

# **NORTH DAKOTA ADMINISTRATIVE CODE**

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

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**TITLE 10**  
**ATTORNEY GENERAL**



## JANUARY 2015

### CHAPTER 10-07-01

**10-07-01-03. Definitions.** The following definitions shall be used when referred to in the content of this chapter:

1. "~~Bureau~~ Authority having jurisdiction", "bureau of fire prevention", "chief", "chief of the fire department", "chief of the fire prevention bureau", "fire chief", "fire code official", "fire department", "fire marshal", "fire marshal's office", "fire prevention bureau", "fire prevention engineer", "fire prevention inspector", "fire protection engineer", "inspector", or "office of the fire marshal" refers to the state fire marshal or any representative of the state fire marshal's office.
2. "City or "jurisdiction" refers to the state of North Dakota.
3. "Fire prevention code", "fire prevention rules", or "state fire code" refers to the rules provided for within this chapter.
4. "Local jurisdiction" refers to any agency of local or state government which has a defined responsibility for any population, group of persons, land area, occupancy type, class of persons, or municipality located within this state which is less than the entire land area, population or geographical makeup of this state.

**History:** Effective November 1, 1983; amended effective January 1, 2015.

**General Authority:** NDCC 18-01-04, 18-01-33

**Law Implemented:** NDCC 18-01-04, 18-01-33

**10-07-01-04. Fire prevention rules.** The fire prevention rules for this state include, but are not limited to, the following:

1. **Fire code.** The State Fire Code includes:
  - a. The provisions of the present State Building Code providing for fire-safe construction and operation, as provided for in North Dakota Century Code section 54-21.3-03.

b. The provisions of the ~~Uniform Fire Code and its appendices, International Conference of Building Officials, International Fire Code (IFC) International Code Council (ICC),~~ current published edition to correspond to the year presently in use with the State Building Code, with the following deletions and exceptions:

- (1) ~~Article 4 – Permits and Certificates~~ Section 103 Department of Fire Prevention.
- (2) ~~Appendix VI-B – Model Citation Program~~ Section 105 Permits and any reference to.
- (3) Section 108 Board of Appeals.
- (4) Section 109 Violations.
- (5) Section 113 Fees.

2. **Fire protection equipment.** The applicable standards of the national fire protection association shall be utilized for planning, installation, maintenance, and testing of all fire protection, alarm, extinguishing, and fire extinguishers in all instances.
3. **Explosives.** The standards, as defined within the regulations of the bureau of alcohol, tobacco and firearms under federal statutes and all standards for explosives as published by the national fire protection association shall be utilized in all applicable situations involving explosives or defined components.
4. **Fireworks.** The rules for public fireworks displays as defined in National Fire Protection Association Standard No. 1123 shall be used.
5. **Liquified petroleum gases.** Regulations for the storage and handling of liquified petroleum gases as defined within national fire protection standards shall be utilized in all applicable situations.
6. **Flammable and combustible liquids.** The standards for storage and handling of flammable and combustible liquids as defined within national fire protection association standards shall be utilized in all applicable situations.

**History:** Effective November 1, 1983; amended effective January 1, 2015.

**General Authority:** NDCC 18-01-04, 18-01-33, 18-09-02, 23-15-03

**Law Implemented:** NDCC 18-01-02, 18-01-04, 18-01-33, 18-09-02, 23-15-03

**10-07-01-05. Availability of standards.** The standards listed in section 10-07-01-04 are available from:

1. National Fire Protection Association  
Battery March Park

Quincy, Massachusetts 02269  
(617) 328-9290

2. ~~International Conference of Building Officials Code Council, Inc.~~  
~~5360 South Workman Mill Road~~ 4051 West Flossmoor Road  
~~Whittier, California 90601~~ Country Club Hills, IL 60478-5795  
~~(213) 699-0541~~ (800) 214-4321

3. ~~Bureau of Alcohol, Tobacco and Firearms~~  
~~c/o Department of Treasury~~  
~~Washington, D.C. 20226~~

**History:** Effective November 1, 1983; amended effective January 1, 2015.

**General Authority:** NDCC 18-01-04, 18-01-33, 18-09-02, 23-15-03

**Law Implemented:** NDCC 18-01-02, 18-01-04, 18-01-33, 18-09-02, 23-15-03

## CHAPTER 10-16-01

### 10-16-01-01. Definitions. As used in this article:

1. "Applicant's agent" means a general manager, sole proprietor, partner of a partnership, or, for a corporation, an officer or director who is primarily responsible for financial affairs or a shareholder who owns ten percent or more of the common stock, of a business that is applying for or renewing a license. A general manager is a person who regularly is onsite and primarily responsible and accountable for managing and controlling the day-to-day operation of the business.
2. "Cash voucher" means a voucher generated by the lottery's player-activated terminal that can be validated for cash at the retailer's lottery terminal.
- ~~2:~~ 3. "Draw" means the formal process of randomly selecting winning numbers, letters, or symbols that determine the number of winning plays for each prize level of a game.
- ~~3:~~ 4. "Game" means an on-line game authorized by the lottery.
- ~~4:~~ 5. "Game group" means a group of lotteries that have joined together to offer a game on a multi-state basis according to the terms of the MUSL and group's rules.
- ~~5:~~ 6. "Grand prize" means the top prize that can be won in a game.
7. "Group play" means two or more individuals sharing a purchase made.
- ~~6:~~ 8. "Lottery" means the North Dakota lottery.
- ~~7:~~ 9. "Multi-state lottery" means a lottery game that spans the individual borders of a state, jurisdiction, province, district, commonwealth, territory, or country.
- ~~8:~~ 10. "MUSL" means the multi-state lottery association.
11. "North Dakota Lottery Players Club<sup>SM</sup>" means a program that players can join to earn exclusive benefits and rewards.
- ~~9:~~ 12. "Online gaming system" means a computer system designed to control, monitor, communicate with a terminal, and record play transactions and accounting data.
- ~~10:~~ 13. "Play" means the numbers, letters, or symbols that are on a ticket or properly and validly registered subscription play to be played by a player in a draw, excluding a lottery promotion.



- ~~41.~~ 14. "Play area" means the area of a play slip that contains one or more sets of numbered squares to be marked by a player for a game. Each set contains a certain number of numbers, letters, or symbols that correspond to the game.
- ~~42.~~ 15. "Play slip" means a card used in marking a player's selections of numbers, letters, or symbols and containing one or more play areas for a game.
16. "Player-activated terminal" means a device authorized by the lottery and operated by a player to function in an online, interactive mode with the lottery's computer system to receive and process lottery transactions, including the purchase and issuance of a ticket, the validation of a ticket, and the issuance of a cash voucher.
17. "Points for Drawings™" means a program where players can enter drawings by using points received from the submission of valid tickets.
18. "Points for Prizes®" means a rewards program where players can earn points by becoming registered members and submitting valid tickets.
- ~~43.~~ 19. "Quick pick" means a random selection of numbers, letters, or symbols by a computer system that are printed on a ticket or properly and validly registered subscription play and played by a player for a draw in a game.
- ~~44.~~ 20. "Retailer fraud" means an owner or employee of a licensed retailer who knowingly and intentionally:
- a. Fails to properly validate a player's winning ticket;
  - b. Fails to pay the player the proper prize amount on a winning ticket;
  - c. Fails to provide the player the proper exchange ticket on a winning multi-draw ticket; or
  - d. Performs any other act that causes financial harm to a player in violation of the lottery law or rules.
- ~~45.~~ 21. "Set prize" means all prizes, except the grand prize for a game that are to be paid by a single cash payment and, except as provided by rule, will be equal to the prize amount established by the MUSL game group for the prize level of the game.
22. "Subscription" means a purchase of a draw game play for drawings up to one year.
- ~~46.~~ 23. "Terminal" means a device authorized by the lottery and operated by a retailer or the lottery to function in an on-line, interactive mode with the lottery's computer system to issue a ticket and enter, receive, and

process a lottery transaction, including a purchase, validation of a ticket, and issuance of a report.

- ~~17:~~ 24. "Ticket holder" means a person who has signed a ticket or possesses an unsigned ticket.
- ~~18:~~ 25. "Validation" means the process of determining whether a ticket presented for a prize is a winning ticket.
26. "Winning account" means the account to which subscription winnings are deposited and from which player withdrawals are made.
- ~~19:~~ 27. "Winning numbers" means the numbers, letters, or symbols randomly selected in a draw to determine a winning play contained on a ticket or properly and validly registered subscription play or randomly selected in a lottery promotion to determine a winning prize stated on a ticket or coupon.

**History:** Effective February 1, 2004; amended effective April 1, 2006; July 1, 2008; July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

## CHAPTER 10-16-02

### **10-16-02-06. Duties.** A retailer shall:

1. Comply with the lottery law, rules, promotional rules, and terms of a license agreement prescribed by the lottery;
2. Display a lottery license in an area visible, but not accessible, to the public where a ticket is sold and redeemed. A retailer shall prominently display signage and promotional and point-of-sale items provided by the lottery. A retailer may advertise and use, display, or make available other appropriate promotional and point-of-sale items. On request of the lottery, a retailer shall discontinue an advertisement or promotion that the lottery determines is in noncompliance with subsections 2 and 3 of section 10-16-01-02;
3. Display a problem gambling helpline telephone number;
4. Provide a secure operating space for a terminal at a location approved by the lottery or its online gaming system vendor. A retailer may not move the terminal to a different location at a site without written authorization from the lottery. If the retailer desires to have the terminal relocated at the site, only a qualified representative of the lottery's online gaming system vendor may relocate the terminal;
5. Provide dedicated alternating current to a duplex electrical receptacle for lottery equipment, including a terminal. Only lottery equipment may be on the circuit. A retailer shall pay the installation cost of the receptacle and monthly costs of electricity to operate the lottery equipment. The lottery shall provide the retailer with a schematic of the required amperage, voltage, and wiring of the receptacle;
6. As requested by the lottery, have an employee attend a training session sponsored by the lottery, review training material, complete a terminal-based tutorial, or notify the lottery if a new employee needs training on operating a terminal;
7. Exercise care in operating a terminal and immediately notify the lottery's online gaming system vendor of a terminal malfunction, including the issuance of an invalid ticket, inability to sell or redeem a ticket, and nonissuance of a ticket. Except to clear a paper jam, the retailer may not perform mechanical or electrical maintenance on the terminal. Unless approved by the lottery, a retailer may not attach or adhere any stickers, decals, or advertisements on a terminal;
8. Replace ticket stock and clear a paper jam as necessary in a terminal;

9. Monitor the supply of game brochures, point-of-sale items, ticket stock, and play slips and notify the lottery or its online gaming system vendor when an item is in short supply;
10. Actively promote and sell a ticket and redeem a winning ticket during the retailer's core business hours on the days that the retailer is open and when a terminal is operating. If the retailer's core business hours are earlier or later, or both, than the hours that the terminal is operating, the retailer shall post the hours during which a person may redeem a winning ticket;
- ~~11.~~ ~~Actively promote the sale of subscriptions;~~
- ~~12.~~ 11. Prohibit a person under age eighteen from buying a ticket or redeeming a winning ticket;
- ~~13.~~ 12. Not extend credit to a player or accept a credit card from a player for the purchase of a ticket or accept a food stamp or food coupon as consideration for a ticket. A player shall pay for a ticket when the ticket is bought from a retailer. If a retailer delivers a ticket to a player's residence, the player shall prepay or pay for the ticket upon delivery. A retailer may not loan money to or accept a postdated check from a player;
- ~~14.~~ 13. Maintain a level of ticket sales set by the lottery based on a minimum sales program;
- ~~15.~~ 14. Be financially responsible and personally liable to the lottery for money derived from the sale of a ticket, less money related to a sales commission and money paid on a redeemed winning ticket. The retailer shall allow money from the sale of a ticket that is deposited by the retailer in a bank account to be transferred to the lottery by electronic funds transfer on a weekly basis or other period prescribed by the lottery;
- ~~16.~~ 15. Store ticket stock, supplies, terminal, and related equipment in a safe place to prevent loss, theft, or damage;
- ~~17.~~ 16. Prominently post the winning numbers for a draw and estimated grand prize of the next draw of a game where a ticket is sold as soon as reasonably possible after the draw for the game;
- ~~18.~~ 17. Redeem a winning ticket and may pay a prize of up to five hundred ninety-nine dollars in cash or by business check, regardless of which retailer sold the ticket. The retailer may not charge a fee for redeeming a ticket and may not refuse to redeem a winning ticket sold by another retailer;

- ~~49.~~ 18. File a claim for credit for a printed defective ticket as prescribed by the lottery;
- ~~20.~~ 19. Permit an employee or agent of the lottery who has first shown proper identification to the retailer to review the retailer's accounting records and inspect, maintain, replace, or remove lottery equipment, supplies, ticket stock, or a record or recorded video from the site without prior notice during the retailer's normal hours of operation;
- ~~24.~~ 20. Notify the lottery in writing thirty days before there is a change of the bank account maintained for electronic funds transfer;
- ~~22.~~ 21. Make it convenient for the public to buy and redeem a ticket. A retailer may sell a ticket through a drive-up window;
- ~~23.~~ 22. Have a copy of the lottery law and rules at the site available near the terminal for review by any person;
- ~~24.~~ 23. Incur the loss from theft of a ticket or gift certificate;
- ~~25.~~ 24. Defend, indemnify, and hold harmless the lottery and state of North Dakota from any claim of any nature, including all costs, expenses, and attorney's fees, that may result from or arise out of an agreement with the lottery, except for a claim that results from or arises out of the state's sole negligence;
- ~~26.~~ 25. Upon revocation, relinquishment, or nonrenewal of a license, immediately return all lottery-related equipment and supplies, including unused ticket stock. The retailer is liable for money still owed the lottery; and
- ~~27.~~ 26. Maintain complete and accurate records and retain them for one year related to the sale and redemption of a lottery ticket. Records must include weekly terminal-issued reports of electronic funds transfers transactions.

