient vital signs and oxygen levels during the anesthetic procedures consistent with current standards of practice. The anesthesia service is responsible for all anesthetics administered in the hospital.
  - c. The patient must receive a preoperative visit from the anesthesiologist or the certified registered nurse anesthetist involved in the case.
  - d. The anesthesia service shall establish policies, procedures, rules, and regulations for the control, storage, and safe use of combustible anesthetics, oxygen, and other medicinal gases in accordance with national fire protection association standards; types of anesthesia to be administered and procedures for each; personnel permitted to administer anesthesia; infection control; safety regulations to be followed; and responsibility for regular inspection, maintenance, and repair of anesthesia equipment and supplies.
  - e. Anesthesia services may be initiated only when ordered by a member of the medical staff and must be administered only by persons qualified and licensed in the management of such materials.



f. An intraoperative anesthetic record must be made a part of the patient's medical record. Drugs used, vital signs, and other relevant information must be recorded at regular intervals during anesthesia.

(1) There must be a preanesthesia evaluation by an individual qualified and licensed to administer anesthesia, performed within forty-eight hours prior to the surgery, with findings recorded in the patient's medical record.

(2) Except in emergency, anesthetic may not be administered until the patient has had a history and physical examination, and a record made of the findings.

g. Postanesthetic followup visits must be made within forty-eight hours after the procedure by the anesthesiologist, certified registered nurse anesthetist, or responsible physician who shall note and record any postoperative abnormalities or complications from anesthesia.

2. ~~Primary--care--hospitals--may--not--provide--anesthesia--services--~~  
If the primary care hospital provides anesthesia services, the hospital shall comply with anesthesia services requirements for general acute hospitals in this section.

3. Specialized hospitals providing surgical services shall comply with the anesthesia services requirements for general acute hospitals in this section.

**History:** Effective April 1, 1994; amended effective August 1, 1999.

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

**Law Implemented:** NDCC 23-16-06

### **33-07-01.1-34. Obstetrical services.**

1. All general acute hospitals providing obstetrical services shall provide for the admission, medical care, transfer, or discharge of obstetric and neonatal patients. Obstetrical services must include the following:

a. The obstetrical services must have an organized obstetric staff with a chief of obstetrical services who is either certified or qualified in obstetrics or a physician who regularly practices obstetrics as head of the obstetrical service. The level of qualification and expertise of the chief of the obstetrical services must be appropriate to the level of care rendered in the hospital. Responsibilities of the chief of the obstetrical service include:

- (1) The general supervision of the care of obstetrical patients.
  - (2) The arrangement of conferences held at regular intervals to review surgical procedures and operations, complications, and mortality.
  - (3) The provision for exchange of information between medical, administrative, and nursing staffs.
- b. Only members of the medical staff with appropriate privileges may admit and care for patients in the obstetrical services areas. A roster of licensed health care practitioners, specifying the obstetrical privileges of each, must be maintained and available to staff in the obstetrical services area and in the files of the hospital administration.
- c. Obstetrical patients under the effect of an analgesic or an anesthetic, in active labor or delivery, must be monitored and attended in accordance with the current standards of practice for obstetric-gynecologic services as identified by the association of women's health, obstetric and neonatal nursing and defined by hospital policies and procedures.
- d. Fetal maturity must be established and documented prior to elective inductions and Caesarean sections.
- e. There must be a written policy and procedure established in accordance with the current standards of practice as identified by the association of women's health, obstetric, and neonatal nursing concerning the administration and documentation of oxytocic drugs and their effects. Oxytocin may be used for medical induction or stimulation of labor only when qualified personnel, determined by the medical staff, can attend the patient closely. If electronic fetal monitoring is not available, the patient must be monitored on a one-to-one basis during the administration of the oxytocic drugs. The following areas must be included in the written policy and procedure for administration and documentation of oxytocic medications:
- (1) The licensed health care practitioner shall evaluate the patient for induction or stimulation, especially with regard to indications for use of oxytocic medications.
  - (2) The licensed health care practitioner or other individuals starting the oxytocin shall be familiar with its effects and complications and be qualified to identify both maternal and fetal complications.

- (3) A qualified licensed health care practitioner shall be immediately available as necessary to manage complications effectively.
- f. Birthing and delivery rooms must be equipped and staffed to provide emergency resuscitation for infants in accordance with the current association of women's health, obstetric, and neonatal nursing standards of practice. Only personnel qualified and trained to do so may use infant emergency resuscitation equipment.
- g. Equipment and personnel trained to use the equipment to maintain a neutral thermal environment for the neonate must be available and utilized as needed.
- h. Nursing staff for obstetrical services must include:
  - (1) Nursing supervision by a registered nurse must be provided for the entire twenty-four-hour period the obstetrical services is occupied.
  - (2) At least one nurse trained in obstetrical and nursery care must be assigned to the care of mothers and infants at all times. Infants must be visually or electronically monitored at all times.
  - (3) A registered nurse must be in attendance at all deliveries, and must be available to monitor the mother's general condition and that of the fetus during labor.
- i. A clean nursery must be provided near the mothers' rooms with adequate lighting and ventilation and must include the following:
  - (1) Bassinets equipped to provide for the medical examination of the newborn and for the storage of necessary supplies and equipment.
  - (2) A glass observation window through which infants may be viewed.
  - (3) Each nursery must have immediately on hand equipment necessary to stabilize the sick infant in accordance with current standards of practice established by the association of women's health, obstetric, and neonatal nursing and defined in hospital policies.
- j. The hospital shall identify specific rooms and beds to be used exclusively for obstetrical patients, obstetrical and gynecological patients, and nursery patients as provided in a plan specifically approved by the department.

- (1) Obstetrical services must be located and arranged to provide maximum protection for obstetrical and neonatal patients from infection and cross-infection from patients in other services of the hospital.
  - (2) Obstetrical services must be located in the hospital so as to prevent through traffic to any other part of the hospital.
2. ~~Primary--care--hospitals--may--not--provide--obstetrical--services--~~  
If the primary care hospital provides obstetrical services, the hospital shall comply with obstetrical services requirements for general acute hospitals in this section.
  3. If a specialized hospital provides obstetrical services, the specialized hospital is subject to the obstetrical services requirements for general acute hospitals.

**History:** Effective April 1, 1994; amended effective May 1, 1998; August 1, 1999.

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

**Law Implemented:** NDCC 23-16-06

**OCTOBER 1999**

**STAFF COMMENT:** Article 33-40 contains all new material and is not underscored so as to improve readability.

**ARTICLE 33-40**

**DNA ANALYSIS**

**Chapter**  
**33-40-01**      **DNA Analysis General Provisions**

**CHAPTER 33-40-01**  
**DNA ANALYSIS GENERAL PROVISIONS**

<b>Section</b>	
<b>33-40-01-01</b>	<b>Scope</b>
<b>33-40-01-02</b>	<b>Definitions</b>
<b>33-40-01-03</b>	<b>Procedures for Responsibilities of Samples</b>
<b>33-40-01-04</b>	<b>Procedures for Collection of Samples</b>
<b>33-40-01-05</b>	<b>Procedures for Analysis of Samples</b>
<b>33-40-01-06</b>	<b>Procedures for Classification of Samples</b>
<b>33-40-01-07</b>	<b>Procedures for Data Base System Usage and Integrity</b>
<b>33-40-01-08</b>	<b>Procedures for Contracting with Another Laboratory for Analysis and Classification of Samples</b>

**33-40-01-01. Scope.** This article is applicable to all qualifying offenders pursuant to North Dakota Century Code chapter 31-13.

**History:** Effective October 1, 1999.  
**General Authority:** NDCC 31-13-08  
**Law Implemented:** NDCC 31-13-08

**33-40-01-02. Definitions.** The following terms are defined as follows for purposes of this chapter, unless otherwise made appropriate by use and context.

1. "Buccal swab" means a sample from the inside of the mouth taken by scraping the cheek. The sample includes saliva.
2. "Designated agency" means the entity designated by this chapter to be responsible for the collection of sample specimens.
3. "Division" means the crime laboratory division.
4. "DNA identification index" means the division's DNA identification record system and the federal bureau of investigation's combined DNA index system, established under North Dakota Century Code section 31-13-05.
5. "DNA record" means DNA identification information stored in the state DNA data base and federal bureau of investigation's combined DNA index system for purposes of generating investigative leads, establishing identification in connection with law enforcement investigations, and supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of analysis, such as numerical representation of DNA fragment lengths, autoradiographs and the digital image of autoradiographs, and discrete allele assignments numbers.
6. "DNA testing" means DNA analysis of materials derived from the human body for the purposes of identification.
7. "Kit" means the genetic marker kit provided by the division.
8. "Marker" means a method of describing individuals by the genetic loci recognized for the participation in the combined DNA index system.
9. "Other body fluids" means a sample of fluid containing human cells, including saliva, in which markers can be profiled from a qualifying offender.
10. "Qualified medical personnel" means any person trained in sampling techniques and approved by the division as described in North Dakota Century Code chapter 31-13.
11. "Qualifying offender" means any convicted person as described in North Dakota Century Code chapter 31-13.

12. "Sample" includes a vial of blood and other body fluids collected from a qualifying offender.
13. "Sampling techniques" includes venipuncture and buccal swab, and other recognized medical techniques.
14. "Venipuncture" means a puncture of a vein as for drawing blood.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 31-13-08

**Law Implemented:** NDCC 31-13-08

**33-40-01-03. Procedures for responsibilities of samples.**

1. When a person becomes a qualifying offender, the state's attorney, at the time of sentencing, shall request the court to issue an order requiring the qualifying offender to comply with North Dakota Century Code chapter 31-13.
2. At the time of sentencing the qualifying offender, the sentencing judge shall issue an order requiring the offender to provide a sample and shall assess costs against the qualifying offender which shall be submitted to the division in accordance with North Dakota Century Code chapter 31-13.
3. The designated agency responsible for sample collection of qualifying offenders is as follows:
  - a. The sheriff's office in the county where the qualifying offender is sentenced is the designated agency and is responsible for the sample collection.
  - b. If the qualifying offender has not previously had a sample collected and is serving a term of incarceration in a facility under the control of the county sheriff, the sheriff's office is the designated agency and is responsible for the sample prior to release of the offender.
  - c. The department of corrections and rehabilitation shall be responsible for collecting, storing, and sending sample specimens of people housed in facilities administered by the department of corrections and rehabilitation.
  - d. If the qualifying offender has not previously had a sample collected and is serving a sentence but is not physically incarcerated, the supervising agency (such as a probation office) is the designated agency and is responsible for the collection of the sample prior to the termination of the sentence.

4. At the time of sentencing, if no order has been issued requiring the qualifying offender to provide a sample, the designated agency shall ask the state's attorney of the county of the conviction or the county in which the offender is located to request the court to issue such an order, including awarding costs to the division.
5. The state's attorney shall designate a person or entity to collect, store, and send the sample specimen of all other people.
6. For convictions on or after August 1, 1995, if the qualifying offender voluntarily consents to provide the sample and pays the costs, no court order is necessary and the state's attorney is not required to request one.
7. A general order issued under the administrative authority of the chief judge of a judicial district is sufficient to satisfy the court order requirements of these rules. In the event such an order exists and is valid with respect to the qualifying offender, the state's attorney need not seek an individualized order.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 31-13-08

**Law Implemented:** NDCC 31-13-03

**33-40-01-04. Procedures for collection of samples.**

1. The state department of health shall provide kits to the designated agencies as needed. Each kit must contain, but is not limited to, a receipt form, an instruction sheet, and containers for sample collections.
2. The collection site shall be any location chosen by the designated agency for sample collection.
3. The qualifying offender must be identified by the designated agency by one or more of the following: a driver's license, fingerprints, identification by law enforcement that has the individual in custody, or any other reasonable means within the designated agency's discretion before the samples are collected.
4. The samples must be collected by personnel described in North Dakota Century Code section 31-13-04 and by qualified medical personnel as described in this chapter.
5. The receipt form must be completed by the designated agency at the time of sample collection.



6. The completed kit must be delivered or sent to the department address indicated in the kit instructions.
7. All costs associated with the collection of the sample must be assessed to the qualifying offender as provided in North Dakota Century Code section 31-13-03.

**History:** Effective October 1, 1999.  
**General Authority:** NDCC 31-13-08  
**Law Implemented:** NDCC 31-13-04

**33-40-01-05. Procedures for analysis of samples.** The division shall perform DNA analysis in accordance with national standards for DNA quality assurance and proficiency testing issued pursuant to the DNA Identification Act of 1994 [Pub. L. 103-322; 108 Stat. 2065].

**History:** Effective October 1, 1999.  
**General Authority:** NDCC 31-13-08  
**Law Implemented:** NDCC 31-13-05

**33-40-01-06. Procedures for classification of samples.** The division shall classify samples in accordance with the criteria established by the federal bureau of investigation for inclusion of DNA records in the combined DNA index system.

**History:** Effective October 1, 1999.  
**General Authority:** NDCC 31-13-08  
**Law Implemented:** NDCC 31-13-05

**33-40-01-07. Procedures for data base system usage and integrity.**

1. Except as provided in subsection 2, the results of the genetic marker grouping analysis may be disclosed only to:
  - a. Criminal justice agencies for law enforcement official purposes;
  - b. A defendant for criminal defense purposes in response to valid subpoenas or other court orders;
  - c. Any person who is the subject of a record;
  - d. A public official or the official's authorized agent who requires that information in connection with the discharge of the official's duties; or
  - e. Any other person required by law.
2. In addition, the division may use test results for system integrity and quality control including to assist in a

population statistics data base and for other research purposes if personally identifying information is removed.

3. The DNA identification index may include the analysis of DNA samples recovered from crime scenes, medical examinations, and unidentified human remains. For the purpose of missing persons, the DNA identification index may include DNA records of close biological relatives of a missing person.
4. If a court with proper jurisdiction has ordered an expungement and no other grounds exist for sample collection, the record of the sample will be removed from the data base and all samples from the person will be destroyed.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 31-13-06, 31-13-07, 31-13-09

**Law Implemented:** NDCC 31-13-08

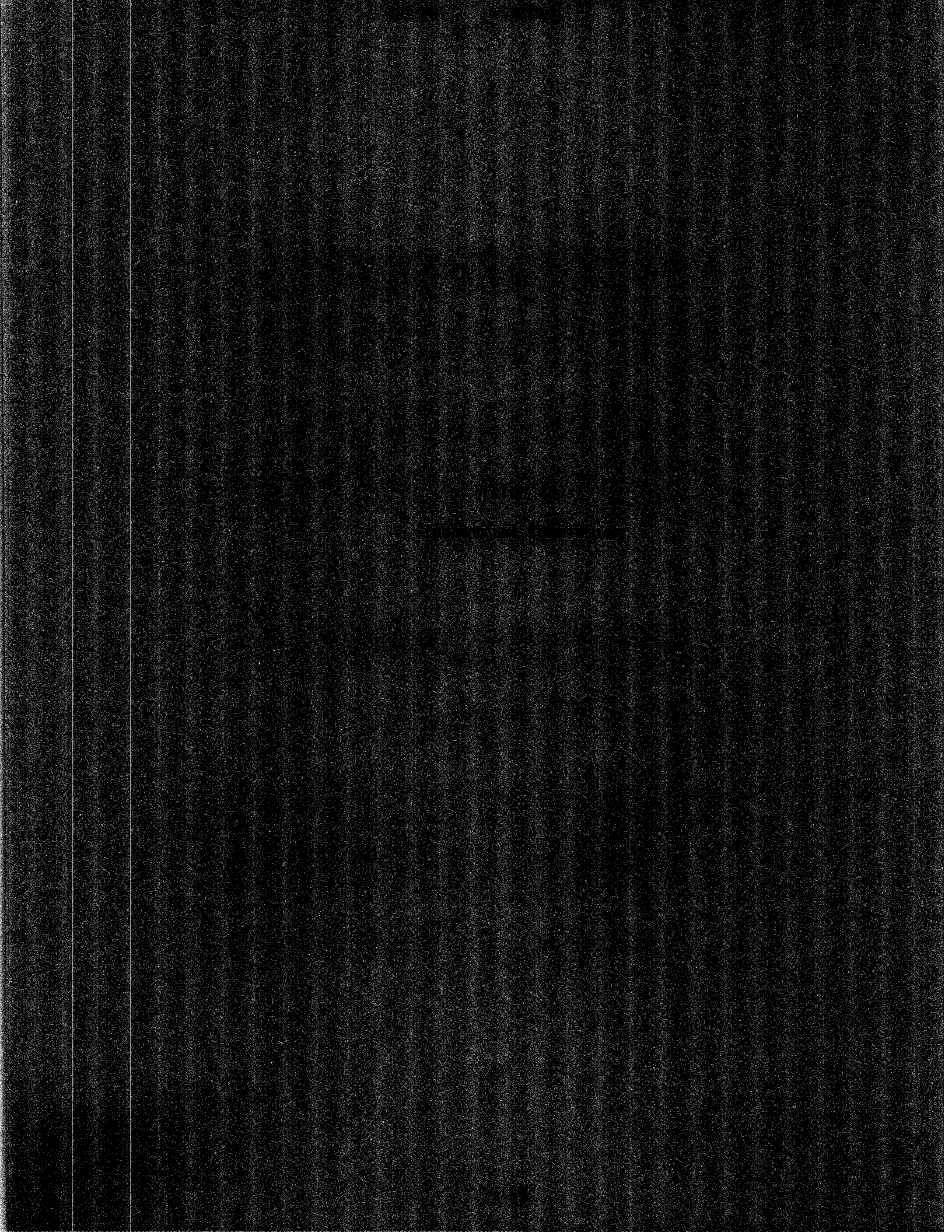
**33-46-01-08. Procedures for contracting with another laboratory for analysis and classification of samples.**

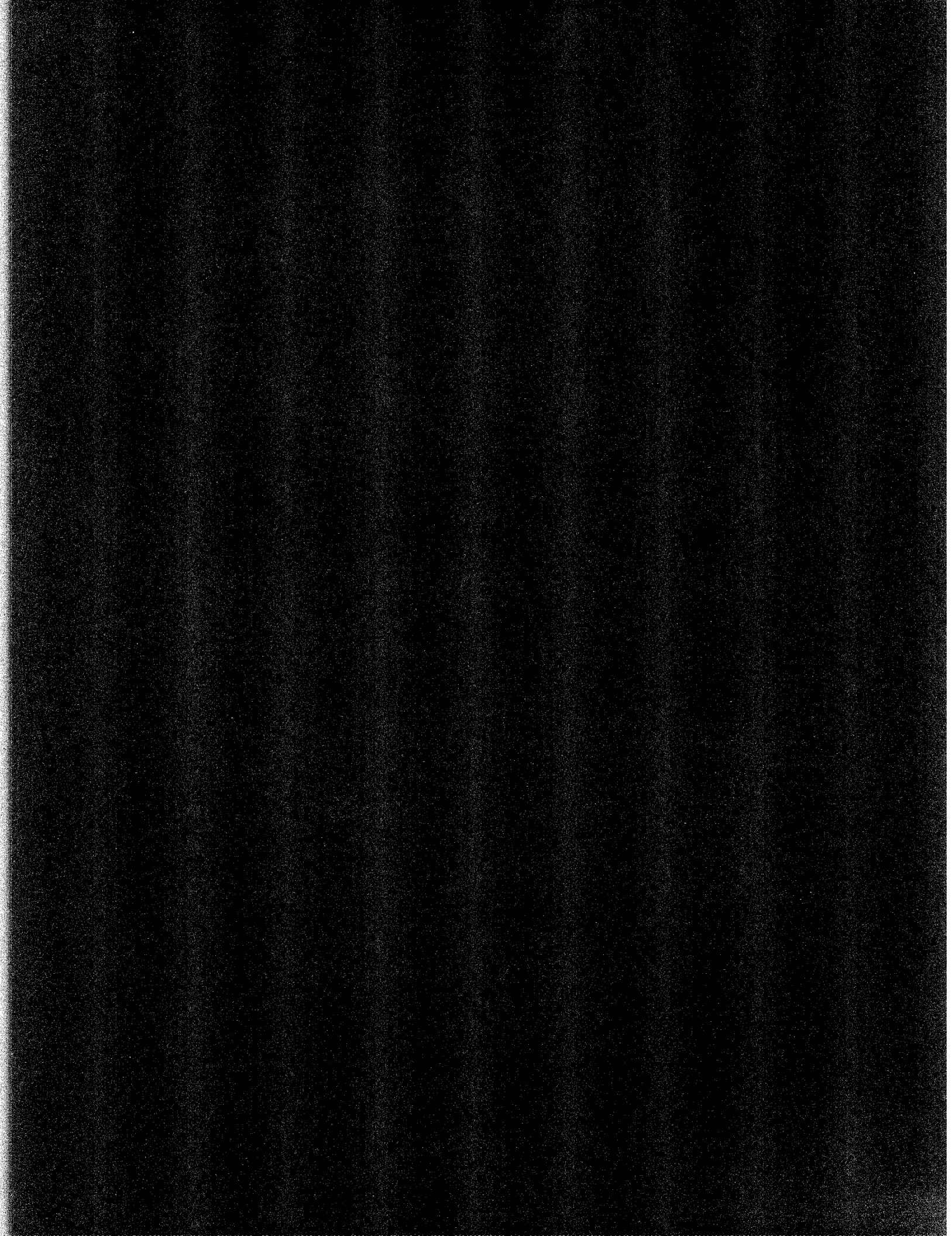
1. The division shall follow state procurement procedures when contracting for analysis of samples.
2. The division shall contract with laboratories that hold a current accreditation from the association of crime laboratory directors laboratory accreditation board.
3. The cost of the procedure must be assessed to the qualifying offender as designated in North Dakota Century Code chapter 31-13.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 31-13-03, 31-13-08

**Law Implemented:** NDCC 31-13-08





AUGUST 1999

CHAPTER 43-02-03

**43-02-03-55. Abandonment of wells - Suspension of drilling.**

1. The removal of production equipment or the failure to produce oil or gas {, other than a gas well shut in for lack of a market}, for a period of one year constitutes abandonment of a producing the well. The removal of injection equipment or the failure to use an injection well for a period of one year constitutes abandonment of an injection the well. Any such An abandoned well must be plugged and the its site must be reclaimed pursuant to applicable rules of the commission sections 43-02-03-34 and 43-02-03-19.
2. The director may waive for one year the requirement to plug and grant temporary reclaim an abandoned well by giving the well temporarily abandoned status for a period of one year for such well provided it can be demonstrated to the director's satisfaction that the well may. This status may only be given to wells that are to be used for alternative purposes related to the production of oil or and gas. The director may grant extensions to the one-year period upon application. If a well is granted temporary given temporarily abandoned status, the well's perforations in the well must be isolated, the integrity of the its casing must be proven, and the its casing must be sealed at the surface, all in a manner approved by the director. The director may extend a well's temporarily abandoned status beyond one year.
3. In addition to the waiver in subsection 2, the director may also waive the duty to plug and reclaim an abandoned well for any other good cause found by the director. If the director

exercises this discretion the director shall set a date or circumstance upon which the waiver expires.

4. The director may approve suspension of the drilling of a well  
~~may-be-suspended-upon-approval-of-the-director;--in-such~~  
event. If suspension is approved, a plug must be placed at  
~~the top of the casing in-such-manner-as~~ to prevent the  
~~intrusion-of~~ any foreign matter from getting into the well.  
~~Unless-otherwise-authorized-by-the-director;--when~~ When  
~~drilling operations--have~~ has been suspended for thirty days,  
~~the well, unless otherwise authorized by the director, must be~~  
plugged and the its site reclaimed pursuant to applicable  
~~rules-of-the-commission~~ sections 43-02-03-34 and 43-02-03-19.

