

NORTH DAKOTA ADMINISTRATIVE CODE

Supplement 324

April 2007

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

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TITLE 33

STATE DEPARTMENT OF HEALTH

APRIL 2007

CHAPTER 33-06-01

33-06-01-01. Reportable conditions. All reports and information concerning reportable conditions are confidential and not open to inspection. The following designated reportable conditions must be reported to the state department of health by the persons designated in chapter 33-06-02. If any reportable condition is designated by an asterisk, an appropriate sample or isolate must be submitted to the division of microbiology (public health laboratory) in addition to the required report.

1. Anthrax*.
2. Arboviral infection.
3. Botulism*.
4. Brucellosis*.
5. Campylobacter enteritis*.
6. Cancer, all invasive and in situ carcinomas (except basal and squamous cell skin carcinomas or carcinoma in situ of the cervix uteri).
7. All CD4 test results.
8. Chickenpox (varicella).
9. Chlamydial infections.
10. Cholera*.
11. Clostridium perfringens intoxication.
12. Creutzfeldt-Jakob disease.
13. Cryptosporidiosis.

14. Diphtheria*.
15. Enteric E. coli infection (includes E. coli 0157:H7 and infections caused by other enterohemorrhagic, enteropathogenic, or enteroinvasive E. coli)*.
16. Enterococcus, vancomycin resistant (VRE)*.
17. Foodborne or waterborne outbreaks.
18. Giardiasis.
19. Glanders*.
20. Gonorrhea.
21. Hantavirus*.
22. Haemophilus influenzae infection (invasive infection with haemophilus influenzae isolated from blood, cerebral spinal fluid, or other normal sterile site)*.
23. Hemolytic uremic syndrome.
24. Hepatitis (specify type).
25. Human immunodeficiency virus (HIV) infection, including acquired immunodeficiency syndrome (AIDS)*. (Any positive HIV test result.)
26. Human immunodeficiency virus (HIV) nucleic acid test result (detectable or nondetectable).
27. Influenza.
28. Laboratory incidences involving the possible release of category A bioterrorism agents or novel influenza viruses into the laboratory environment.
29. Lead blood level greater than or equal to 10 ug/dl.
- ~~29.~~ 30. Legionellosis.
- ~~30.~~ 31. Listeriosis*.
- ~~31.~~ 32. Lyme disease.
- ~~32.~~ 33. Malaria*.
- ~~33.~~ 34. Measles (rubeola)*.

- 34: 35. Melioidosis*.
- 35: 36. Meningitis, bacterial (all bacterial species isolated from cerebrospinal fluid)*.
- 36: 37. Meningococcal disease (invasive infection with neisseria meningitidis isolated from blood, cerebral spinal fluid, or other normal sterile site)*.
- 37: 38. Mumps.
- 38: 39. Nipah viral infections.
- 39: 40. Nosocomial outbreaks in institutions.
- 40: 41. Pertussis*.
- 41: 42. Plague*.
- 42: 43. Poliomyelitis*.
44. Pregnancy in a person infected with hepatitis B, HIV, Group B strep, syphilis, or other perinatally transmissible disease.
- 43: 45. Psittacosis.
- 44: 46. Q fever*.
- 45: 47. Rabies (animal or human*).
- 46: 48. Rocky Mountain spotted fever.
- 47: 49. Rubella*.
- 48: 50. Salmonellosis*.
- 49: 51. Scabies outbreaks in institutions.
- 50: 52. Severe acute respiratory syndrome (SARS).
- 51: 53. Shigellosis*.
- 52: 54. Smallpox.
- 53: 55. Staphylococcus aureus, methicillin resistant (MRSA), ~~all~~ invasive sites only. All isolates from blood, cerebral spinal fluid, or other normal sterile site must be forwarded to the North Dakota public health laboratory.
- 54: 56. Staphylococcus aureus, vancomycin resistant and intermediate resistant (VRSA and VISA) (~~any staphylococcus aureus isolate~~

demonstrating intermediate or greater resistance to vancomycin of MIC greater than or equal to 8 ug/ml)*.

- ~~55- 57.~~ Staphylococcus enterotoxin B intoxication.
- ~~56- 58.~~ Streptococcal infections (invasive infection of streptococcus group A or B or streptococcus pneumoniae isolated from blood, cerebral spinal fluid, or other normal sterile site)*.
- ~~57- 59.~~ Syphilis.
- ~~58- 60.~~ Tetanus.
- ~~59- 61.~~ Tickborne encephalitis viruses*.
- ~~60- 62.~~ Tickborne hemorrhagic fevers.
- ~~61- 63.~~ Toxic-shock syndrome*.
- ~~62- 64.~~ Trichinosis.
- ~~63- 65.~~ Tuberculosis (tuberculosis disease caused by mycobacterium tuberculosis or mycobacterium bovis)*.
- ~~64- 66.~~ Tularemia*.
- ~~65- 67.~~ Tumors of the central nervous system.
- ~~66- 68.~~ Typhoid fever*.
- ~~67- 69.~~ Unexplained critical illness or death in an otherwise healthy person.
- ~~68- 70.~~ Unusual cluster of severe or unexplained illnesses or deaths.
- ~~69- 71.~~ Viral hemorrhagic fevers.
- ~~70- 72.~~ Weapons of mass destruction suspected event.
- ~~71- 73.~~ Yellow fever*.

History: Amended effective May 1, 1984; December 1, 1986; January 1, 1988; January 1, 1989; October 1, 1990; January 1, 1991; February 1, 1992; May 1, 1994; January 1, 1995; July 1, 1996; February 1, 2000; August 1, 2002; March 1, 2003; July 1, 2004; April 1, 2007.

General Authority: NDCC 23-07-01

Law Implemented: NDCC 23-07-01

TITLE 54
BOARD OF NURSING

APRIL 2007

CHAPTER 54-05-04

54-05-04-06. Training of medicaid recipient-directed care providers. A licensed nurse may train a person to provide care authorized by North Dakota Century Code section 50-24.1-18.1 using the same teaching process described in subsections 1 through 5 of section 54-07-03.1-02. A licensed nurse shall not be accountable for the supervision or implementation of any services provided by another care provider to individuals found eligible by the department of human services to direct their own care.

History: Effective April 1, 2007.

General Authority: NDCC 43-12.1-02(5)

Law Implemented: NDCC 43-12.1-08(1)

CHAPTER 54-07-01

54-07-01-04. Medicaid recipient-directed care providers. A person who provides care authorized by North Dakota Century Code section 50-24.1-18.1 to individuals found eligible by the department of human services to direct their own care is not required to register as an unlicensed assistive person and is not subject to these rules governing unlicensed assistive persons.

History: Effective April 1, 2007.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

TITLE 66
STATE BOARD OF PSYCHOLOGIST EXAMINERS

APRIL 2007

CHAPTER 66-01-01

66-01-01-01. Organization of board of psychologist examiners.