**History:** Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008; July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-13

**10-16-02-07. Sales commission and bonus.**

- 1. The lottery shall credit a retailer's account for:
  - a. A sales commission of five percent of the retail price of a ticket sold or otherwise issued by the retailer;

- b. A sales commission of five percent of the amount of ~~an initial or renewal~~ a subscription sale that is transacted through the lottery on a subscription application form that is issued by the retailer's terminal or procured from the retailer with the retailer's license number on it North Dakota Lottery Players Club<sup>SM</sup> when a player chooses a specific retailer. The retailer must be currently licensed when the subscription application form is processed by the lottery. ~~There is no sales commission on the value of a prize on a winning subscription play that automatically extends a subscription period according to subdivision a of subsection 10 of section 10-16-03-08.1~~ purchased; and
- c. A sales bonus for selling a ticket with a winning play, ~~or for an initial or renewal subscription sale described by subdivision b, including an extended subscription period, that has a winning play,~~ for a game as stated below. However, the retailer must be currently licensed when a draw is conducted that results in the winning play of a ticket ~~or when the winning subscription play is validated~~. If the winning play for POWERBALL® has the power play option, or the winning play for MEGA MILLIONS® has the Megaplier® option, or the winning play for HOT LOTTO® has the triple sizzler option, the retailer's account must also be credited for an additional bonus as stated below:

<u>Prize</u>	<u>Bonus</u>	<u>Additional Bonus</u>
<b>POWERBALL®</b>		
Grand prize	\$50,000	Additional \$50,000 with power play
\$1,000,000	\$5,000	Additional \$5,000 with power play
\$10,000	\$500	Additional \$500 with power play
<b>MEGA MILLIONS®</b>		
Grand prize	\$50,000	Additional \$50,000 with Megaplier®
\$1,000,000	\$5,000	Additional \$5,000 with Megaplier®
\$5,000	\$250	Additional \$250 with Megaplier®
<b>HOT LOTTO®</b>		
Grand prize	\$5,000	Additional \$5,000 with triple sizzler
\$30,000	\$750	Additional \$750 with triple sizzler
\$3,000	\$150	Additional \$150 with triple sizzler
<b>WILD CARD 2®</b>		

Grand prize	\$2,000
\$6,000	\$250
2BY2®	
Grand prize	
\$22,000	\$500
\$44,000*	\$1,000

\*Tuesday draw double grand prize winning play on a qualifying multi-draw ticket.

2. The lottery may credit a retailer's account for a fixed or graduated sales commission or bonus for a special promotion, including power play, Megaplier®, and triple sizzler, that the lottery conducts for a certain period of time based on parameters set by the lottery.

**History:** Effective February 1, 2004; amended effective January 1, 2006; January 3, 2008; January 31, 2010; January 15, 2012; October 19, 2013; July 6, 2014.

**General Authority:** NDCC, 53-12.1-13

**Law Implemented:** NDCC 53-12.1-02, 53-12.1-03, 53-12.1-13

## CHAPTER 10-16-03 CONDUCT AND PLAY

### Section

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### **10-16-03-05. Sale or gift of a ticket.**

1. Only a retailer may sell a ticket and only at the site listed on a license. The sales price of a ticket is exempt from sales tax. Except as authorized by the lottery or for a lottery promotion, ~~sale of a subscription,~~ or delivery of a ticket by a retailer, a complete sales transaction between the retailer and a player must occur at a terminal or a player-activated terminal, including the exchange of money, exchange of a play slip if the player uses it, and exchange of the ticket. The retailer shall accept cash and a lottery gift certificate and may, at its option, accept a check or debit card from a player. The retailer may not extend credit to a player or accept a food stamp or food coupon as consideration for a ticket. A player shall pay for a ticket when the ticket is bought from a retailer. A retailer may not loan money to a player or accept a postdated check from the player. A retailer is responsible for a check that is not collectible for any reason. This subsection does not prevent a person who may lawfully buy a ticket from giving a gift of the ticket to another person, or prevent a business or organization from purchasing a ticket and providing it as a gift or prize to a person, except to a person under age eighteen or an ineligible player according to section 10-16-03-02.
2. A person may buy a ticket on behalf of another person or group of people, provided that the person provides the ticket without charging a procurement fee and the other person is not, or the group of people does not include, a person under age eighteen or an ineligible player according to section 10-16-03-02.
3. ~~Except for a subscription,~~ A player shall place a play through a retailer who acts as an agent for the player in entering the play. The player shall place a play by using and hand-marking a play slip provided by



the retailer or requesting the retailer to place a quick pick. The retailer may assist and train a player how to complete a play slip. It is the sole responsibility of the player to verify the accuracy of a game play and other data printed on a ticket. The retailer may not use a copy of a play slip or other material in a terminal's play slip reader or permit any device to be connected to a terminal to enter a play.

4. A retailer shall use a terminal to issue a ticket containing the selected sets of numbers, letters, or symbols each set of which is a play. A retailer's sale of a ticket is final. A player may not void or cancel a ticket by returning the ticket to the retailer and the retailer may not buy back a ticket from a player. If data printed on a ticket is incorrect, a ticket is printed in error, an employee, volunteer, or agent of a retailer steals a ticket from the retailer, or if any other issued ticket can be used to claim a prize, the retailer cannot void or cancel the ticket or return the ticket to the lottery for credit. If the retailer cannot sell the ticket, the retailer owns the ticket and may redeem a winning ticket. However, the lottery may credit a retailer's account for a ticket that is illegible, mutilated, or otherwise defective as it was printed and that because of its physical condition cannot be sold. A retailer shall comply with a policy of the lottery related to criteria for sending a claim for credit of a defective ticket to the lottery. The retailer may not send a defective ticket to the lottery until after the draw for the game for which the ticket was issued.
5. A retailer shall sell a ticket only for the standard price of the ticket. However, a retailer may do a promotion for a period not to exceed ninety consecutive days in any six-month period in which a retailer offers a ticket for sale through a discount provided that the retailer accounts for the standard price of the ticket to the lottery. A discount includes, for example, selling six tickets for the price of five tickets, selling two tickets for the price of one ticket, and selling a ticket for one-half price. A retailer may buy a ticket for the standard price of the ticket and offer it, at no charge, to a person. A recipient of a ticket in a promotion may not be under age eighteen or an ineligible player according to section 10-16-03-02. A retailer may conduct other promotions, including:
  - a. Second chance drawings of winning or nonwinning tickets or other entry forms provided that a person may not be required to purchase anything to participate in the drawing;
  - b. Giving away a ticket with the purchase of a product or service;
  - c. Giving away or discounting a product or service with the sale of a ticket or return of a number of nonwinning tickets; and
  - d. With the purchase of a ticket, a person may spin a wheel, for example, to select a free prize, product, or service.

6. A person who buys or accepts a ticket, attempts to redeem a ticket for a prize, or otherwise participates in a draw agrees to comply with and abide by the lottery law, rules, procedures, policy, MUSL or game group rule or game rule, and decision of the lottery.
7. A person who buys or accepts a ticket, attempts to redeem a ticket for a prize, or otherwise participates in a draw agrees to accept the decision of the lottery regarding the validity of the ticket, and any prize payment determinations relating to that ticket, and to release the state, lottery, MUSL, game group, and their officers, employees, agents, representatives, and contractors from any liability regarding that ticket or payment of that prize and are not responsible or liable for:
  - a. A lost or stolen ticket or incorrectly read play slip; or
  - b. Paying a prize related to a damaged, destroyed, erroneous, illegible, or mutilated ticket.

**History:** Effective February 1, 2004; amended effective November 8, 2005; July 1, 2008; July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-02, 53-12.1-03, 53-12.1-07, 53-12.1-08, 53-12.1-13, 57-39.2-04

#### **10-16-03-07. Validation of a ticket or cash voucher.**

1. A retailer shall use a terminal to validate a ticket or cash voucher before the retailer may pay a prize on the ticket or cash voucher. A retailer that pays a player a prize without first validating the ticket or cash voucher assumes the financial risk that the ticket is not an actual winning ticket or, the ticket was previously redeemed, or that the cash voucher was previously redeemed. The lottery may not reimburse a retailer for a prize paid in error by the retailer. A ticket that does not pass validation is invalid and ineligible for a prize. A cash voucher that does not pass validation is invalid for cashing. Except as provided by subsection 18 of section 10-16-03-08, an original ticket is the only proof of a game play and submitting a winning ticket to the retailer or lottery is the only method of claiming a prize. A play slip or, copy of a winning ticket, or copy of a cash voucher has no monetary or prize value and is not evidence of a ticket bought or of numbers selected for a draw. A ticket must have been bought from a North Dakota retailer and meet all of these validation requirements:
  - a. A retailer must have issued the ticket in an authorized manner;
  - b. The play, including the combination of numbers, letters, or symbols selected by a player or quick picked, evidenced by the ticket, must reach and be accepted and recorded by the lottery's online gaming system before the cutoff time for a draw. The draw for a game is

held on the days determined by the game group. Even if a player intends for a retailer to enter the player's play before the cutoff time for the present draw, the play is only eligible for the draw that is printed on the ticket;

- c. The ticket or cash voucher must not have been previously paid or voided by the lottery;
  - d. The ticket or cash voucher must not have been stolen, or be counterfeit, altered, mutilated, reconstructed, unreadable, illegible, irregular, partly blank, incomplete, defective, or an exact duplicate of another winning ticket. The game group, MUSL, and lottery are not responsible for a ticket that is altered in any manner;
  - e. A ticket or cash voucher is void unless the ticket is printed on a paper stock roll that was validly issued to and used by the retailer that sold the ticket;
  - f. The ticket or cash voucher validation number must be legible, intact, presented in its entirety, and correspond, based on the lottery's computer validation file, exactly to the date and selected numbers printed on the apparent winning ticket that was sold at a specific site;
  - g. The ticket or cash voucher may not be marked in any way, except by a player to place a signature on the back side of the ticket to claim a prize or by a retailer to deface or void the ticket after it was redeemed, with the intent to commit fraud;
  - h. If the total prize value of all plays of a winning ticket is five thousand dollars or more, the ticket must pass a confidential security check by the lottery;
  - i. Upon request by the lottery, a claimant of an apparent winning ticket shall disclose to the lottery the name of the retailer from whom the claimant bought the ticket, date of purchase, and approximate time; and
  - j. A validation requirement adopted by the MUSL or game group.
2. After a retailer validates a winning ticket or cash voucher, the retailer shall, if sufficient funds are available, pay the player the prize value. However, a retailer shall redeem a winning ticket or cash voucher that has a prize value of fifty dollars or less. A retailer shall return the ~~branded~~ winning ticket or cash voucher and the player copy of the terminal receipt to the player and retain the retailer copy of the terminal receipt for recordkeeping purposes. ~~If a retailer manually validates a winning ticket, the retailer shall initial and write on the face of the ticket the prize amount and date redeemed.~~ After a retailer validates

a nonwinning ticket, the retailer shall return the nonwinning ticket and player copy of the terminal receipt to the player. The player may discard a redeemed winning or nonwinning ticket and player copy of the terminal receipt.

3. The lottery shall credit a retailer's account for a prize actually paid by the retailer on a validated redeemed winning ticket or cash voucher.
4. The lottery's determination on a contested validation is final.

**History:** Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008; July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-09, 53-12.1-13

#### **10-16-03-08.1. Subscription.**

- ~~1.~~ A player may procure a subscription application form from a retailer, lottery's office, or lottery's website.
- ~~2.~~ A player may purchase one or more subscriptions for one or more games. Each subscription is limited to one play for a draw for one game. A player may purchase a subscription for thirteen, twenty-six, or fifty-two weeks. A subscription is not refundable or cancelable by a player unless the game group makes a matrix change to the game at which time, the subscription would be refunded to the player based on the number of draws actually held under the former game matrix in relation to the total number of draws purchased plus the value of an extension.
- ~~3.~~ 1. A player shall purchase a subscription only from, and the financial transaction for that subscription must be only with, the lottery. ~~A player may apply for a subscription on the lottery's website or by mail, by telephone, or in person~~ through the North Dakota Lottery Players Club<sup>SM</sup> website and payment processor. A player may use cash, ~~check,~~ automated clearinghouse, debit card, or authorized credit card to pay for a subscription.
- ~~4.~~ 2. A person must be at least eighteen years of age.
- ~~5.~~ A person must have a mailing address within the state of North Dakota when the original or renewal subscription application form was submitted to the lottery.
3. A person must provide the following information when registering as a player, or a member of a group, for the lottery subscription service:
  - a. Name:

- b. Address;
  - c. Date of birth;
  - d. Telephone number;
  - e. Valid email address; and
  - f. Last four digits of their social security number.
4. A person, whether individually or as a member of a group, must have a North Dakota mailing address and must pass all verification processes used by the lottery during the player's registration process.
  5. A player may purchase one or more subscriptions for one or more games. Each subscription is limited to one play for a draw for one game. A player may purchase a subscription for up to fifty-two weeks. A subscription is not refundable or cancelable by a player unless the game group makes a matrix change to the game at which time, the subscription would be canceled by the lottery and funds used to purchase the subscription would be refunded to the player's winning account through the lottery's subscription service, based on the number of draws actually held under the former game matrix in relation to the total number of draws purchased.
  6. To be valid, a subscription play must be properly and validly registered with the lottery on its subscriber data base at its central computer site which meets the requirements established by the product group and MUSL security and integrity committee. All data on a subscriber is confidential.
  7. The owner of a subscription play is the person whose name is validly and properly registered with the lottery. However, the lottery may, ~~based on the owner's request,~~ split a prize among two or more persons who are registered members of a group play.
  8. After the lottery properly and validly registers a subscription play, the lottery shall send a confirmation ~~card~~ email to the subscriber. The confirmation ~~card~~ email is the player's evidence of an actual play in a draw and there is no actual ticket. The confirmation ~~card~~ email must include:
    - ~~a.~~ a. Name and address of the subscriber;
    - ~~b.~~ b. Assigned subscriber number;
    - ~~c.~~ a. Name of game. For the game of POWERBALL®, indication of whether the play has the power play option. For the game of MEGA MILLIONS®, indication of whether the play has the Megaplier®

option. For the game of HOT LOTTO®, indication whether the play has the triple sizzler option;

- d. ~~b.~~ Number of and starting and ending dates of the draws;
  - e. ~~c.~~ Numbers, letters, or symbols of the play;
  - f. ~~d.~~ ~~Notice that the~~ The subscriber is responsible for ensuring that all subscriber information and game play numbers, letters, or symbols are correct; and
  - ~~g.~~ ~~e.~~ Explanation of how a prize will be awarded.
9. Except as provided by subsection 10, a subscription play is valid for only the date range of draws specified ~~on~~ in the confirmation ~~and email~~. The effective date of a new subscription play ~~cannot be sooner than fourteen days from the original date of subscription~~. The effective date of a renewal subscription play can begin with the next draw following the end of the current subscription will be valid for the present draw in the game, if it is purchased by 8:58 p.m. central time.
10. If the value of a prize on a winning POWERBALL®, HOT LOTTO®, WILD CARD 2®, MEGA MILLIONS®, or 2BY2® subscription play for a draw is:
- a. ~~Five dollars or less~~ Less than six hundred dollars, the lottery shall automatically ~~extend the subscription period by the number of draws equal to the value of the winning play; deposit the funds into the player's winning account.~~
  - b. ~~Equal to or more than six dollars and less than six hundred dollars;~~ the lottery shall send the player a check for the prize; or
  - e. ~~b.~~ Equal to or more than six hundred dollars, the lottery shall contact the player by email and phone to arrange payment of the prize, less withholding of income tax required by federal or state law and any debt setoff according to North Dakota Century Code section 53-12.1-12.
11. If the value of a prize on a winning MEGA MILLIONS® subscription play for a draw is:
- a. ~~Less than six hundred dollars, the lottery shall send the player a check for the prize; or~~
  - b. ~~Equal to or more than six hundred dollars, the lottery shall contact the player to arrange payment of the prize, less withholding of income tax required by federal or state law and any debt setoff according to the North Dakota Century Code section 53-12.1-12.~~

- ~~42.~~ 11. If the owner of a subscription changes the owner's name ~~or address~~, the owner shall provide the lottery with a notarized letter of the change. If the owner of a subscription dies, the lawful representative of the owner's estate shall provide the lottery with a notarized statement of the death and the lottery shall change the ownership of the subscription to "The Estate of" the owner.