**History:** Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; August 1, 1999.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

## CHAPTER 43-02-08

**43-02-08-02. Application for stripper well property determination.** Any operator desiring to classify a property as a stripper well property for purposes of exempting production from the imposition of the oil extraction tax as provided under North Dakota Century Code chapter 57-51.1 shall file an application for stripper well property determination with the director and obtain a determination certifying the property as a stripper well property. The applicant has the burden of establishing entitlement to stripper well property status and shall submit all data necessary for a determination by the director.

The application must include, ~~but is not limited to,~~ the following:

1. ~~A fee in the amount of one hundred dollars.~~
2. The name and address of the applicant and the name and address of the person operating the well, if different.
3. 2. The legal description of the property for which a determination is requested.
4. 3. The well name and number and legal description of each oil-producing well on the property during the qualifying period and at the time of application.
5. 4. The depth of all perforations (measured in feet from ground level) from each producing well on the property during the qualifying period which produces from the same pool.
6. 5. Designation of the property which the applicant requests to be certified as a stripper well property. Such designation must be accompanied by sufficient documentation for the director to determine (as set forth in section 43-02-08-02.1) that the property the applicant desires to be certified as a stripper well property constitutes a property as specified in subsection 4 of North Dakota Century Code section 57-51.1-01.
7. 6. The monthly production of each oil-producing well on the property during the qualifying period.
8. 7. An affidavit stating that all working interest owners of the property, and all purchasers of the crude oil produced from the property have been notified of the application by certified or registered mail.
9. ~~The application must be submitted to the commission within twelve months after the end of the stripper well property's qualification period.~~

If the application does not contain sufficient information to make a determination, the director may require the applicant to submit additional information.

**History:** Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; May 1, 1994; July 1, 1996; August 1, 1999.

**General Authority:** NDCC 38-08-04(5)

**Law Implemented:** NDCC 38-08-04(4), 57-51.1-01



## CHAPTER 43-02-09

**43-02-09-04. Application for workover project determination.** The applicant has the burden of establishing entitlement to the exemption provided in North Dakota Century Code section 57-51.1-03 and upon completion of the workover project shall submit all information necessary for a determination by the director. The cost of a workover project includes only direct costs for material, equipment, services, and labor used in the workover project. Labor and services included must be performed onsite and materials and equipment must be used onsite. The value of capital equipment removed from the site must be deducted from the cost of the project.

The application must include the following:

1. ~~A fee in the amount of one hundred dollars.~~
2. The name and address of the applicant and the name and address of the person operating the well, if different.
3. 2. The well name and number and legal description of the well.
4. 3. The dates during which the workover rig was in service actually performing work on the workover project, and the date the workover was completed.
5. 4. A detailed list identifying all labor, services, and materials used and equipment replaced during the workover project, the cost of each item, and whether the replacement equipment was new or used. Also, the value of all of the equipment removed from service must be listed. The list must be verified by a person knowledgeable in the costs of workover projects and the value of used equipment. At any time the director may require the applicant to submit actual invoices to verify any costs set forth in the application.
6. 5. A sundry notice (form 4) detailing all work done.
7. 6. The average daily oil production from the well during the first two months after completion of the project, if the costs of the project did not exceed sixty-five thousand dollars. The project is completed and the two-month period commences the first day of production through the wellhead equipment after the workover rig is removed from over the well.
8. 7. All gauge tickets of oil produced in incomplete months during the first two months after completion of the workover, and the volume of oil stored on the well premises immediately prior to the commencement of the workover project.

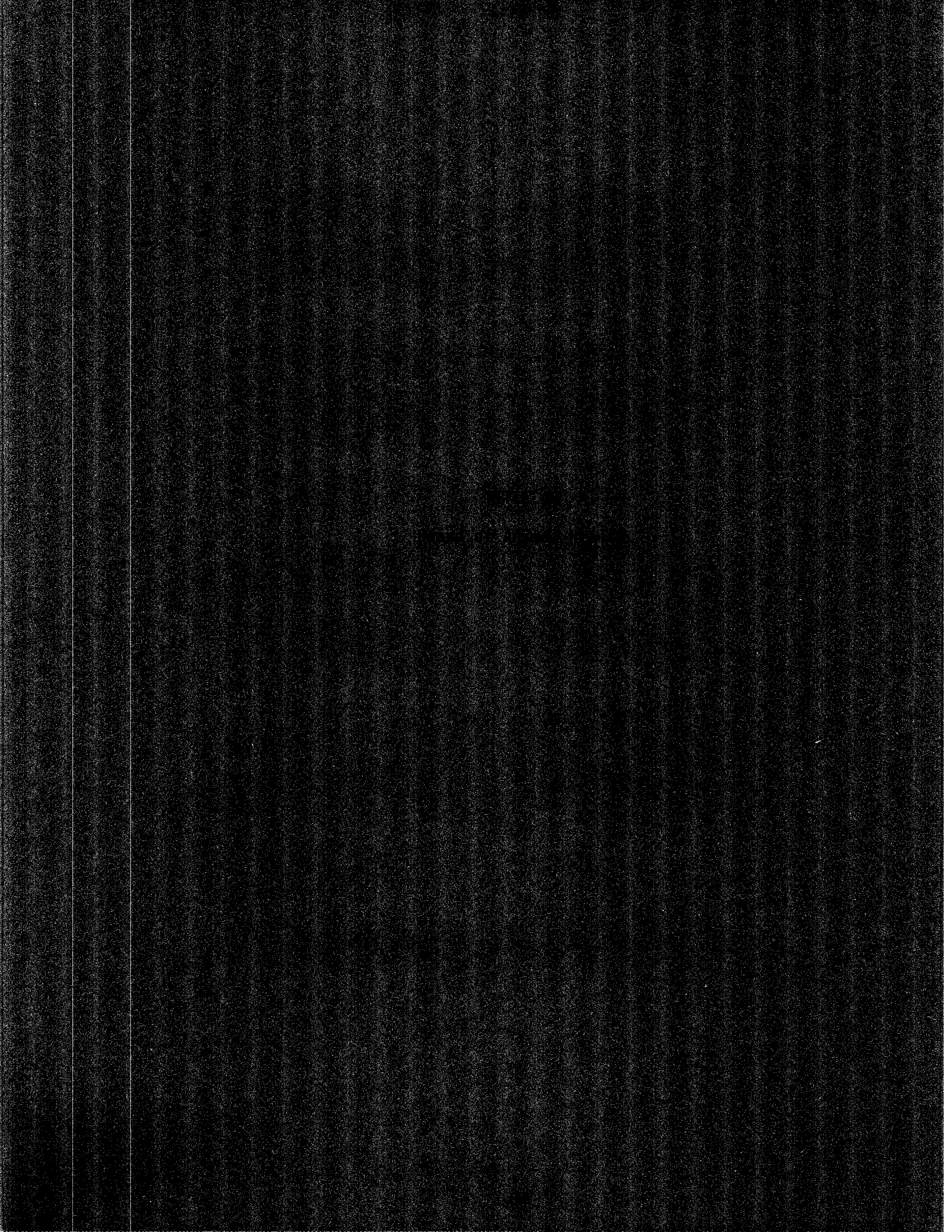
~~The--application-must-be-submitted-to-the-commission-within-twelve months-after-the-completion-of-the-workover-project-~~

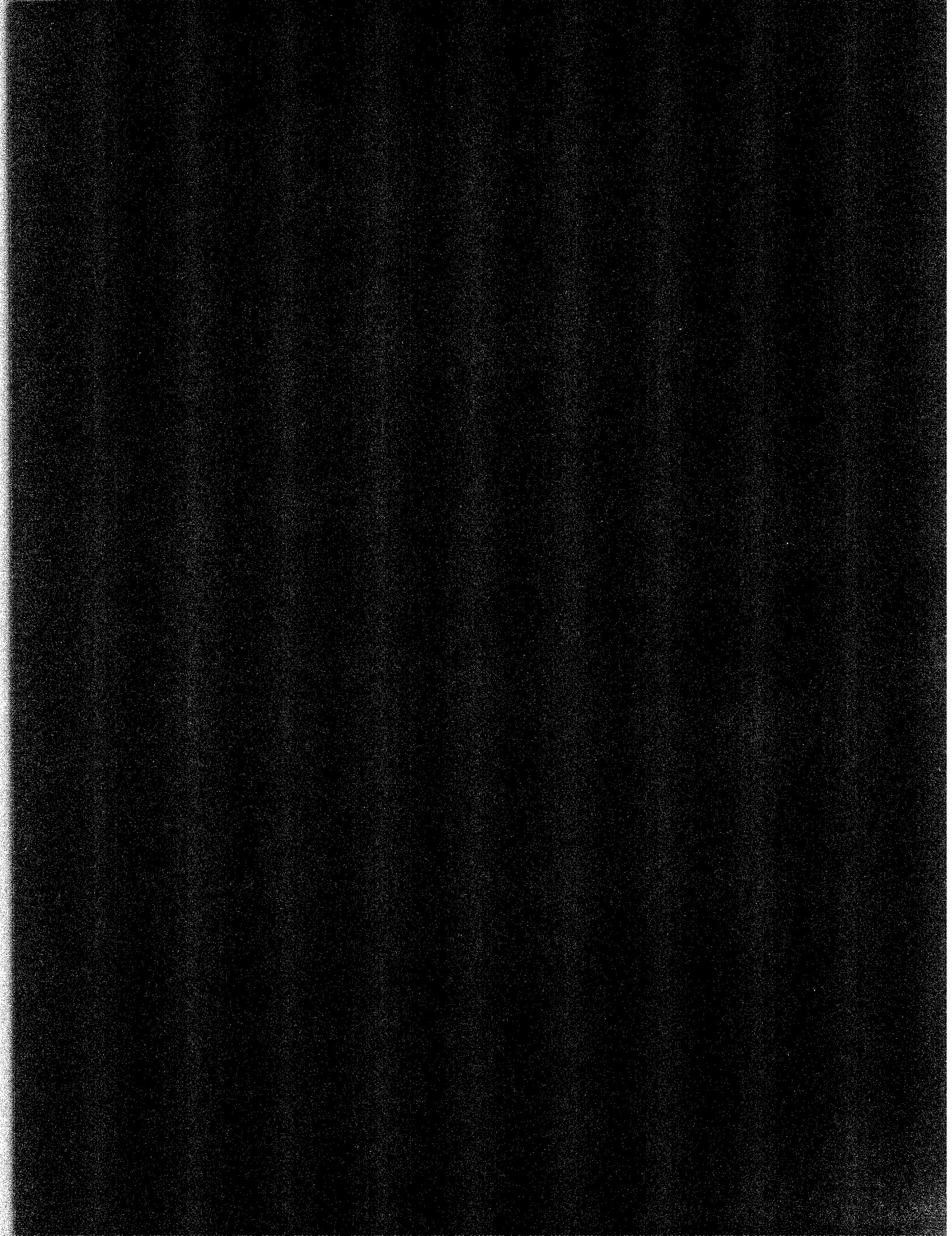
If the application does not contain sufficient information to make a determination, the director will advise the applicant of the additional information that must be filed in order to make a determination. If the requested additional information is not received within fifteen working days after receipt of the request, the application will be returned to the applicant.

**History:** Effective May 1, 1990; amended effective May 1, 1992; May 1, 1994; July 1, 1996; August 1, 1999.

**General Authority:** NDCC 38-08-04, 57-51.1-03

**Law Implemented:** NDCC 57-51.1-03





OCTOBER 1999

CHAPTER 48-02-01

48-02-01-05. Sheep.

1. For all sheep imported into North Dakota, all of the following are required:
  - a. A certificate of veterinary inspection, except as otherwise provided by North Dakota Century Code sections 36-14-04.1 and 36-14-10 and North Dakota Administrative Code section 48-02-01-01.
  - b. A An import permit from the board.
  - c. Sheep must be free of any visible signs of infectious foot rot and must originate from flocks that have been inspected and are free from any visible signs of infectious foot rot. The certificate of veterinary inspection must specifically state that all of the sheep are free of any visible signs of infectious foot rot. Special permission may be given by the state veterinarian to import registered breeding sheep without meeting the requirements of this subsection. Registered breeding sheep imported by special permission must be held under quarantine and isolated from other sheep for a minimum of thirty days, upon entry into North Dakota.
  - d. The certificate of veterinary inspection must contain a written statement, signed by the owner of the sheep, stating that:

"To the best of my knowledge, the sheep listed on this certificate originate from a flock that has not been diagnosed as a scrapie-infected, source, trace, or exposed flock in the past five years. (This statement shall be signed by the owner.)"

2. All breeding rams imported into North Dakota must comply with all of the following requirements:
  - a. Breeding rams six months of age or over must have had a negative test for brucella ovis, or the flock of origin must have a negative brucella ovis status. To qualify a flock as a negative brucella ovis status flock, two negative tests for brucella ovis must have been administered, forty-five to sixty days apart, during the same year, to all rams one year of age or older, and thereafter a yearly negative test must have been administered to all rams in the flock one year of age or older. The certificate of veterinary inspection must include specific negative test information concerning brucella ovis.
  - b. Rams must be individually identified with registration ear tag or tattoo, or other identification approved by the state veterinarian.
3. All rams sold for breeding purposes in North Dakota must comply with all of the following requirements:
  - a. Breeding rams six months of age or over must have had a negative test for brucella ovis, or the flock of origin must have a negative brucella ovis status. To qualify a flock as a negative brucella ovis status flock, two negative tests for brucella ovis must have been administered, forty-five to sixty days apart, during the same year, to all rams one year of age or older, and thereafter a yearly negative test must have been administered to all rams in the flock one year of age or older.
  - b. Rams testing positive to an official brucella ovis test must be isolated, branded with a B brand on the left jaw, and sold for slaughter only, or they must be neutered before leaving the premises.
  - c. Rams must be individually identified by registration ear tag or tattoo, or other identification approved by the state veterinarian.
4. All tests for brucella ovis administered pursuant to this section must be tests officially recognized or otherwise approved by the state veterinarian.

**History:** Amended effective July 1, 1988; September 1, 1988; October 1, 1999.

**General Authority:** NDCC 36-01-08

**Law Implemented:** NDCC ~~36-01-08~~ 36-01-12, 36-14-04.1, 36-14-10

**STAFF COMMENT:** Chapter 48-04-04 contains all new material and is not underscored so as to improve readability.

**CHAPTER 48-04-04  
SCRAPIE**

<b>Section</b>	
48-04-04-01	Definitions
48-04-04-02	Disposition of Infected Flock
48-04-04-03	Disposition of Source Flock
48-04-04-04	Disposition of Trace Flock
48-04-04-05	Disposition of Exposed Flock
48-04-04-06	Owner Reporting Requirements
48-04-04-07	Flock Identification
48-04-04-08	Flock Records Disclosure
48-04-04-09	Disclosure of Records Under Federal Scrapie Program
48-04-04-10	Scrapie Testing

**48-04-04-01. Definitions.** The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 36-01 except:

1. "Accredited veterinarian" means a veterinarian approved by the administrator to perform functions specified in title 9, Code of Federal Regulations, part 161, and to perform functions required by the cooperative state-federal disease control and eradication programs.
2. "Administrator" means the administrator, animal and plant health inspection service, United States department of agriculture, or any employee of the United States department of agriculture authorized to act in that person's place.
3. "Animal" means a sheep or goat.
4. "Animal and plant health inspection service" or "APHIS" means the animal and plant health inspection service of the United States department of agriculture.
5. "APHIS representative" means an individual employed by APHIS who is authorized to perform the function involved.
6. "Breed associations and registries" means organizations which maintain the permanent records of ancestry or pedigrees of animals (including the animals sires and dams), individual identification of animals, and ownership of animals.
7. "Exposed animal" means any animal that has been in the same flock at the same time within the previous sixty months as a scrapie-positive animal, excluding limited contacts. Limited



contacts are contacts between animals that occur off the premises of the flock, and do not occur during or immediately after parturition for any of the animals involved. Limited contacts do not include commingling, when animals concurrently share the same pen or same section in a transportation unit where there is uninhibited physical contact.

8. "Exposed flock" means any flock that had contained, within the previous sixty months, an animal which was later confirmed as scrapie-positive in another flock.
9. "Flock" means all animals maintained on any single premises, and all animals under common ownership or supervision on two or more premises which are geographically separated, but among which there is an interchange or movement of animals.
10. "Flock plan" means a written flock management agreement designed by the owner of a flock, an accredited veterinarian, and a veterinary services representative or state representative in which each participant agrees to undertake actions specified in the flock plan to control the spread of scrapie from, and to eradicate scrapie in, an infected flock, source flock, or trace flock. The flock plan must require an epidemiologic investigation to identify high-risk animals that must be removed from the flock, and must include other requirements found necessary by the APHIS representative or state representative to control scrapie in the flock. These other requirements may include cleaning and disinfecting of flock premises, education of the owner of the flock and personnel working with the flock in techniques to recognize clinical signs of scrapie and control the spread of scrapie, and maintaining records of the animals in the flock.
11. "High-risk animal" means an animal which is:
  - a. The progeny of a scrapie-positive dam;
  - b. Born in the same flock, during the same lambing season as progeny of a scrapie-positive dam, unless the progeny of the scrapie-positive dam are from separate contemporary lambing groups (groups that are managed as separate units and are not commingled during lambing and for sixty days following the date the last lamb was born, and that do not use the same lambing facility unless the lambing facility is cleaned and disinfected between lambing by removing all organic matter and spraying the lambing facility with a two percent sodium hydroxide solution or 0.5 percent sodium hypochlorite solution); or
  - c. Born during the same lambing season as a scrapie-positive ewe or a ram in a source flock or trace flock.

12. "Infected flock" means any flock in which a state representative has determined an animal to be a scrapie-positive animal after March 31, 1989. A flock will no longer be an infected flock after it has completed the requirements of a flock plan.
13. "Permit" means an official document (VS form 1-27) issued by an APHIS representative or state representative which indicates the following:
  - a. The shipper's or consignor's name and address;
  - b. The consignee's name and address;
  - c. The state where the permit was issued;
  - d. Points of origin and destination of the animals being moved interstate;
  - e. Purpose of the movement;
  - f. Number and species of animals covered by the permit;
  - g. Whether the animals are from an infected flock or a source flock;
  - h. Transportation vehicle license number or other identification numbers; and
  - i. Seal number.
14. "Scrapie-positive animal" means an animal for which a diagnosis of scrapie had been made by the national veterinarian services laboratory, United States department of agriculture, or another laboratory authorized by the administrator to conduct scrapie tests through histological examination of central nervous system samples from the animal for microscopic lesions in the form of neuronal vacuoles or spongy degeneration, or by the use of protease-resistant protein analysis or other confirmatory techniques used in conjunction with histological examination.
15. "Source flock" means a flock in which a state representative has determined that at least two animals were born that were diagnosed as scrapie-positive animals at an age of fifty-four months or less. In order for the flock to be a source flock, the second scrapie-positive diagnoses must have been made within sixty months of the first scrapie-positive diagnosis and after March 31, 1989. A flock will no longer be a source flock after it has completed the requirements of a flock plan.

16. "State" means each of the fifty states, the District of Columbia, the Northern Mariana Islands, Puerto Rico, and all territories or possessions of the United States.
17. "State representative" means the state veterinarian, deputy state veterinarian, or an agent of the state board of animal health.
18. "Trace flock" means a flock in which a state representative has determined that one animal was born that was diagnosed as a scrapie-positive animal at an age of fifty-four months or less. In order for the flock to be a trace flock, the scrapie-positive diagnosis must have been made after March 31, 1989. A flock will no longer be a trace flock after it has completed the requirements of a flock plan.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 36-01-08

**Law Implemented:** NDCC 36-01-12, 9 CFR 79.1, 9 CFR 161

**48-04-04-02. Disposition of infected flock.** In the event a flock is determined to be a scrapie-infected flock, the flock must be quarantined. The owner has the option of depopulating the flock or signing an agreement with the state-federal scrapie program administrators agreeing to comply with requirements of title 9, Code of Federal Regulations, part 79.2, until the time the flock is no longer an infected flock.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 36-01-08

**Law Implemented:** NDCC 36-01-12, 9 CFR 79.2

**48-04-04-03. Disposition of source flock.** In the event a flock is determined to be a scrapie source flock, the flock must be quarantined. The owner has the option of depopulating the flock, signing an agreement with the state-federal scrapie program administrators agreeing to comply with the requirements of title 9, Code of Federal Regulations, part 79.2, until the flock is no longer a source flock, or implementing a flock plan that meets board approval.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 36-01-08

**Law Implemented:** NDCC 36-01-12, 9 CFR 79.2

**48-04-04-04. Disposition of trace flock.** In the event a flock is determined to be a scrapie trace flock, the owner has the option of depopulating the flock, signing an agreement with the state-federal scrapie program administrators agreeing to comply with requirements of title 9, Code of Federal Regulations, part 79.2, until the time the flock is no longer a trace flock, or entering into an agreement with the

board allowing it to conduct semiannual flock inspections for a period of five years to monitor the flock status. Upon designation by a state representative as a trace flock, the flock must be quarantined until the owner executes one of the foregoing options.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 36-01-08

**Law Implemented:** NDCC 36-01-12, 9 CFR 79.2

**48-04-04-05. Disposition of exposed flock.** In the event a flock is determined to be a scrapie exposed flock, the owner has the option of signing an agreement with the state-federal scrapie program administrators agreeing to comply with requirements of title 9, Code of Federal Regulations, part 79.2, until the time the flock is no longer an exposed flock or entering into an agreement with the board allowing it to conduct semiannual flock inspections for a period of five years to monitor the flock status. Upon designation by a state representative as an exposed flock, the flock must be quarantined until the owner executes one of the foregoing options.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 36-01-08

**Law Implemented:** NDCC 36-01-12, 9 CFR 79.2

**48-04-04-06. Owner reporting requirements.** The owner of a flock or the owner's agent shall immediately report to a state representative, APHIS representative, or an accredited veterinarian, any animal in the flock exhibiting symptoms consistent with scrapie. Symptoms of scrapie include: weight loss despite retention of appetite; behavioral abnormalities; pruritus (itching); wool pulling; biting at legs or side; lip smacking; motor abnormalities such as incoordination, high-stepping gate of forelimbs, bunny hop movement of rear legs, swaying of back end; increased sensitivity to noise and sudden movement; tremor, "star gazing", head pressing, recumbency, or other signs of neurological disease or chronic wasting illness. Such animals must not be removed from the flock without written permission of a state representative.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 36-01-08

**Law Implemented:** NDCC 36-01-12

**48-04-04-07. Flock identification.** The owner of a flock or the owner's agent shall identify all animals one year of age or over within the flock. All animals less than one year of age shall be identified when a change of ownership occurs, with the exception of those moving within slaughter channels. The form of identification shall be a tamper-proof ear tag, electronic implant, flank tattoo, or ear tattoo or other means of identification subsequently prescribed by the board by rule. Provided, however, that any unique identification number that may

be applied by the owner of the flock or the owner's agent shall be in accordance with instructions by the state representative.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 36-01-08

**Law Implemented:** NDCC 36-01-12

**48-04-04-08. Flock records disclosure.** The owner of a flock or the owner's agent shall allow breed associations and registries, livestock markets, and packers to disclose records to state representatives, to be used in an epidemiological investigation of source flocks, trace flocks, and exposed animals.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 36-01-08