1. **History.** The 1967 legislative assembly passed legislation establishing the state board of psychologist examiners, codified as North Dakota Century Code chapter 43-32. The board of psychologist examiners licenses psychologists who practice psychology in this state.
2. **Board membership.** The board consists of five members appointed by the governor. Each member must be a licensed psychologist and at least one member must be currently engaged primarily in providing service in psychology and at least one member must be engaged primarily in teaching, training, or research in psychology. Members of the board serve three-year terms, with at least one but not more than two terms expiring each year.
3. **Board officers.** The board annually elects from its membership a president and vice president.
4. **Inquiries.** Inquiries regarding the board may be addressed to the executive secretary:

~~Shelly Hanson, Executive Secretary
State Board of Psychologist Examiners
P.O. Box 8380
Grand Forks, ND 58202~~

Maria Gokim
Executive Secretary
State Board of Psychologist Examiners
P.O. Box 7458

Bismarck, ND 58507-7458

History: Amended effective September 1, 1983; March 1, 1985; April 1, 1988; September 1, 2000; April 1, 2007.

General Authority: NDCC ~~28-32-02.4~~ 28-32-02

Law Implemented: NDCC ~~28-32-02.4~~ 28-32-02

CHAPTER 66-02-01

66-02-01-01.1. Regionally accredited school or college Regional accrediting association. A regionally accredited educational institution regional accrediting association means one which is accredited by any one of the following:

1. Southern association of colleges and schools;_{1,2}
2. Middle states association of colleges and schools;_{1,2}
3. New England association of colleges and schools;_{1,2}
4. North central association of colleges and schools;_{1,2}
5. North western association of colleges and schools;_{1,2} and
6. Western association of schools and colleges.
7. An accrediting association approved by the board.

Accreditation in subsections 1 through 6 means accreditation by ~~one of the~~ one of the ~~forementioned associations~~ at level 4 four (doctoral degree-granting institution) or at level 5 five (graduate or professional degree-granting institution).

History: Effective September 1, 2000; amended effective April 1, 2007.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-01

66-02-01-03. Licensing of psychologists and industrial-organizational psychologists from other states jurisdictions. Licensing of psychologists and industrial-organizational psychologists of other states jurisdictions will follow the procedures described in North Dakota Century Code ~~section~~ sections 43-32-19 and 43-51-06. A psychologist or industrial-organizational psychologist licensed pursuant to North Dakota Century Code ~~section~~ sections 43-32-19 and 43-51-06 must pass the North Dakota oral examination.

History: Amended effective September 1, 2000; April 1, 2007.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-19, 43-51-06

66-02-01-07. Application of code of ethics. The American psychological association ethical principles of psychologists and code of conduct (1992 2002) shall apply to licensed psychologists and licensed industrial-organizational psychologists.

History: Amended effective September 1, 2000; April 1, 2007.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-27

66-02-01-08. Fees. The license application fee is two hundred fifty dollars plus the actual cost of the examination for the professional practice of psychology (EPPP) plus seventy-five dollars for all persons receiving licensure under sections 66-02-01-04 and 66-02-01-06 and two hundred fifty dollars for all persons receiving licensure under section 66-02-01-03. ~~Prior to January 2000, an annual license fee of seventy-five dollars will be charged all licensed psychologists.~~ Starting January 1, 2000, an when it is required. An annual license fee of one hundred dollars will be charged all licensed psychologists and industrial-organizational psychologists.

History: Amended effective March 1, 1985; April 1, 1988; September 1, 2000; April 1, 2007.

General Authority: NDCC 43-32-08

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

66-02-01-09.1. Written examination. The written examination is the examination for the professional practice of psychology. The passing score is a scaled score of 500. Prior to April 18, 1994, seventy percent correct is considered a passing score. A passing score is required for applicants for licensure as a psychologist or as an industrial-organizational psychologist.

History: Effective September 1, 2000; amended effective February 1, 2002; April 1, 2007.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-23

66-02-01-10. Guidelines for oral examinations. The oral examination will be administered by at least three board members in addition to any other licensed psychologist whom the board sees fit to add to the examining committee. However, only the board members present may vote. Oral examinations will be scheduled as appropriate but not less than twice a year. The examination committee will use a structured oral examination, will record the applicants' answers, will discuss the results, and the board members will vote with the majority opinion being necessary for the candidate to pass. The examination will cover ethics, legal issues, and areas of stated competence as listed on the application form shall assess the applicant's knowledge of North Dakota law regulating the practice of psychology or industrial-organizational psychology as well as the applicant's understanding of ethics and standards of practice. Specific questions to be used will be selected at the time of the examination from a pool of questions available for that purpose.

History: Effective March 1, 1985; amended effective April 1, 1988; April 1, 2007.

General Authority: NDCC 43-32-08

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

66-02-01-11.1. Supervised professional experience.

1. Applicants for licensure as a psychologist must complete ~~two~~ one thousand five hundred hours of supervised internship and ~~two~~ one thousand five hundred hours of supervised postdoctoral experience

in the practice of psychology. Internship and postdoctoral experience supervision must be provided by a licensed psychologist or licensed psychologists practicing in the areas of competence claimed by the applicant. At least one hundred hours of supervision at each level is required, at least fifty of which must be one to one at each level. Successful completion of an American psychological association or Canadian psychological association accredited internship or accredited postdoctoral program will be accepted as fulfilling these requirements, respectively. Any other supervised experience must be described in detail by the applicant, including nature of service setting or settings, nature of consumers served, nature and amount of supervision, and specific skills in which the applicant demonstrated proficiency. The supervisor or supervisors must corroborate the areas of competence claimed by the applicant.

2. Applicants for licensure as an industrial-organizational psychologist must complete three thousand hours of supervised experience in the practice of industrial-organizational psychology. At least one thousand five hundred hours must be completed after the granting of the doctoral degree. Applicants must submit an individualized supervision plan which is subject to approval by the board. Until January 1, 2010, supervisors of industrial-organizational psychologist applicants may be identified by earned degrees, positions, memberships in professional organizations, and publications and not necessarily licensed as psychologists in their jurisdiction. However, as of January 1, 2010, supervisors of industrial-organizational psychologist applicants must be licensed in their jurisdiction of practice. The supervised experience of applicants for licensure as an industrial-organizational psychologist must be consistent with the applicant's intended area of practice.

History: Effective September 1, 2000; amended effective April 1, 2007.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20, 43-32-20.1

66-02-01-12. Identifying psychology and industrial-organizational psychology doctoral program programs as professional psychology program substantially psychological in nature. The following criteria will be used to identify psychology and industrial-organizational psychology doctoral programs as professional psychology programs substantially psychological in nature:

1. Programs that are accredited by the American psychological association; or Canadian psychological association.
2. Programs For licensure as a psychologist, programs that meet the following criteria:
 - a. Training in professional psychology is doctoral training sponsored by an institution of higher education accredited by a nationally

recognized regional accrediting body in the United States or, in the case of Canadian programs, the institution is publicly recognized by the association of universities and colleges of Canada as a member in good standing.