**History:** Effective November 8, 2005; amended effective January 3, 2008; November 1, 2008; July 1, 2010; October 19, 2013; July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-01, 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-13

## CHAPTER 10-16-07

**10-16-07-02. Expected prize pool percentage and odds.** Except as provided by subsection 3 of section 10-16-07-03 or by section 10-16-07-04, the grand prize is twenty-two thousand dollars. All prizes awarded must be paid as set cash prizes or free ticket prizes with the following expected prize payout percentages:

<u>Matches Per Play</u>	<u>Prize</u>	<u>Prize Pool Percentage Allocated to Prize</u>	<u>Odds*</u>
2 red + 2 white	Grand prize	<del>41.56%</del> <u>41.18%</u>	1:105,625
2 red + 1 white	\$100	<del>8.93%</del> <u>8.99%</u>	<del>4:2,204</del> <u>1:1,100</u>
1 red + 2 white	\$100	<del>8.93%</del> <u>8.99%</u>	<del>4:2,204</del> <u>(3 matches)</u>
2 red + 0 white	\$3	<del>1.54%</del> <u>1.55%</u>	<del>4:383</del> <u>1:37</u>
0 red + 2 white	\$3	<del>1.54%</del> <u>1.55%</u>	<del>4:383</del> <u>(2 matches)</u>
1 red + 1 white	\$3	<del>12.86%</del> <u>12.94%</u>	<del>4:46</del>
1 red + 0 white	Free ticket	<del>12.32%</del> <u>12.40%</u>	<del>4:8</del> <u>1:4</u>
0 red + 1 white	Free ticket	<del>12.32%</del> <u>12.40%</u>	<del>4:8</del> <u>(1 match)</u>

Overall odds of winning a prize on a one dollar play are 1:3.59.

\*Reflects the odds of winning and ~~probable~~ a combined distribution probability of winning plays ~~in and among each prize tier~~, based on the total number of possible combinations.

**History:** Effective November 8, 2005; amended effective February 22, 2008; July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**10-16-07-04. Tuesday draw double prize feature.** If a player purchases a subscription ~~of a play for 91, 182, or 364 draws, including an extension~~ seven draws, in increments of seven, or a multi-draw ticket of one or more plays for 7, 14, 21, 28, 35, or 42 consecutive draws, the value of the player's prize, including the grand prize, that is won on a Tuesday draw automatically doubles in value.

**History:** Effective February 22, 2008; amended effective July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13



**CHAPTER 10-16-09**  
**NORTH DAKOTA LOTTERY PLAYERS CLUB<sup>SM</sup> POINTS FOR PRIZES<sup>®</sup>**

<u>Section</u>	
<u>10-16-09-01</u>	<u>General</u>
<u>10-16-09-02</u>	<u>Eligibility for Points</u>
<u>10-16-09-03</u>	<u>Registration</u>
<u>10-16-09-04</u>	<u>Points for Prizes<sup>®</sup> Points</u>
<u>10-16-09-05</u>	<u>Submitting Tickets</u>
<u>10-16-09-06</u>	<u>Points for Prizes<sup>®</sup> Store</u>
<u>10-16-09-07</u>	<u>Item Selection</u>
<u>10-16-09-08</u>	<u>Additional Conditions</u>

**10-16-09-01. General.**

1. The North Dakota Lottery and its designated agents Scientific Games International, Inc., and MDI Entertainment, LLC, a subsidiary of Scientific Games International, Inc., will operate the Points for Prizes<sup>®</sup> program.
2. Points for Prizes<sup>®</sup> is a rewards program that is part of the North Dakota Lottery's North Dakota Lottery Players Club<sup>SM</sup>. Players can earn points by becoming registered members of the program and submitting valid tickets at [club.lottery.nd.gov](http://club.lottery.nd.gov). Players can redeem their points for items at the Points for Prizes<sup>®</sup> store at [store.lottery.nd.gov](http://store.lottery.nd.gov).
3. The Points for Prizes<sup>®</sup> program is void where prohibited by law.
4. The North Dakota Lottery reserves the right to changes Points for Prizes<sup>®</sup> in any way and at any time or to terminate Points for Prizes<sup>®</sup> entirely upon reasonable and appropriate public notice.
5. By submitting a ticket to earn Points for Prizes<sup>®</sup> points, an entrant agrees to and is bound by the Points for Prizes<sup>®</sup> rules, the North Dakota Lottery Players Club<sup>SM</sup> terms of service, all other applicable North Dakota Lottery rules and laws, and the laws of the state of North Dakota.
6. The North Dakota Lottery may use, without limitation, an entrant's name, hometown, likeness, and/or voice in any promotions, research, marketing, publications, or other advertising media including, but not limited to, North Dakota Lottery websites, without compensation or additional release.
7. The North Dakota Lottery reserves the right to use the names, addresses, and telephone numbers of all entrants for research and marketing purposes.

8. These rules may be amended at the North Dakota Lottery's sole discretion.

**History:** Effective July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

#### **10-16-09-02. Eligibility for points.**

1. A terminal ticket or player-activated terminal ticket eligible for points is any ticket that includes a twenty-five digit alphanumeric draw game code printed on the ticket.
2. Any subscription purchase will automatically receive points after confirmation of purchase. No entry code is generated nor is entry of any code required. Players will receive notification of points earned for a subscription purchase.
3. Exchange tickets will not print an entry code. Entry codes are only printed once on the original ticket.
4. North Dakota Lottery Players Club<sup>SM</sup> members must be at least eighteen years old and have a valid United States address in order to register as a member of the North Dakota Lottery Players Club<sup>SM</sup> and participate in Points for Prizes<sup>®</sup>.
5. Players will be limited to earn up to seven hundred fifty points per week as part of the North Dakota Lottery's North Dakota Lottery Players Club<sup>SM</sup>. A week is defined as Sunday at midnight until the following Saturday at 11:59:59 p.m. central time. The North Dakota Lottery reserves the right to change, without notice, the limit on the amount of points that can be earned weekly.
6. The North Dakota Lottery reserves the right to discontinue eligibility for any game.
7. Entries for Points for Prizes<sup>®</sup> may also automatically receive entry into other promotions.
8. Once the seven hundred fifty point-per-week maximum is reached, players will still be eligible to enter tickets for second chance drawings or any additional ticket entry eligible promotion. These tickets will not earn points.

**History:** Effective July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

#### **10-16-09-03. Registration.**

1. To access Points for Prizes<sup>®</sup>, a player must first register to become a North Dakota Lottery Players Club<sup>SM</sup> member and establish a North Dakota Lottery Players Club<sup>SM</sup> account at club.lottery.nd.gov.
2. Once registered, a player will be able to log in to submit entries or participate in other North Dakota Lottery Players Club<sup>SM</sup> programs that may be provided from time to time.
3. Registration to be a member of the North Dakota Lottery Players Club<sup>SM</sup> requires the player to provide their birth date, email address, password, last four digits of social security number, and contact information.
4. Failure to fully provide required information will cause a player's request to register to be rejected.
5. The North Dakota Lottery, Scientific Games International, Inc., and MDI Entertainment, LLC, assume no responsibility for incorrect information provided by a player on the registration form. After completing registration, a player is responsible for updating account information as needed by logging in and going to their account page.
6. A player may have no more than one account. A player is not permitted to create additional accounts in the event that their email or other relevant information changes. The player may log in with their existing account credentials and make any desired changes at any time.

**History:** Effective July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**10-16-09-04. Points for Prizes<sup>®</sup> points.**

1. Players earn Points for Prizes<sup>®</sup> for eligible subscription purchases (after purchase confirmation) or for terminal tickets or player-activated terminal tickets entered through the North Dakota Lottery Players Club<sup>SM</sup> at club.lottery.nd.gov.
2. Points are nonmonetary numerical values assigned to eligible tickets.
3. Points for Prizes<sup>®</sup> provide points for each eligible ticket or subscription purchase. Cash shall not be awarded in lieu of points awarded or rewards items.
4. Each eligible ticket or subscription purchase has a point value based on a range of values assigned by the North Dakota Lottery. The North Dakota Lottery reserves the right to change the point value assigned.
5. The point value, associated with each valid ticket or subscription purchase, will be revealed to the player and applied to their account at

club.lottery.nd.gov upon successful submission of each eligible ticket or after purchase confirmation of subscriptions.

6. Points are not transferable. Point balances from more than one account may not be combined.
7. Points shall be valid for use only within the North Dakota Lottery's Points for Prizes® program or Points for Drawings™ program.
8. The North Dakota Lottery may credit a player's account at its sole discretion.
9. Points may expire. The North Dakota Lottery reserves the right to establish, modify, or delete a rule regarding the expiration of points at its own discretion at any time.

**History:** Effective July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

#### **10-16-09-05. Submitting tickets.**

1. To submit a ticket, a player must first log in to the club.lottery.nd.gov using their unique North Dakota Lottery Players Club<sup>SM</sup> account information.
  - a. Once logged in, a player submits an entry according to the instructions on the "Ticket Entry" (Rewards) page of the website. Required entry information for a terminal ticket or player-activated terminal ticket is the twenty-five digit alphanumeric draw game code printed on the ticket. Subscribers will receive notification of points received for their purchase.
  - b. To prevent fraudulent submissions, after ten consecutive attempts to submit tickets that are not recognized as eligible tickets, a player will be unable to submit tickets for twenty-four hours.
  - c. Unless a player has a need to retain their ticket (example: remaining draws or prize claim for winning ticket), players are encouraged to properly dispose of the ticket after submission.
2. A list of previously submitted tickets is available within a player's account and can be found within the "My History" page.

3. An eligible ticket may be submitted one time only. The system will reject a ticket that has been previously submitted.

**History:** Effective July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**10-16-09-06. Points for Prizes® store.**

1. Points may be redeemed for items listed at store.lottery.nd.gov in the Points for Prizes® store. Points may also be used to purchase Points for Drawings™ entries.
2. Points required for redemptions vary. The number of points required to be redeemed for a particular item shall be determined by the North Dakota Lottery and be posted at store.lottery.nd.gov. The North Dakota Lottery may, in its sole discretion, change the points required for redemption of any item at any time.
3. The North Dakota Lottery may, in its sole discretion, discontinue offering an item at any time.
4. If an item is not readily available for any reason, the North Dakota Lottery reserves the right, in its sole discretion, to substitute another item of similar value, or credit a player's account at its sole discretion.
5. Prizes are nontransferable and nonrefundable unless otherwise authorized by the North Dakota Lottery.
6. The awarding of all prizes is subject to eligibility verification.

**History:** Effective July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**10-16-09-07. Item selection.**

1. A player may use some or all points for items offered in the Points for Prizes® store.
2. A player must first log in to their North Dakota Lottery Players Club<sup>SM</sup> account at club.lottery.nd.gov.
3. To redeem points, a player must select the item or items, designate the quantity of each item requested, and select the appropriate button to submit the order.
4. It is the responsibility of the player to ensure that the appropriate item and quantity are selected.

5. Once the order has been submitted, points will be deducted from the player's North Dakota Lottery Players Club<sup>SM</sup> account.
6. Orders cannot be changed, canceled, or returned once placed.

**History:** Effective July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**10-16-09-08. Additional conditions.**

1. The North Dakota Lottery does not warrant or guarantee product quality or availability of products.
2. The North Dakota Lottery is not responsible for any prizes lost, damaged, or stolen during shipment, pickup, or use.
3. The North Dakota Lottery is not responsible for any damages, injury, or loss of life resulting from any item awarded.
4. Players are responsible for any applicable taxes.
5. Players are solely responsible for maintaining and keeping account information current or accurate. The North Dakota Lottery assumes no responsibility or liability whatsoever for technical or computer malfunctions or for the player's failure to keep account information current.
6. By participating in the North Dakota Lottery Players Club<sup>SM</sup>, each player and their heirs, legal representatives, and assignees agree to indemnify, defend, release, and discharge the North Dakota Lottery, Scientific Games International, Inc., MDI Entertainment LLC, the state of North Dakota, their employees, officers, and directors, from and against any loss, claim, damage, suit, or injury arising out of or relating to the North Dakota Lottery Players Club<sup>SM</sup> products or any action taken pursuant to these rules.
7. No one under eighteen years of age and no one otherwise prohibited by North Dakota Century Code section 53-12.1-08 from playing North Dakota Lottery games are eligible to participate in the Points for Prizes<sup>®</sup> program.