**Law Implemented:** NDCC 36-01-12

**48-04-04-09. Disclosure of records under federal scrapie program.** The owner of a flock enrolled in the voluntary scrapie flock certification program described in title 9, Code of Federal Regulations, part 54, or the owner's agent, selling or otherwise disposing of breeding stock shall make animals in the flock and records required to be kept under paragraph (a)(2)(iv) of title 9, Code of Federal Regulations, part 79.2, available for inspection by APHIS representatives or state representatives, given reasonable prior notice.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 36-01-08

**Law Implemented:** NDCC 36-01-12, 9 CFR 79.2

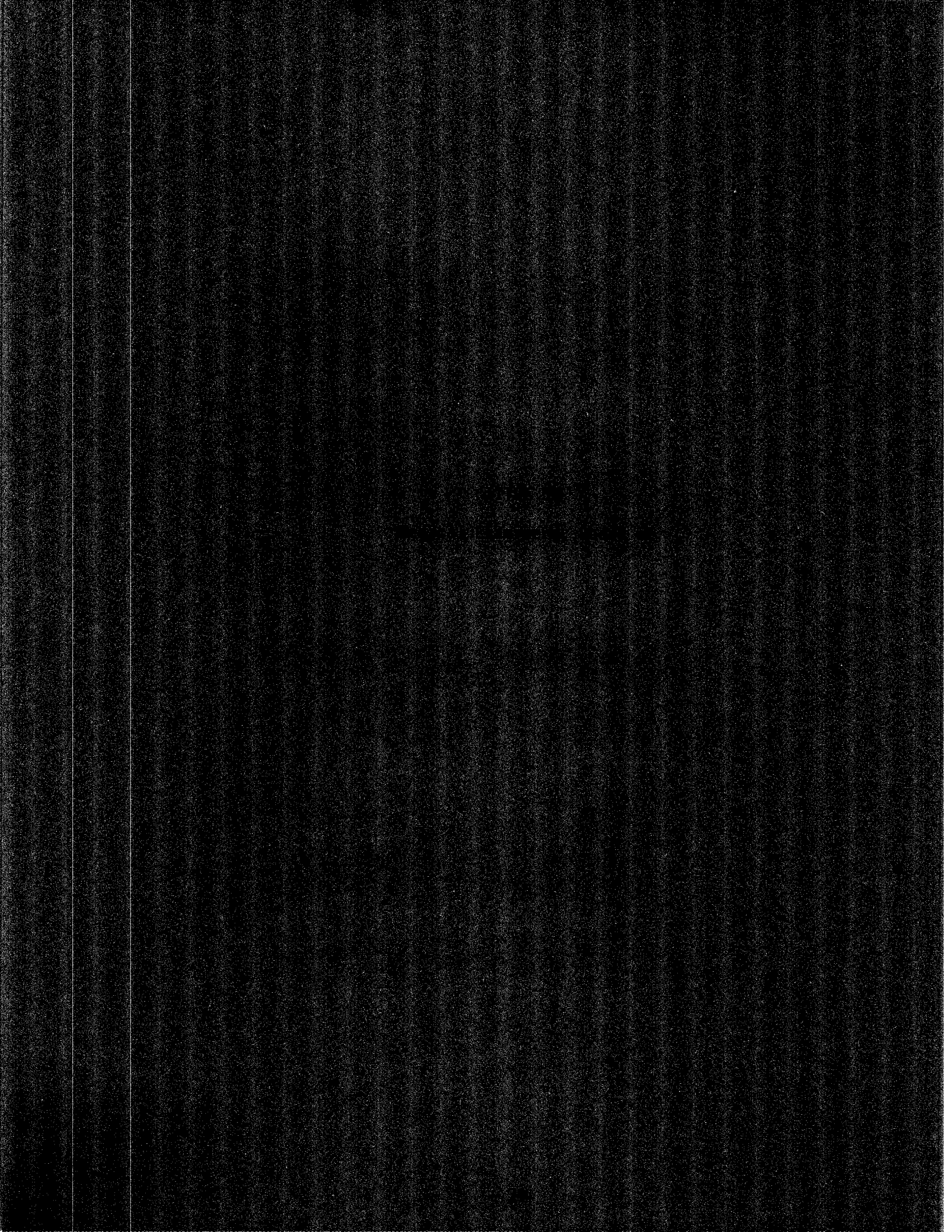
**48-04-04-10. Scrapie testing.** Upon request by a state representative, the owner of a flock or the owner's agent shall have an accredited veterinarian collect and submit tissues from animals reported in accordance with section 48-04-04-06 to a laboratory designated by an APHIS or state representative.

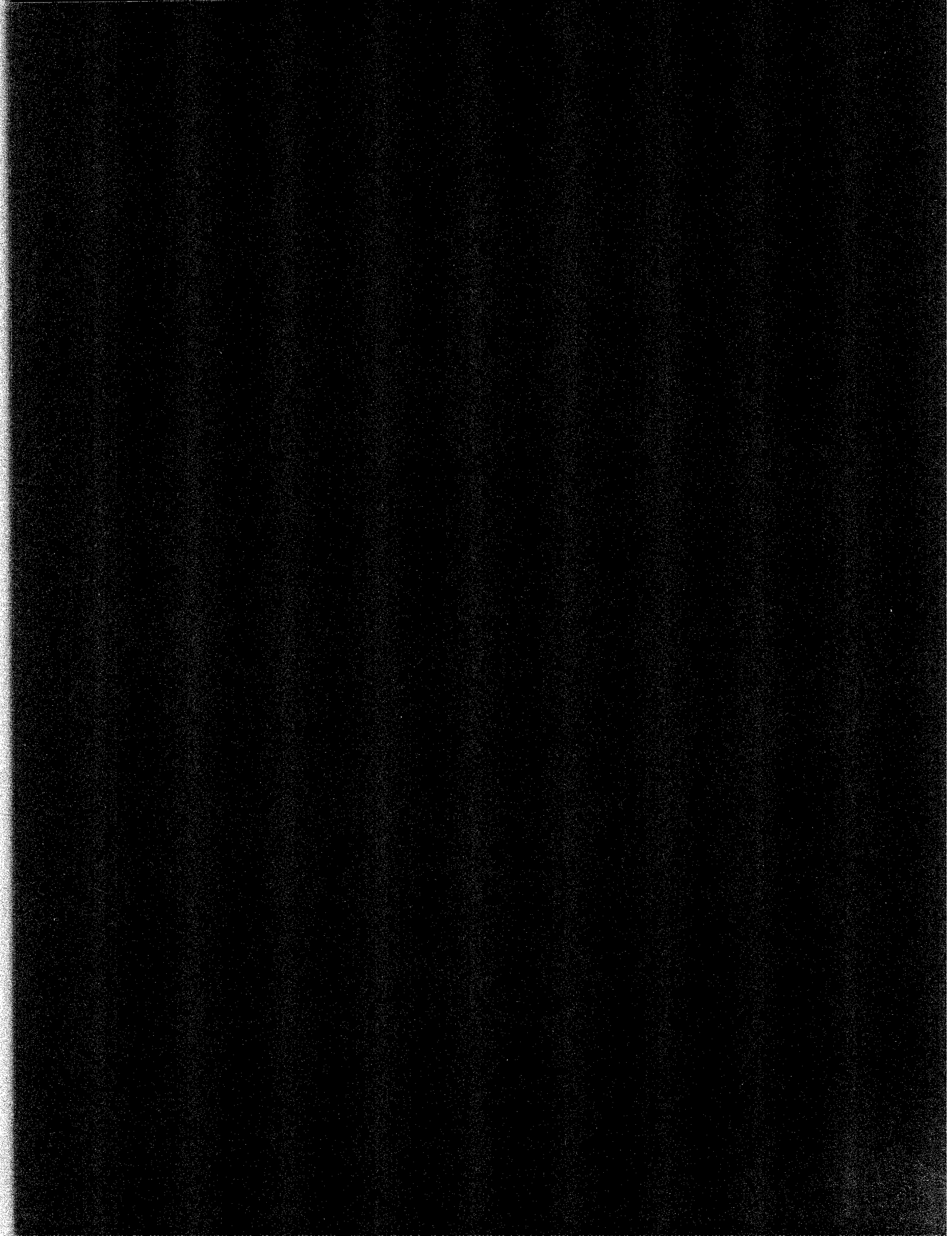
**History:** Effective October 1, 1999.

**General Authority:** NDCC 36-01-08

**Law Implemented:** NDCC 36-01-12, 9 CFR 79.2









OCTOBER 1999

CHAPTER 50-03-01

**50-03-01-11. Revocation of registration license.** The board may deny, suspend, or revoke registration licensure of a physician assistant upon any of the following grounds:

1. Failing to demonstrate the qualifications for registration licensure under this act or the regulations of the board.
2. Soliciting or receiving any form of compensation from any person other than the assistant's registered employer for services performed as a physician assistant.
3. Willfully or negligently divulging a professional confidence or discussing a patient's condition or a physician's diagnosis without the express permission of the physician.
4. The habitual or excessive use of intoxicants or drugs.
5. Aiding or abetting the practice of medicine by a person not licensed by the board.
6. Gross negligence in performing the duties, tasks, or functions assigned to the assistant by a supervising physician.
7. Manifest incapacity or incompetence to perform as a physician assistant.
8. Conduct unbecoming in a person registered licensed as a physician assistant or detrimental to the best interests of the public or the profession.

9. Repeated or willful violation of the contract of employment on file with the board.
10. Representing himself or herself to be a physician.
11. Fraud or deceit in obtaining initial registration licensure as a physician assistant, the renewal of registration licensure as a physician assistant, or in the practice of the physician assistant profession.

**History:** Amended effective July 1, 1988; November 1, 1993; April 1, 1996; October 1, 1999.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(10)

**50-03-01-13. Fees.** The fee for initial registration licensure of a physician assistant is fifty dollars. The annual renewal fee is fifty dollars. The fee for approval of employment contract changes is twenty-five dollars.

**History:** Effective July 1, 1988; amended effective November 1, 1993; December 1, 1996; October 1, 1999.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(10)

**50-03-01-14. Registration License renewal requirements.** Every second year after the initial registration licensure of a physician assistant, the assistant's registration license renewal application must be accompanied with evidence of the successful completion of one hundred hours of continued education for physician assistants. Every sixth year, the applicant must demonstrate that the applicant has successfully passed reexamination by the national commission on certification of physician assistants or other certifying reexamination approved by the board.

**History:** Effective August 1, 1989; amended effective November 1, 1993; October 1, 1999.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 43-17-02(10)

**50-03-01-15. Forms of registration licensure.** The board of medical examiners may recognize the following forms of registration licensure for a physician assistant and may issue certificates licenses accordingly:

1. Permanent registration licensure - which will continue in effect so long as the physician assistant meets all requirements of the board.

2. Locum tenens permit - which may be issued for a period not to exceed three months.

**History:** Effective July 1, 1994; October 1, 1999.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(10)

**STAFF COMMENT:** Chapter 50-03-04 contains all new material and is not underscored so as to improve readability.

**CHAPTER 50-03-04  
FLUOROSCOPY TECHNOLOGISTS**

Section	
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50-03-04-04	Annual Permit Renewal
50-03-04-05	Fees
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50-03-04-13	Number of Technologists Under Physician's Supervision Limited
50-03-04-14	Disciplinary Action
50-03-04-15	Grounds for Disciplinary Action
50-03-04-16	Communications

**50-03-04-01. Definitions. As used in this chapter:**

1. "Approved school for radiologic technologists" means a school that provides a course of instruction in radiologic technology which:
  - a. Has been found by the board of medical examiners to be adequate to meet the purposes of this chapter; or
  - b. Has been approved by an accrediting body recognized by the board of medical examiners for this purpose.
2. "Board" means the North Dakota state board of medical examiners.
3. "Fluoroscopy" means a radiological examination utilizing fluorescence for the observation of the transient image.
4. "Fluoroscopy technologist" means a radiology technologist who has been granted a radiologic technologist fluoroscopy permit by the board.
5. "Immediately available supervision" means being physically available for consultation and supervision.

6. "Onsite supervising physician" means a North Dakota-licensed physician who provides supervision of the fluoroscopy technologist's activities outside the presence of the primary supervising physician.
7. "Primary supervising physician" means a North Dakota-licensed physician who:
  - a. Is certified by the American board of radiology, the American osteopathic board of radiology, or the royal college of physicians and surgeons of Canada;
  - b. Is approved by the board for this purpose; and
  - c. Is contractually bound to provide primary supervision of fluoroscopy technologists as specified in this chapter.
8. "Radiologic technologist" means any person in good standing with the American registry of radiologic technologists making application of x-rays to human beings for diagnostic purposes.
9. "Supervision" means responsibility for, and control of, quality, radiation safety, and technical aspects of all x-ray examinations and procedures.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(11)

**50-03-04-02. Permit required.** A radiologic technologist fluoroscopy permit issued by the board shall be required of any radiologic technologist who independently and directly controls a fluoroscopy procedure.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(11)

**50-03-04-03. Initial requirements for permit.** To obtain a radiologic technologist fluoroscopy permit, an applicant must meet the following requirements:

1. Graduation from a radiologic technologist school approved by the board.
2. No less than five years experience as a radiologic technologist.
3. A history free of any finding by the board of any act that would constitute grounds for disciplinary action under this chapter.

4. Successful completion of the following educational requirements:

a. Classroom instruction must include at least the following:

Subject	Hours of Instructions
(1) Fluoroscopy regulations and radiation safety	10
(2) Fluoroscopy equipment	5
(3) X-ray image intensifiers	4
(4) Television, including closed circuit equipment	4
(5) Image recording and image recording equipment	6
(6) Special fluoroscopy equipment	5
(7) Mobile image-intensified units	2
(8) Anatomy and physiology of the eye	2
(9) Three-dimensional and radiologic anatomy	2
(10) Radiation dosimetry	2
(11) Quality assurance and quality control	2

b. At least fifteen hours of laboratory in which each student shall conduct experiments on phantoms to illustrate at least the following:

- (1) Methods of reducing dose to patients during fluoroscopy procedures;
- (2) Methods of reducing exposure to self and personnel;
- (3) Image recording during the exposure of a phantom; and
- (4) Quality control of fluoroscopy equipment.

5. Completion of no less than seventy-five gastrointestinal fluoroscopy procedures under the direct supervision of the primary supervising physician.

6. Successful completion of board-approved examinations in:

- a. Fluoroscopy radiation protection and safety; and
- b. Use of fluoroscopy and ancillary equipment.

7. Current certification and registration with the American registry of radiologic technology.

8. Physical, mental, and professional capability to provide medical services in a safe and appropriate manner.
9. Payment of the initial licensure fee fixed by the board.

**History:** Effective October 1, 1999.  
**General Authority:** NDCC 43-17-13  
**Law Implemented:** NDCC 43-17-02(11)

**50-03-04-04. Annual permit renewal.** Each fluoroscopy technologist who practices in North Dakota must annually submit a fluoroscopy permit renewal application. That application must be submitted on forms supplied by the board and must be accompanied by:

1. Evidence of the applicant's continued good standing with the American registry of radiologic technology;
2. The annual permit renewal fee;
3. Evidence of a contractual agreement with a primary supervising physician who meets the board's requirements; and
4. Evidence that the applicant has completed at least three hours of continuing education which has been approved by the American registry of radiologic technology and pertains specifically to fluoroscopy.

**History:** Effective October 1, 1999.  
**General Authority:** NDCC 43-17-13  
**Law Implemented:** NDCC 43-17-02(11)

**50-03-04-05. Fees.** The fee for initial registration of a fluoroscopy technologist is fifty dollars. The annual renewal fee and the fee for approval of employment contract changes is fifty dollars.

**History:** Effective October 1, 1999.  
**General Authority:** NDCC 43-17-13  
**Law Implemented:** NDCC 43-17-02(11)

**50-03-04-06. Scope of practice.** The provisions of this chapter notwithstanding, a fluoroscopy technologist may only perform the following fluoroscopic procedures in North Dakota:

1. Gastrointestinal fluoroscopy of the esophagus;
2. Stomach; and
3. Small and large intestine.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(11)

**50-03-04-07. Supervising physician.** A radiologic technologist may not provide fluoroscopy services except under the supervision of a primary supervising physician.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(11)

**50-03-04-08. Supervision contract requirements.** Upon undertaking the supervision of a fluoroscopy technologist as contemplated by this chapter, the primary supervising physician shall file with the board a copy of the contract establishing the supervisory relationship. That contract must be approved by the board. Upon effecting any significant change in this contract, or in the supervisory relationship, the primary supervising physician must immediately notify the board and the administrator of every facility where the fluoroscopy technologist is known to be providing services.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(11)

**50-03-04-09. Primary supervising physician's responsibility.** It is the responsibility of the primary supervising physician to direct and review the work, records, and practice of the fluoroscopy technologist on a daily, continuous basis to ensure that appropriate and safe treatment is rendered. The primary supervising physician must be available continuously for contact personally or by telephone or radio, and the supervision must include at least two hours per week of onsite, personal supervision. A fluoroscopy technologist must be present at all times when fluoroscopic studies performed by the radiologic technologist are being interpreted by a supervising radiologist. All studies performed by a fluoroscopy technologist must be reviewed by a supervising radiologist. The primary supervising physician will remain primarily responsible for the acts of the fluoroscopy technologist even when the fluoroscopy technologist is acting under the immediate supervision of an onsite supervising physician.

It is the responsibility of the primary supervising physician to evaluate and monitor fluoroscopy patient exposure to ionizing radiation



to ensure that the cumulative absorbed dose is limited to the minimum amount necessary to achieve the clinical tasks. This includes requiring the use of equipment that aids in minimizing absorbed doses, the recording of "beam on" time in patient records for every fluoroscopy procedure, and the establishment of standard operating procedures and protocols for each specific type of procedures performed. Those protocols must address all aspects of each procedure and must be available for review by the board at all times.

It is the responsibility of the primary supervising physician to ensure that the fluoroscopy technologist does not perform any fluoroscopy procedure in any facility that has not developed a comprehensive fluoroscopic quality control program. That quality control program must be approved by the board before the fluoroscopy technologist performs fluoroscopy procedures at that facility.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(11)

**50-03-04-10. Onsite supervising physician required.** In circumstances in which a fluoroscopy technologist performs fluoroscopy procedures outside the presence of the fluoroscopy technologist's primary supervising physician, the fluoroscopy technologist must be supervised by an on-site supervising physician who is immediately available to the fluoroscopy technologist for consultation and supervision at all times when the fluoroscopy technologist is performing fluoroscopy procedures.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(11)

**50-03-04-11. Requirements to serve as an onsite supervising physician.** A physician, except those who meet the postgraduate training requirements required of a primary supervising physician, may not serve as an onsite supervising physician unless:

1. The primary supervising physician has first certified to the board that the physician has demonstrated a satisfactory understanding of radiation safety standards; and
2. The physician has certified to the board that:
  - a. The physician has read and understands all written materials recommended by the primary supervising physician.
  - b. The physician will be immediately available in the medical facility to provide advice regarding the

appropriateness of specific exams and to serve in a general advisory capacity to the fluoroscopy technologist.

- c. The physician will be available for telephone consultation with the primary supervising physician.
- d. The physician will immediately report any variance or aberration in the fluoroscopy technologist's performance to the primary supervising physician.
- e. The physician will ensure that the fluoroscopy technologist does not perform exams on any patients who are pregnant or have had endoscopic biopsies within the past forty-eight hours.
- f. The physician will ensure proper use of lead-shielding devices by the fluoroscopy technologists.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(11)

**50-03-04-12. Designation of substitute primary supervising physician.**

1. A supervising physician may not designate the fluoroscopy technologist to take over the physician's duties or cover the physician's practice. During any absence or temporary disability of a primary supervising physician, the primary supervising physician must designate a substitute primary supervising physician to assume all duties and responsibilities of the primary supervising physician. During this period, the fluoroscopy technologist will be responsible to the substitute primary supervising physician. The designation of a substitute primary supervising physician must be in writing and be signed by the primary supervising physician, the substitute primary supervising physician, and the radiologic technologist and must contain the following information:
  - a. The name of the substitute primary supervising physician.
  - b. The period during which the substitute primary supervising physician will assume the duties and responsibilities of the primary supervising physician.
  - c. Any substantive change in the radiologic technologist's duties and responsibilities.
  - d. Documentation satisfactory to the board indicating that the substitute primary supervising physician possesses the

qualifications required of a primary supervising physician.

2. The appointment of a substitute primary supervising physician does not become effective unless it is first approved by the board. A primary supervising physician may designate as many as three substitute primary supervising physicians. However, the notification filed with the board must clearly specify which individual will be responsible as primary supervising physician at any given time.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(11)

**50-03-04-13. Number of technologists under physician's supervision limited.** A physician may not act as primary supervising physician for more than two fluoroscopy technologists currently qualified under this chapter, unless compelling reasons are presented to and approved by the board.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(11)

**50-03-04-14. Disciplinary action.** The board is authorized to take disciplinary action against a fluoroscopy technologist who has been granted a fluoroscopy permit by any one or more of the following means, as it may find appropriate:

1. Revocation of permit.
2. Suspension of permit.
3. Probation.
4. Imposition of stipulations, limitations, or conditions relating to the practice of fluoroscopy.
5. Reprimand.
6. Letter of concern.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(11)

**50-03-04-15. Grounds for disciplinary action.** Disciplinary action may be imposed against a fluoroscopy technologist upon any of the following grounds:

1. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the requirements for obtaining a flouroscopy permit.
2. The conviction of any misdemeanor determined by the board to have a direct bearing upon a person's ability to serve the public as a practitioner of medicine or any felony.
3. Habitual use of alcohol or drugs.
4. Physical or mental disability materially affecting the ability to perform the duties of a technologist in a competent manner.
5. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
6. Obtaining any fee by fraud, deceit, or misrepresentation.
7. Aiding or abetting the practice of medicine by an unlicensed, incompetent, or impaired person.
8. The violation of any provision of a medical practice act or the rules of the board or any action, stipulation, condition, or agreement imposed by the board.
9. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
10. The willful or negligent violation of the confidentiality between a medical provider and patient, except as required by law.
11. Gross negligence in the technologist's practice.
12. Sexual abuse, misconduct, or exploitation related to the technologist's practice.
13. A continued pattern of inappropriate care as a technologist.
14. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.
15. The violation of any state or federal statute or regulation relating to controlled substances.
16. The failure to furnish the board or the commission on medical competency or their investigators or representatives, information legally requested by the board or the commission.
17. The failure to maintain current certification and registration with the American registry of radiologic technology.