- b. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogs and brochures the explicit philosophy of training by which it intends to prepare students for the practice of psychology and its intent to educate and train professional psychologists. The program's philosophy, educational model, and curriculum plan should be substantially consistent with the mission, goals, and culture of the program's sponsor institution. They must also be consistent with the principle of the discipline that psychological practice is based on the science of psychology, which, in turn, is influenced by the professional practice of psychology.
- c. The psychology program must be an integral part of the mission of the academic department, college, school, or institution in which it resides. It must be represented in the institution's operating budget and plans in a manner designed to enable the program to achieve its goals and objectives.
- d. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.
- e. The program must be an integrated, organized sequence of study that is sequential, cumulative, and graded in complexity and designed to prepare students for further organized training.
- f. There must be an identifiable core (i.e., full-time) psychology faculty and a psychologist responsible for the program.
- g. The program must have an identifiable body of students who are matriculated in the program for a degree. There must be a sufficient number of such students and the facilities necessary to ensure meaningful peer interaction, support, and socialization.
- h. The program must include supervised practicum, internship, field, or laboratory training appropriate to the practice of psychology. To this end the program should:
 - (1) Place students in settings that are clearly committed to training, supervise students using an adequate number of appropriate professionals, and provide a wide range of training and educational experiences through applications of empirically supported intervention procedures;

- (2) Integrate the practicum component of the students' education and training with the other elements of the program and provide adequate forums for the discussion of practicum experiences; and
 - (3) Ensure that the sequencing, duration, nature, and content of these experiences are both appropriate for and consistent with the program's immediate and long-term training goals and objectives.
- i. The curriculum must encompass a minimum of three academic years of ~~full-time resident~~ graduate study, at least one academic year of which must be in residence at the degree-granting institution. The academic year in residence must include twenty-four semester hours taken on a full-time or part-time basis at the institution or a minimum of three hundred hours of student-faculty contact that involves face-to-face educational meetings conducted by the institution's psychology faculty and fully documented by the institution and the student. These meetings must include interaction between the student and faculty and the student and other students and must relate to program content areas. These meetings must be in addition to the practicum, clerkship, or externship supervision hours or dissertation hours. On request by the applicant or the board, the institution shall provide documentation showing how the applicant's performance was assessed and documented. In addition, the program must specify education and training goals in terms of the competencies expected of its graduates. Those competencies must be consistent with the program's philosophy and training model, the substantive areas of professional psychology for which the program prepares students, and an understanding of professional issues, including ethical, legal, and quality assurance principles.
- j. In achieving its objectives, the program has and implements a clear and coherent curriculum plan that provides the means whereby all students can acquire and demonstrate substantial understanding of and competence in the following areas:
- (1) The breadth of scientific psychology, its history of thought and development, its research methods, and its applications. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:
 - (a) Biological aspects of behavior;
 - (b) Cognitive and affective aspects of behavior;
 - (c) Social aspects of behavior;

- (d) History and systems of psychology;
 - (e) Psychological measurement;
 - (f) Research methodology; and
 - (g) Techniques of data analysis;
- (2) The scientific, methodological, and theoretical foundations of practice in the substantive areas of professional psychology in which the program has its training emphasis. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:
- (a) Individual differences in behavior;
 - (b) Human development;
 - (c) Dysfunctional behavior or psychopathology; and
 - (d) Professional standards and ethics;
- (3) Diagnosing and defining problems through psychological assessment and measurement and formulating and implementing intervention strategies, including training in empirically supported procedures. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:
- (a) Theories and methods of assessment and diagnosis;
 - (b) Effective intervention;
 - (c) Consultation and supervision; and
 - (d) Evaluating the efficacy of interventions;
- (4) Issues of cultural and individual diversity that are relevant to all of the above; and
- (5) Attitudes essential for lifelong learning, scholarly inquiry, and professional problem-solving as psychologists in the context of an evolving body of scientific and professional knowledge.

~~In addition, all professional education programs in psychology~~

k. The program must include course requirements in specialty areas.

3. To identify a program as a professional industrial-organizational psychology program, until January 1, 2010, the program must be identified as a doctoral-level industrial-organizational psychology program at a regionally accredited school or college. As of January 1, 2010, the program must be identified as a doctoral-level industrial-organizational psychology program at a regionally accredited school or college and must be designated as a doctoral program in industrial-organizational psychology by the association of state and provincial psychology boards and the national register of health service providers in psychology.

History: Effective March 1, 1985; amended effective April 1, 1988; September 1, 2000; April 1, 2007.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20

66-02-01-13. Psychology resident and industrial-organizational psychology resident.

1. A person intending to perform services as a psychology resident or an industrial-organizational psychology resident shall inform the board on a form prepared by the board prior to performing services. Within six months of registering with the board, the psychology resident or industrial-organizational psychology resident must apply for licensure and be determined by the board to be eligible for licensure. A psychology resident or industrial-organizational psychology resident may sit for the required written examination if the required application and fee have been filed with the board and the board determines the psychology resident applicant to be eligible for licensure upon completion of examination and postdoctoral requirements. A psychology resident or an industrial-organizational psychology resident who has passed the written examination may sit for the oral examination after completion of six months of residency if the required application and fee have been filed with the board. The psychology resident or an industrial-organizational psychology resident and supervising psychologist or psychologists must complete a report of completed supervised postdoctoral experience for approval of the board prior to licensure. A person may have psychology resident or industrial-organizational psychology resident status for up to five years.
2. A psychology resident or industrial-organizational psychology resident must specify that person's professional title as such in reports, letters, business cards, and public presentations.
3. Supervising psychologists of psychology residents must have at least three years of postlicensure experience, except for supervisory relationships existing on April 1, 2007. Supervising psychologists of psychology residents must have adequate training, knowledge,

and skill to render competently or have available consultation for any psychological service which their supervisee undertakes.

4. To verify completion of the residency, the supervising psychologist of the psychology resident or the industrial-organizational resident shall submit documentation to the board of the number and nature of supervised hours of experience.

History: Effective September 1, 2000; amended effective April 1, 2007.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20, 43-32-20.1, 43-32-30

66-02-01-14. Nonpayment of annual license fee. If a licensed psychologist licensee fails to pay the annual fee by January first, the board shall send a certified letter to that psychologist licensee with notice of the invalid status of the license and notice that the psychologist licensee may not practice psychology or industrial-organizational psychology in the state of North Dakota unless the license is renewed by payment of the annual renewal fee and late fee.