**History:** Effective July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**CHAPTER 10-16-10**  
**NORTH DAKOTA LOTTERY PLAYERS CLUB™ POINTS FOR DRAWINGS™**

Section

10-16-10-01

General

10-16-10-02

Eligibility

10-16-10-03

Submitting Entries into Points for Drawings™

10-16-10-04

Additional Conditions

**10-16-10-01. General.**

1. The North Dakota Lottery and its designated agents Scientific Games International, Inc., and MDI Entertainment, LLC, a subsidiary of Scientific Games International, Inc., will operate the Points for Drawings™ program.
2. Points for Drawings™ is part of the Points for Prizes® program that is part of the North Dakota Lottery's North Dakota Lottery Players Club<sup>SM</sup>. Players can enter drawings by using some or all points received from submission of eligible tickets or subscription purchases at [club.lottery.nd.gov](http://club.lottery.nd.gov).
3. Drawing entries may be submitted at [store.lottery.nd.gov](http://store.lottery.nd.gov).
4. The Points for Drawings™ program is void where prohibited by law.
5. The North Dakota Lottery reserves the right to change Points for Drawings™ in any way and at any time or to terminate Points for Drawings™ entirely upon reasonable and appropriate public notice.
6. By submitting an entry into Points for Drawings™, an entrant agrees to and is bound by the Points for Drawings™ rules, the Points for Prizes® rules, the North Dakota Lottery Players Club<sup>SM</sup> terms of use, all other applicable North Dakota Lottery rules and laws, and the laws of the state of North Dakota.
7. The North Dakota Lottery may use, without limitation, an entrant's name, hometown, likeness, and/or voice in any promotions, research, marketing, publications, or other advertising media including, but not limited to, North Dakota Lottery websites, without compensation or additional release.
8. The North Dakota Lottery reserves the right to use the names, addresses, and telephone numbers of all entrants for research and marketing purposes.

9. These rules may be amended at the North Dakota Lottery's sole discretion.

**History:** Effective July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

#### **10-16-10-02. Eligibility.**

1. Only points accumulated within the Points for Prizes® program in the player's North Dakota Lottery Players Club<sup>SM</sup> account may be used to enter any Points for Drawings<sup>TM</sup> drawing.
2. Entrants must have a valid U.S. address in order to register and participate.

**History:** Effective July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

#### **10-16-10-03. Submitting entries into Points for Drawings<sup>TM</sup>.**

1. A detailed description of each Points for Drawings<sup>TM</sup> drawing will be located on the North Dakota Lottery's North Dakota Lottery Players Club<sup>SM</sup> website and will include a description of the prize, entry dates, drawing date, rules and regulations, and the number of points necessary for entry into the drawing.
2. The number of points needed for entry into each Points for Drawings<sup>TM</sup> drawing may vary by drawing.
3. To submit an entry, a player must first log in to club.lottery.nd.gov using their North Dakota Lottery Players Club<sup>SM</sup> account information.
4. Following login, players may submit entries by visiting the Points for Prizes® store and select the desired Points for Drawings<sup>TM</sup> drawing. Players enter the number of entries desired, select "Update Quantity" followed by "Submit Entries".
5. It is the responsibility of the player to ensure that the appropriate Points for Drawings<sup>TM</sup> drawing and number of entries are selected.
6. Once the selected number of entries has been submitted, points from the player's North Dakota Lottery Player's Club<sup>SM</sup> Points for Prizes® account will be deducted.
7. Unless otherwise specified in the rules and regulations for a specific Points for Drawings<sup>TM</sup>, entries are created only for the drawing for which



points were used by the player. Drawing entries are eligible for one Points for Drawings™ drawing only.

8. A player may submit as many entries as allowed by their North Dakota Players Club<sup>SM</sup> account balance, but the player may only win once per Points for Drawings™ drawing.
9. Once an entry into the Points for Drawings™ drawing is submitted, it cannot be changed, canceled, or returned. Once an entry is submitted, points will not be refunded.
10. Entries submitted after the Points for Drawings™ drawing deadline for a given drawing will not be accepted.

**History:** Effective July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**10-16-10-04. Additional conditions.**

1. The North Dakota Lottery does not warrant or guarantee product quality or availability of products.
2. The North Dakota Lottery is not responsible for any prizes lost, damaged, or stolen during shipment, pickup, or use.
3. The North Dakota Lottery is not responsible for any damages, injury, or loss of life resulting from any item awarded.
4. The North Dakota Lottery is not responsible for the electronic misdelivery, late delivery, or failure to receive entry information entered electronically, risk of loss remains with the entrant regardless of the cause of the transmission failure.
5. If required, a player will receive a W-2G form for prizes, either cash or merchandise.
6. The prize winner is responsible for all applicable state and federal taxes.
7. Winners' cash prizes are subject to debt setoff of certain governmental debts. Unless otherwise noted on the North Dakota Lottery Players Club<sup>SM</sup> website, if a winner fails to satisfy an outstanding debt within thirty days of notification of the debt, the North Dakota Lottery may, at its sole discretion, disqualify the winner, and the next alternate will become the winner.
8. Players are solely responsible for maintaining and keeping account information current and accurate. The North Dakota Lottery assumes no responsibility or liability whatsoever for technical or computer

malfunctions or for the player's failure to keep account information current.

9. By accepting the prize, each winner, their heirs, legal representatives, and assignees agree to indemnify and hold harmless, defend, release, and discharge the North Dakota Lottery, Scientific Games International, Inc., MDI Entertainment LLC, the state of North Dakota, their employees, officers, and directors, from and against any loss, claim, damage, suit, or injury arising out of or relating to the acceptance of the prize.
10. The North Dakota Lottery is not responsible for any rules, regulations, or restrictions imposed by its promotional partners. The North Dakota Lottery is not responsible for and has no obligation regarding the condition, quality, defects, or other attributes of the prizes awarded during a promotion and expressly disclaims all warranties, expressed or implied, including, but not limited to, all implied warranties of merchantability and fitness for particular purpose.
11. The North Dakota Lottery reserves the right, in its sole discretion, to modify, suspend, postpone, or cancel, with or without notice, any portion of this promotion at any time and for any reason, including the award of any prize with the approval of the North Dakota Lottery's director or the director's designee.
12. In the event that interpretation of these rules is necessary, the decision of the North Dakota Lottery's director or designee, after legal consultation with the assistant attorney general, if necessary, will be final.
13. No one under eighteen years of age and no one otherwise prohibited by North Dakota Century Code section 53-12.1-08 from playing North Dakota Lottery games are eligible to participate in this promotion or win any prize.

**History:** Effective July 6, 2014.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**TITLE 20**  
**STATE BOARD OF DENTAL EXAMINERS**



## JANUARY 2015

### CHAPTER 20-01-02

**20-01-02-01. Definitions.** Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "Advertising" means any public communication, made in any form or manner, about a licensee's professional service or qualifications, for the purpose of soliciting business.
2. "Anxiolysis" means diminution or elimination of anxiety.
3. "Basic full upper and lower denture" means replacement of all natural dentition with artificial teeth. This replacement includes satisfactory tissue adaptation, satisfactory function, and satisfactory aesthetics. Materials used in these replacements must be nonirritating in character and meet all the standards set by the national institute of health and the bureau of standards and testing agencies of the American dental association for materials to be used in or in contact with the human body.
4. "Board certified" means the dentist has been certified in a specialty area in which there is a certifying body approved by the commission on dental accreditation of the American dental association.
5. "Board eligible" means the dentist has successfully completed a duly accredited training program or in the case of a dentist in practice at the time of the adoption of these rules has experience equivalent to such a training program in an area of dental practice in which there is a certifying body approved by the commission on dental accreditation of the American dental association.
6. "Bona fide specialties" means the specialties of dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, and prosthodontics.

7. "Cardiopulmonary resuscitation course" means the American heart association's health care provider course, the American red cross professional rescuer course, or an equivalent course.
8. "Certified dental assistant" means a dental assistant who meets the education or experience prerequisites, or both, established by the dental assisting national board and passes the dental assisting national board's certified dental assistant examination (including radiation health and safety, infection control, and general chairside components), is currently cardiopulmonary resuscitation-certified, and continues to maintain the credential by meeting the dental assisting national board requirements.
9. "Code of ethics" means the January 2009 version of the American dental association's principles of ethics and code of professional conduct.
10. "Combination inhalation - enteral conscious sedation" (combined conscious sedation) means conscious sedation using inhalation and enteral agents.

When the intent is anxiolysis only, and the appropriate dosage of agents is administered, then the definition of enteral or combined inhalation-ental conscious sedation (combined conscious sedation), or both, does not apply.

Nitrous oxide/oxygen when used in combination or with sedative agents may produce anxiolysis, conscious or deep sedation, or general anesthesia.

11. "Complete evaluation" means an examination, review of medical and dental history, the formulation of a diagnosis, and the establishment of a written treatment plan, documented in a written record to be maintained in the dentist's office or other treatment facility or institution.
12. "Conscious sedation" means depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and that is produced by a pharmacological or nonpharmacological method or a combination thereof. The drugs or technique, or both, should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of conscious sedation.
13. Contiguous supervision" means that the supervising oral and maxillofacial surgeon whose patient is being treated and has personally authorized the procedures to be performed. The supervising oral surgeon is continuously onsite and physically present in the treatment

facility while the procedures are performed by the dental anesthesia auxiliary and capable of responding immediately in the event of an emergency. The term does not require a supervising dentist to be physically present in the operatory.

- ~~43.~~ 14. "Coronal polishing" is the mechanical polishing of clinical crowns using a rubber cup or brush only and not to include any instrumentation. ~~Examination for calculus and instrumentation must be done by the dentist or hygienist.~~
- ~~44.~~ 15. "Deep sedation" is an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently or to respond purposefully to physical stimulation or verbal command, and is produced by pharmacological or nonpharmacological method, or combination thereof.
- ~~45.~~ 16. "Dental technician" means any individual who offers or undertakes to perform the fabrication or repair of corrective or prosthetic dental devices according to the written instructions of a licensed dentist. A certified dental technician is an individual who is specifically qualified through education and experience and who has successfully completed the written and practical certification examinations administered by the national board for certification, and who further maintains certification through compliance with continuing education requirements as stipulated by the national board for certification.
- ~~46.~~ 17. "Direct supervision" means the dentist is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the procedures and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant, and before dismissal of the patient, evaluates the performance of the dental hygienist or dental assistant.
18. "Direct visual supervision" means supervision by an oral and maxillofacial surgeon by verbal command and under direct line of sight.
- ~~47.~~ 19. "Evaluation" means the act or process by a dentist of assessing and determining the significance, quality or work of something such as the patient's oral health status, the progress of dental therapy, or the performance of the dental hygienist or dental assistant.
- ~~48.~~ 20. "General anesthesia" means an induced state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command, and is produced by a pharmacological or nonpharmacological method, or a combination thereof.

- ~~19.~~ 21. "General supervision" means the dentist has authorized the procedures and they are carried out in accordance with the dentist's diagnosis, if necessary, and treatment plan. The dentist is not required to be in the treatment facility. Limitations are contained in North Dakota Century Code section 43-20-03.
- ~~20.~~ 22. "Inactive status" means the licensee shall not engage in the practice of dentistry or dental hygiene in the state of North Dakota. The license that is placed on inactive status remains on that status until such time as the license is reinstated.
- ~~24.~~ 23. "Indirect supervision" means that a dentist is in the dental office or treatment facility, has personally diagnosed the condition to be treated, authorizes the procedures, and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant.
- ~~22.~~ 24. "Local anesthesia" means the elimination of sensations in one part of the body by regional injection of drugs without causing the loss of consciousness.
25. "Oral assessment" means the evaluation of data pertaining to the patient's condition to help identify dental problems leading to a professional treatment plan. The final diagnosis of disease or treatment plan is the sole responsibility of the supervising or collaborative dentist.
- ~~23.~~ 26. ~~"Oral hygiene treatment planning" means the process of assessing and determining, by the dentist and the hygienist, the services the dental hygienist will perform, including preventative, educational, and instrumentation. This treatment plan is an organized sequence of events that is a part of the dentist's total treatment plan. The total treatment plan and diagnosis are to be determined by the dentist is a component of a comprehensive treatment plan developed by the hygienist or dentist to provide the hygienist a framework for addressing the preventative, educational, and clinical treatment needs of the patient.~~
- ~~24.~~ 27. "Patient of record" means a patient who has undergone a complete dental evaluation performed by a licensed dentist.
- ~~25.~~ 28. "Primary practice site" means the office location that is to be considered the main location of the dental practice. This office location would be listed first on the biennial registration.
- ~~26.~~ 29. "Satellite office" means an office, building, or location used at any time by a dentist for the practice of dentistry other than the office listed on the dentist's biennial registration certificate.



30. "Supragingival scaling" means to remove hard deposits and accretions from the coronal surfaces of teeth or tooth replacements.

**History:** Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; October 1, 2007; January 1, 2011; January 1, 2015.

**General Authority:** NDCC 43-20-10; 43-28-06

**Law Implemented:** NDCC 43-20, 43-28

## CHAPTER 20-02-01 GENERAL REQUIREMENTS

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### **20-02-01-01. Advertising.**

1. Advertising by dentists is permitted to disseminate information for the purpose of providing the public a sufficient basis upon which to make an informed selection of dentists. In the interest of protecting the public health, safety, and welfare, advertising which is false, deceptive, or misleading is prohibited.
2. All advertising must contain the legal name of the dentist, or a reasonable variation thereof. In the case of a partnership or corporation, the name used in the advertisement may be the true name of the partnership or corporation. The advertisement must also contain the location, or locations, of the dentist, partnership, or corporation.
3. A dentist engaged in general practice who wishes to announce the services available in the dentist's practice is permitted to announce the availability of those services as long as the dentist avoids using language that expresses or implies that the dentist is a specialist. If a dentist, other than a specialist, wishes to advertise a limitation of practice, such advertisement must state that the limited practice is being conducted by a general dentist. A dentist who is a specialist may announce the dentist's ~~specialization~~ bona fide specialty provided that the dentist has successfully completed an educational program

accredited by the commission on accreditation of dental and dental auxiliary educational programs, two or more years in length, as specified by the commission on dental accreditation of the American dental association or be a diplomate of a nationally recognized certifying board. Such a dentist may announce that the dentist's practice is limited to the special area of dental practice in which the dentist has or wishes to announce.