18. Performing any fluoroscopic procedure outside the presence of a properly trained supervising physician.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(11)

**50-03-04-16. Communications.** All communications and reports concerning rules in this chapter and applications filed under them should be addressed to or be delivered in person to:

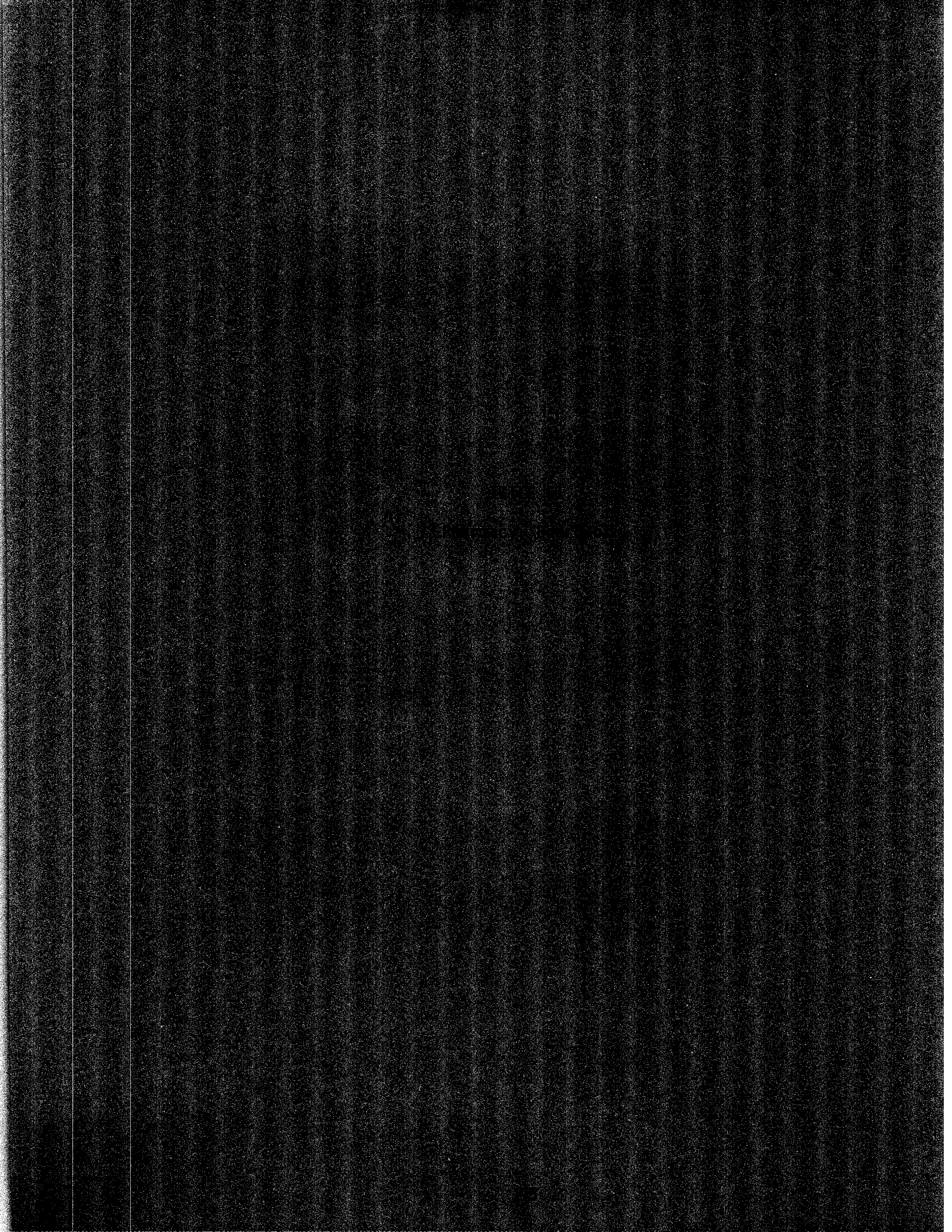
North Dakota State Board of Medical Examiners  
418 East Broadway Avenue, Suite 12  
Bismarck, ND 58501  
Phone: 701-328-6500

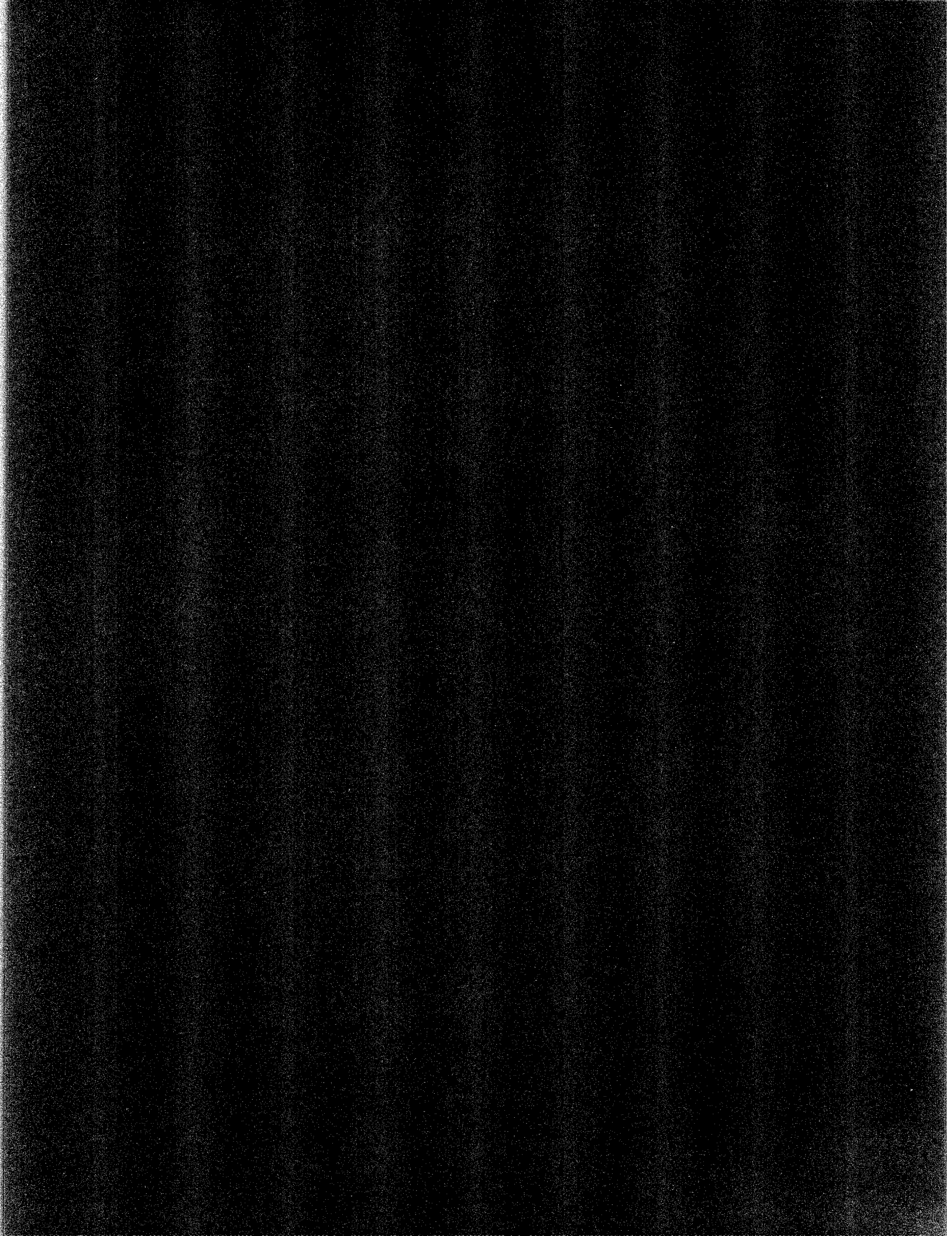
**History:** Effective October 1, 1999.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(11)









OCTOBER 1999

CHAPTER 61-02-01

**61-02-01-01. Permit required.** No person, partnership, association, or corporation shall conduct a pharmacy in North Dakota without first obtaining a permit to do so from the board. A fee, set by the board but not to exceed that prescribed by statute, shall be charged for each permit.

1. Each physical location of a pharmacy shall have a separate pharmacy permit. A location is defined as being in the same building at the same physical address. Buildings connected by tunnels, skywalks, or other similar methods must be deemed separate physical locations.
2. Any pharmacy receiving a permit shall advise the board, when applying for the permit and when changes occur, of the name of the employees of the pharmacy who are:
  - a. The pharmacist-in-charge of the pharmacy, who shall be a licensed pharmacist in North Dakota in good standing;
  - b. All other licensed pharmacists who shall be licensed pharmacists in North Dakota in good standing;
  - c. All licensed pharmacy interns who shall be licensed pharmacy interns in North Dakota in good standing;
  - d. All registered pharmacy technicians who shall be registered pharmacy technicians in North Dakota in good standing; and
  - e. All supportive personnel permitted in the pharmacy area.

3. Nothing in this section prohibits a pharmacy with other than class F permit from delivering drugs or devices through the United States postal service or other parcel delivery service or hand delivery.
4. Classes of pharmacy permits are as follows:
  - a. Class A - Permit to conduct an outpatient pharmacy. These permits are issued to a pharmacy dispensing drugs or devices to the general public pursuant to a valid prescription.
  - b. Class B - Permit to conduct a hospital pharmacy. These permits are issued to a pharmacy dispensing drugs or devices to persons who are patients in a hospital, patients who are being discharged, or patients in emergency situations, pursuant to a valid prescription. These permits shall be issued to facilities licensed under North Dakota Century Code chapter 23-16 and shall be issued in the name of the facility.
  - c. Class C - Permit to conduct a home health care pharmacy. These permits are issued to a pharmacy dispensing sterile injectable drug products and devices to the general public who are not patients within a facility with a class B pharmacy permit pursuant to a valid prescription.
  - d. Class D - Permit to conduct a long-term care pharmacy. These permits are issued to a pharmacy dispensing drugs and devices to residents of facilities licensed under North Dakota Century Code chapters 23-09.3 and 23-16 pursuant to a valid prescription which are not physically accessed by the general public.
  - e. Class E - Permit to conduct a nuclear pharmacy. These permits are issued to a pharmacy dispensing or providing diagnostic or therapeutic radioactive drugs or devices for administration to an ultimate user.
  - f. Class F - Permit to conduct a mail-order pharmacy. These permits are issued to a pharmacy dispensing drugs and devices to the general public exclusively through the United States postal service or other parcel delivery service pursuant to a valid prescription but which are not physically accessed by the general public.
  - g. Class G - Permit to conduct an out-of-state pharmacy. These permits are issued to any pharmacy operating outside the state of North Dakota which ships, mails, or delivers in any manner a dispensed prescription drug or legend device into North Dakota, which shall obtain and hold a pharmacy permit issued by the North Dakota state board of pharmacy and that part of the pharmacy operation

dispensing the prescription for a North Dakota resident shall abide by state laws and rules of the board.

h. Class H - Permit to conduct a governmental agency pharmacy. This permit is issued to a pharmacy operated by the state of North Dakota, dispensing drugs and devices only to patients within correctional facilities or rehabilitation facilities, or for the purpose of teaching at institutions of higher learning, pursuant to a valid prescription.

i. Class I - Permit to conduct a research pharmacy. This permit is issued to a pharmacy in which scientific research is conducted under protocols established by an institutional review board meeting federal drug administration guidelines. Pharmaceuticals on hand are incident to the research being conducted. Security and storage for pharmaceuticals must meet United States Pharmacopeia and board of pharmacy requirements. A specific application for a pharmacy permit must be made delineating the specific physical facility to be utilized.

j. Class J - Permit to conduct an office practice pharmacy. Any licensed pharmacist may practice in an office pharmacy setting where prescriptions are not routinely dispensed. If legend drugs or devices are maintained, a permit must be obtained by making application to the board of pharmacy delineating specific practice intentions and assuring the board that security and storage requirements are met for any legend drugs or pharmaceuticals on hand.

5. Any applicable rule governing the practice of pharmacy shall apply to all permits under this section.

6. Operating in one class does not preclude permitting in another class. Pharmacies wishing to operate in more than one class shall apply on forms prescribed by the board, pay a fee set by the board, and comply with all rules for each class.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 43-15-34

**Law Implemented:** NDCC 43-15-34

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

1. Suitable storage facilities.

2. Two scales or balances for bulk and medium weighing, at least one of which must be sensitive to one-half grain [32.40 milligrams].

3. Weights; apothecary set from one-fourth grain to one ounce; avoirdupois set from one-half ounce to two pounds; metric set for ten milligrams to fifty grams.
4. Graduates capable of accurately measuring from five minims to one pint and from one-half cubic centimeter to five hundred cubic centimeters.
5. Mortars and pestles; glass and wedgewood.
6. Spatulas; steel and nonmetallic.
7. Glass funnels, assorted sizes.
8. Stirring rods.
9. Pill tile or ointment pad.
10. Suitable heating apparatus.
11. Poison record book and suitable prescription files.
12. ~~The--latest--revision--of--the--United--States--Pharmacopeia--and--National--Formulary--and--supplements--thereto,--or--the--United--States--Pharmacopeia--Dispensing--Information,--volumes--I--and--II--(USPDI).~~ Suitable current reference sources either in book or electronic data form (available in the pharmacy or on-line) which might include the United States Pharmacopeia and National Formulary, the United States Pharmacopeia Dispensing Information, Facts & Comparisons, Micro Medex, the ASHP Formulary, or other suitable references determined by the board which are pertinent to the practice carried on in the licensed pharmacy.
13. A reasonable amount of consumable material, such as filter paper, powder papers, litmus paper, empty capsules, ointment jars, bottles, vials, safety closures, powderboxes, labels, and distilled water.

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

**History:** Amended effective August 1, 1983; April 1, 1988; October 1, 1999.

**General Authority:** NDCC 28-32-02, 43-15-10(9), 43-15-10(12),  
 43-15-10(14), 43-15-35(2), 43-15-35(3), 43-15-36  
**Law Implemented:** NDCC 28-32-03, 43-15-10(9), 43-15-10(12),  
 43-15-10(14), 43-15-35(2), 43-15-35(3), 43-15-36

## CHAPTER 61-02-07.1

**61-02-07.1-06. Tasks pharmacy technicians may not perform. The pharmacy technician may not:**

1. Evaluate the patient's profile relative to the pharmaceuticals that have or will be dispensed.
  2. Consult with the patient concerning the utilization of their pharmaceuticals.
  3. ~~Initially--select-a-generic-pharmaceutical,-if-substitution-is-permissible-or-legal.~~
  4. Make decisions that require a pharmacist's professional education, such as interpreting and applying pharmacokinetic data and other pertinent laboratory data or therapeutic values to design safe and effective drug dosage regimens.
5. 4. Engage in the practice of pharmacy, except as authorized by a licensed pharmacist, as permitted by North Dakota law and rules adopted by the board.

**History:** Effective October 1, 1993; amended effective July 1, 1996; October 1, 1999.

**General Authority:** NDCC 28-32-02, 43-15-10(12)(14)(19)

**Law Implemented:** NDCC 28-32-03

## CHAPTER 61-03-02

**61-03-02-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Consulting pharmacist" means a pharmacist in a long-term care facility, who:
  - a. Establishes the procedures and rules for distribution and storage of drugs;
  - b. Supervises the distribution and storage of drugs;
  - c. Visits the facility on a regularly scheduled basis;
  - d. Monitors the therapeutic response and utilization of all medications prescribed for the patients, utilizing as guidelines the indicators of the health care financing administration;
  - e. Provides regular pharmacy educational opportunities to the institution.
2. "Provider pharmacist" means a pharmacist who supplies medication to a patient in a long-term care facility and maintains separate pharmacy patient profiles from the facility.

**History:** Effective August 1, 1983; amended effective October 1, 1999.

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

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

### **61-03-02-04. Distribution and control.**

1. **General.** The consulting pharmacist services shall establish written procedures for the safe and efficient distribution of pharmaceutical products; which shall be on hand for inspections.
2. **Responsibility of consulting pharmacist.** The consulting pharmacist shall be responsible for the safe and efficient distribution of, control of, and accountability of medications including by developing procedures subject to the approval of the pharmaceutical services committee of the long-term care facility, to include:
  - a. Establishment of specifications for the storage, distribution, and procurement of medications and biologicals, ~~subject to approval of the pharmaceutical services committee of the long-term care facility.~~

- b. Participation in those aspects of the long-term care patient evaluation program which relate to drug utilization and effectiveness.
- c. Providing information on a twenty-four-hour basis for assistance in emergency situations.
- d. Assuring all medication shall be stored in a locked area or locked cart.
- e. Review, evaluate, and make recommendations monthly regarding drug utilization to the pharmaceutical services committee.
- f. Minimum standards that all provider pharmacists must meet to include the following:
  - (1) Expected delivery times for new orders and reorders.
  - (2) Procedures to ensure accountability during delivery.
  - (3) Methods to document receipt of medications by the facility.
  - (4) Procedure to obtain emergency medications and for the provider pharmacist to receive orders.
  - (5) Procedures used by the facility to reorder medications and for the provider pharmacist to receive reorders.
  - (6) Expected scope of services and medications to be provided by the provider pharmacist. If the provider pharmacist cannot provide the complete scope of services and medications, the provider pharmacist shall designate alternative sources.
- g. Procedures that allow for use of or repackaging of medications received which are not in the packaging system used by the facility.
- h. Policy that is included as a part of the patient admissions packet that describes the responsibility of the patient or provider pharmacist to compensate a secondary pharmacist for medications or packaging services that the provider pharmacist chosen by the patient is either unwilling or unable to provide.

3. **Responsibility of provider pharmacy pharmacist. ~~The pharmacy serving the long-term care facility as an institutional drug outlet shall be responsible for:~~**

- a. ~~The emergency medication kit.~~

~~b. Medications for the long-term patient.~~

~~e. Records of all transactions of the institutional pharmacy as may be required by law, state and federal, and to maintain accurate control over and accountability for all pharmaceutical materials. All provider pharmacists shall meet the minimum standards established by the consulting pharmacist.~~

4. Discontinued drugs.

a. The consulting pharmacist shall develop and implement policies and procedures to ensure that all discontinued or outdated drugs or containers with worn, illegible or missing labels are destroyed or disposed of so as to render them unusable. Controlled and noncontrolled drugs shall be destroyed by the consulting pharmacist subject to guidelines and approval of the state board of pharmacy.

b. All drugs for destruction be they controlled or noncontrolled shall be destroyed at the specific institution.

5. Practitioner's orders. A pharmacist shall review the medication order, or a copy thereof.

a. Authorization. Any licensed practitioner authorized by law to prescribe drugs within the scope of the practitioner's license may prescribe for the practitioner's patient in a long-term facility.

b. Abbreviations. Orders employing abbreviations or chemical symbols will be only those which are customarily used in the practice of medicine and pharmacy or those on a list of approved abbreviations developed by the pharmaceutical services committee of the facility.

c. Requirements. Orders for drugs for use by patients of the facility shall, at a minimum, contain patient name, drug name and strength, directions for use, date of order, and name of prescriber. On the facility reorder form, include all of the above except for directions.

d. Emergency medication order. In cases where an emergency medication order is written when pharmacy services are unavailable, the medication order shall be reviewed by the pharmacist as soon as reasonably possible.

e. Verification. Verification of the accuracy of any medication dispensed and of any transcriptions made of that order shall be done by handwritten initials of the pharmacist so certifying.



- f. Duration. The prescribed medications should be for a specific time.
6. **Controlled drug accountability.** The consulting pharmacist shall establish and implement effective procedures and assure that adequate records be maintained regarding use and accountability of controlled substances which meet federal and state laws and regulations, and which shall at least specify the following:
    - a. Name of drug.
    - b. Dose.
    - c. Prescriber.
    - d. Patient.
    - e. Date and time of administration.
    - f. Person administering the drug.
  7. **Recall.** The consulting pharmacist shall develop and implement a recall procedure that can readily be activated to assure the medical staff of the facility, the provider pharmacy, and the consulting pharmacist that all drugs included in the recall, located within the facility, are returned to the provider pharmacy for proper disposition.
  8. **Records and reports.** The consulting pharmacist shall supervise the maintenance of such records and reports as are required to ensure patient health, safety, and welfare and, at a minimum, the following:
    - a. Pharmacy patient profiles and medication administration records.
    - b. Reports of suspected adverse drug reactions.
    - c. Inspections of drug storage areas.
    - d. Controlled drug and accountability reports, including board of pharmacy destroyed medication forms for controlled and noncontrolled medications.
    - e. Such other and further records and reports as may be required by law and this chapter.
  9. **Labeling.**
    - a. All stock drugs intended for use within the facility shall be in appropriate containers and adequately labeled as to identify at a minimum: brand name or generic name and

manufacturer, and strength. An internal code which centrally references manufacturer and lot number can be utilized.

- b. Whenever any drugs are added to parenteral solutions, whether within or outside the direct and personal supervision of a pharmacist, such admixtures shall be labeled with a distinctive supplementary label indicating the name and amount of the drug added, date and time of addition, expiration date, administration time and infusion rate when applicable, and name or initials of person so adding. This excludes any single dose medication prepared and totally administered immediately.

**History:** Effective August 1, 1983; amended effective October 1, 1999.

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

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

**CHAPTER 61-03-03**

**PRECEPTOR/INTERN - INTERNSHIP/EXTERNSHIP/CLERKSHIP**

[Repealed effective October 1, 1999]

**STAFF COMMENT:** Chapter 61-03-03.1 contains all new material and is not underscored so as to improve readability.

**CHAPTER 61-03-03.1  
INTERNSHIP**

**Section**

61-03-03.1-01	Definitions
61-03-03.1-02	Licensure
61-03-03.1-03	Identification
61-03-03.1-04	Supervision
61-03-03.1-05	Evidence of Completion
61-03-03.1-06	Board and College Responsibilities
61-03-03.1-07	Change of Address or Practice Site

**61-03-03.1-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Approved pharmacy experiential program" means structured courses in the pharmacy professional curriculum that are administered by a college of pharmacy, and approved by the state board of pharmacy, via accreditation by the American council on pharmaceutical education.
2. "Approved pharmacy intern program" means pharmacy practice in a board approved experiential program after a student has been accepted into a board-approved accredited college or school of pharmacy. The entire one thousand five hundred hours of credit shall be included in the four-year doctor of pharmacy program as an intern.
3. "Hour" means the standard sixty minutes division of time.
4. "Intern" means a person licensed by the state board of pharmacy for the purpose of receiving instruction in the practice of pharmacy from a preceptor. The state board of pharmacy may license as an intern any candidate who has successfully completed no less than one academic year of full-time college or university enrollment and has satisfied the state board of pharmacy that the candidate is of good moral character or as required when a student has been accepted into the doctor of pharmacy program.
5. "Location" means any establishment other than a preceptor pharmacy approved by the state board of pharmacy.
6. "Preceptor" means an educator and a licensed pharmacist in good standing with the state of board of pharmacy who will devote sufficient time to educate a student in the practice of pharmacy as described in subsection 22 of North Dakota Century Code section 43-15-01.