History: Effective September 1, 2000; amended effective April 1, 2007.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-13, 43-32-14

CHAPTER 66-02-02

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

History: Amended effective April 1, 1988; September 1, 2000; April 1, 2007.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20

66-02-02-03. Documentation of training and coursework. There must be documented evidence, in the form illustrated in the appendix to this chapter, of the following:

1. The doctoral training must be sponsored by an institution of higher education accredited by a nationally recognized regional accrediting body in the United States or, in the case of Canadian programs, the institution must be publicly recognized by the association of universities and colleges of Canada as a member in good standing.
2. The program must be an integral part of the mission of the academic department, college, school, or institution in which it resides. It must be represented in the institution's operating budget and plans in a manner designed to enable the program to achieve its goals and objectives.
3. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.
4. The program must be an integrated, organized sequence of study that is sequential, cumulative, and grading in complexity and designed to prepare students for further organized training.
5. There must be an identifiable core (i.e., full-time faculty with a director, chair, or head whom is clearly administratively responsible for the functioning of the program).
6. The program must have an identifiable body of students who are matriculated in the program for a degree. There must be a sufficient number of such students and the facilities necessary to ensure meaningful peer interaction, support, and socialization.

7. The program must include supervised practicum, internship, field, or laboratory training appropriate to the practice of psychology. To this end the program should:
 - a. Place students in settings that are clearly committed to training, supervise students using an adequate number of appropriate professionals, and provide a wide range of training and educational experiences through applications of empirically supported intervention procedures;
 - b. Integrate the practicum component of the students' education and training with the other elements of the program and provide adequate forums for the discussion of practicum experience; and
 - c. Ensure that the sequencing, duration, nature, and content of these experiences are both appropriate for and consistent with the program's immediate and long-term training goals and objectives.
8. The curriculum must encompass a minimum of three academic years of full-time resident graduate study, at least one academic year of which must be in residence at the degree-granting institution. The academic year in residence must include twenty-four semester hours taken on a full-time or part-time basis at the institution or a minimum of three hundred hours of student-faculty contact that involves face-to-face educational meetings conducted by the institution's psychology faculty and fully documented by the institution and the student. These meetings must include interaction between the student and faculty and the student and other students and must relate to program content areas. These meetings must be in addition to the practicum, clerkship, or externship supervision hours or dissertation hours. On request by the applicant or the board, the institution shall provide documentation showing how the applicant's performance was assessed and documented. The program must specify education and training goals in terms of the competencies expected of its graduates. Those competencies must be consistent with the program's philosophy and training model, the substantive areas of professional psychology for which the program prepares students, and an understanding of professional issues, including ethical, legal, and quality assurance principles.
9. In achieving its objectives, the program has and implements a clear and coherent curriculum plan that provides the means whereby all students can acquire and demonstrate substantial understanding of and competence in the following areas:
 - a. The breadth of scientific psychology, its history of thought and development, its research methods, and its applications. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:

- (1) Biological aspects of behavior;
 - (2) Cognitive and affective aspects of behavior;
 - (3) Social aspects of behavior;
 - (4) History and systems of psychology;
 - (5) Psychological measurement;
 - (6) Research methodology; and
 - (7) Techniques of data analysis;
- b. The scientific, methodological, and theoretical foundations of practice in the substantive areas in which the program has its training emphasis. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:
- (1) Individual differences in behavior;
 - (2) Human development;
 - (3) Dysfunctional behavior or psychopathology; and
 - (4) Professional standards and ethics;
- c. Diagnosing and defining problems through psychological assessment and measurement and formulating and implementing intervention strategies, including training in empirically supported procedures. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:
- (1) Theories and methods of assessment and diagnosis;
 - (2) Effective intervention;
 - (3) Consultation and supervision; and
 - (4) Evaluating the efficiency of interventions;
- d. Issues of cultural and individual diversity that are relevant to all of the above; and

- e. Attitudes essential for lifelong learning, scholarly inquiry, and professional problem-solving in the context of an evolving body of scientific and professional knowledge.

History: Amended effective March 1, 1985; April 1, 1988; September 1, 2000; April 1, 2007.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20

~~**66-02-02-04. Additional documentation for clinical work or counseling or therapy** Supervised professional experience for equivalency. As part of the program, the applicant must have completed two thousand hours of supervised internship and two thousand hours of supervised postdoctoral experience. Internship and postdoctoral experience supervision must be provided by a licensed psychologist or licensed psychologists practicing in the areas of competence claimed by the applicant. At least one hundred hours of supervision at each level is required, at least fifty of which must be one to one at each level. Successful completion of an American psychological association accredited internship or accredited postdoctoral program will be accepted as fulfilling these requirements, respectively. Any other supervised experience must be described in detail by the applicant, including nature of service setting or settings, nature of consumers served, nature and amount of supervision, and specific skills in which the applicant demonstrated proficiency. The supervisor or supervisors must corroborate the areas of competence claimed by the applicant. The applicant must have completed all supervised professional experience required by subsection 1 of section 66-02-01-11.1.~~

History: Amended effective September 1, 2000; April 1, 2007.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20

OUTLINE FOR DOCUMENTING COURSEWORK

The applicant must document the aforementioned coursework by specifying the following information for each:

COLLEGE	DEPARTMENT	COURSE TITLE	CATALOG DESCRIPTION	TEXT NAME & AUTHOR	*INSTRUCTOR	**ACADEMIC AREA

* Full name and highest degree.

**Academic area as listed in section 66-02-02-03(9).

CHAPTER 66-03-01

66-03-01-01. Continuing education. Every psychologist and industrial-organizational psychologist licensed to practice in this state ~~as of January 1, 1992, under North Dakota Century Code chapter 43-32 shall, on or before November 1, 1994, and every two years thereafter,~~ complete continuing education credits relevant to the practice of psychology. ~~Continuing education credits earned after the first day of November of a reporting cycle may be applied to the next two-year reporting cycle. The reporting cycle for individuals licensed after January 1, 1992, begins on November first of the year in which they obtained their North Dakota license or industrial-organizational psychology. Reporting cycles are two years, commencing with November first of the year in which the licensee obtained a North Dakota license, except that individuals licensed prior to January 1, 1992, have reporting cycles which began on November 1, 1992.~~

History: Effective February 1, 1995; amended effective April 1, 2007.

General Authority: NDCC 43-32-08

Law Implemented: NDCC ~~43-32-08~~ 43-32-08.1, 43-32-08.2

66-03-01-02. Continuing education reports. Application for continuing education credits must be made on the form provided by the board and must include evidence of completion of at least forty credits of continuing education completed over the two-year period. ~~At least twenty of the forty credits of continuing education must be completed within category A, formal programs described in subsection 1 of section 66-03-01-04.~~ The application must be submitted to the board no later than December ~~November~~ fifteenth following the completion of the two-year reporting cycle.

History: Effective February 1, 1995; amended effective April 1, 2007.