4. A dentist who advertises on radio or television must retain a recorded copy of such advertising for a period of one year following the termination of the use of such advertising, and is responsible to make recorded copies of such advertising available to the North Dakota state board of dental examiners within thirty days following a request from the board for such copies.
5. No dentist may advertise the dentist, the dentist's staff, the dentist's services, or the dentist's method or methods of delivery of dental services to be superior to those of any other licensed dentist, unless such claim or claims can be substantiated by the advertiser, upon whom rests the burden of proof.
6. No advertising by a dentist may contain representations or other information contrary to the provisions of North Dakota Century Code section 43-28-18 or North Dakota Administrative Code title 20.

**History:** Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; January 1, 2015.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-06

**20-02-01-03. Nitrous oxide.** A duly licensed dentist may use nitrous oxide for treating patients only when the following conditions are met:

1. Documentation has been provided by the dentist to the board that verifies completion of fourteen hours of instruction or continuing professional education dealing specifically with the use of nitrous oxide. In the absence of documentation of classroom training, the dentist must provide proof acceptable to the board that demonstrates three years of practical experience in the use of nitrous oxide.
2. A dentist who induces a patient into a state of psychosedation or relative analgesia using nitrous oxide shall ensure that the patient will be continually and personally monitored by a dentist. A dentist may delegate the monitoring tasks to a licensed dental hygienist or a registered dental assistant utilizing ~~direct~~ indirect supervision only after the patient has been stabilized at the desired level of conscious sedation or relative analgesia by the action of the dentist. The licensed dental hygienist or registered dental assistant who is assigned the monitoring task shall remain in the treatment room with the patient

at all times. A dental hygienist or a dental assistant may not initiate the administration of nitrous oxide to a patient. A dental hygienist or a registered dental assistant may terminate or reduce the amount of nitrous oxide previously administered by the dentist.

3. The dentist must provide and document training for the dental hygienist or registered dental assistant in the proper and safe operation of the analgesia machine being used prior to the registered dental hygienist or registered dental assistant monitoring the patient. Training shall include emergency procedures to be employed if required.

**History:** Effective February 1, 1992; amended effective May 1, 1996; April 1, 2000; October 1, 2007; January 1, 2011; January 1, 2015.

**General Authority:** NDCC 43-20-10, 43-28-06

**Law Implemented:** NDCC 43-20-03, 43-20-10, 43-20-12, 43-20-13, 43-28-06

**20-02-01-03.1. Additional requirements for licensure by examination.**

The board may grant a license to practice dentistry to an applicant who has met the requirements of North Dakota Century Code section 43-28-10.1 and all the following requirements:

1. The applicant has passed the examination administered by the joint commission on national dental examiners or the national dental examining board of Canada within five years of application.
2. The applicant has passed, within five years of application, a clinical competency examination. Required component shall include a patient-based periodontal component, a patient-based restorative component, an endodontic component, administered by one or more of the following:
  - a. Central regional dental testing service.
  - b. Council of interstate testing agencies.
  - c. ~~Northeast regional examining board of dental examiners, except after December 31, 2009, the examination approved by the American board of dental examiners.~~
  - d. ~~Southern regional testing agency, except the applicant must pass the periodontal part of an examination administered by another approved regional dental testing service.~~
  - e. Western regional examining board.
3. The applicant has successfully completed a cardiopulmonary resuscitation course within two years of application.

4. The applicant has the physical health and visual acuity to enable the applicant to meet the minimum standards of professional competence.

**History:** Effective January 1, 2011; amended effective January 1, 2015.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-10.1

**20-02-01-03.3. Additional requirements for applications.** Applications must be completed within six months of filing. The board may require an interview with the applicant. In addition to the application requirements of North Dakota Century Code sections 43-28-11 and 43-28-17, the board may require an application to include:

1. Proof of identity, including any name change.
2. An official transcript sent by an accredited dental school directly to the board.
3. Evidence demonstrating the applicant passed the examination administered by the joint commission on national dental examinations within five years of application.
4. Evidence demonstrating the applicant passed a clinical competency examination, approved by the board, within five years of application.
- ~~5.~~ ~~An interview by the board.~~
- ~~6.~~ 5. Anything necessary for a criminal history record check pursuant to North Dakota Century Code section 43-28-11.2.
- ~~7.~~ 6. A certification, from the licensing board of every jurisdiction in which the applicant is licensed, that the applicant is licensed in good standing.
- ~~8.~~ 7. Certification that the applicant has completed a cardiopulmonary resuscitation course within two years of application.
- ~~9.~~ 8. Verification of physical health and visual acuity.
- ~~10.~~ 9. For applications for licensure by credential review, the law and rules stating the requirements for licensure, when the applicant was licensed, of the jurisdiction in which the applicant is licensed.
- ~~11.~~ 10. For applications for licensure by credential review and reinstatement from inactive status, proof of completion of thirty-two hours of continuing education in accordance with section 20-02-01-06 within two years of application.

~~42-~~ 11. Any information required by the application forms prescribed by the board.

**History:** Effective January 1, 2011; amended effective January 1, 2015.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-10.1, 43-28-11, 43-28-11.2, 43-28-15, 43-28-17

**20-02-01-04. Temporary license to practice dentistry.** The board may grant a nonrenewable temporary license to practice dentistry in the state of North Dakota for a period not to exceed one year. ~~The temporary license will be issued only for special purposes that are unique and cannot be satisfied by the normal means to licensure.~~ Between meetings of the board, the executive director of the board may review the temporary license application and grant a provisional license if all requirements are met.

1. A temporary license to practice dentistry in North Dakota may be granted to a dentist when the dentist:
  - a. Has applied to the board as prescribed in North Dakota Century Code section 43-28-11.
  - b. Has paid the nonrefundable application and license fee that may be prescribed by the board.
  - c. Holds an active dental license in another jurisdiction, has been a full-time student or resident of a dental program accredited by the American dental association's commission on dental accreditation within the last six months, or has held a North Dakota dental license within the previous five years.
  - d. Has provided a statement from the licensing authority of all the states in which the dentist is licensed that the dentist's license is unencumbered, unrestricted, and that the dentist's professional record is free of blemish for professional misconduct, substandard care, or violations of the state's practice act.
  - e. Has certified that no disciplinary actions are pending in other states or jurisdictions.
  - f. Has authorized the board to seek information concerning the dentist's professional and personal background and agrees to hold harmless those individuals who may provide such information to the board.
2. The board may apply such restrictions as it deems appropriate to limit the scope of the practice of dentistry under the authority of the temporary license.

3. The board may restrict the licensee to engage in dental practice, as may be limited above, only at certain and specifically defined practice locations.
4. The board may require the North Dakota jurisprudence examination.

**History:** Effective February 1, 1992; amended effective October 1, 2007; January 1, 2011; January 1, 2015.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-06

**20-02-01-04.2. Volunteer license to practice dentistry.** A patient who is seen by a dentist who holds a volunteer license to practice dentistry shall not be considered a patient of record of the volunteer dentist. The dentist is not obligated to treat the patient outside of the volunteer practice setting. ~~The board may grant a~~ Between meetings of the board, the executive director of the board may review the volunteer license application and grant a provisional license if all the requirements are met. A volunteer license to practice dentistry in North Dakota, renewable annually by application to the board, may be granted when the following conditions are met:

1. The applicant was formerly licensed and actively practicing in the state of North Dakota ~~and is in good standing with the board.~~ or another jurisdiction for at least three of the five years immediately preceding application, where the requirements are at least substantially equivalent to those of this state; or
  - a. The applicant is the resident of a board-approved speciality program; or
  - b. The board determines that the applicant is qualified and satisfies the criteria specified under North Dakota Century Code section 43-28-10.1.
2. The applicant agrees to provide primary health services without remuneration in a board-approved setting.
3. The applicant holds a current cardiopulmonary resuscitation course certification.
4. The applicant has completed continuing education requirements of the board.
5. The applicant has made application for a volunteer dental license in a manner prescribed by the board.
6. ~~The board may collect from the applicant has paid~~ The board may collect from the applicant the nonrefundable application and license fee prescribed by the board.

7. The board may apply such restrictions as it deems appropriate to limit the scope of the practice of dentistry under the authority of the volunteer license.

**History:** Effective April 1, 2000; amended effective January 1, 2011; January 1, 2015.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-06

**20-02-01-05. Permit for anesthesia use.**

1. The rules in this chapter are adopted for the purpose of defining standards for the administration of anesthesia by dentists. The standards specified in this chapter shall apply equally to general anesthesia, deep sedation, moderate (conscious) sedation, or a combination of any of these with inhalation, but do not apply to sedation administered through inhalation alone. A dentist licensed under North Dakota Century Code chapter 43-28 and practicing in North Dakota may not use any form of sedation if the intent is beyond anxiolysis on any patient unless such dentist has a permit, currently in effect, issued by the board, ~~initially for a period of twelve months~~ and renewable biennially thereafter, authorizing the use of such general anesthesia, deep sedation, moderate (conscious) sedation, or minimal sedation when used in combination with inhalation.
2. An applicant may not be issued a permit initially as required in subsection 1 unless:
  - a. The board of dental examiners approves the applicant's facility and any other facility, clinic, or mobile dental clinic where anesthesia services are provided after an inspection conducted by an individual or individuals designated by the dental examiners;
  - b. The board of dental examiners is satisfied that the applicant is in compliance with the American dental association's most recent policy statement: the use of sedation and general anesthesia by dentists;
  - c. The initial application includes payment of a fee in the amount determined by the dental examiners; and
  - d. If the application appears to be in order, the board may issue a temporary permit prior to the site evaluation. The temporary permit may be revoked if the applicant fails the site inspection or if the applicant fails to cooperate with the timely scheduling of the site inspection.
3. The board of dental examiners may renew such permit biennially, provided:



- a. Requirements of the permit application have been met;
  - b. Application for renewal and renewal fee is received by the dental examiners before the date of expiration of such permit. If the renewal application and renewal fee have not been received by the expiration of the permit, late fees as determined by the board shall apply; and
  - c. An onsite evaluation of the dentist's facility may be conducted by an individual designated by the board of dental examiners, and the board of dental examiners must approve the results of each such evaluation. Each facility where anesthesia is administered must be evaluated.
4. The board shall reevaluate the credentials, facilities, equipment, personnel, and procedures of a permitholder five years following a successful initial application.

**History:** Effective October 1, 1993; amended effective May 1, 1996; June 1, 2002; July 1, 2004; April 1, 2006; October 1, 2007; January 1, 2011; January 1, 2015.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-06

**20-02-01-06. Continuing dental education for dentists.** Each dentist shall provide evidence on forms supplied by the board that the dentist has attended or participated in continuing dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.
2. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.
3. The minimum number of hours required within a two-year cycle for dentists is thirty-two. Of these hours, a dentist may earn no more than sixteen hours from publications and online education. The continuing education must include:
  - a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.
  - b. Two hours of infection control.
  - c. A cardiopulmonary resuscitation course.

- d. For anesthesia permitholders, four hours related to sedation or anesthesia.
4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement.
5. All dentists must hold a current cardiopulmonary resuscitation certificate. Anesthesia permitholders are required to maintain current advanced cardiac life support certification or pediatric advanced life support as specified by permit.
6. The board may audit the continuing education credits of a dentist. Each licensee shall maintain certificates or records of continuing education activities from the previous renewal cycle. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at, or participation in the continuing education activities listed on the licensee's continuing education form. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the license.

**History:** Effective October 1, 1993; amended effective May 1, 1996; August 1, 1998; June 1, 2002; April 1, 2006; October 1, 2007; January 1, 2011; January 1, 2015.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-06, 43-28-16.2

**20-02-01-08. Discontinuance of practice - Retirement - Discontinuance of treatment.** These rules are adopted for the purpose of avoiding practice abandonment. A licensed dentist shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Upon request of the patient or patient's legal guardian, the dentist shall furnish the dental records or copies of the records, including dental radiographs or copies of the radiographs. The dentist may charge a nominal fee for duplication of records as provided by North Dakota Century Code section 23-12-14, but may not refuse to transfer records for nonpayment of any fees.

1. A licensee, upon retirement, or upon discontinuation of the practice of dentistry, or upon moving from a community, shall notify all active patients in writing and by publication once a week for three consecutive weeks in a newspaper of general circulation in the community that the licensee intends to discontinue the practice of dentistry. The licensee shall make reasonable arrangements with active patients for the transfer of patient records, or copies thereof, to the succeeding licensee. In the event of a transfer of patient records to another licensee assuming the practice, written notice must be furnished to all patients as hereinbefore specified. "Active patient" is defined as a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the two-year period prior to the discontinuation of the practice of dentistry

by the licensee. In the event of a nontransfer of records, a licensee shall have the ongoing obligation of not less than two years to afford the licensee's prior patients access to those records not previously provided to the patient.

2. In the event of termination of a dentist-patient relationship by a licensee, notice of the termination must be provided to the patient. A dentist-patient relationship exists if a dentist has provided treatment to a patient on at least one occasion within the preceding year. The dentist who is the owner or custodian of the patient's dental records shall mail notice of the termination of the dentist's relationship to the patient, which shall provide the following:
  - a. The date that the termination becomes effective, and the date on which the dentist and patient relationship may resume, if applicable;
  - b. A location at which the patient may receive emergency dental care for at least thirty days following the termination of the dentist and patient relationship;
  - c. A statement of further dental treatment required, if any; and
  - d. ~~A means for the patient to obtain a copy of the patient's dental records.~~ The dentist shall respond to a written request to examine or copy a patient's record within ten working days after receipt. A dentist shall comply with North Dakota Century Code section 23-12-14 for all patient record requests.
3. If a licensee dies or becomes unable to practice dentistry due to disability, for the purpose of selling or otherwise disposing of the deceased or disabled licensee's dental practice, a person who is not licensed to practice dentistry but who is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist may contract with a dentist to manage the dental practice for a period not to exceed twenty-four months.
4. If a dentist agrees to provide dental care without remuneration to underserved patients in the absence of a public health setting, the patient may not be considered a patient of record of the dentist providing the donated dental service.