7. "Preceptor pharmacy" means the pharmacy where the preceptor is practicing the profession. This pharmacy must have a clear record with respect to adherence to federal, state, and municipal laws governing any phase of activity in which it is engaged and must be licensed by the state board of pharmacy, or other duly authorized licensing agency, where located and must have a private patient consultation area.
8. "Supervision" means that in the approved preceptor pharmacy or other location where the intern is being taught, a licensed pharmacist designated as preceptor or another licensed pharmacist shall be in continuous contact with and actually giving instructions to the intern during all professional activities.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 28-32-02, 43-15-10, 43-15-18

#### **61-03-03.1-02. Licensure.**

1. A pharmacy intern must license with the board of pharmacy when accepted into the doctor of pharmacy professional program at any board-approved college or school of pharmacy and annually while successfully completing all four years of the doctor of pharmacy program.
2. Upon receipt of the completed application for internship licensure form, the state board of pharmacy will issue to the intern a certificate, an annual wallet-sized identification card, and an annual renewal card and instruct the intern that the identification card must be carried on the intern's person at all times while on duty in the preceptor pharmacy or other location of instruction. The annual renewal card must be posted in the preceptor pharmacy or other location of instruction.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 28-32-02, 43-15-10, 43-15-18

**61-03-03.1-03. Identification.** The intern shall be so designated in the intern's professional relationships and shall in no manner falsely assume, directly or by inference, to be a pharmacist. The board shall issue to the intern a license for purposes of identification and verification of the intern's role as an intern, which license shall be surrendered to the board upon discontinuance of internship for any reason including licensure as a pharmacist. No individual not properly

licensed by the board as an intern shall take, use, or exhibit the title of intern, or any other term of similar like or import.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 28-32-02, 43-15-10, 43-15-18

**61-03-03.1-04. Supervision.** An intern shall be allowed to engage in the practice of pharmacy provided that such activities are under direct supervision of a pharmacist. The pharmacist shall physically review the prescription drug order and the dispensed pharmaceutical before the pharmaceutical is delivered to the patient or the patient's agent. The pharmacist is responsible for the practice of the intern.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 28-32-02, 43-15-10, 43-15-18

**61-03-03.1-05. Evidence of completion.** Applicants for licensure as pharmacists shall submit evidence that they have satisfactorily completed not less than one thousand five hundred hours of internship credit per board forms under educational instruction and supervision of a licensed pharmacist as an approved preceptor.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 28-32-02, 43-15-10, 43-15-18

**61-03-03.1-06. Board and college responsibilities.** During the entire internship rotations, the intern will maintain a weekly record of activities in a form designated by the board of pharmacy. This form must be reviewed weekly with the preceptor pharmacist during the entire experiential rotations.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 28-32-02, 43-15-10, 43-15-18

**61-03-03.1-07. Change of address or practice site.** An intern shall notify the board immediately upon change of an experiential rotation and residence address.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 28-32-02, 43-15-10, 43-15-18

## CHAPTER 61-04-05

**61-04-05-01. Facsimile transmission of prescriptions.** A prescription order may be transmitted from an authorized prescribing practitioner to a pharmacy under the following provisions:

1. Actual transmittal is done by or under the direct supervision of the authorized prescribing practitioner or the practitioner's authorized agent.
2. Practitioners or their authorized agents transmitting medication orders using facsimile equipment are obligated to provide voice verification when requested by the pharmacist receiving the medication order. If requested voice verification is refused, the facsimile transmitted prescription may not be filled.
3. Pharmacists are precluded from supplying or leasing facsimile equipment to prescribing practitioners, hospitals, nursing homes, or any medical care provider or facility.
4. Using facsimile equipment to transmit schedule II controlled substance prescriptions is not allowed except when the patient is a hospice patient or resides in a licensed long-term care facility. A facsimile may serve as the pharmacy's original prescription, if it has been signed by the practitioner before faxing and is in compliance with subsection 6.
5. Schedule III-IV-V controlled substances prescriptions received by facsimile equipment must be signed within seventy-two hours seven days by the authorized prescriber as required by subsection 3 of North Dakota Century Code section 19-03.1-22 except when the patient is a hospice patient or resides in a licensed long-term care facility. A facsimile may serve as the pharmacy's original prescription, if it has been signed by the practitioner before faxing and is in compliance with subsection 6.
6. A facsimile copy prescription must be reduced to writing either manually or by other process (computer, photocopying, etc.) which produces a nonfading document; proper notation on the file copy must indicate that the prescription order was initially received by facsimile equipment.
7. The receiving facsimile machine must be in the prescription department of the pharmacy to protect patient-pharmacist authorized prescribing practitioner confidentiality and security.
8. Using facsimile equipment to circumvent documentation, authenticity, verification, or other standards of pharmacy

practice or drug diversion will be considered unprofessional conduct under chapter 61-04-04.

9. The board of pharmacy recognizes that the facsimile transmission of prescriptions will depend on the type of pharmaceutical services offered, and therefor, variations of the requirements for facsimile transmission of prescriptions may be granted by the board of pharmacy.

**History:** Effective October 1, 1993; amended effective October 1, 1999.

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

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



**STAFF COMMENT:** Chapter 61-04-05.1 contains all new material and is not underscored so as to improve readability.

**CHAPTER 61-04-05.1  
PRESCRIPTION TRANSFER REQUIREMENTS**

Section	
61-04-05.1-01	Prescription Transfer Requirements
61-04-05.1-02	Prescription Transfer Requirements for Transferring Pharmacy
61-04-05.1-03	Prescription Transfer Requirements for Receiving Pharmacy
61-04-05.1-04	Additional Prescription Transfer Requirements for Controlled Drugs

**61-04-05.1-01. Prescription transfer requirements.** The transfer of original prescription information for the purpose of refill dispensing is permissible between pharmacies subject to the following requirements:

1. The transfer is communicated directly between licensed pharmacists, licensed pharmacy interns, or registered pharmacy technicians and the transferring person records the information on the hard copy or the electronic record.
2. The transfer is limited to the number of refills authorized on the original prescription.
3. Both the original and transferred prescription are kept for five years from the date of last refill.
4. Pharmacies electronically accessing the same prescription record must satisfy all information requirements of a manual mode of prescription transferal.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 28-32-02, 43-15-10

**61-04-05.1-02. Prescription transfer requirements for transferring pharmacy.** The person transferring the prescription shall record on the original prescription or the electronic record:

1. The name and address of the pharmacy to which the prescription was transferred.
2. The name of the person receiving the prescription information and the name of the person transferring the prescription information.

3. The date of the transfer.
4. The number of refills transferred. If all refills are transferred the original prescription must be marked "VOID".

**History:** Effective October 1, 1999.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 28-32-02, 43-15-10

**61-04-05.1-03. Prescription transfer requirements for receiving pharmacy.** The person receiving the transfer of a prescription shall record on the hard copy or the electronic record:

1. The word "transfer" on the face of the transferred prescription.
2. The following information:
  - a. All information required to be on a prescription pursuant to section 61-04-06-02 or 61-04-06-03.
  - b. The name of the pharmacy and address and original prescription number from which the prescription information is transferred.
  - c. The original date of issuance and date of dispensing if different from the date of issuance.
  - d. The number of valid refills remaining and date of last refill.
  - e. The name of the person transferring the prescription information and the name of the person receiving the prescription information.
  - f. The date of the transfer.
3. Pharmacies electronically accessing the same prescription record must satisfy all information requirements of a manual mode of prescription transferal.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 28-32-02, 43-15-10

**61-04-05.1-04. Additional prescription transfer requirements for controlled drugs.** The transfer of original prescription information for a controlled drug for the purpose of refill dispensing is permissible between pharmacies on a one-time basis subject to the following requirements:

1. The transferring person shall:
  - a. Write the word "VOID" on the face of the invalidated prescription.
  - b. Record on the reverse of the invalidated prescription the name, address, and drug enforcement administration registration number of the pharmacy to which it was transferred and person receiving the prescription information.
2. The receiving person shall:
  - a. Record the drug enforcement administration registration number of the pharmacy from which the prescription was transferred.
  - b. Verify with the transferring person that the original prescription was signed and then the transferred prescription does not require another signature.
3. A practitioner's signature is not required on the received prescription. A signature on the prescription at the transferring pharmacy will be deemed in compliance with North Dakota Century Code section 19-03.1-22.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 28-32-02, 43-15-10

**STAFF COMMENT:** Chapter 61-04-09 contains all new material and is not underscored so as to improve readability.

**CHAPTER 61-04-09  
WARNING NOTICE**

Section	
61-04-09-01	Purpose
61-04-09-02	Recipient
61-04-09-03	Issuance
61-04-09-04	Filing
61-04-09-05	Failure to Respond
61-04-09-06	Board Review of Two Notices

**61-04-09-01. Purpose.** A warning notice to the pharmacist, pharmacy permittee, licensee, or registrant protects public health by allowing them to expeditiously correct violations of laws and rules and report these corrections to the board of pharmacy in writing.

**History:** Effective October 1, 1999.  
**General Authority:** NDCC 28-32-02, 43-15-10  
**Law Implemented:** NDCC 28-32-02, 43-15-10

**61-04-09-02. Recipient.** A warning notice may be issued to any permittee, licensee, or registrant found to be violating the provisions of this title, North Dakota Century Code chapter 43-15 or 43-19, or any federal, state, or local laws and rules.

**History:** Effective October 1, 1999.  
**General Authority:** NDCC 28-32-02, 43-15-10  
**Law Implemented:** NDCC 28-32-02, 43-15-10

**61-04-09-03. Issuance.** An agent of the North Dakota state board of pharmacy may issue a warning notice at the time a violation is found.

**History:** Effective October 1, 1999.  
**General Authority:** NDCC 28-32-02, 43-15-10  
**Law Implemented:** NDCC 28-32-02, 43-15-10

**61-04-09-04. Filing.** The warning notice may become an integral part of a file and be maintained in the file sixty months and discarded if no further action is pending.

**History:** Effective October 1, 1999.  
**General Authority:** NDCC 28-32-02, 43-15-10  
**Law Implemented:** NDCC 28-32-02, 43-15-10

**61-04-09-05. Failure to respond.** Permittees, licensees, or registrants who fail to satisfactorily respond to a warning notice may be referred to the board for review or complaint and hearing by the executive director of the board.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 28-32-02, 43-15-10

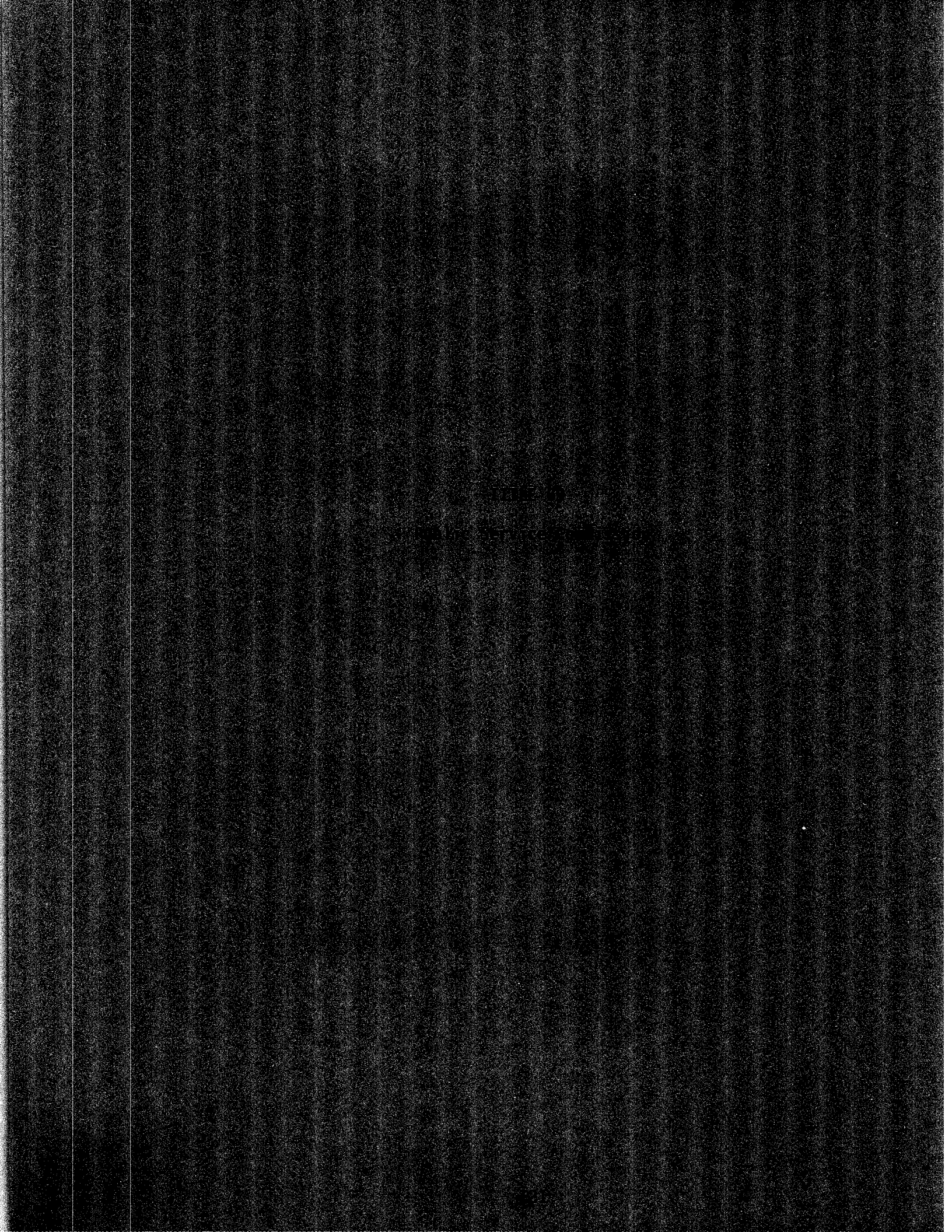
**61-04-09-06. Board review of two notices.** Any permittee, licensee, or registrant receiving two or more warning notices within a twenty-four month period may be referred to the board for review or complaint and hearing.

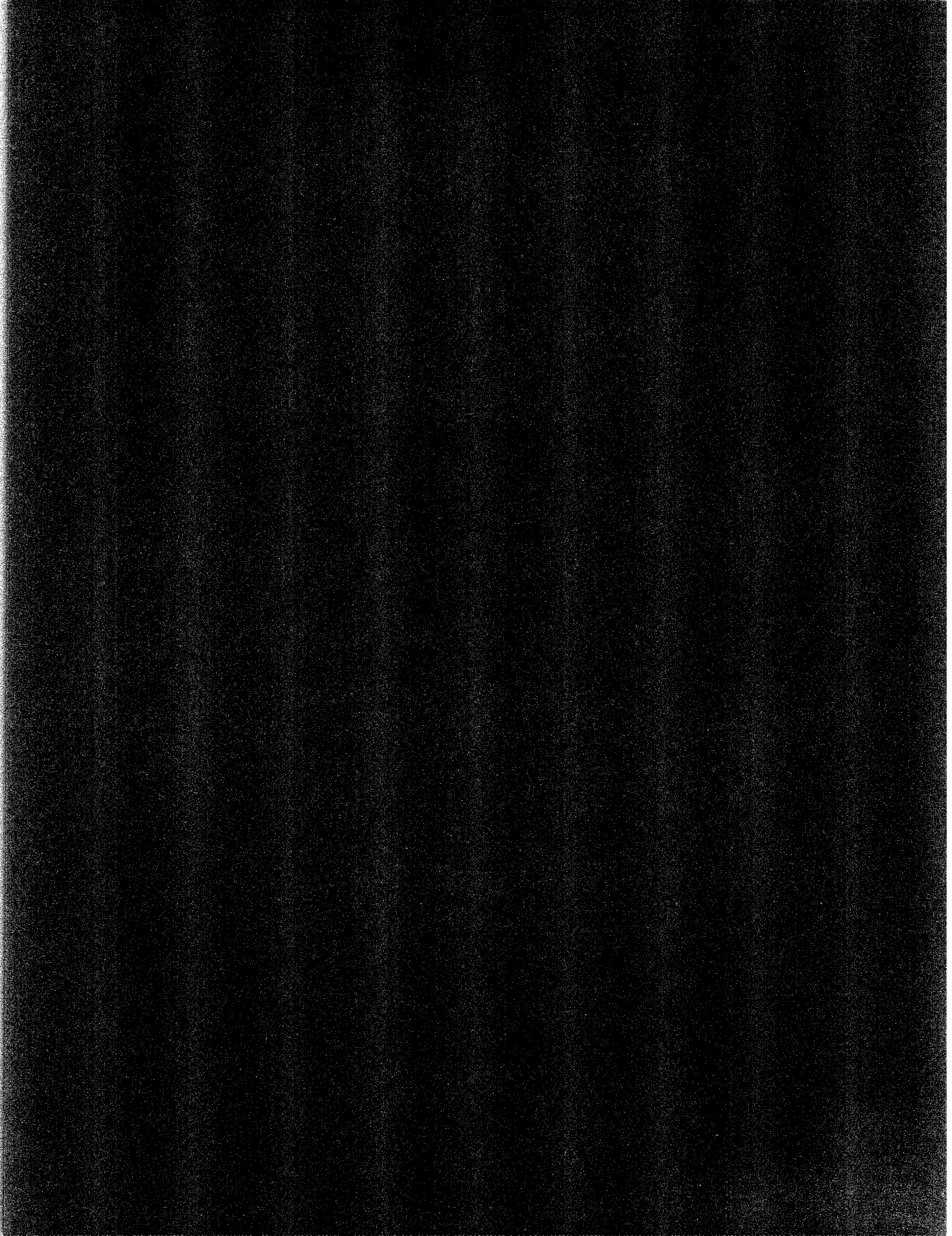
**History:** Effective October 1, 1999.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 28-32-02, 43-15-10









**AUGUST 1999**

**CHAPTER 69-07-01**

**69-07-01-01. Open trades. Warehousemen--are A licensee is prohibited from carrying open trades more than the legitimate hedging needs. Violation of this section may be punishable by revocation of license.**

**History: Amended effective August 1, 1999.  
General Authority: NDCC 60-02-03, 60-02.1-03  
Law Implemented: NDCC 60-02-03, 60-02.1-03**

**69-07-01-04. Storage in other-warehouses another warehouse. All nontransit grain owned or held by a warehouseman licensed under North Dakota Century Code chapter 60-02 must be held in a licensed and bonded warehouses warehouse, either within or outside the state. When grain is held in space that is not licensed by the warehouseman under North Dakota Century Code chapter 60-02, a warehouse documents document issued for that grain must identify the originating warehouse as the receiptholder. When grain held subject to a warehouse receipts receipt is stored in a warehouse that is not licensed under North Dakota Century Code chapter 60-02, the originating warehouse must increase its bond to provide protection for that grain as well as its own licensed warehouse space.**

**Daily position records must include inventories held under nonnegotiable warehouse receipts issued by another licensed warehouseman.**

**History: Amended effective May 1, 1984; February 1, 1994; August 1, 1999.  
General Authority: NDCC 60-02-03**

Law Implemented: NDCC 60-02-03

**69-07-01-06. Procedure for temporary closing.** Whenever a warehouseman desires to temporarily close the warehouse for a period of more than fifteen days, the warehouseman shall first make application to the commission for permission to do so. If closing of a warehouse is permitted, notice shall be posted in the office window and on the front driveway door stating the dates the warehouse will be closed, how receipts may be redeemed, and how the management may be contacted. A facility may not be closed for more than fifteen days without the prior commission approval. Notice of the duration of the closing and the name, address, and telephone number of the facility's contact person must be posted in a conspicuous manner at the facility.

History: Amended effective May 1, 1984; February 1, 1994; August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-03, 60-02-39, 60-02.1-03, 60-02.1-25

**69-07-01-07. Modified business hours.** Warehousemen wanting to maintain less than normal business hours shall first receive commission approval. Requests must be in writing and must state the reason for the request. Upon receipt of commission approval, a notice showing the warehouse's new hours and stating when and where the manager can be reached must be posted conspicuously at the warehouse. A facility may not deviate from normal business hours without prior commission approval. Notice of the revised business hours and the name, address, and telephone number of the facility's contact person must be posted in a conspicuous manner at the facility.

History: Effective February 1, 1991; amended effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-39, 60-02.1-25

**69-07-01-08. Adequate bond and insurance coverage - Suspension.** Warehousemen shall provide the commission with proof of adequate insurance and bond coverage. Failure to maintain adequate insurance and bond coverage will result in the automatic suspension of the warehouse license. Suspended licenses must be surrendered to the commission and suspension notices posted conspicuously at the warehouse. The license of a licensee who fails to maintain adequate insurance and bond coverage will be suspended automatically. The suspended license must be surrendered to the commission and the suspension notice must be posted in a conspicuous manner at the facility, if applicable.

History: Effective February 1, 1991; amended effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-09, 60-02-09.1, 60-02-10.1, 60-02-35, 60-02-35.1, 60-02.1-08, 60-02.1-09, 60-02.1-21, 60-02.1-22

**69-07-01-09. Changes Change in capacity.** Warehouses-desiring-to change-their-physical-capacity-shall-receive-prior-commission-approval. Requests--to--decrease--capacity--must--be--in--writing;--must--state--that--the space-being-deleted-is-physically-disconnected--from--the--rest--of--the facility;--and--must--be--accompanied--by--a--diagram--showing--the--warehouse's remaining-capacity-as-well-as-that-being-deleted;--Requests-to--increase capacity--must--be--accompanied--by--a--diagram--showing--the--warehouse's--entire capacity--and--specifically--identifying--the--space--being--added;--such requests--will--be--granted--only--upon--receipt--of--notification--of--adequate bond-coverage. A licensee may not change its physical capacity without prior commission approval. A request to change capacity must be in writing and specifically identify the capacity being added or deleted. Deleted capacity must be physically disconnected from other capacity. Added capacity must be properly bonded. Additions not previously licensed must be accompanied by a diagram showing the location and capacity of the space involved.

**History:** Effective February 1, 1991; amended effective August 1, 1999.

**General Authority:** NDCC 60-02-03, 60-02.1-03

**Law Implemented:** NDCC 60-02-09, 60-02.1-03

**69-07-01-10. Warehouse--license License suspension.** When--a warehouse--license--has--been--suspended--by--law--or--by--order--of--the commission;--the--warehouseman--shall Upon suspension of its license, a licensee must:

1. Notify all---receiptholders each receiptholder that its warehouse license is suspended, if applicable, and that grain must be removed from the warehouse facility or it will be priced and redeemed in cash in accordance with North--Dakota Century-Code-section-60-02-41 state law.
2. Keep If applicable, keep the commission's suspension notice conspicuously posted in the office window or on the front driveway door of the elevator facility.
3. Surrender the warehouse license to the commission.
4. Not If applicable, not receive additional grain for purchase, storage, shipping, or processing.
5. Not--sell--or--ship--any--grain--without--submitting--a--written request--to--the--commission--and--receiving--commission authorization--to--do--so. If applicable, refrain from selling or shipping grain without prior written commission approval.

**History:** Effective February 1, 1991; amended effective August 1, 1999.

**General Authority:** NDCC 60-02-03, 60-02.1-03

**Law Implemented:** NDCC 60-02-09.1, 60-02-10.1, 60-02-35.1, 60-02.1-09, 60-02.1-11, 60-02.1-22

**69-07-01-11. Request to discontinue business.** ~~All warehouses that cease to operate as a licensed public warehouse shall file a request to discontinue business with the commission. Requests must be made on forms provided by the commission.~~ A licensee may not discontinue business without prior written approval from the commission.

**History:** Effective February 1, 1991; amended effective August 1, 1999.  
**General Authority:** NDCC 60-02-03, 60-02.1-03, 60-03-01.1  
**Law Implemented:** NDCC 60-02-41, 60-02.1-27, 60-03-02

**69-07-01-12. Assumption of liability for transfer of grain.** ~~Warehousemen intending~~ A licensee that intends to acquire a facility operated by another licensed public warehouseman licensee and containing purchased or stored to assume responsibility for grain shall obligations of the former licensee must notify the commission that it is assuming responsibility for grain being transferred. Notices of the assumption of the liability. The notice must be submitted on forms a form provided by the commission.

**History:** Effective February 1, 1991; amended effective August 1, 1999.  
**General Authority:** NDCC 60-02-03, 60-02.1-03  
**Law Implemented:** NDCC 60-02-40, 60-02.1-26

**69-07-01-13. Delivery policy on dry edible beans.** ~~Warehousemen handling dry edible beans~~ A warehouseman shall, during July of each year, publish and post in a conspicuous place in their warehouses each warehouse, their the warehouse's policy for delivery of beans grain to a warehouse receipt holders receiptholder. The policy must remain in effect at least through the following June and must outline how the warehouseman will charge or compensate receiptholders for differences in quantity, kind, quality, and grade that exist between the beans grain described in the scale ticket and the beans grain that are is actually delivered back to the receiptholder. A copy of the warehouse's policy for delivery must be provided to the commission as a part of its annual warehouse license application. A copy of the policy must also be attached to each warehouse receipts receipt issued to owners an owner of beans grain.