General Authority: NDCC 43-32-08

Law Implemented: NDCC ~~43-32-08~~ 43-32-08.1, 43-32-08.2

66-03-01-03. Board approval. Any continuing education program relevant to psychology or industrial-organizational psychology and to be applied as continuing education credits ~~must receive prior~~ is subject to board approval, except continuing education programs sponsored or approved by the American psychological association, the Canadian psychological association, the North Dakota psychological association, other state or provincial psychological associations, or any other scientific or professional organization whose continuing education program is clearly relevant to the practice of psychology. Other programs may be approved at any time by the board by submission of an application by the sponsoring organization and payment of a twenty-five dollar fee.

History: Effective February 1, 1995; amended effective September 1, 2000; April 1, 2007.

General Authority: NDCC 43-32-08

Law Implemented: NDCC ~~43-32-08,~~ 43-32-08.1

66-03-01-04. Categories of continuing education programs and credits.
A minimum of three continuing education credits per reporting cycle must be in the area of professional ethics, law, or jurisprudence. The board recognizes the following categories of continuing education programs or activities and established credit hours:

1. ~~Category A formal activities, a minimum of twenty credits per reporting cycle.~~
 - a. Formal continuing education programs that may consist of courses, workshops, professional psychology conventions or conferences, or institutes. The number of continuing education credits assigned by an association recognized by the board will be accepted. Otherwise the credits will be one credit per clock-hour.
 - b. ~~Attendance at conventions including national, international, regional, state or provincial, and substate associations of psychologists. If a convention other than a psychological convention is attended for credit, prior approval must be obtained from the board. One credit is allowed per each two clock-hours of meeting. A maximum of ten credits is allowed per reporting cycle.~~
2. ~~Category B other activities:~~
 - a. Regularly scheduled postgraduate courses offered by an accredited college or university which are relevant to the professional growth and development of practice of psychology or industrial-organizational psychology by the applicant. One quarter hour of academic credit constitutes ten continuing education credits. One semester hour of academic credit constitutes fifteen continuing education credits.
3. Writing or speaking, including a paper or other presentation at a formal professional meeting, a paper published in a professional journal, or a book or an original chapter in an edited book in the area of psychology or a related field. Credit will be granted for the year of publication or presentation in the case of a paper. Continuing education credits will be granted at the rate of five for each paper or presentation, ten fifteen for each chapter in a book, fifteen for editing a book, and twenty for the publication of a book. Continuing education credits will be granted only once for any given paper or presentation.
- e. ~~Other areas of professional development not covered in the foregoing categories, but deemed by the board to be worthy of continuing education credit. Such a determination must be made on an individual basis, including the number of credits granted.~~
4. Correspondence or online courses, tapes, or independent readings approved by the board or by one of the associations recognized

by the board which include an examination component successfully completed by the licensee. A maximum of twenty continuing education credits per reporting cycle will be granted for continuing education programs in this category.

History: Effective February 1, 1995; amended effective September 1, 2000; April 1, 2007.

General Authority: NDCC 43-32-08

Law Implemented: NDCC ~~43-32-08~~ 43-32-08.1

66-03-01-05. Verification of continuing education credits and programs.

1. At the end of the two-year reporting cycle, each licensee shall submit a signed statement on a form provided by the board attesting to satisfaction of the continuing education requirement. The licensee shall list the activities submitted for continuing education credit and the amount of credit claimed for each one.
2. The licensee may not submit the specific verification of each continuing education experience claimed, but must maintain a file of such verification documentation for two years following the submission of the reporting form.
3. At each reporting period, the board will select a random sample of approximately ten percent of the licensees and require them to provide verification of the continuing education experiences claimed on the reporting form.

History: Effective February 1, 1995; amended effective April 1, 2007.

General Authority: NDCC 43-32-08

Law Implemented: NDCC ~~43-32-08~~ 43-32-08.1, 43-32-08.2

66-03-01-06. Failure to comply with the continuing education requirement. If, after the opportunity for a formal hearing, a psychologist licensee does not satisfy the number of credits required for a two-year cycle, the board may exercise the following options:

1. Extension of time to complete the requirement. A psychologist licensee may request an extension of time because of illness or serious extenuating circumstances amounting to good cause. The approval of an extension and the amount of time granted to complete the requirements are at the sole discretion of the board. In such cases the psychologist licensee will be required to continue to fulfill the continuing education requirement for the next two-year cycle as well.
2. Refuse to renew a license. A license that is not renewed because of failure to meet the continuing education requirements will be renewed if, within one year from the date of nonrenewal, the licenseeholder

demonstrates to the secretary of the board the continuing education requirements have been satisfied and pays the renewal fee and a late fee of twenty dollars.

3. Place the license on probationary status.
4. Suspension of a license until such time as the ~~psychologist~~ licensee meets the requirements of the previous two-year cycle, but not to exceed a second two-year cycle.
5. Revocation of a license. In the event of license suspension for noncompletion of continuing education requirements, if the ~~psychologist~~ licensee does not complete the requirements during the period of suspension, the license may be revoked.
6. Reinstatement. A ~~psychologist~~ licensee whose license has been revoked for failing to satisfy the continuing education requirements must earn forty credits in continuing education, ~~including at least twenty in category A,~~ during the immediately preceding two-year period in order to apply to the board for reinstatement.

History: Effective February 1, 1995; amended effective September 1, 2000; April 1, 2007.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-08.1, 43-32-08.2, 43-32-27

TITLE 69
PUBLIC SERVICE COMMISSION

APRIL 2007

CHAPTER 69-05.2-06

69-05.2-06-03. Permit applications - Right of entry and operation information.

1. In addition to satisfying subdivision k of subsection 1 of North Dakota Century Code section 38-14.1-14, the application must also contain a narrative and supporting certified copies of the appropriate documents which demonstrate that the applicant has complied with North Dakota Century Code section 38-18-06.
2. Following completion of coal removal operations on the lands covered by a coal lease, the copy of the lease may be deleted from an approved permit if:
 - a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or
 - b. The lease has expired or has been terminated.

If a coal lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; April 1, 2007.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

CHAPTER 69-05.2-10

69-05.2-10-01. Permit applications - Public notices of filing.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:
 - a. The applicant's name and business address.
 - b. A map or description which must:
 - (1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the permit area.
 - (2) Clearly show or describe the exact location and boundaries of the permit area.
 - (3) ~~Name the United States geological survey 7.5-minute quadrangle map which contains the area shown or described.~~
 - (4) Show the north point (if a map).
 - (5) (4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or conduct activities that may impact future coal recovery, the names of each owner of record of coal rights within the permit boundaries.
 - c. The address of the commission, to whom written comments, objections, or requests for informal conferences on the application may be submitted.
 - d. If an applicant seeks a permit to conduct operations within one hundred feet [30.48 meters] of the outside right of way of a public road or to relocate a public road, a concise statement describing the road, the particular part to be relocated, where the relocation is to occur, and its duration.
2. The commission will distribute appropriate portions of the application to the state advisory committee specified in subsection 2 of North Dakota Century Code section 38-14.1-21 formed to aid the commission in evaluating the operations and reclamation plan. Members of the committee shall forward their evaluation to the commission within forty-five days of receipt.
3. If the application contains prime farmlands to be mined, the commission will furnish the state conservationist of the natural resource conservation

service with the prime farmland reclamation plan submitted under section 69-05.2-09-15. The state conservationist shall provide review and comment on the proposed method of soil reconstruction and suggest remedial revisions if the plan is considered inadequate.