**History:** Effective April 1, 2006; amended effective January 1, 2015.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-06

**20-02-01-11. Permit for the use of dermal fillers and botulinum toxin for dental use.**

1. The rules in this chapter are adopted for the purpose of defining standards for the administration of dermal fillers and botulinum toxin by a dentist if the use is limited to the practice of dentistry as defined in North Dakota Century Code 43-28-01(7). Notwithstanding a dentist who specializes in oral and maxillofacial surgery, the board may issue a permit to a dentist who applies on forms prescribed by the board and pays the fee as required by section 20-05-01-01(1) to administer botulinum toxin or dermal fillers for the purpose of functional, therapeutic, and aesthetic dental treatment purposes under the following conditions:

a. The dentist provides evidence that demonstrates:

(1) The applicant has completed a course and received satisfactory training in a residency or other educational program accredited by the commission on dental accreditation of the American dental association; or

(2) The applicant has successfully completed a board-approved continuing education course of instruction within the previous three months of application which includes neurophysiology, including facial tissues, parasympathetic, sympathetic, and peripheral nervous systems relative to the peri-oral tissue, and facial architecture, and:

(a) Patient assessment and consultation for botox and dermal fillers;

(b) Indications and contraindications for techniques;

(c) Proper preparation and delivery techniques for desired outcomes;

(d) Enhancing and finishing esthetic dentistry cases with dermal fillers;

(e) Botulinum neurotoxin treatment of temporomandibular joint syndrome and bruxism;

(f) Knowledge of adverse reactions and management and treatment of possible complications;

(g) Patient evaluation for best esthetic and therapeutic outcomes;

(h) Integrating botulinum neurotoxin and dermal filler therapy into dental therapeutic and esthetic treatment plans; and

- (i) Live patient hands-on training, including diagnosis, treatment planning, and proper dosing and delivery of botox and dermal fillers.

**History:** Effective January 1, 2015.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-02

## CHAPTER 20-03-01 DUTIES

Section	
20-03-01-01	Duties
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<u>20-03-01-01.2</u>	<u>Registered Dental Assistant in a Public Health Setting</u>
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20-03-01-05	Registration of Registered and Qualified Dental Assistants
<u>20-03-01-05.1</u>	<u>Additional Expanded Duties of Registered Dental Assistants</u>
20-03-01-06	Continuing Dental Education for Qualified and Registered Dental Assistants

**20-03-01-01. Duties.** A dental assistant may perform the duties listed in subsections 1 through 6 5 under direct, indirect, or general supervision of a dentist. ~~A qualified dental assistant may perform duties set forth in subsections 1 through 7 under direct supervision of a dentist. A registered dental assistant may perform the duties set forth in subsections 1 through 24 under indirect supervision of a dentist. A registered dental assistant may perform duties set forth in subsections 25 through 31 under direct supervision of a dentist. A registered dental assistant may perform duties set forth in subsections 32 and 33 under general supervision of a dentist.~~ as follows:

- ~~1. Take and record pulse, blood pressure, and temperature.~~
- ~~2. Take and record preliminary dental and medical history for the interpretation by the dentist.~~
- ~~3. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.~~
- ~~4. Receive removable dental prosthesis for cleaning or repair.~~
- ~~5. Take impressions for study casts.~~
- ~~6. Hold impression trays in the mouth (e.g., reversible hydrocolloids, rubber base).~~
- ~~7. Take dental radiographs.~~
- ~~8. Apply anticariogenic agents topically.~~
- ~~9. Apply desensitizing solutions to the external surfaces of the teeth.~~
- ~~10. Dry root canal with paper points.~~

- ~~11. Place and remove rubber dams.~~
- ~~12. Take occlusal bite registration for study casts.~~
- ~~13. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.~~
- ~~14. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments only.~~
- ~~15. Perform nonsurgical clinical and laboratory oral diagnosis tests, including pulp testing, for interpretation by the dentist.~~
- ~~16. Apply pit and fissure sealants if the registered dental assistant has provided documentation of a board-approved sealant course. Adjust sealants with slow-speed handpiece.~~
- ~~17. Polish the coronal surfaces of the teeth with a rubber cup or brush only after necessary scaling by a hygienist or dentist.~~
- ~~18. Polish restorations.~~
- ~~19. Place and remove periodontal dressings, dry socket medications, and packing.~~
- ~~20. Remove sutures.~~
- ~~21. Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.~~
- ~~22. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.~~
- ~~23. Preselect and prefit orthodontic bands.~~
- ~~24. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.~~
- ~~25. Place and remove arch wires or appliances that have been activated by a dentist.~~
- ~~26. Acid-etch enamel surfaces prior to direct bonding of orthodontic brackets or composite restorations.~~
- ~~27. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.~~

- ~~28. Take face bow transfers.~~
- ~~29. Place and remove matrix bands and wedges.~~
- ~~30. Adjust permanent crowns outside of the mouth.~~
- ~~31. Orally transmit a prescription that has been authorized by the supervising dentist.~~
- ~~32. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, or onlay or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.~~
- ~~33. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.~~

1. A dental assistant who is not registered with the board employed by a dentist may perform the following duties under direct supervision:

- a. Take and record pulse, blood pressure, and temperature.
- b. Take and record preliminary dental and medical history for the interpretation by the dentist.
- c. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.
- d. Receive removable dental prosthesis for cleaning or repair.
- e. Take impressions for study casts.
- f. Hold impression trays in the mouth (e.g., reversible hydrocolloids, rubber base).

2. A qualified dental assistant may perform the duties set forth in subsection 1 and take dental radiographs under the direct supervision of a dentist.

3. A registered dental assistant may perform the duties set forth in subsection 2 and the following duties under the direct supervision of a dentist:

- a. Place and remove arch wires or appliances that have been activated by a dentist.
- b. Acid etch enamel surfaces prior to direct bonding of orthodontic brackets or composite restorations.



- c. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.
  - d. Take face bow transfers.
  - e. Place and remove matrix bands and wedges.
  - f. Adjust permanent crowns outside of the mouth.
  - g. Orally transmit a prescription that has been authorized by the supervising dentist.
  - h. Administer emergency medications to a patient in order to assist the dentist in an emergency.
4. A registered dental assistant may perform the following duties under the direct or indirect supervision of a dentist:
- a. Apply anticariogenic agents topically.
  - b. Apply desensitizing solutions to the external surfaces of the teeth.
  - c. Dry root canal with paper points.
  - d. Place and remove rubber dams.
  - e. Take occlusal bite registration for study casts.
  - f. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.
  - g. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments only.
  - h. Perform nonsurgical clinical and laboratory diagnosis tests, including pulp testing, for interpretation by the dentist.
  - i. Apply pit and fissure sealants if the registered dental assistant has provided documentation of a board-approved sealant course. Adjust sealants with slow-speed handpiece.
  - j. Polish the coronal surfaces of the teeth with a rubber cup or brush.
  - k. Polish restorations with a slow-speed handpiece.
  - l. Place and remove periodontal dressings, dry socket medications, and packing.

- m. Monitor a patient who has been inducted by a dentist into nitrous oxide relative analgesia.
  - n. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.
  - o. Preselect and prefit orthodontic bands.
  - p. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.
5. A registered dental assistant may perform the following duties under the direct, indirect, or general supervision of a dentist:
- a. Take and record pulse, blood pressure, and temperature.
  - b. Take and record preliminary dental and medical history for the interpretation by the dentist.
  - c. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.
  - d. Receive removable dental prosthesis for cleaning or repair.
  - e. Take impressions or occlusal bite registrations for study casts.
  - f. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, or onlay or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.
  - g. Remove sutures.
  - h. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.
  - i. Provide oral hygiene education and instruction.
  - j. Provide an oral assessment for interpretation by the dentist.

k. Repack dry socket medication and packing for palliative treatment.

**History:** Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; January 1, 2011; January 1, 2015.

**General Authority:** NDCC 43-20-10

**Law Implemented:** NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

**20-03-01-01.1. Expanded duties of registered dental assistants. A registered dental assistant shall apply for a permit to perform the following duties:**

1. A registered dental assistant under the direct supervision of a dentist may perform the following restorative functions:
  - a. Place, carve, and adjust class I and class V supragingival amalgam or glass ionomer restorations with hand instruments or a slow-speed handpiece;
  - b. Adapt and cement stainless steel crowns; and
  - c. Place, contour, and adjust class I and class V supragingival composite restorations where the margins are entirely within the enamel with hand instruments or a slow-speed handpiece.
2. A registered dental assistant authorized by permit and under the direct supervision of a dentist may perform supragingival scaling duties to a patient that is at least twelve years of age or less.
3. A registered dental assistant authorized by permit and under the contiguous supervision of an oral and maxillofacial surgeon may provide anesthesia duties as follows:
  - a. Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation or general anesthesia; and
  - b. Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open.
4. A registered dental assistance authorized by permit and under the direct visual supervision of an oral and maxillofacial surgeon shall provide anesthesia duties as follows:
  - a. Draw up and prepare medications;
  - b. Follow instructions to deliver medication into an intravenous line upon verbal command;

- c. Adjust the rate of intravenous fluids infusion beyond a keep-open rate;
- d. Adjust an electronic device to provide medications, such as an infusion pump.

**History:** Effective January 1, 2015.

**General Authority:** NDCC 43-20-10

**Law Implemented:** NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

**20-03-01-01.2. Registered dental assistant in a public health setting.**

For the purposes of this section a public health setting shall include schools, nursing homes and long-term care facilities, medical facilities, mobile dental health programs, head start programs, and any other facilities or programs where Medicaid-eligible and other vulnerable populations are targeted. A registered dental assistant under the general supervision of a dentist and in a public health setting may perform the following duties:

1. Assist a dental hygienist who is performing services within the scope and supervision requirements as provided by chapter 20-04-01.
2. Take and record pulse, blood pressure, and temperature.
3. Take and record preliminary dental and medical history for the interpretation by the dentist.
4. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.
5. Receive removable dental prosthesis for cleaning or repair.
6. Take impressions for study casts.
7. Take occlusal bite registration for study casts.
8. Apply pit and fissure sealants if the registered dental assistant has provided documentation of a board-approved sealant course. Adjust sealants with a slow-speed handpiece.
9. Polish the coronal surfaces of the teeth with a rubber cup or brush.
10. Polish restorations with a slow-speed handpiece.
11. Place and remove periodontal dressings, dry socket medications, and packing.
12. Remove sutures.

13. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, or onlay or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.
14. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.
15. Provide oral hygiene education and instruction.
16. Provide an oral assessment for interpretation by the dentist.
17. Repack dry socket medication and packing for palliative treatment.

**History:** Effective January 1, 2015.

**General Authority:** NDCC 43-20-10

**Law Implemented:** NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

**20-03-01-02. Prohibited services.** A dental assistant, qualified dental assistant, or registered dental assistant may not perform the following services:

1. Diagnosis and treatment planning.
2. Surgery on hard or soft tissue.
3. Administer ~~or titrate~~ local anesthetics, sedation or general anesthesia drugs or titrate local anesthetics, sedation or general anesthesia drugs without a board authorized permit.
4. Any irreversible dental procedure or procedures which require the professional judgment and skill of a licensed dentist.
- ~~5. Placing a final restoration.~~
6. ~~5. Contouring a final restoration, excluding~~ Adjust a crown which has not been cemented by a dentist.
- ~~7. 6. Activating~~ Activate any type of orthodontic appliance.
- ~~8. 7. Cementing or bonding~~ Cement or bond orthodontic bands or brackets that have not been previously placed by a dentist.
- ~~9. 8. Placing~~ Place bases or cavity liners.
- ~~10. 9. Sealing~~ Subgingival scaling, root planing, or gingival curettage.
- ~~11. 10. Measuring~~ Measure the gingival sulcus with a periodontal probe.

11. Use a high-speed handpiece inside the mouth.

**History:** Effective February 1, 1992; amended effective October 1, 1993; April 1, 2000; June 1, 2002; July 1, 2004; January 1, 2011; January 1, 2015.

**General Authority:** NDCC 43-20-10

**Law Implemented:** NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

**20-03-01-05.1. Additional expanded duties of registered dental assistants.** The board may grant a permit to a registered dental assistant for the following:

1. The board may issue or renew a permit authorizing a registered dental assistant to provide anesthesia assistance under the supervision of a dentist who specializes in oral and maxillofacial surgery, and meets the following requirements:
  - a. The applicant submits evidence on forms prescribed by the board that the applicant meets any of the following requirements:
    - (1) The applicant has completed a board-approved dental anesthesia assistant education and training course within one year of application and has proof of current certification status from a board-approved competency examination.
    - (2) The applicant has completed a board-approved dental anesthesia assistant education and training course and has proof of current certification status from a board-approved competency examination.
  - b. The applicant has successfully completed training in intravenous access or phlebotomy that includes experience starting and maintaining intravenous lines;
  - c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support; and
  - d. The applicant provides a copy of a valid North Dakota general anesthesia permit of the oral and maxillofacial surgeon where the registered dental assistant will be performing anesthesia assistant services.
2. The board may issue or renew a permit on forms prescribed by the board authorizing a registered dental assistant under the direct supervision of a dentist to provide restorative functions under the following conditions:
  - a. The applicant meets any of the following requirements:

- (1) The applicant has successfully completed a board-approved curriculum from a program accredited by the commission on dental accreditation of the American dental association or other board-approved course and successfully passed the western regional examining board's restorative examination or other equivalent examinations approved by the board within the last five years, and successfully completed the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination; or
  - (2) The applicant has successfully passed the western regional examining board's restorative examination or other board-approved examination over five years from the date of application and successfully completed the restorative function component of the dental assistant certification examination and provide evidence from another state or jurisdiction where the applicant legally is or was authorized to perform restorative functions and certification from the supervising dentist of successful completion of at least twenty-five restorative procedures within the immediate five years from the date of application.
- b. A registered dental assistant may perform the placement and finishing of direct alloy or direct composite restorations, under the direct supervision of a licensed dentist, after the supervising dentist has prepared the dentition for restoration.
- c. The restorative functions shall only be performed after the patient has given informed consent for the placement of the restoration by a restorative functions dental assistant.
- d. Before the patient is released, the final restorations shall be checked and documented by the supervising dentist.
3. The board may issue or renew a permit on forms prescribed by the board authorizing a registered dental assistant under the direct supervision of a dentist to provide supragingival scaling if the applicant meets any of the following requirements:
  - a. The applicant has successfully completed a board-approved supragingival didactic and clinical training course and successfully passed an examination approved by the board within one year of application. The board may require a competency examination.
  - b. The applicant provides verification of successfully completed a supragingival scaling didactic and clinical training approved by the board and provides verification of continuous use in another

jurisdiction during the past five years. The board may require a competency examination. Verification may consist of:

- (1) A letter from the program with the school seal affixed. Photocopies will not be accepted.
- (2) A notarized copy of the certificate of completion from the board-approved course.
- (3) A notarized letter stating that the registered dental assistant has performed supragingival scaling within the last five years.
- (4) A notarized copy of the dental assisting program transcript with the supragingival course recorded.