**History:** Effective February 1, 1991; amended effective August 1, 1999.  
**General Authority:** NDCC 28-32-02, 60-02-03  
**Law Implemented:** NDCC 60-02-17, 60-02-22

**69-07-01-14. Grain buyers license - Processed grain.** A grain buyers license is not required if a purchaser is acquiring grain that is owned by the licensed entity and that has been:

1. Substantially altered by processing or blending with a nongrain product; or
2. Cleaned and bagged and made ready for consumption.

Any processed commodity will, however, be considered grain and thereby made an asset that is available to the commission in an insolvency proceeding.

**History:** Effective August 1, 1999.

**General Authority:** NDCC 60-02-03, 60-02.1-03

**Law Implemented:** NDCC 60-02-03, 60-02.1-03

## CHAPTER 69-07-02

**69-07-02-01. Warehouse-license-applications License application.** Applications An application for a warehouseman's license must be submitted on forms a form provided by the commission. Corporations, limited-partnerships,--and-general-partnerships-using-a--fictitious--name Every business organization or sole proprietor using a trade name other than its given name must be registered and in good standing with the secretary of state. Applications--must--provide--all--the--information requested--on--the--application--form--and--must--be--accompanied--by The application must be complete and must include:

1. The required license fee required-by-North-Dakota-Century-Code section--60-02-07.
2. An--appropriate--corporate--surety-bond-as-required-by-section 69-07-02-02;--Corporate-surety-bonds A surety bond, which must be countersigned by an authorized resident agent unless the bonding company is based in a state having reciprocity with North Dakota.
3. A copy of the scale-ticket,--warehouse-receipt,--and any receipt or credit-sale contract to be used by the warehouseman licensee.
4. Certificate of continuous insurance in an the required amount required-by-North-Dakota-Century-Code-section-60-02-35.
5. Partnerships applicants shall file a copy of their partnership agreement with-their-application if the partnership is not registered with the secretary of state.

**History:** Amended effective May 1, 1984; February 1, 1991; August 1, 1999.

**General Authority:** NDCC 60-02-03, 60-02.1-03

**Law Implemented:** NDCC 60-02-07, 60-02.1-07

**69-07-02-02. Schedule-of-requirements---Bonding Grain warehouse - Bond schedule.** The-capacity-of--elevator,--annex,--and--any--additional storage--used--must--be--listed--as--the--capacity--of--your--elevator--giving--the capacity--of--each--unit--individually,--The--following--schedule--shall--be used--for--determining--the--minimum--surety--to--accompany--the--warehouseman's application The warehouse bond is determined by the total physical capacity licensed by the licensee in the state. The capacity of each warehouse, bin, annex, or any additional space must be specifically identified. The bond amounts are:

**CAPACITY-OF-ELEVATORS,--ANNEXES,--AND--ANY--ADDITIONAL-STORAGE**

**Bond**

Schedule

Capacity to 50,000 <u>100,000</u> bushels.....	\$50,000-	
From 50,001 bushels through 75,000 bushels.....	75,000-	
From 75,001 bushels through 100,000 bushels.....	100,000-	
From 100,001 bushels through 125,000 bushels.....	125,000-	<u>62,500</u>
From 125,001 bushels through 150,000 bushels.....	150,000-	<u>75,000</u>

From 150,001 bushels through 175,000 bushels.....	\$175,000-	\$ <u>87,500</u>
From 175,001 bushels through 200,000 bushels.....	200,000-	<u>100,000</u>
From 200,001 bushels through 225,000 bushels.....	225,000-	<u>112,500</u>
From 225,001 bushels through 250,000 bushels.....	250,000-	<u>125,000</u>
From 250,001 bushels through 275,000 bushels.....	275,000-	<u>137,500</u>
From 275,001 bushels through 300,000 bushels.....	300,000-	<u>150,000</u>

From 300,001 bushels through 325,000 bushels.....	\$325,000-	\$ <u>162,500</u>
From 325,001 bushels through 350,000 bushels.....	350,000-	<u>175,000</u>
From 350,001 bushels through 375,000 bushels.....	375,000-	<u>187,500</u>
From 375,001 bushels through 400,000 bushels.....	400,000-	<u>200,000</u>

From 400,001 bushels through 425,000 bushels.....	\$425,000-	\$ <u>212,500</u>
From 425,001 bushels through 450,000 bushels.....	450,000-	<u>225,000</u>
From 450,001 bushels through 475,000 bushels.....	475,000-	<u>237,500</u>
From 475,001 bushels through 500,000 bushels.....	500,000-	<u>250,000</u>

**Elevators** A licensee with a capacity in excess of five hundred thousand bushels shall be required to must furnish an additional bond coverage of five thousand dollars for each twenty-five thousand bushels of capacity or fraction thereof.

~~The commission may require a warehouseman to file a bond in addition to the above minimum amounts when it deems such~~ Unless the commission determines that an increase is necessary to accomplish the purposes purpose of North Dakota Century Code chapter 60-02, the bond of a warehouseman shall not exceed one million five hundred thousand dollars.

**History:** Amended effective May 1, 1984; August 1, 1999.  
**General Authority:** NDCC 60-02-03  
**Law Implemented:** NDCC 60-02-02, 60-02-07, 60-02-09

69-07-02-02.1. Grain buyer - Bond schedule. The grain buyer bond is determined by the three-year rolling average of grain purchased annually in this state by the grain buyer. The bond amounts are:

Up to 50,000 bushels \$50,000

For each additional 100,000 bushels or \$20,000  
fraction thereof in excess of 50,000  
up to 1,000,000

For each additional 100,000 bushels or \$5,000  
fraction thereof in excess of 1,000,000

For a new licensee, the first year's bond shall be based on the projected purchase volume and the second year's bond and third year's bond shall be based on the average actual volume according to the above schedule.

Unless the commission determines that an increase is necessary to accomplish the purpose of North Dakota Century Code chapter 60-02.1, the bond of a facility-based grain buyer shall not exceed one million dollars nor shall the bond of a non-facility-based grain buyer exceed one million five hundred thousand dollars.

History: Effective August 1, 1999.  
General Authority: NDCC 60-02.1-03  
Law Implemented: NDCC 60-02.1-03, 60-02.1-08

69-07-02-02.2. Hay buyer - Bond schedule. The hay buyer bond is determined by the three-year rolling average of hay purchased annually in this state by the hay buyer. The bond amounts are:

Up to 2,500 tons \$25,000

For each additional 2,500 tons \$25,000  
or fraction thereof

Unless the commission determines that an increase is necessary to accomplish the purposes of North Dakota Century Code chapter 60-03, the bond of a hay buyer shall not exceed one million five hundred thousand dollars.

History: Effective August 1, 1999.  
General Authority: NDCC 60-03-01.1  
Law Implemented: NDCC 60-03-04

69-07-02-03. License renewal. Warehouse-licenses-expire-on-July thirty-first-of-each-year.--The-commission-shall--mail--license--renewal forms--to--warehouseman--by--June-first.--Warehousemen-desiring-to-renew their-license-shall-complete-and-return-these-forms-to-the-commission-by July-fifteenth.---These-forms-must-fully-state-the-company's-legal-name. Corporations-and-partnerships-must-be-registered-and--in--good--standing with--the--secretary--of--state.--Applications-that-are-not-received-in-a



timely-manner-will-result-in-the-automatic-closure-of-the--warehouse--on August-first. A license is an annual license that expires on July thirty-first. A licensee must submit a renewal application to the commission by July fifteenth on a form that will be provided by the commission. Every business organization or sole proprietor using a trade name must be in good standing with the secretary of state. An application that is not received in a timely manner will result in the automatic discontinuance of business on August first.

**History:** Effective February 1, 1991; amended effective August 1, 1999.  
**General Authority:** NDCC 60-02-03, 60-02.1-03, 60-03-01.1  
**Law Implemented:** NDCC 60-02-07, 60-02.1-07, 60-03-02

**69-07-02-04. Business documents - Revisions. Warehousemen shall**  
notify-the-commission-of-any-changes-in-the-warehouse's-ownership,-name, corporate--structure,-scale-tickets,-warehouse-receipts,-and-credit-sale contracts. A licensee must promptly notify the commission of a change in ownership, name, corporate structure, or format of any receipt or credit-sale contract.

**History:** Effective February 1, 1991; amended effective August 1, 1999.  
**General Authority:** NDCC 60-02-03, 60-02.1-03  
**Law Implemented:** NDCC 60-02-03, 60-02.1-03

## CHAPTER 69-07-03

**69-07-03-01. Form of scale tickets.** ~~A scale ticket issued by a warehouseman must be consecutively numbered and issued in consecutive order, and must contain as a minimum the name of the warehouseman, the warehouse location, the name of the depositor, the type of grain, the per centum of dockage, the test weight, and the gross, tare, and net weights.~~ Scale tickets must be consecutively numbered and issued in consecutive order and must contain the name of the licensee, receiving location, name of the depositor, type of grain, per centum of dockage, test weight, gross weight, tare weight, and net weight.

**History:** Amended effective May 1, 1984; August 1, 1999.

**General Authority:** NDCC 60-02-03, 60-02.1-03

**Law Implemented:** NDCC 60-02-03, 60-02-11, 60-02.1-03, 60-02.1-12

**69-07-03-02. Cross-referencing of receipts.** ~~All accounts~~ Every account and records record relating to grain storage and purchase, including all every scale tickets ticket, warehouse receipts receipt, checks check, and credit-sale contracts contract, must be properly cross-referenced to allow audit identification from delivery to purchase and final payment or redelivery of all grain.

**History:** Amended effective May 1, 1984; August 1, 1999.

**General Authority:** NDCC 60-02-03, 60-02.1-03

**Law Implemented:** NDCC 60-02-03, 60-02.1-03

**69-07-03-04. Records - Filing.** The warehouseman licensee shall keep in a safe place all records of grain purchased and stored and all receipts and contracts issued and canceled. Such records must be kept current and open for inspection by commission personnel and must be retained for a period of three years. All receipts and contracts must be issued and filed in numerical sequence. The warehouseman licensee shall provide the necessary assistance required for any examination of the warehouseman's licensee's books and records.

**History:** Amended effective May 1, 1984; August 1, 1999.

**General Authority:** NDCC 60-02-03, 60-02.1-03

**Law Implemented:** NDCC 60-02-03, 60-02.1-03

**69-07-03-05. Certificate of weight and grade - Account sales.** The certificate of weights and grades and all account sales of grain shipped ~~to terminals shall~~ must be kept in the office of the elevator manager available at all times for local inspection by the public service commission, if necessary.

**History:** Amended effective August 1, 1999.

**General Authority:** NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-03, 60-02.1-03

**69-07-03-06. Credit-sale contracts.** Unless the warehouseman licensee has secured independent bond coverage for credit-sale contracts, the following statement or a similar statement approved by the commission must be printed on the contract in a clear and prominent manner directly above the place for the seller to sign:

THIS CONTRACT IS NOT PROTECTED BY NORTH--DAKOTA--STATUTORY WAREHOUSEMAN'S BOND COVERAGE IN THE EVENT OF THE BUYER'S INSOLVENCY.

If the warehouseman licensee has obtained bond coverage in addition to that required by North-Dakota-Century-Code-section--60-02-09 state law and rule and such coverage extends to the benefit of credit-sale contracts, the following statement or a similar statement approved by the commission must be printed on the contract in a clear and prominent manner directly above the place for the seller to sign:

THIS CONTRACT IS NOT PROTECTED BY NORTH DAKOTA STATUTORY WAREHOUSEMAN'S BOND COVERAGE IN THE EVENT OF THE BUYER'S INSOLVENCY. HOWEVER, THE BUYER HAS SECURED INDEPENDENT BOND COVERAGE IN THE AMOUNT OF (state amount) FOR THE PROTECTION OF SELLERS UNDER CREDIT-SALE CONTRACTS IN THE EVENT OF THE BUYER'S INSOLVENCY.

A warehouseman licensee securing independent bond coverage for the protection of sellers under credit-sale contract, shall file a copy of such bond with the commission.

History: Effective May 1, 1984; amended effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03, 60-03-01.1

Law Implemented: NDCC 60-02, 60-02-19.1, 60-02.1-14, 60-03-04.1

**69-07-03-07. Roving Non-facility-based grain buyers or hay buyers.** Roving A roving grain buyer or a hay buyers--are--required--to buyer shall issue receipts, certificates, and contracts and to maintain records as described in this chapter.---~~They--may--not;--however;--be required--to--adhere--to~~ but is exempt from the rules that specifically involve apply to physical warehouse grain-handling facilities.

History: Effective February 1, 1991; amended effective August 1, 1999.

General Authority: NDCC 60-02-03 60-02.1-03, 60-03-01.1

Law Implemented: NDCC 60-03-01.1 60-02.1-03, 60-03-03

**69-07-03-08. Bean scale tickets - Contents.** Scale tickets for dry edible beans must contain the following information:

1. The date and place where the beans were received.

2. The name and address of the owner of the beans.
3. A description of the beans including the kind of beans, foreign material, splits, check seed coats, total pick, moisture, and the gross weight, total dockage, and net weight of the load.
4. ~~A--notation--that;~~ The statement: "All storage contracts on dry edible beans terminate on April thirtieth of each year".
5. ~~A--notation--that;~~ The statement: "This warehouse is not responsible for returning an identical percentage of check seed coats back to receipt holder in the event of redelivery".
6. A space for comments and other information.

**History:** Effective February 1, 1991; amended effective August 1, 1999.

**General Authority:** NDCC 28-32-02, 60-02-03, 60-02.1-03

**Law Implemented:** NDCC 60-02-11, 60-02.1-12

**69-07-03-10. Warehouse-receipts-- Grain on hand.** A warehouseman must maintain a grain inventory sufficient to cover outstanding scale tickets and warehouse receipts.

**History:** Effective February 1, 1994; amended effective August 1, 1999.

**General Authority:** NDCC 60-02-03, 60-02.1-03

**Law Implemented:** NDCC 60-02-03, 60-02.1-03

**SEPTEMBER 1999**

**CHAPTER 69-09-03**

**69-09-03-02. Adoption of regulations.** The following parts of title 49, Code of Federal Regulations in effect as of January 1, 1998 1999, are adopted by reference:

1. Part 190 - Department of Transportation Pipeline Safety Enforcement Procedures.
2. Part 191 - Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards.
4. Part 199 - Control of Drug Use in Natural Gas, Liquefied Natural Gas and Hazardous Liquids Pipelines.

Copies of these regulations may be obtained from:

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

**History:** Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-02-01.2



**OCTOBER 1999**

**CHAPTER 69-10-01**

**69-10-01-09. Bulk liquid fuel meters.** A newly manufactured liquid fuel meter placed into service on or after January 1, ~~1999~~ 2000, for use in the sale of all types of bulk liquid fuels, including aviation fuels, must be equipped with a ticket printing device meeting the requirements of NIST Handbook No. 44.

**History:** Effective August 1, 1993; amended effective July 1, 1997; October 1, 1999.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02, 64-02-13

**CHAPTER 69-10-02**

69-10-02-22. Sensitivity response. The sensitivity response of a motor truck or motor truck dump scale designed with a division size of five pounds [2.27 kilograms] and without a balance indicator may not exceed four scale divisions.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02, 64-02-03, 64-02-04



## CHAPTER 69-10-03

**69-10-03-01. National Institute of Standards and Technology (NIST) Handbook No. 44.** Except as modified in this article, the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices in North Dakota shall conform to the following sections and subsections of the 1997 1998 edition of the United States department of commerce, NIST Handbook No. 44, which is adopted by reference: all of section 1, all of section 2, subsections 3.30, 3.31, 3.32, 3.33, 3.35, and 3.37 of section 3, subsections 5.50, 5.51, and 5.52 of section 5, and, all of appendices A, B, C, and D. In the event of a conflict between the NIST Handbook No. 44 and North Dakota laws and rules, North Dakota laws and rules shall prevail. Copies of the handbook may be obtained from the public service commission, state capitol, Bismarck, North Dakota 58505-0480.

**History:** Amended effective October 1, 1988; December 1, 1990; February 1, 1992; August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; October 1, 1999.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-07

## CHAPTER 69-10-04

**69-10-04-03. Revocation of registration.** The commission may, for good cause, suspend or revoke a registered service person's permit or a registered service company's permit. A person or a company not registered with the commission but qualified to install a commercial weighing or measuring device may install but may not service, repair, or recondition a commercial weighing or measuring device without a variance from the commission.

**History:** Amended effective April 1, 1992; July 1, 1997; July 1, 1998; October 1, 1999.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02

**69-10-04-05. Standardized report forms.** All test report forms filed with the commission after July 1, 1994, must be in a standardized format. The commission will issue copies of the standardized prototype to all newly permitted registered service persons companies.

**History:** Effective August 1, 1993; amended effective February 1, 1996; October 1, 1999.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02, 64-02-13

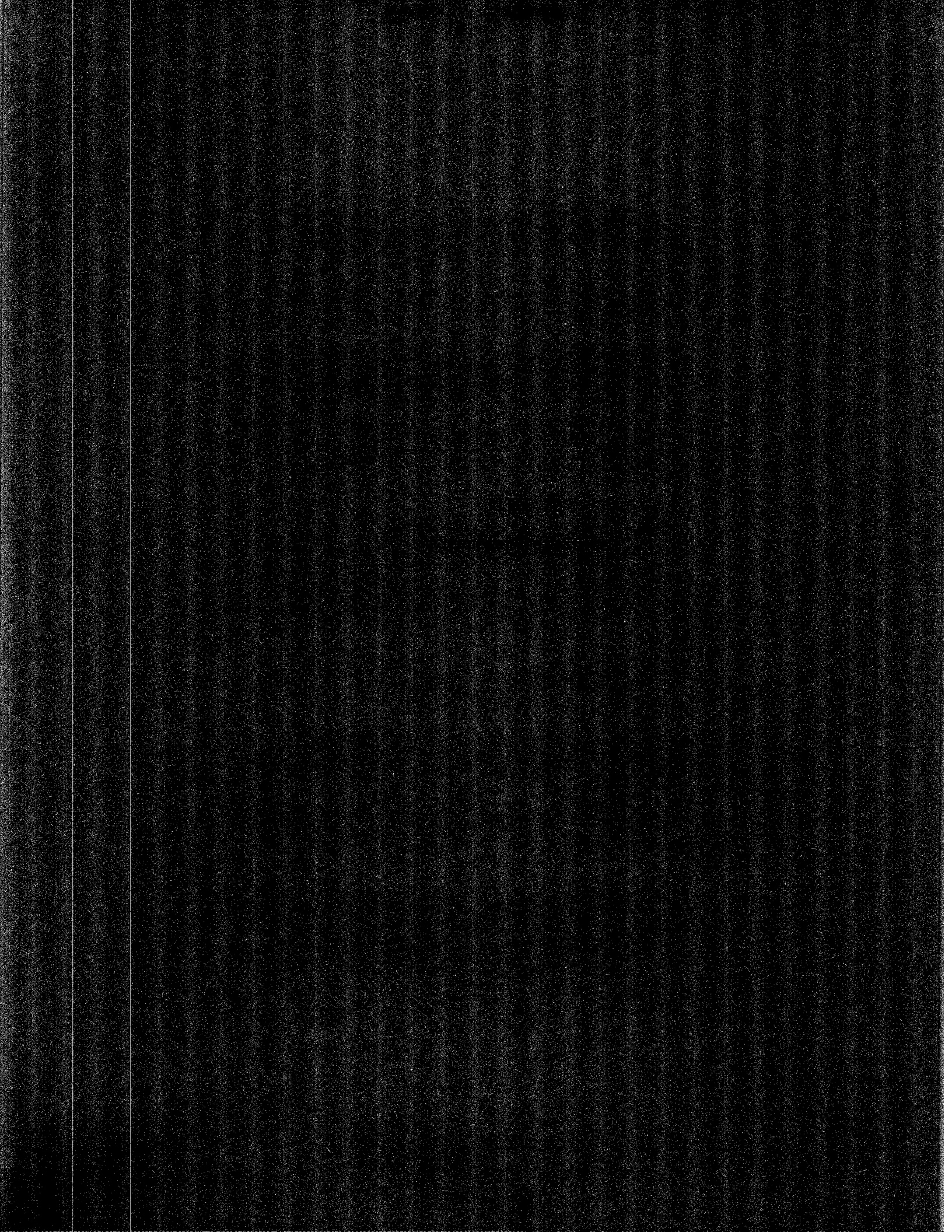
**69-10-04-06.1. Quality control - Failures.** If a registered service person fails three consecutive quality control inspections within one year, the commission may:

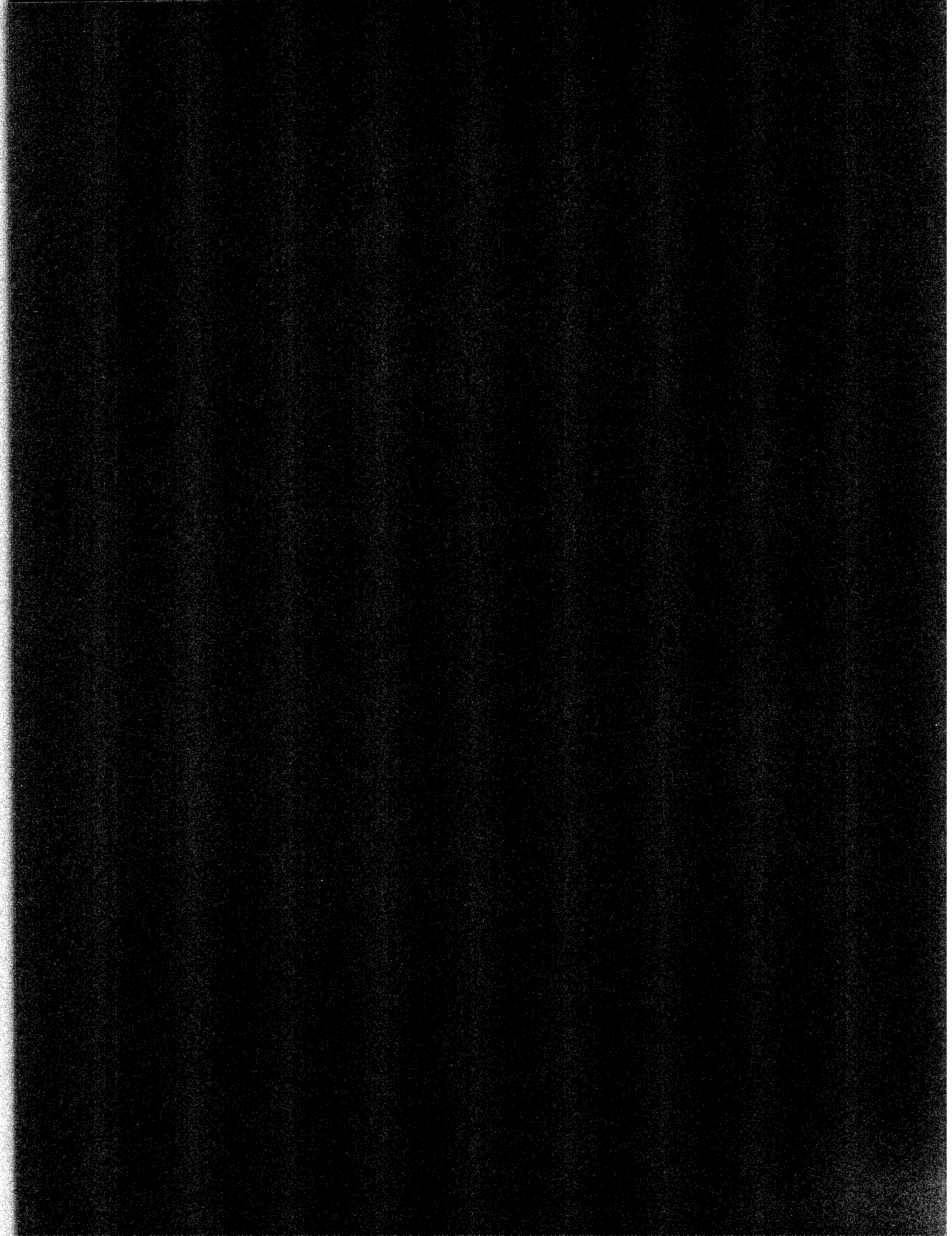
1. Issue a formal warning letter requiring remedial action within thirty days from the date of the letter;
2. Schedule a conference with the division director or chief inspector, the registered service person, and that person's supervisor;
3. Require that the registered service person retake the written tests required for licensing under section 69-10-04-02;
4. Reduce the registered service person's permit status to probationary for up to six months; and
5. Suspend the registered service person's permit and assess a civil penalty.