4. The applicant shall make a copy of the complete application available for the public to inspect and copy by filing it with the county auditor in the county where the mining is proposed. The applicant shall file the copy by the first date of the newspaper advertisement and any subsequent changes at the same time they are submitted to the commission.
5. In addition to the requirements of subsection 3 of section 38-14.1-18 of the North Dakota Century Code, the commission will notify all federal or state government agencies with authority to issue permits and licenses applicable to the proposed operations as part of the permit coordinating process and those with an interest in the proposed operations. These agencies include the soil conservation district office, the local United States army corps of engineers district engineer, the national park service, and the United States fish and wildlife service.
6. The commission will provide notice and opportunity for hearing for persons seeking and opposing disclosure prior to declaring any permit information confidential. Notice will be published in the official county newspaper of the county where the proposed operations will be located at least fifteen days prior to the hearing. Information requested to be held confidential must be clearly identified by the applicant and submitted separately. Confidential information is limited to:
 - a. Analysis of the chemical and physical properties of the coal to be mined, except information on coal components potentially toxic in the environment.
 - b. The nature and location of archaeological resources on public land and Indian land as required by the Archaeological Resources Protection Act of 1979.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; April 1, 2007.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-18

CHAPTER 69-05.2-12

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

1. The permittee may request the commission release all or part of a bond for lands disturbed after July 1, 1975, as follows:
 - a. For lands disturbed between July 1, 1975, and June 30, 1979, the application must comply with subsection 1 of North Dakota Century Code section 38-14.1-17 and subsections 3 and 4. The criteria for release of all or part of the bond will be according to the reclamation requirements in effect at the time of the disturbance.
 - b. For lands disturbed after June 30, 1979, the application must comply with the requirements of this section and section 69-05.2-12-11.
2. The permittee may file bond release applications only at times and seasons that allow the commission to properly evaluate the completed reclamation operations. Each application for bond release shall include a notarized statement by the permittee which certifies that all applicable reclamation activities have been accomplished in accordance with this article, North Dakota Century Code chapter 38-14.1, and the approved reclamation plan.
3. Within thirty days after filing a request for bond release, the permittee shall submit ~~proof of the publication~~ a copy of the newspaper advertisement that was published as required by North Dakota Century Code section 38-14.1-17. The advertisement published must include the permittee's name.
4. Lands for which the permittee requests final bond release must be legally described and delineated on maps of the permit area. Lands requested for partial bond release may be either legally described or otherwise clearly depicted and identified on maps of the permit area so the bond release tracts can be distinguished from other lands.
5. When the permittee requests a partial release of bond after regrading under subdivision a of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must, unless waived by the commission, include surface profiles or topographic maps in accordance with section 69-05.2-21-06.
6. When the permittee requests a partial release of bond after resspreading suitable plant growth material under subdivision b of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include the thickness of the resspread first lift and second lift suitable plant growth materials.

7. When the permittee requests a partial release of bond after vegetation has been established under subdivision c of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include:
 - a. The data collected, analyses conducted, and a narrative demonstrating vegetation establishment as required by subsection 3 of section 69-05.2-22-07.
 - b. Documentation that the lands to which the release would be applicable are not contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 69-05.2-16-04.
 - c. A discussion of how the provisions of a plan approved by the commission for the sound future management of any permanent impoundment by the permittee or landowner have been implemented.
8. When the permittee requests final bond release under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include:
 - a. The data collected, analyses conducted, and a narrative detailing compliance with subsection 4 of section 69-05.2-22-07.
 - b. The history of initial and subsequent seedings and fertilization, including mixtures and rates, appropriate soil tests, supplemental irrigation, or other management practices employed.
 - c. Documentation showing the reestablishment of essential hydrologic functions of alluvial valley floors.
 - d. If a premine water delivery system will not be replaced, the bond release application must address the requirements of subdivision b of subsection 90 of section 69-05.2-01-02.
9. When the permittee requests release of bond for any combination of release stages detailed in subsection 7 of North Dakota Century Code section 38-14.1-17, the application must contain all the information required at each bond release stage.
10. Requests for a reduction in bond amount for reclamation work performed according to subsection 4 of section 69-05.2-12-08 must include a detailed description of the work performed and a new reclamation cost estimate.

11. The commission may request any additional information necessary to evaluate the bond release application.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1992; January 1, 1993; May 1, 2001; March 1, 2004; April 1, 2007.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-17

CHAPTER 69-05.2-16

69-05.2-16-09. Performance standards - Hydrologic balance - Sedimentation ponds.

1. General requirements. Sedimentation ponds must be used individually or in series and:
 - a. Be constructed before any disturbance of the undisturbed area to be drained into the pond.
 - b. Be located as near as possible to the disturbed area and out of perennial streams, unless approved by the commission.
 - c. Meet all the criteria of this section.
2. Sediment storage volume. Sedimentation ponds must provide adequate sediment storage volume. Sediment storage volume must be determined using the universal soil loss equation, gully erosion rates, and the sediment delivery ratio converted to sediment volume, using either the sediment density or other empirical methods derived from regional sediment pond studies if approved by the commission.
3. Detention time. Sedimentation ponds must provide the required theoretical detention time for the water inflow or runoff entering the pond from a ten-year, twenty-four-hour precipitation event (design event). The theoretical detention time must be sufficient to achieve and maintain applicable effluent standards. The calculated theoretical detention time and all supporting materials must be included in the permit application.
4. Dewatering. The stored water must be removed by a nonclogging dewatering device or a conduit spillway approved by the commission, and have a discharge rate to achieve and maintain the required theoretical detention time. The dewatering device may not be lower than the maximum elevation of the sediment storage volume.
5. Each operator shall design, construct, and maintain sedimentation ponds to prevent short circuiting to the extent possible.
6. The design, construction, and maintenance of a sedimentation pond or other sediment control measures do not relieve the operator from compliance with applicable effluent limitations.
7. For sedimentation ponds designed to contain the runoff from a ten-year, twenty-four-hour precipitation event (design event), there must be no spillway outflow as a result of runoff from the design event or lesser runoff events, unless multiple runoff events occur before the pond can be dewatered in accordance with approved plans in the permit.