**History:** Effective January 1, 2015.

**General Authority:** NDCC 43-20-10

**Law Implemented:** NDCC 43-20-13.2

**20-03-01-06. Continuing dental education for qualified and registered dental assistants.** Each qualified or registered dental assistant shall provide evidence on forms supplied by the board that the qualified or registered dental assistant has attended or participated in continuing dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.
2. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.
3. The minimum number of hours required within a two-year cycle is sixteen. Of these hours, a qualified or registered dental assistant may earn no more than eight hours from publications and online education. The continuing education must include:
  - a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.
  - b. Two hours of infection control.
  - c. A cardiopulmonary resuscitation course.
  - d. For registered dental anesthesia assistant permitholders, two hours related to sedation or anesthesia.



- e. For registered dental restorative assistant permitholders, two hours related to restorative dentistry.
4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement.
  5. All qualified or registered dental assistants must hold a current cardiopulmonary resuscitation certificate.
  6. The board may audit continuing education credits of a registered dental assistant. Proof of continuing education shall be maintained from the previous renewal cycle. Upon receiving notice of an audit from the board, a registered dental assistant shall provide satisfactory documentation of attendance at, or participation in, the continuing education activities listed on the licensee's continuing education form. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the registration.

**History:** Effective January 1, 2011; amended effective January 1, 2015.

**General Authority:** NDCC 43-20-10

**Law Implemented:** NDCC 43-20-13.1

## CHAPTER 20-04-01 DUTIES

Section	
20-04-01-01	Duties
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20-04-01-03	Duties of Dental Hygienists
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20-04-01-04	Additional Requirements for Licensure by Examination
<u>20-04-01-04.1</u>	<u>Clinical Competency Examination Retakes</u>
20-04-01-05	Additional Requirements for Licensure by Credential Review
20-04-01-06	Additional Requirements for Applications
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20-04-01-08	Continuing Dental Education for Dental Hygienists

**20-04-01-01. Duties.** A dental hygienist may perform the following services under the general, direct, or indirect supervision of a dentist:

1. Complete prophylaxis to include removal of accumulated matter, deposits, accretions, or stains from the natural and restored surfaces of exposed teeth. The dental hygienist may also do root planing and soft tissue curettage upon direct order of the dentist.
2. Polish and smooth existing restorations with a slow-speed handpiece.
3. Apply topical applications of drugs to the surface tissues of the mouth and to exposed surfaces of the teeth, including anticariogenic agents and desensitizing solutions.
4. Take impressions for study casts.
5. Take and record preliminary medical and dental histories for the interpretation by the dentist.
6. Take and record pulse, blood pressure, and temperature.
7. Provide oral hygiene treatment planning after an oral assessment or dentist's diagnosis.
8. Take dental radiographs.
9. Apply therapeutic agents subgingivally for the treatment of periodontal disease.
10. Hold impression trays in the mouth after placement by a dentist (e.g., reversible hydrocolloids, rubber base, etc.).
11. Receive removable dental prosthesis for cleaning and repair.

12. Dry root canal with paper points.
13. Place and remove rubber dams.
14. Place and remove matrix bands or wedges.
15. Take occlusal bite registration for study casts.
16. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.
17. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, onlay, or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.
18. Adjust permanent crowns outside of the mouth.
19. Perform nonsurgical clinical and laboratory oral diagnostic tests for interpretation by the dentist.
20. Apply pit and fissure sealants. Adjust sealants with slow-speed handpiece.
21. Place and remove periodontal dressings, dry socket medications, and packing.
22. Remove sutures.
23. Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.
24. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.
25. Preselect and prefit orthodontic bands.
26. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.
27. Place and remove arch wires or appliances that have been activated by a dentist.
28. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.
29. Acid-etch enamel surfaces prior to pit and fissure sealants, direct bonding of orthodontic brackets, or composite restorations.

30. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a dentist.
31. Take face bow transfers.
32. Orally transmit a prescription that has been authorized by the supervising dentist.
33. Repack dry socket medication and packing for palliative treatment.
34. Administer emergency medications to a patient in order to assist the dentist.
35. A dental hygienist authorized by the board under contiguous supervision of an oral and maxillofacial surgeon may:
  - a. Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation or general anesthesia; and
  - b. Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open.
36. A dental hygienist authorized by the board under direct visual supervision of an oral and maxillofacial surgeon may:
  - a. Draw up and prepare medications;
  - b. Follow instructions to deliver medication into an intravenous line upon verbal command;
  - c. Adjust the rate of intravenous fluids infusion beyond a keep-open rate; and
  - d. Adjust an electronic device to provide medications, such as an infusion pump.
37. A dental hygienist under the direct supervision of a dentist may:
  - a. Place, carve, and adjust class I and class V supragingival amalgam or glass ionomer restorations with hand instruments or a slow-speed handpiece;
  - b. Adapt and cement stainless steel crowns; and

c. Place, contour, and adjust class I and class V supragingival composite restorations where the margins are entirely within the enamel with hand instruments or a slow-speed handpiece.

**History:** Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; July 1, 2004; April 1, 2006; January 1, 2011; January 1, 2015.

**General Authority:** NDCC 43-20-10

**Law Implemented:** NDCC 43-20-03, 43-20-11, 43-20-12

**20-04-01-02. Prohibited services.** A dental hygienist may not perform the following services:

1. Diagnosis and treatment planning.
2. Surgery on hard or soft tissue.
3. Administer ~~or titrate~~ anesthetics, except topical and local anesthetic, as permitted under sections 20-04-01-01 and 20-04-01-03, or titrate local anesthetics, sedation or general anesthesia drugs without a board authorized permit.
4. Any irreversible dental procedure or procedures which require the professional judgment and skill of a dentist.
5. ~~Place a final restoration.~~
6. 5. ~~Contour a final restoration, excluding Adjust~~ a crown which has not been cemented by a dentist.
7. 6. ~~Activating~~ Activate any type of orthodontic appliance.
8. 7. ~~Cementing or bonding~~ Cement or bond orthodontic bands or brackets that have not been previously placed by a dentist.
9. 8. ~~Placing~~ Place bases or cavity liners.
9. Use a high-speed handpiece inside the mouth.

**History:** Effective February 1, 1992; amended effective October 1, 1993; July 1, 2004; January 1, 2011; January 1, 2015.

**General Authority:** NDCC 43-20-10

**Law Implemented:** NDCC 43-20-03; 43-20-11, 43-20-12, 43-20-12.3

**20-04-01-03.1. Duties of the dental hygienist requiring a permit.** The board may issue or renew a permit to a dental hygienist for the following:

1. The board may issue or renew a permit authorizing a dental hygienist to provide anesthesia assistance under the supervision of a dentist who

specializes in oral and maxillofacial surgery, and meets the following requirements:

a. The applicant submits evidence on forms prescribed by the board that the applicant meets any of the following requirements:

(1) The applicant has completed a board-approved dental anesthesia assistant education and training course within one year of application and has proof of current certification status from a board-approved competency examination.

(2) The applicant has completed a board-approved dental anesthesia assistant education and training course and has proof of current certification status from a board-approved competency examination.

b. The applicant has successfully completed training in intravenous access or phlebotomy that includes experience starting and maintaining intravenous lines:

c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support; and

d. The applicant provides a copy of a valid North Dakota general anesthesia permit of the oral and maxillofacial surgeon where the registered dental hygienist will be performing anesthesia assistant services.

2. The board may issue or renew a permit on forms prescribed by the board to authorize a dental hygienist under the direct supervision of a dentist to provide restorative functions under the following conditions:

a. The applicant meets any of the following requirements:

(1) The applicant successfully completes a board-approved curriculum from a program accredited by the commission on dental accreditation of the American dental association or other board-approved course and successfully passed the western regional examining board's restorative examination or other equivalent examinations approved by the board within the last five years, and was successfully completed the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination; or

(2) Successfully passed the western regional examining board's restorative examination or other board-approved examination over five years from the date of application and provides

evidence from another state or jurisdiction where the applicant legally is or was authorized to perform restorative functions and certification from the supervising dentist of successful completion of at least twenty-five restorative procedures within the previous five years from the date of application.

- b. A dental hygienist may perform the placement and finishing of direct alloy or direct composite restorations, under the direct supervision of a licensed dentist, after the supervising dentist has prepared the dentition for restoration.
- c. The restorative functions shall only be performed after the patient has given informed consent for the placement of the restoration by a restorative functions dental hygienist.
- d. Before the patient is released, the final restorations shall be checked and documented by the supervising dentist.

**History:** Effective January 1, 2015.

**General Authority:** NDCC 43-20-10

**Law Implemented:** NDCC 43-20-03

**20-04-01-04.1. Clinical competency examination retakes.** A dental hygiene applicant may take a clinical examination three times before remedial training is required. After failing the examination for a third time, and prior to the fourth attempt of the examination, an applicant shall:

- 1. Submit to the board a detailed plan for remedial training by an accredited dental hygiene school. The board must approve the proposed remedial training.
- 2. Submit proof to the board of passing the remedial training within twenty-four months of its approval by the board. The board may grant or deny a fourth attempt of the clinical examination. A fourth attempt must occur within twelve months of the date of the board's decision. If an applicant fails any part of the examination after remedial training, the board must approve additional retakes.

**History:** Effective January 1, 2015.

**General Authority:** NDCC 43-20-10

**Law Implemented:** NDCC 43-20-01.2

**20-04-01-06. Additional requirements for applications.** Applications must be completed within twelve months of filing. The board may require an interview with the applicant. In addition to the application requirements of North Dakota Century Code sections 43-20-01.2, 43-20-01.3, and 43-20-06, the board may require an application to include:

1. Proof of identity, including any name change.
2. An official transcript sent by an accredited dental school directly to the board.
3. Evidence demonstrating the applicant passed the examination administered by the joint commission on national dental examinations within two years of application.
4. Evidence demonstrating the applicant passed a clinical competency examination, approved by the board, within two years of application.
- ~~5.~~ ~~An interview by the board.~~
- ~~6.~~ 5. A certification, from the licensing board of every jurisdiction in which the applicant is licensed, that the applicant is licensed in good standing.
- ~~7.~~ 6. Certification that the applicant has completed a cardiopulmonary resuscitation course within two years of application.
- ~~8.~~ 7. Verification of physical health and visual acuity.
- ~~9.~~ 8. For applications for licensure by credential review, the law and rules stating the requirements for licensure, when the applicant was licensed, of the jurisdiction in which the applicant is licensed.
- ~~10.~~ 9. For applications for licensure by credential review and reinstatement from inactive status, proof of completion of sixteen hours of continuing education in accordance with section 20-04-01-08 within two years of application.
- ~~11.~~ 10. Any information required by the application forms prescribed by the board.

**History:** Effective January 1, 2011; January 1, 2015.

**General Authority:** NDCC 43-20-10

**Law Implemented:** NDCC 43-20-01.2, 43-20-01.3, 43-20-06

**20-04-01-08. Continuing dental education for dental hygienists.** Each dental hygienist shall provide evidence on forms supplied by the board that the dental hygienist has attended or participated in continuing dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.
2. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in education. Subject matter



directly related to clinical dentistry will be accepted by the board without limit.

3. The minimum number of hours required within a two-year cycle is sixteen. Of these hours, a dental hygienist may earn no more than eight hours from publications and online education. The continuing education must include:
  - a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.
  - b. Two hours of infection control.
  - c. A cardiopulmonary resuscitation course.
  - d. For registered dental anesthesia hygienist permitholders, two hours related to sedation or anesthesia.
  - e. For registered dental restorative hygienist permitholders, two hours related to restorative dentistry.
4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement.
5. All dental hygienists must hold a current cardiopulmonary resuscitation certificate.

**History:** Effective January 1, 2011; amended effective January 1, 2015.

**General Authority:** NDCC 43-20-10

**Law Implemented:** NDCC 43-20-01.4

## CHAPTER 20-05-01

**20-05-01-01. Fees.** The board shall charge the following nonrefundable fees:

1. For dentists:

a.	License by examination application fee	\$440.00
b.	License by credential review application fee	\$1,200.00
c.	Renewal fee	\$400.00
d.	Late fee	\$400.00
e.	Temporary license application and license fee	\$250.00
f.	Volunteer license application and license fee	\$65.00
g.	Inactive status application fee	\$35.00
h.	Inactive status renewal fee	\$35.00
i.	Inactive status reinstatement fee	\$400.00
j.	<u>Dermal fillers and botulinum toxin permit</u>	<u>\$200.00</u>

2. For dental hygienists:

a.	License by examination application fee	\$200.00
b.	License by credential review application fee	\$450.00
c.	Renewal fee	\$150.00
d.	Late fee	\$150.00
e.	Inactive status application fee	\$35.00
f.	Inactive status renewal fee	\$35.00
g.	Inactive status reinstatement fee	\$150.00

3. For registered and qualified dental assistants:

a.	Application fee	\$130.00
b.	Renewal fee	\$100.00
c.	Late fee	\$100.00

4. For anesthesia permits:

a.	Application fee	\$200.00
b.	Inspection fee	actual cost
c.	Renewal fee	\$200.00

d.	Late fee	\$200.00
5.	For a duplicate license, registration, or permit	\$45.00

**History:** Effective May 1, 1992; amended effective October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; January 1, 2008; January 1, 2011; January 1, 2015.