**History:** Effective October 1, 1999.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02, 64-02-13





NOVEMBER 1999

CHAPTER 72-01-02

72-01-02-01. Definitions.

1. "Active filings" means those filings which have not been terminated and which have not lapsed.
2. "Agricultural statutory lien" means agricultural processor's lien, agricultural supplier's lien, or agister's lien.
3. "Associated filings" includes all amendments, assignments, continuations, subordination notices, releases, updates, and terminations which have been filed relating to a specific Uniform Commercial Code or central notice system financing statement or a specific statutory lien.
4. "Central notice system" means farm product central notice system adopted pursuant to North Dakota Century Code section 41-09-46.
5. "Current secured party" means the person or entity which the financing statement and its associated filings show as being the last one to whom the security interest has been assigned. If neither the original financing statement nor the associated filings show any assignments, then it means any original secured party who has not released all of his the secured party's interest in all of the collateral.
6. "Debtor's address" means post-office mailing address.

7. "Debtor's name", unless the context indicates otherwise, means the debtor's legal name from birth, marriage, court order, partnership agreement, or articles of incorporation.
8. "Federal liens" means those federal liens described in North Dakota Century Code section 35-29-01.
9. "Filing office" means any one of the fifty-three county register of deeds' offices or the secretary of state's office.
10. "Financing statement" means any document submitted for filing as an effective financing statement under North Dakota Century Code section 41-09-41.
11. "Lapsed filing" means a filing which has become ineffective either because it has expired or because it was originally filed prior to January 1, 1992, and was not submitted for refiling prior to July 1, 1992, in the filing office in which the original was filed.
12. "Lienholder" means any person or entity which has an agricultural a statutory lien.
13. "Nonstandard form" means any document or paper presented for filing which is not specified as a standard form, whether presented as a separate filing or as an attachment to a standard form.
14. "Secured party's address" means post-office mailing address.
15. "Secured party's name", unless the context indicates otherwise, means the secured party's legal name from birth, marriage, court order, partnership agreement, or articles of incorporation.
16. "Social security number" means social security number as assigned by the social security administration.
17. "Standard form" means a form preapproved for use by the North Dakota secretary of state including the UCC-1/CNS-1, the UCC-3/CNS-3, the UCC-5/CNS-5, the UCC-1A, the UCC-3A, the ASL-1 (agricultural processor's lien), the ASL-2 (agricultural supplier's lien), the ASL-3 (agister's lien), and the ASL-4 (assignment, amendment, or lien release), ASL-5 (landlord lien notice), MSL-1 (miscellaneous statutory lien), and MSL-2 (assignment, amendment, or lien release) approved by the North Dakota secretary of state. A single An eight and one-half inches by eleven inches page or pages solely listing collateral additional information may be attached to the UCC-1/CNS-1 or the UCC-3/CNS-3 and still be a standard filing.

18. "Tax identification number" means the federal tax identification number issued to the entity by the internal revenue service.
19. "Uniform Commercial Code" means Uniform Commercial Code as adopted in North Dakota Century Code title 41.
20. "Update" means a change or correction to the name, address, social security number, tax identification number, or telephone number of the current secured party.

**History:** Effective February 1, 1992; amended effective November 1, 1999.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-02, 41-09-46

### **72-01-02-02. Refiling.**

#### **1.--Procedure-for-refiling:**

a.--A-copy-of-the-first-page-of-each-financing-statement-which-is-to-be-refiled-must-be-submitted--along--with--a--letter-requesting--refiling--to--the--filing--office-in-which-the-original-document-was-filed:

b.--A--copy-of-each-agricultural-statutory-lien-which-is-to-be-refiled-must-be-submitted-along-with-a--letter--requesting-refiling--to--the--filing--office--in--which--the-original-statutory-lien-was-filed:

c.--A--letter--must--be--sent--to--the--filing-officer-requesting-federal-liens-be-refiled-containing-the-information--which-is-to-be-refiled:

d.--The--filing--officer--shall--issue--and-mail--to--the-person-requesting-the-refiling-a-certificate--of--refiling--which-identifies-each-original-filing-and-each-associated-filing-which-has-been-refiled-along-with-both-the-original-filing-number-and-the-new-filing-number:

e.--All--central-notice-system-filings-which-are-active-in-the-secretary-of-state's-office-as-of-January-1,-1992,-will-be-automatically--refiled.---No--notice--or--request--by--the-secured-party-is-required:

f.--All--agricultural--statutory-lien-notices-which-are-active-in-the-secretary-of-state's-office-as-of-January-1,-1992,-will--be--automatically--refiled.---No-notice-or-request-by-the-lienholder-is-required:

#### **2.--Adding-new-information-when-refiling:**

a.---If--no--social--security--number--or--tax--identification--number--has--ever--been--submitted--for--the--debtor--on--a--filing,--the--debtor's--social--security--number--or--tax--identification--number--can--be--added--by--the--secured--party--or--lienholder--at--the--time--or--refiling--by--submitting--a--Uniform--Commercial--Code--refiling--form.

b.---The--Uniform--Commercial--Code--refiling--form--can--be--used--to--add--a--social--security--number--or--tax--identification--number--for--the--secured--party,--assignee,--or--lienholder.

c.---If--the--Uniform--Commercial--Code--refiling--form--is--used,--it--must--be--attached--to--the--copy--of--the--first--page--of--the--financing--statement--or--agricultural--statutory--lien--which--is--submitted--with--the--letter--requesting--refiling.

d.---A--secured--party--or--lienholder--may--include--in--the--letter--requesting--refiling--its--social--security--number--or--tax--identification--number--and--its--current--telephone--number--with--a--request--that--those--numbers--be--added--to--each--filing--listed--for--refiling.---If--this--is--done,--the--filing--officer--shall--add--this--information--to--each--filing--on--that--particular--request--for--refiling.

e.---There---is--no--fee--for--adding--information--under--this--subsection.

3.---Time--deadline--for--refiling.---Only--those--financing--statements,--federal--liens,--agricultural--statutory--liens,--and--notices--for--which--requests--for--refiling--or--refiling--documents--are--submitted--by--midnight--on--June--30,--1992,--or--mailed--to--the--correct--filing--office,--postage--prepaid,--with--a--postmark--no--later--than--June--30,--1992,--may--be--refiled.

4.---Documents--not--refiled.---All--financing--statements,--agricultural--statutory--liens,--and--federal--liens--which--have--not--expired,--been--terminated,--or--refiled--by--July--1,--1992,--must--be--stored--in--the--filing--office--for--a--period--of--five--years.

### 5.---Rejections.

a.---Any--time--a--filing--office--receives--a--request--for--refiling--for--a--filing--which--is--not--in--its--currently--active--filings,--the--request--for--refiling--will--be--rejected.

b.---The--filing--office--in--all--such--cases--will--send--a--letter--to--the--person--submitting--the--request--for--refiling--stating--the--date--the--request--for--refiling--was--submitted--and--whether--the--termination--fee,--if--required,--was--submitted--with--the--request--for--refiling.---The--copy--of--the--document--submitted--along--with--the--request--for--refiling--will--be--returned--to--the--submitting--party--with--the--rejection--letter.



~~e:--Any--fees--tendered--with--the--request--for--refiling--will--be  
refunded: Repealed effective November 1, 1999.~~

**History:** Effective February 1, 1992;  
**General Authority:** NDCC-28-32-02, 41-09-46  
**Law Implemented:** NDCC-41-09-28, 41-09-46

**72-01-02-04. Time.** Each financing statement, associated filing, agricultural statutory lien, and federal lien accepted for filing will be given a ~~computer--generated~~ computer-generated filing number and marked with the date and time filed. The time will be specified to the tenth of a second. The time placed on each new filing beginning January 1, 1992, will be based on prevailing central time.

**History:** Effective February 1, 1992; amended effective November 1, 1999.  
**General Authority:** NDCC 28-32-02, 41-09-46  
**Law Implemented:** NDCC 41-09-42, 41-09-43, 41-09-44, 41-09-45, 41-09-46

**72-01-02-06. Rejections.**

1. Any financing statement submitted for filing with any filing officer must be rejected if it lists the same individual as both debtor and secured party or if it does not have all of the following:
  - a. Each debtor's social security number or tax identification number;
  - b. Each debtor's signature, unless it meets one of the criteria specified in subsection 2 of North Dakota Century Code section 41-09-41;
  - c. The secured party's signature if the filing is being submitted without the debtor's signature pursuant to subsection 2 of North Dakota Century Code section 41-09-41, or if the filing contains a notice of assignment by the secured party;
  - d. The original file number of the financing statement which has lapsed if filed pursuant to subdivision c of subsection 2 of North Dakota Century Code section 41-09-41;
  - e. An address for the secured party from which further information may be obtained; and
  - f. Some collateral listed.
2. For the purposes of subsection 1, any debtor name preceded by d/b/a (doing business as) or a/k/a/ (also known as) or f/k/a

(formerly known as) does not require a separate signature. It does, however, require the listing of the individual's social security number or the entity's tax identification number.

3. A request--for--refiling--pursuant--to--section--72-01-02-02, continuation statement, termination statement, or other associated filing will be rejected if the financing statement or lien to which it relates is not on file as an active filing in that filing office.
4. Any amendment adding or changing collateral will be rejected if it does not contain the signature of each current debtor and the current secured party. Any amendment adding or changing the name of a debtor will be rejected if it does not contain the social security number or tax identification number and the signature of the affected debtor and the signature of the current secured party. Any other associated filing will be rejected if it does not contain the current secured party's signature.
5. A continuation statement submitted for filing with any filing officer must be rejected if it does not contain a social security number or tax identification number for each debtor unless that number was included on the original financing statement, submitted with the refiling, or included on a prior associated filing.
6. Any agricultural statutory lien submitted for filing with any filing officer must be rejected if it is not a verified statement containing all of the following:
  - a. Name and address of lienholder;
  - b. Debtor's name; and
  - c. The debtor's social security number or tax identification number.
7. Any document tendered for filing which is rejected by the filing officer will be marked with the time and date it was tendered, whether the correct filing fee was tendered with the document, the reason for the rejection, and will indicate the filing officer. Any fees tendered with the rejected filing will be refunded.
8. Request for reinstatement of a filing.
  - a. If a filing has been rejected pursuant to subsection 3, the secured party or lienholder may submit a request for reinstatement of filing. The request must be accompanied by two legible copies of the lien or original financing statement and each associated filing which had been filed showing the file number; and an affidavit by the secured

party or lienholder stating the debtor's current address and that the financing statement has not been terminated and has not lapsed or that the lien has not been released. If any debtor listed on the financing statement is currently involved in an insolvency proceeding, notice of that proceeding must be attached.

- b. Upon receipt of a proper request for reinstatement, the filing officer shall reinstate the filing and send to each listed debtor a copy of the request for reinstatement, along with attachments, and notice that the financing statement or lien has been reinstated.
- c. Any file which has been reinstated must be marked as a reinstated file both on the physical documents and in the index.

**History:** Effective February 1, 1992; amended effective March 1, 1994; November 1, 1999.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 41-09-41, 41-09-42, 41-09-44, 41-09-46

#### **72-01-02-11. Searches.**

1. **Public access.** Any person may obtain from any filing office at no charge the following information:
  - a. Whether any filings exist for a specific name, or social security number or tax identification number, within the computerized central index system; and
  - b. If any filings exist for the specific name, or social security number or tax identification number, the index in which they appear; and
  - c. The filing office in which the documents are located.
2. **Data bases.** Included within the computerized central index systems are the following indexes which may be searched:
  - a. Uniform Commercial Code index;
  - b. Central notice system index;
  - c. Agricultural-statutory Statutory lien index;
  - d. Agricultural statutory lien notice index; and
  - e. Federal lien index; and
  - f. State tax lien index.

### 3. Types of searches.

- a. A search may be conducted by name of the debtor, or name of secured party, or social security number or tax identification number, or file number.
- b. Each name, or social security number or tax identification number, searched must be deemed a separate search.
- c. A search request must indicate which index or indexes are to be searched.
- d. A copy of a filing must include all pages of the original filing and of each associated filing.

### 4. Copy requests.

- a. A copy of a filing must include all pages of the original filing and of each associated filing.
- b. Any request for a certified copy of a filing must be made to the filing office where the original filing was made.

**History:** Effective February 1, 1992; amended effective November 1, 1999.

**General Authority:** NDCC 28-32-02, 41-09-46

**Law Implemented:** NDCC 41-09-46

### 72-01-02-13. Fees.

1. Termination fees must be paid at the time of the original filing of any Uniform Commercial Code financing statement, separate central notice system filing, agricultural statutory lien, separate agricultural statutory lien notice, or federal lien.
2. ~~Termination--fees--must--be--paid--at--the--time--of--refiling--any--Uniform--Commercial--Code--financing--statement,--agricultural--statutory--lien,--or--federal--lien--for--which--the--termination--fee--has--not--been--paid--prior--to--the--refiling.~~
3. The fee for terminating a central notice system filing or an agricultural statutory lien notice which was refiled automatically pursuant to section 72-01-02-02 is five dollars and must be paid at the time the filing is terminated.
4. 3. The fee for having information faxed to a requesting party is three dollars. A maximum of twenty pages may be faxed.
5. 4. The fee for filing an update is five ten dollars.

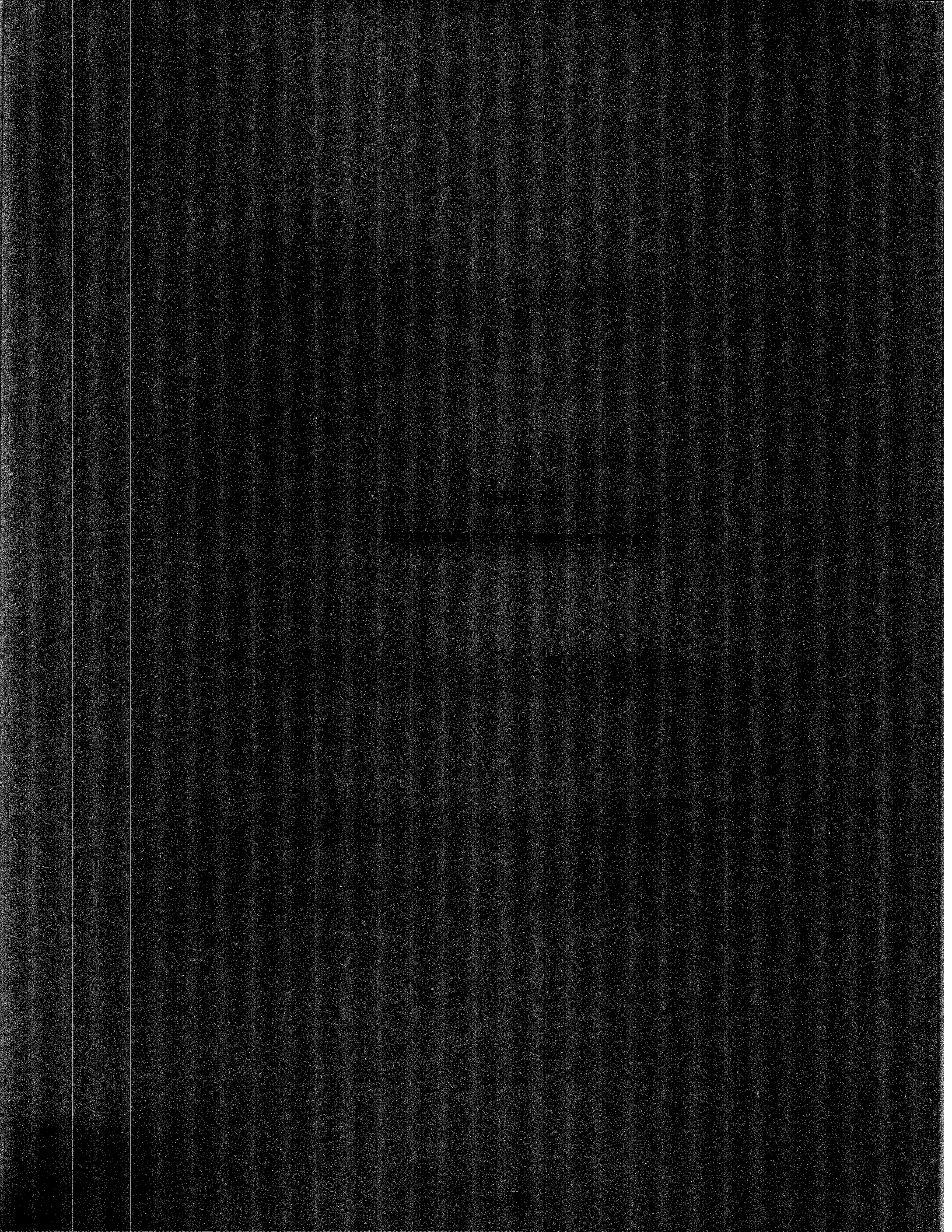
- 6- 5. The fee for filing a name change in the name change index is one hundred dollars.
- 7- 6. The fee for having all filings updated with a current secured party's name change is four hundred dollars.
- 8- 7. Filing fees are the same in all fifty-four filing offices for any Uniform Commercial Code or central notice system filing, agricultural statutory lien, agricultural statutory lien notice, or federal lien.
- 9- 8. All fees not specified within this section are as set forth in North Dakota Century Code sections 41-09-28.1, 41-09-42, 41-09-43, 11-18-05, and 35-17-08, 35-29-05, 35-30-06, 35-31-06, 41-09-28.1, 41-09-42, and 41-09-43.
- 10- 9. Fees will be billed for any secured party or searching party who has received prior approval for billing, has been assigned a billing number, and who indicates a desire to be billed for that particular filing or search.
- ~~11. Any person or entity may prepay into the secretary of state's office funds to be drawn against for filing fees, search fees, or any other charges normally billed by the secretary of state's office.~~

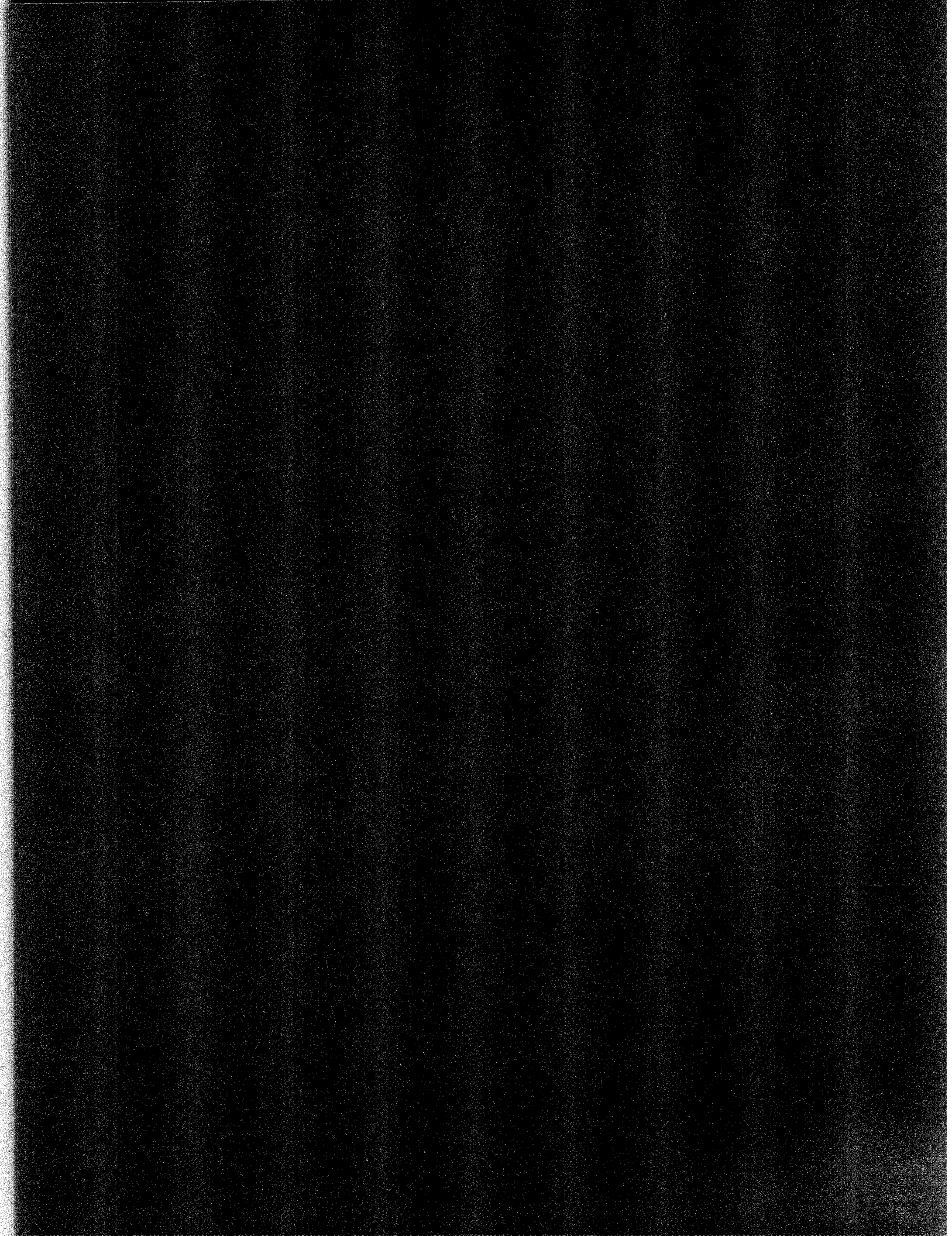
**History:** Effective February 1, 1992; amended effective November 1, 1999.

**General Authority:** NDCC 28-32-02, 41-09-42

**Law Implemented:** NDCC 41-09-28.1, 41-09-42, 41-09-43









**AUGUST 1999**

**CHAPTER 75-02-04.1**

**AGENCY SYNOPSIS: North Dakota Administrative Code Chapter 75-02-04.1: Child Support Guidelines**

**Section 75-02-04.1-01:** Amends the definitions of "gross income" and "net income," and deletes the definition of "net income from self-employment."

**Section 75-02-04.1-02(12):** Provides general instruction used to determine net income.

**Section 75-02-04.1-05:** Clarifies and revises the process of determining net income from self-employment.

**Section 75-02-04.1-06:** Simplifies and revises the calculation made in determining the cost of supporting children living with the obligor.