8. Sediment must be removed from sedimentation ponds on a periodic basis in order to maintain an adequate storage volume for the design event.
9. An appropriate combination of principal and emergency spillways or a single spillway must be provided to safely discharge the runoff from a twenty-five-year, six-hour precipitation event for a temporary impoundment, a fifty-year, six-hour precipitation event for a permanent impoundment, or a larger event specified by the commission. The spillways must be capable of safely discharging the required event when the impoundment is at high water elevation. Commission approval of open channel spillway grades and allowable velocities must be obtained and velocities must be nonerosive. Earth or grass lined spillways may be used only where sustained flows are not expected.
10. The minimum elevation at the top of the settled embankment must be one foot [30.48 centimeters] above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this minimum elevation requirement applies at all times.
11. The constructed height of the dam must be increased a minimum of five percent over the design height to allow for settlement, unless it has been demonstrated to the commission that the material used and the design will ensure against settlement.
12. The minimum top width of the embankment may not be less than the quotient of $(H+35)/5$, where H is the height, in feet, or $(H+10.7)/5$, where H is the height, in meters, of the embankment as measured from the upstream toe of the embankment.
13. The upstream side slope of the settled embankment may not be steeper than a horizontal to vertical ratio of 3:1 and the downstream side slope of the settled embankment may not be steeper than a horizontal to vertical ratio of 2:1.
14. The foundation area must be cleared of all organic matter, all surfaces sloped to no steeper than a horizontal to vertical ratio of 1:1, and the entire foundation surface scarified. Cutoff trenches must be installed if necessary to ensure stability.
15. The fill material must be free of sod, large roots, other large pieces of vegetative matter, and frozen soil, and in no case shall coal processing waste be used.
16. The placing and spreading of fill material must be started at the lowest point of the foundation. The fill must be brought up in horizontal layers in the thicknesses required to facilitate compaction and meet

the design requirements of this section. Fill adjacent to structures, pipe conduits, and drainfill or antiseep collars must be compacted to a density equal to that of the surrounding fill by hand tamping or by using manually directed power tampers or plate vibrators. Compaction must be conducted as specified in the approved design. In lieu of the specific design requirements of this subsection and subsections 11 through 14, the operator may demonstrate that the design of the structure has a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.

17. If a proposed impoundment can meet the size and other criteria of 30 CFR 77.216, the following additional requirements must be met:
 - a. An appropriate combination of principal and emergency spillways must be provided to safely discharge the runoff from a one-hundred-year, six-hour precipitation event, or a larger event as specified by the commission.
 - b. The embankment must be designed and constructed with a seismic safety factor of 1.2 and a static safety factor of at least 1.5 for a normal pool with steady state seepage saturation conditions, or a higher safety factor as designated by the commission.
 - c. Appropriate barriers must be provided to control seepage along conduits that extend through the embankment.
 - d. The criteria of the mine safety and health administration as published in 30 CFR 77.216 must be met.
18. If an impoundment meets the class B or C criteria for dams (those located where failure would be expected to cause loss of life or serious property damage) in the United States department of agriculture, natural resource conservation service technical release no. 60 (TR-60), Earth Dams and Reservoirs, 1985, the following apply:
 - a. The emergency spillway must comply with freeboard hydrograph criteria found in the minimum emergency spillway hydrologic criteria table in TR-60, or greater event specified by the commission.
 - b. The embankment must be designed and constructed with a seismic safety factor of 1.2 and a static safety factor of at least 1.5 for a normal pool with steady state seepage saturation conditions, or a higher safety factor as designated by the commission.
 - c. Foundation testing, as well as any necessary laboratory testing of foundation material, must be performed to determine design requirements for foundation stability.

- d. Appropriate barriers must be provided to control seepage along conduits that extend through the embankment.
19. Impoundment inspections.
- a. A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under ~~subdivision~~ subdivisions b, c, and d. The registered professional engineer and specialist must be experienced in the construction of impoundments.
 - b. Inspections must be made regularly during construction, ~~upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.~~ Reports for each inspection during construction must be prepared and maintained at or near the minesite.
 - c. ~~After each inspection impoundment construction is complete,~~ the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been inspected during construction on a regular basis and it has been constructed or maintained as designed and according to the approved plan and this chapter. The report must include discussion of any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability a summary of the construction inspections, final storage capacity, and if applicable, a discussion of any deviations from the approved plan.
 - d. After impoundments are operational, they shall be inspected at least yearly until removal of the structure or release of the performance bond. A registered professional engineer shall promptly provide the commission with an annual impoundment inspection report addressing any appearance of instability, structural weakness, or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. A single report can address more than one impoundment; however, the condition of each impoundment must be noted separately.
 - e. A copy of the inspection reports must be maintained at or near the minesite.
20. The embankment, including the surrounding areas and diversion ditches disturbed or created by construction, must be stabilized with

respect to erosion and sudden drawdown by a vegetative cover or other means immediately after the embankment is completed. The active upstream face where water will be impounded may be riprapped or otherwise stabilized to protect the embankment from erosion and sudden drawdown. Areas where the reestablishment of vegetation is not successful or where rills and gullies develop must be repaired and revegetated according to section 69-05.2-15-06.

21. In addition to the requirements of subsection 19, all impoundments meeting the criteria of subsections 17 and 18 must be examined according to 30 CFR 77.216-3. Other impoundments must be examined at least quarterly by a qualified person for appearance of erosion, structural weakness, and other hazardous conditions. The annual inspection required by subsection 19 will be considered one of the examinations required by this subsection.
22. Plans for any enlargement, reduction, reconstruction, or other modification of dams or impoundments must be submitted to the commission. Commission approval of these plans is required before modification begins, unless a modification is necessary to eliminate a hazard to public health, safety, or the environment.
23. Sedimentation ponds or other sediment control measures may not be removed until authorized by the commission and the disturbed area has been stabilized and revegetated. The ponds or other measures may not be removed sooner than two years after the last augmented seeding unless the last augmented seeding is a supplemental seeding into an established vegetation stand that is effectively controlling erosion. When the pond is removed, the affected land must be reclaimed, unless the pond has been approved by the commission for retention. If the commission approves retention, the pond must meet all the requirements for permanent impoundments of section 69-05.2-16-12.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995; May 1, 1999; March 1, 2004; April 1, 2007.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

CHAPTER 69-05.2-22

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

1. Success of revegetation must be measured by using statistically valid techniques approved by the commission. Comparison of ground cover and productivity may be made on the basis of reference areas, through the use of standards in technical guides published by the United States department of agriculture, or through the use of other approved standards. If reference areas are used, the management of the reference area during the responsibility period required in subsection 2 must be comparable to that required for the approved postmining land use of the permit area. If standards are used, they must be approved by the commission and the office of surface mining reclamation and enforcement. Approved standards are contained in the commission's Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.
2. The period of responsibility under the performance bond requirements of section 69-05.2-12-09 will begin following augmented seeding, planting, fertilization, irrigation, or other work, except for cropland and prime farmland where the period of responsibility begins at the date of initial planting of the crop being grown or a precropland mixture of grasses and legumes, and must continue for not less than ten years.
3. Vegetation establishment, for the purpose of the third stage bond release provided for in subdivision c of subsection 7 of North Dakota Century Code section 38-14.1-17, will be determined for each postmining land use according to the following procedures:
 - a. For native grassland, tame pastureland, and fish and wildlife habitat where the vegetation type is grassland, ground cover on the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence. All species used in determining ground cover must be perennial species not detrimental to the approved postmining land use.
 - b. For cropland, vegetation will be considered established after the successful seeding of the crop being grown or a precropland mixture of grasses and legumes.
 - c. For prime farmland, annual average crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for a minimum of three crop years.