**Section 75-02-04.1-06.1:** Clarifies the calculation made in determining the cost of supporting children in multiple-family cases.

**Section 75-02-04.1-07:** Clarifies imputation of income based upon previous earnings, particularly in cases involving a voluntary change in employment resulting in reduction of income.

**Section 75-02-04.1-08.1:** Creates a new section to describe an adjustment for extended visitation between the obligor and a child.

**Section 75-02-04.1-09(2)(1):** Provides a basis for deviating from the guideline amounts if an obligor has two or more children in foster care or guardianship care.

**Section 75-02-04.1-11:** Clarifies the calculation of child support obligations concerning children in foster care or guardianship care.

**75-02-04.1-01. Definitions.**

1. "Child" means any child, by birth or adoption, to whom a parent owes a duty of support.
2. "Child living with the obligor" means the obligor's child who lives with the obligor most of the year.
3. "Children's benefits" means a payment, to or on behalf of a child of the person whose income is being determined, made by a government, insurance company, trust, pension fund, or similar entity, derivative of the parent's benefits or a result of the relationship of parent and child between such person and such child. Children's benefits do not mean benefits received from means tested public assistance programs.
4. "Custodial parent" means a parent who acts as the primary caregiver on a regular basis for a proportion of time greater than the obligor, regardless of custody descriptions such as "shared" or "joint" custody given in relevant judgments, decrees, or orders.
5. a. "Gross income" means income from any source, in any form, but does not mean benefits:
  - (1) Benefits received from means tested public assistance programs such as aid-to temporary assistance to needy families with---dependent---children, supplemental security income, and food stamps;
  - (2) Employee benefits over which the employee does not have significant influence or control over the nature or amount unless:
    - (a) That benefit may be liquidated; and
    - (b) Liquidation of that benefit does not result in the employee incurring an income tax penalty; or
  - (3) Child support payments.
- b. Gross Examples of gross income includes include salaries, wages, overtime wages, commissions, bonuses, employee benefits, currently deferred income, dividends, severance pay, pensions, interest, trust income, annuities income, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, distributions of retirement benefits, receipt of previously deferred income, veterans' benefits (including

gratuitous benefits), gifts and prizes to the extent each exceeds they annually exceed one thousand dollars in value, spousal support payments received, each earned income tax credits, value of in-kind income received on a regular basis, children's benefits, income imputed based upon earning capacity, military subsistence payments, and net income from self-employment.

c. For purposes of this subsection, income tax due or paid is not an income tax penalty.

6. "In-kind income" means the receipt of any valuable right, property or property interest, other than money or money's worth, including forgiveness of debt (other than through bankruptcy), use of property, including living quarters at no charge or less than the customary charge, and the use of consumable property or services at no charge or less than the customary charge.
7. "Net income" means total gross ~~monthly~~ annual income less:
  - a. Federal ~~A hypothetical federal~~ income tax obligation based on application-of-standard-deductions-and-tax-tables the obligor's gross income, reduced by that part of the obligor's gross income that is not subject to income tax under the Internal Revenue Code, and applying:
    - (1) The standard deduction for the tax filing status of single;
    - (2) One exemption for the obligor;
    - (3) One additional exemption for each child actually claimed on a disclosed income tax return or one additional exemption for each child, as defined in this section, if a tax return is not disclosed; and
    - (4) Tax tables for a single individual for the most recent year published by the internal revenue service, reduced by one child tax credit for each child's exemption considered under paragraph 3;
  - b. State ~~A hypothetical state~~ income tax obligation based on application-of-standard-deductions-and-tax-tables equal to fourteen percent of the amount determined under subdivision a without reduction for child tax credits;
  - c. A hypothetical obligation for Federal Insurance Contributions Act (FICA), Railroad Retirement Tax Act (RTA) tier I and tier II, and medicare deductions or obligations based on that part of the obligor's gross income that is subject to FICA, RTA, or medicare tax;

- d. A portion of premium payments, made by the person whose income is being determined, for health insurance policies or health service contracts, intended to afford coverage for the child or children for whom support is being sought, determined by dividing the payment by the total number of persons covered and multiplying the result times the number of such children;
  - e. Payments made on actual medical expenses of the child or children for whom support is being sought to the extent it is reasonably likely similar expenses will continue;
  - f. Union dues where and occupational license fees if required as a condition of employment;
  - g. Employee retirement contributions, deducted from the employee's compensation, ~~other than FICA, where and not otherwise deducted under this subsection, to the extent required as a condition of employment;~~ and
  - h. Employee expenses for special equipment or clothing required as a condition of employment or for lodging expenses incurred when engaged in travel required as a condition of employment (limited to thirty dollars per night ~~or actual lodging costs, whichever is less), incurred on a regular basis, but not reimbursed by the employer; and~~
  - i. Employer reimbursed out-of-pocket expenses of employment, if included in gross income, but excluded from adjusted gross income on the obligor's federal income tax return.
8. ~~"Net income from self-employment" means gross income of any organization or entity which employs the obligor, but which the obligor is to a significant extent able to control, less actual expenditures attributable to the cost of producing income to that organization or entity.~~
9. "Obligee" includes, for purposes of this chapter, an obligee as defined in subsection 8 of North Dakota Century Code section 14-09-09.10 and a person who is alleged to be owed a duty of support.
10. 9. "Obligor" includes, for purposes of this chapter, an obligor as defined in subsection 9 of North Dakota Century Code section 14-09-09.10 and a person who is alleged to owe a duty of support.
11. 10. "Split custody" means a situation where the parents have more than one child in common, and where each parent has sole custody of at least one child.

**History:** Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999.

**General Authority:** NDCC 50-06-16, 50-09-25

**Law Implemented:** NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

**75-02-04.1-02. Determination of support amount - General instructions.**

1. Calculations of child support obligations provided for under this chapter consider and assume that one parent acts as a primary caregiver and the other parent contributes a payment of child support to the child's care.
2. Calculations assume that the care given to the child during temporary periods when the child resides with the obligor or the obligor's relatives do not substitute for the child support obligation.
3. Net income received by an obligor from all sources must be considered in the determination of available money for child support.
4. The result of all calculations which determine a monetary amount ending in fifty cents or more must be rounded up to the nearest whole dollar, and must otherwise be rounded down to the nearest whole dollar.
5. In applying the child support guidelines, an obligor's monthly net income amount ending in fifty dollars or more must be rounded up to the nearest one hundred dollars, and must otherwise be rounded down to the nearest one hundred dollars.
6. The annual total of all income considered in determining a child support obligation must be determined and then divided by twelve in order to determine the obligor's monthly net income.
7. Income must be documented through the use of tax returns, current wage statements, and other information sufficiently to fully apprise the court of all gross income. Where gross income is subject to fluctuation, particularly in instances involving self-employment, information reflecting and covering a period of time sufficient to reveal the likely extent of fluctuations must be provided.
8. Calculations made under this chapter are ordinarily based upon recent past circumstances because past circumstances are typically a reliable indicator of future circumstances, particularly circumstances concerning income. If circumstances that materially affect the child support obligation are very likely to change in the near future, consideration may be given to the likely future circumstances.

9. Determination of a child support obligation is appropriate in any matter where the child and both of the child's parents do not reside together.
10. Each child support order must include a statement of the net income of the obligor used to determine the child support obligation, and how that net income was determined.
11. A payment of children's benefits made to or on behalf of a child who is not living with the obligor must be credited as a payment toward the obligor's child support obligation in the month (or other period) the payment is intended to cover, but may not be credited as a payment toward the child support obligation for any other month or period.
12. No amount may be deducted to determine net income unless that amount is included in gross income.

**History:** Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999.

**General Authority:** NDCC 50-06-16, 50-09-25

**Law Implemented:** NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

**75-02-04.1-05. Determination of net income from self-employment.**

1. ~~Expenses--attributable--to--the--cost--of--producing--income--vary--from--business--to--business.--Deducting--expenses--from--the--gross--income--of--the--business--determines--the--adjusted--gross--income; according--to--internal--revenue--service--terminology.~~ Net income from self-employment means total income, for internal revenue service purposes, of the obligor and the obligor's business, reduced by the amount, if any, of that total income that is not the obligor's income from self-employment, plus:
  - a. Business expenses attributable to the obligor or a member of the obligor's household for:
    - (1) Employee's or proprietor's benefits, pensions, and profit-sharing plans; and
    - (2) Travel, meals, or entertainment; and
  - b. Payments made to a member of the obligor's household, other than the obligor, to the extent the payment exceeds the fair market value of the service furnished by the household member.
2. "Member of the obligor's household" includes any individual who shares the obligor's home a substantial part of the time, without regard to whether that individual maintains another home.

3. The "obligor's business" includes any business organization or entity which the obligor is, to a significant extent, able to directly or indirectly control.

4. If the latest tax return is returns are not available or does do not reasonably reflect the income from the business, a profit and loss statement statements which will more accurately reflect the current status of the business must be used.

2:--After--adjusted--gross--income--from--self-employment--is determined;--all--business--expenses--allowed--for--taxation purposes;--but--which--do--not--require--actual--expenditures;--such as--depreciation;--must--be--added--to--determine--net--income--from self-employment;--Business--costs--actually--incurred--and--paid; but--not--expensed--for--internal--revenue--service--purposes;--such as--principal--payments--on--business--loans--(to--the--extent--there is--a--net--reduction--in--total--principal--obligations--incurred--in purchasing--depreciable--assets);--may--be--deducted--to--determine net--income--from--self-employment:

3: 5. Farm--businesses Businesses may experience significant changes in production and income over time. To the extent that information is reasonably available, the average of the most recent five years of farm business operations, if undertaken on a substantially similar scale, should must be used to determine farm business income.

4:--Land--costs--are--a--significant--part--of--farm--expenses;--Because farm--lands--are--used--both--for--the--production--of--income--and--for investment--purposes;--for--the--purpose--of--making--determinations under--this--section;--deduction--of--business--costs--relating--to the--purchase--of--land--is--limited--to--the--lesser--of:

a:--The--fair--rental--value--of--the--land--being--purchased;--or

b:--The--total--principal--and--interest--payments--actually--made toward--the--purchase--of--the--land:

**History:** Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999.

**General Authority:** NDCC 50-06-16, 50-09-25

**Law Implemented:** NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

**75-02-04.1-06.** Determining the cost of supporting a child living with the obligor. The cost of supporting a child living with the obligor, who is not also a child of the obligee, may be deducted from net income under subsection 4 of section 75-02-04.1-06.1 if this section is followed:

1. ~~When the other parent of a child living with the obligor does not live with the obligor, the cost of supporting that child and is determined by:~~

a. ~~Applying applying the obligor's net income and the total number of children living with the obligor to whom the obligor owes a duty of support, to section 75-02-04.1-10;~~

b. ~~Dividing the amount determined under subdivision a by the total number of children to whom the obligor owes a duty of support; and~~

c. ~~Multiplying the amount determined under subdivision b times the total number of children to whom the obligor owes a duty of support and who are also living with the obligor.~~

2. ~~When the other parent of a child living with the obligor also lives with the obligor, the cost of supporting that child is determined by:~~

a. ~~Applying the combined total net income of the obligor and the other parent and the total number of children to whom the obligor or the other parent owes a duty of support, to section 75-02-04.1-10;~~

b. ~~Dividing the amount determined under subdivision a by the total number of children to whom the obligor or the other parent owes a duty of support;~~

c. ~~Multiplying the amount determined under subdivision b times the total number of children to whom the obligor owes a duty of support and who are also living with the obligor;~~

d. ~~Dividing the obligor's net income by the combined total net income of the obligor and the other parent; and~~

e. ~~Multiplying the amount determined under subdivision c times the decimal fraction determined under subdivision d.~~

3. ~~For purposes of the calculation described in subsection 2, income may not be imputed under section 75-02-04.1-08.~~

4. ~~When the other parent of a child living with the obligor also lives with the obligor, no deduction for the cost of supporting that child may be made, under subsection 4 of section 75-02-04.1-06.1, from the obligor's income if the obligor fails to furnish reliable information sufficient to determine the other parent's income.~~

**History:** Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999.



**General Authority:** NDCC 50-06-16, 50-09-25

**Law Implemented:** NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

**75-02-04.1-06.1. Determination of support amount in multiple-family cases.**

1. This section must be used to determine the child support amount presumed to be the correct amount of child support in all cases involving an obligor who:
  - a. Owes duties of support payable to two or more obligees; or
  - b. Owes a duty of support to at least one obligee and also owes a duty of support to a child living with the obligor who is not also the child of that obligee.
2. If a court consolidates proceedings involving an obligor and two or more obligees, the court must determine all obligations that may be determined in the consolidated proceeding without regard to whom the initial moving party may be.
3. A hypothetical amount that reflects the cost of supporting children living with the obligor, as determined under section 75-02-04.1-06, and a hypothetical amount due to each obligee under this chapter must first be determined for the children living with the obligor and each obligee, whether or not the obligee is a party to the proceeding, assuming for purposes of that determination:
  - a. The obligor has no support obligations except to the obligee in question; and
  - b. The guidelines amount is not rebutted; and
  - c. The obligor does not have extended visitation.
4. A hypothetical amount due to each obligee under this chapter must next be determined for each obligee who is a party to the proceeding, assuming for purposes of that determination:
  - a. The obligor's net income is reduced by:
    - (1) The amount of child support due to all other obligees, as determined under subsection 3; and
    - (2) The cost of supporting a child living with the obligor, who is not also the child of that obligee, as determined under section 75-02-04.1-06;
  - b. The guidelines amount is not rebutted; and

- c. Any support amount otherwise determined to be less than one dollar is determined to be one dollar; and
  - d. The obligor does not have extended visitation.
5. a. ~~For~~ Except as provided in subdivision b, for each obligee before the court, the support obligation presumed to be the correct amount of child support is equal to one-half of the total of the two amounts determined, with respect to that obligee, under subsections 3 and 4.
- b. Any necessary determination under this section must be made before an adjustment for extended visitation appropriate under section 75-02-04.1-08.1. The "amount otherwise due under this chapter", for purposes of section 75-02-04.1-08.1, is equal to one-half of the total of the two amounts determined, with respect to that obligation, under subsections 3 and 4.
6. The fact, if it is a fact, that the obligor is required to pay, or pays, a different amount than the hypothetical amounts determined under subsections 3 and 4 is not a basis for deviation from the procedure described in this section.

**History:** Effective January 1, 1995; amended effective August 1, 1999.

**General Authority:** NDCC 50-06-16, 50-09-25

**Law Implemented:** NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

**75-02-04.1-07. Imputing income based on earning capacity.**

1. For purposes of this section:
- a. "Community" includes any place within one hundred miles [160.93 kilometers] of the obligor's actual place of residence; and
  - b. An obligor is "underemployed" if the obligor's gross income from earnings is significantly less than prevailing amounts earned in the community by persons with similar work history and occupational qualifications.
2. An obligor is presumed to be underemployed if the obligor's gross income from earnings is less than six-tenths:
- a. Six-tenths of prevailing amounts earned in the community by persons with similar work history and occupational qualifications; or
  - b. One hundred sixty-seven times the federal hourly minimum wage.

3. Except as provided in subsections 4 and 5, and 9, monthly gross income based on earning capacity equal to the greatest of subdivisions a through c, less actual gross earnings, must be imputed to an obligor who is unemployed or underemployed.
  - a. An amount equal to one hundred sixty-seven times the hourly federal minimum wage.
  - b. An amount equal to six-tenths of prevailing gross monthly earnings in the community of persons with similar work history and occupational qualifications.
  - c. An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months beginning on or after thirty-six months before commencement of the proceeding before the court, for which reliable evidence is provided.
4. Monthly gross income based on earning capacity may be imputed in an amount less than would be imputed under subsection 3 if the obligor shows:
  - a. The reasonable cost of child care equals or exceeds seventy percent of the income which would otherwise be imputed where the care is for the obligor's child:
    - (1) Who is in the physical custody of the obligor;
    - (2) Who is under the age of fourteen; and
    - (3) For whom there is no other adult caretaker in the parent's home available to meet the child's needs during absence due to employment.
  - b. The obligor suffers from a disability sufficient in severity to reasonably preclude the obligor from gainful employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage.
  - c. The unusual emotional or physical needs of a minor child of the obligor require the obligor's presence in the home for a proportion of the time so great as to preclude the obligor from gainful employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage.
5. Gross income based on earning capacity may not be imputed if the obligor shows that the obligor has average monthly gross earnings equal to or greater than one hundred sixty-seven times the hourly federal minimum wage and is not underemployed.

6. If an unemployed or underemployed obligor shows that employment opportunities, which would provide earnings at least equal to the lesser of the amounts determined under subdivision b or c of subsection 3, are unavailable in the community, income must be imputed based on earning capacity equal to the amount determined under subdivision a of subsection 3, less actual gross earnings.
7. If the obligor fails, upon reasonable request made in any proceeding to establish a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, income based on earning capacity equal to the greatest of subdivisions a through c of subsection 3 must be imputed.
8. If the obligor fails, upon reasonable request made in any proceeding to review a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, income must be imputed based on the greatest of:
  - a. Subdivisions a through c of subsection 3; or
  - b. The obligor's net income, at the time the child support order was entered or last modified, increased at the rate of ten percent per year.
9. Notwithstanding subsections 4, 5, and 6, if an obligor makes a voluntary change in employment resulting in reduction of income, monthly gross income equal to one hundred percent of the obligor's greatest average monthly earnings, in any twelve consecutive months beginning on or after thirty-six months before commencement of the proceeding before the court, for which reliable evidence is provided, less actual monthly gross earnings, may be imputed without a showing that the obligor is unemployed or underemployed.

**History:** Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999.

**General Authority:** NDCC 50-06-16, 50-09-25

**Law Implemented:** NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-08.1. Adjustment for extended visitation.

1. For purposes of this section, "extended visitation" means visitation between an obligor and a child living with an obligee scheduled by court order to exceed sixty of ninety consecutive nights or an annual total of one hundred sixty-four nights.
2. Notwithstanding any other provision of this chapter, if a court order provides for extended visitation between an

obligor and a child living with an obligee, the support obligation presumed to be the correct child support amount due on behalf of all children of the obligor living with the obligee must be determined under this subsection.

- a. Determine the amount otherwise due under this chapter from the obligor for those children.
- b. Divide the amount determined under subdivision a by the number of those children.
- c. For each child, multiply the number of that child's visitation nights times .32 and subtract the resulting amount from three hundred sixty-five.
- d. Divide the result determined under subdivision c by three hundred sixty-five.
- e. Multiply the amount determined under subdivision b times each decimal fraction determined under subdivision d.
- f. Total all amounts determined under subdivision e.

**History:** Effective August 1, 1999.

**General Authority:** NDCC 50-06-16, 50-09-25

**Law Implemented:** NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

**75-02-04.1-09. Criteria for rebuttal of guideline amount.**

1. The child support amount provided for under this chapter, except for subsection 2, is presumed to be the correct amount of child support. No rebuttal of the guidelines may be based upon evidence of factors described or applied in this chapter, except in subsection 2, or upon:
  - a. The subsistence needs, work expenses, and daily living expenses of the obligor; or
  - b. The income of the obligee, which is reflected in a substantial monetary and nonmonetary contribution to the child's basic care and needs by virtue of being a custodial parent.
2. The presumption that the amount of child support that would result from the application of this chapter, except for this subsection, is the correct amount of child support is rebutted only if a preponderance of the evidence establishes that a deviation from the guidelines is in the best interest of the supported children and:
  - a. The increased need if support for more than six children is sought in the matter before the court;

- b. The increased ability of an obligor, with a monthly net income which exceeds ten thousand dollars, to provide child support;
- c. The increased need if educational costs have been voluntarily incurred, at private schools, with the prior written concurrence of the obligor;
- d. The increased needs of children with disabling conditions or chronic illness;
- e. The increased needs of children age twelve and older;
- f. The increased needs of children related to the cost of child care, purchased by the obligee, for reasonable purposes related to employment, job search, education, or training;
- g. The increased ability of an obligor, who is able to secure additional income from assets, to provide child support;
- h. The increased ability of an obligor, who has engaged in an asset transaction for the purpose of reducing the obligor's income available for payment of child support, to provide child support;
- i. The reduced ability of the obligor to provide support due to travel expenses incurred solely for the purpose of visiting a child who is the subject of the order;
- j. The reduced ability of the obligor to pay child support due to a situation, over which the obligor has little or no control, which requires the obligor to incur a continued or fixed expense for other than subsistence needs, work expenses, or daily living expenses, and which is not otherwise described in this subsection; or
- k. The reduced ability of the obligor to provide support due to the obligor's health care needs, to the extent that the costs of meeting those health care needs:
  - (1) Exceed ten percent of the obligor's gross income;
  - (2) Have been incurred and are reasonably certain to continue to be incurred by the obligor;
  - (3) Are not subject to payment or reimbursement from any source except the obligor's income; and
  - (4) Are necessary to prevent or delay the death of the obligor or to avoid a significant loss of income to the obligor; or

1. The reduced ability of the obligor to provide support when two or more of the obligor's children are in foster care or guardianship care.
3. Assets may not be considered under subdivisions g and h of subsection 2, to the extent they:
  - a. Are exempt under North Dakota Century Code section 47-18-01;
  - b. Consist of necessary household goods and furnishings; or
  - c. Include one motor vehicle in which the obligor owns an equity not in excess of twenty thousand dollars.
4. For purposes of subdivision h of subsection 2, a transaction is presumed to have been made for the purpose of reducing the obligor's income available for the payment of child support if:
  - a. The transaction occurred after the birth of a child entitled to support;
  - b. The transaction occurred no more than twenty-four months before the commencement of the proceeding that initially established the support order; and
  - c. The obligor's income is less than it likely would have been if the transaction had not taken place.
5. For purposes of subdivision j of subsection 2, a situation over which the obligor has little or no control does not exist if the situation arises out of discretionary purchases or illegal activity.

**History:** Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999.

**General Authority:** NDCC 50-06-16, 50-09-25

**Law Implemented:** NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

**75-02-04.1-11. Parental responsibility for children in foster care or guardianship care.** It is important that parents maintain a tie to and responsibility for their child when that child is in foster care. Financial responsibility for the support of that child is one component of the maintenance of the relationship of parent and child. Parents of a child subject to a guardianship order under North Dakota Century Code chapter 27-20 or 30.1-27 remain financially responsible for the support of that child.

1. In order to determine monthly net income, it is first necessary to identify the parent or parents who have financial responsibility for any child entering foster care or

guardianship care, and to determine the net income of those financially responsible parents. If the parents of a child in foster care or guardianship care reside together, and neither parent has a duty to support any child who does not either reside with the parents or receive foster care or guardianship care, the income of the parents must be combined and treated as the income of the obligor. In all other cases, each parent is treated as an obligor, and each parent's support obligations must be separately determined. If an obligor under this section has a child living with the obligor, the support obligation must be determined through applications of sections 75-02-04.1-06 and 75-02-04.1-06.1.

2. Each child in foster care or guardianship care is treated as an obligee, and support obligations must be separately determined for each such child.

~~3.--If-the-support-obligations-determined-under-this-section-for-a child-or-children-in-foster-care-exceed--the--cost--of--foster care;-the-support-obligations-must-be-reduced-(proportionately if-there-is-more-than-one-obligor)-to-an-amount-equal--to--the cost-of-foster-care.~~

**History:** Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999.

**General Authority:** NDCC 50-06-16, 50-09-25

**Law Implemented:** NDCC 14-09-09.7, 50-09-02(12); 42 USC 667