- d. For woodland, shelterbelts, and fish and wildlife habitat where the vegetation type is woodland, the number of trees and shrubs must be equal to or greater than the approved standard. Understory growth must be controlled. Erosion must be adequately controlled by mulch or site characteristics.
 - e. For fish and wildlife habitat where the vegetation type is wetland, the basin must exhibit the capacity to hold water and support wetland vegetation. Ground cover of the contiguous areas must be adequate to control erosion.
4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:
- a. For native grassland, the following must be achieved for ~~the last two consecutive~~ any two years after year six of the responsibility period:
 - (1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence; and
 - (2) Diversity, seasonality, and permanence of the vegetation of the permit area must equal or exceed the approved standard.
 - b. For tame pastureland, ground cover and productivity of the permit area must be equal to or greater than that of the approved standard with ninety percent statistical confidence for ~~the last two consecutive growing seasons~~ any two years after year six of the responsibility period.
 - c. For cropland, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for ~~the last two consecutive growing seasons~~ any two years after year six of the responsibility period.
 - d. For prime farmlands, a showing that the requirements for the restoration of productivity as specified in subdivision c of subsection 3 have been met and that the ten-year period of responsibility has elapsed.
 - e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:

- (1) The number of woody plants established on the permit area must be equal to or greater than the number of live woody plants of the same life form of the approved standard with ninety percent statistical confidence. Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
 - (a) Be healthy;
 - (b) Be in place for at least two growing seasons; and
 - (c) ~~At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half-shrub replanting has occurred during the last six years of the revegetation responsibility period.~~ If any replanting of woody plants took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and
 - (d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted toward meeting success standards; however, volunteer trees must be at least thirty inches [76 centimeters] in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding;
 - (2) The ground cover must be equal to or greater than ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and must be adequate to control erosion; and
 - (3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area must be evaluated on the basis of species stocked and expected survival and reproduction rates.
- f. For shelterbelts, the following must be achieved during the last ~~two consecutive years~~ growing season of the last year of the responsibility period:

- (1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
 - (a) Be healthy;
 - (b) Be in place for at least two growing seasons; and
 - (c) At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half-shrub replanting has occurred during the last six years of the revegetation responsibility period. If any replanting of woody plants took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and
 - (d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted toward meeting success standards; however, volunteer trees must be at least thirty inches [76 centimeters] in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding;
 - (2) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and
 - (3) Erosion must be adequately controlled.
9. For fish and wildlife habitat, where the vegetation type is wetland, vegetation zones and dominant species must be equal to those of the approved standard during the last two consecutive years growing season of the last year of the responsibility period. In addition, wetland permanence and water quality must meet approved standards.
- h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the last two consecutive years growing season of the last year of the responsibility period:
- (1) Ground cover must be equal to or greater than that of the approved standard with ninety percent statistical confidence and must be adequate to control erosion.

- (2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet or exceed the approved standard.
 - i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover may not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission.
 - j. For areas to be developed for water, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement, the ground cover on these areas may not be less than required to control erosion.
 - k. For areas to be developed for recreation, woody plants must meet or exceed the stocking and plant establishment standards for woodlands or shelterbelts found in paragraph 1 of subdivision e or in subdivision f as applicable. In addition, ground cover must not be less than required to achieve the approved postmining land use.
 - l. ~~As an alternative to meeting revegetation success standards for the last two consecutive growing seasons of the responsibility period, an operator may demonstrate that the applicable standards have been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last year of the responsibility period. This alternative does not pertain to success standards for prime farmlands unless a reclaimed tract contains both prime and nonprime farmlands. If a reclaimed tract contains a mixture of prime and nonprime farmlands, the commission may approve a single yield standard for the entire tract based on the soil types that occurred on the prime and nonprime areas prior to mining. The operator must provide a detailed description and comparison of the soil mapping units, acreages, and yield calculations in the reclamation plan as required by subsection 8 of section 69-05.2-09-15. When a single yield standard is approved, the operator must demonstrate that the standard has been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last year of the responsibility period. If this option is approved, the operator must also meet the applicable requirements of section 69-05.2-26-05 for the entire tract.~~
5. Throughout the liability period the permittee must:

- a. Maintain any necessary fences and use proper management practices; and
- b. Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the commission.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; January 1, 1993; June 1, 1997; May 1, 1999; May 1, 2001; March 1, 2004; April 1, 2007.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

CHAPTER 69-05.2-24

69-05.2-24-01. Performance standards - Roads - General requirements.

1. Each road, as defined in subsection 92 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.
 - a. A primary road is any road which is:
 - (1) Used for transporting coal or spoil;
 - (2) Frequently used for access or other purposes for a period in excess of six months; or
 - (3) To be retained for an approved postmining land use.
 - b. An ancillary road is any road not classified as a primary road.
2. Each road must be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:
 - a. Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices.
 - b. Control or prevent damage to fish, wildlife, or their habitat and related environmental values.
 - c. Control or prevent additional contributions of suspended solids to streamflow or runoff outside the permit area.
 - d. Neither cause nor contribute to, directly or indirectly, the violation of state or federal water quality standards applicable to receiving waters.
 - e. Refrain from seriously altering the normal flow of water in streambeds or drainage channels.
 - f. Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the national park system, the national wildlife refuge system, the national system of trails, the national wilderness preservation system, the wild and scenic rivers system, including designated study rivers, and national recreation areas designated by act of Congress.

9. Use nonacid-forming and nontoxic-forming substances in road surfacing.
3. The design and construction or reconstruction of roads must incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the commission.
4. Roads must be located to minimize downstream sedimentation and flooding, but in no case may roads be located in the channel of an intermittent or perennial stream unless specifically approved by the commission under section 69-05.2-16-20, and all other applicable requirements of chapter 69-05.2-16 are met.
5. Roads must be maintained to meet the performance standards of this chapter and any additional criteria specified by the commission.
6. A road damaged by a catastrophic event, such as a flood or earthquake, must be repaired as soon as is practicable after the damage has occurred.

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