**General Authority:** NDCC 43-20-10, 43-28-06

**Law Implemented:** NDCC 43-20-01.2, 43-20-01.3, 43-20-01.4, 43-20-06, 43-20-13.1, 43-20-13.2, 43-28-11, 43-28-16.2, 43-28-17, 43-28-24, 43-28-27



**TITLE 25**  
**STATE BOARD OF FUNERAL SERVICE**



## JANUARY 2015

### CHAPTER 25-01-01

#### 25-01-01-01. Organization of state board of funeral service.

1. **History.** The 1905 legislative assembly enacted legislation providing for a state board of embalmers and regulating the licensure and practice of embalming. The 1963 legislative assembly enacted legislation empowering the board of embalmers to license and regulate funeral establishments in this state. The 1989 legislative assembly changed the name of the board to the state board of funeral service and placed crematories under the board's jurisdiction. These enactments are codified as North Dakota Century Code chapter 43-10. It is the responsibility of the board to uphold high ethical and professional standards in the practice of funeral service and in the conduct of business of funeral establishments and crematoriums in this state.
2. **Board membership.** The board consists of the state health officer and three funeral practitioners appointed by the governor. The appointed members of the board serve four-year terms, with not more than one term expiring on June thirtieth of each year.
3. **Officers of the board and executive secretary.** The members of the board elect from board membership a president, a secretary, and a treasurer. The board may hire an executive secretary, who may be an officer of the board, to transact the business of the board. The board may also hire any other individual deemed necessary for special work relating to the business of the board.
4. **Inquiries.** Inquiries regarding the board may be addressed to the executive secretary and treasurer:

Mr. ~~Rodger E. Haugen~~ Dale G. Niewoehner  
Executive Secretary ~~and Treasurer~~  
State Board of Funeral Service  
P.O. Box ~~633~~ 161  
~~Devils Lake~~ Rugby, North Dakota ~~58301~~ 58368-0161  
[www.nd.gov/funeral](http://www.nd.gov/funeral)

**History:** Amended effective January 1, 1982; July 1, 1983; October 1, 1989; May 1, 1993; May 1, 1998; January 1, 2015.

**General Authority:** NDCC ~~28-32-02.1~~ 28-32-02

**Law Implemented:** NDCC ~~28-32-02.1~~ 28-32-02



## CHAPTER 25-02-01

**25-02-01-01. Definitions.** The terms in this title have the same meaning as in North Dakota Century Code section 43-10-01 unless the context or subject matter otherwise requires, except:

1. "Assistant" means a nonprofessional providing assistance to a funeral practitioner under the direct and immediate supervision of the funeral director. Assistance provided by an assistant may not require the exercise of professional judgment or training.
- ~~2.~~ ~~"Branch facility" means a facility which is affiliated with a funeral service establishment and is equipped for the preparation and embalming of dead human bodies.~~
- ~~3.~~ 2. "Funeral chapel" means a facility that is affiliated with a funeral service establishment and used for mourning or funeral ceremony purposes but not preparation of a dead human body for final disposition.

**History:** Amended effective April 1, 1979; May 1, 1993; May 1, 1998; January 1, 2015.

**General Authority:** NDCC 43-10-05

**Law Implemented:** NDCC 43-10-05, 43-10-10, 43-10-10.1

**25-02-01-03. Preparation room equipment.** Every preparation room ~~shall~~ must be equipped with a sanitary embalming table, ~~and such table shall be provided~~ with running water. Every plumbing fixture, receptacle, and water supply tank ~~shall~~ must be provided with a proper air gap or ~~other acceptable~~ backflow device to prevent backflow into the water supply. All plumbing ~~shall~~ must comply with ~~North Dakota Administrative Code article 62-03, the State Plumbing Code 62-03.1.~~ Every embalming room must be equipped with an exhaust fan below tabletop height at the foot end of the table, a drench shower, and an eyewash station with the potential for running cold water only, continuously for fifteen minutes, in an unobstructed area.

Every funeral establishment, except a funeral chapel, must do all of the following:

1. Maintain a formaldehyde monitor report;
2. Post hazardous signs in compliance with applicable federal regulations;
3. Label storage area for chemicals or hazardous chemicals;
4. Keep a cover on any embalming machine;
5. Store and utilize a safety shield or mask, protective clothing, and rubber protective gloves;
6. Maintain a splash tube on a functioning ~~hydroaspirator~~ aspirator; and

7. Maintain ~~material~~ safety data sheets, training records, and ~~Sharp's~~ sharps disposal container.

**History:** Amended effective March 1, 1985; May 1, 1993; May 1, 1998; January 1, 2015.

**General Authority:** NDCC 43-10-05, 43-10-06

**Law Implemented:** NDCC 43-10-05, 43-10-06, 43-10-22, 43-10-23

**25-02-01-08. Privacy.** The ~~care and~~ preparation of all bodies of persons dead from any cause shall be entirely private, and no one shall be allowed in the embalming room except funeral practitioners, intern embalmers, a student enrolled in a premortuary of science program, and ~~assistants until the body is fully prepared and dressed~~ medical or law enforcement personnel during embalming, except by permission of the immediate family.

**History:** Amended effective May 1, 1998; January 1, 2015.

**General Authority:** NDCC 43-10-05, 43-10-06

**Law Implemented:** NDCC 43-10-05, 43-10-06

**CHAPTER 25-02-02  
LICENSURE OF FUNERAL PRACTITIONERS**

Section	
25-02-02-01	Application for License
25-02-02-02	Qualifications for Licensure
25-02-02-03	Examination for Licensure
25-02-02-04	License Renewal, Late Renewal [ <del>Repealed</del> ]
<u>25-02-02-04.1</u>	<u>License Renewals</u>
25-02-02-05	Licensure by Reciprocity
25-02-02-06	Intern Embalmer
25-02-02-06.1	Internship Requirements
25-02-02-07	Prohibited Acts [ <del>Repealed</del> ]
25-02-02-08	Exception from Licensure [ <del>Repealed</del> ]

**25-02-02-01. Application for license.** An application for license to practice funeral service shall be made on a form provided by the board. The application shall contain the person's full name, age, place of residence, recent photograph, and any other information required by the board. The application shall be accompanied by a fee of one hundred dollars ~~which shall entitle the applicant to examination of the state rules and laws, by~~ the required transcripts, and by affidavits of at least two reputable residents of the county in which the applicant resides or proposes to engage in the practice of funeral service to the effect that the applicant is of good moral character.

**History:** Amended effective March 1, 1985; May 1, 1993; May 1, 1998; April 1, 2005; January 1, 2015.

**General Authority:** NDCC 43-10-05

**Law Implemented:** NDCC 43-10-11, 43-10-13

**25-02-02-02. Qualifications for licensure.** To qualify for a license to practice funeral service, the applicant shall ~~comply with~~ meet all of the following requirements:

1. Be of good moral character.
2. Furnish evidence of successful completion of an accredited four-year high school course of study.
3. Furnish evidence of satisfactory completion of at least two years of accredited college or university course of study ~~(one year in addition to the education required by subsection 4. For purposes of this subsection, two years means a minimum of thirty six semester hours or a minimum of forty five ninety quarter hours).~~
4. Show evidence of graduation from an accredited college of mortuary science.
5. Have successfully completed all required examinations.

6. Demonstrate completion of an approved internship.
7. Demonstrate to a funeral practitioner proficiency in the art of embalming. Final embalming report to indicate by affidavit signed by a funeral practitioner that the applicant is proficient in embalming.

**History:** Amended effective April 1, 1979; July 1, 1983; March 1, 1985; May 1, 1993; May 1, 1998; January 1, 2015.

**General Authority:** NDCC 43-10-05

**Law Implemented:** NDCC 43-10-11, 43-10-12, 43-10-13

**25-02-02-03. Examination for licensure.**

1. ~~Questions used.~~ To be licensed, an applicant shall pass the national board examination offered by the international conference of funeral service examining boards and the North Dakota laws and rules examination.
  - a. ~~The conference of funeral service examining boards' questions may be used in the examination. Written answers to these questions shall be examined and passed upon at the direction of the board. A general average of seventy-five percent correct answers must be attained by the applicant.~~
  - b. ~~The national board examinations as provided by the conference of funeral service examining board and approved by the board may be used in lieu of the examinations on the following subjects: anatomy, embalming, chemistry, pathology, bacteriology, mortuary administration, and restorative arts as provided by the state board.~~
2. ~~Failure to pass examination:~~
  - a. ~~Should the applicant fail the examination, the applicant must wait three months to retake the examination.~~
  - b. ~~An applicant may not take the examination more than three times.~~
3. ~~2. Examination dates.~~ Examination of The North Dakota laws and rules must be given examination is administered by the division of vital records, North Dakota state department of health, state capitol, 600 east boulevard, Bismarck, ND 58505. ~~Time~~ The time of examination must be is arranged by the examinee applicant and the department division. The board of funeral service shall issue a card indicating the eligibility of the examinee applicant to take the examination. Applicants of record shall be duly notified a reasonable time prior to an examination as to the time and place of the examination. The secretary of the board with the assistance of other members of the board may give special examinations during any regular meeting when in the opinion of the board it is necessary to prevent undue hardship upon applicants who

~~may wait many months for the regular examination. These special examinations shall be consistent with all provisions of law and the rules and regulations for the examination for licensure.~~

**History:** Amended effective April 1, 1979; May 1, 1993; May 1, 1998; January 1, 2015.

**General Authority:** NDCC 43-10-05

**Law Implemented:** NDCC 43-10-11, 43-10-12, 43-10-13, 43-10-14, 43-10-15.1

**25-02-02-04. License renewal, late renewal. Repealed effective January 1, 2015.**

- ~~1. **Date of renewal.** The license to practice funeral service shall be issued for one year and may be renewed by the board by submitting a completed renewal application and the renewal fee of one hundred dollars. The board may refuse to renew the license for cause. The executive secretary of the board shall notify each holder of a license to practice funeral service thirty days prior to the renewal date. A retired funeral practitioner may be given an honorary certificate as long as the funeral practitioner is not engaged in the active practice of funeral service.~~
- ~~2. **Late renewal.** A license which has been expired may be renewed at any time within three years after its expiration on filing of application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last regular renewal date. If the license is not renewed within thirty days after its expiration, the licensee shall pay a late fee of one hundred fifty dollars. A license which is not renewed within three years after its expiration may not be renewed thereafter.~~

~~**History:** Amended effective July 1, 1983; March 1, 1985; May 1, 1993; May 1, 1998; April 1, 2005; amendments voided by the Administrative Rules Committee effective October 18, 2005.~~

~~**General Authority:** NDCC 43-10-05, 43-10-06.2~~

~~**Law Implemented:** NDCC 43-10-06.2, 43-10-13, 43-10-15, 43-10-15.1~~

**25-02-02-04.1. License renewals.**

1. Licenses expire after December thirty-first of every year.
2. Licenses may be renewed by December thirty-first by submitting a renewal application and a renewal fee of one hundred dollars, provided the funeral practitioner's license is not revoked or grounds for denial under North Dakota Century Code section 43-10-16 do not exist.
3. If the renewal application and renewal fee are not received by December thirty-first, the license expires and the funeral practitioner may not practice funeral service.

4. For thirty days after expiration, an expired license may be renewed by submitting the renewal application and renewal fee.
5. For two years after expiration, an expired license may be renewed by submitting the renewal application, renewal fee, and a late fee of one hundred fifty dollars.
6. If an expired license is not renewed within two years after expiration, an expired license may be renewed by submitting the renewal application, renewal fee, and late fee and passing the North Dakota laws and rules examination.

**History:** Effective January 1, 2015.

**General Authority:** NDCC 43-10-05

**Law Implemented:** NDCC 43-10-10, 43-10-15, 43-10-15.1, 43-10-16

**25-02-02-05. Licensure by reciprocity.**

1. ~~**Education and experience requirements.** Applicants for license through reciprocity with other states must meet educational and experience requirements in conformity with the requirements of the board. An applicant, licensed in good standing in another jurisdiction to practice embalming and funeral directing, may be licensed if the requirements for licensure in the other jurisdiction are at least as stringent as the requirements in North Dakota.~~
2. ~~**License through examination.** Consideration for reciprocity will be given only to embalmers, funeral directors, or funeral service practitioners who secured through examination the license on which they apply for reciprocal license and who have been actively engaged in the practice of their profession as a licensed embalmer, funeral director, or funeral service practitioner for a period of not less than one year preceding the filing of an application for reciprocity.~~
3. ~~2. **Fee.** The applicant ~~must~~ shall pay a fee of one hundred dollars.~~
4. ~~3. **Submit to examination.** An The applicant for licensure through reciprocity shall submit to an examination at the time and place designated by the board for the purpose of taking a written pass the North Dakota laws and rules examination on the laws and rules of North Dakota regarding the practice of funeral service.~~

**History:** Amended effective July 1, 1983; March 1, 1985; May 1, 1993; May 1, 1998; January 1, 2015.

**General Authority:** NDCC 43-10-05

**Law Implemented:** NDCC 43-10-14

**25-02-02-06. Intern embalmer.**

1. **Application.** The application for registration as an intern embalmer shall be made upon a form approved by the board and verified by the applicant and accompanied by a fee of fifty dollars. The application shall include the name and home address of the intern embalmer, the date the internship begins, and the name, license number, and business address of the supervising funeral practitioner. The registration is valid for one year and may be renewed by filing a renewal application with the board and by payment of the renewal fee of twenty-five dollars. The registration may not be renewed more than three times. A registered intern embalmer must notify the board within thirty days if he/she withdraws from the internship.
2. **Qualifications.** In order to qualify as an intern embalmer, the applicant shall ~~comply with~~ meet all the following requirements:
  - a. Be eighteen years of age.
  - b. Be of good moral character.
  - c. Furnish evidence of having completed an accredited four-year high school course of study ~~and evidence of completion of two years of accredited college or university studies.~~
  - d. In addition to the education required by subdivision e, furnish evidence of completion of two years of accredited college or university studies, or provide proof of substantial completion, as determined by the board, of two years accredited college or university studies. For purposes of this subdivision only, two years means sixty semester hours or ninety quarter hours.
  - ~~d.~~ e. Graduated Furnish evidence of graduation from an accredited college of mortuary science.
3. **Certification.** The state board of funeral service shall pass upon every intern embalmer application at its regular meeting. ~~The applicant shall be duly notified whether the applicant has been accepted or rejected after a majority vote of the board has been received.~~
4. **Intern embalmer register.** The executive secretary of the board shall keep a separate register for intern embalmers.
5. **Lapsed certificate.** In case an intern embalmer has allowed the certificate of registration to lapse for thirty days or more, no reregistration shall be permitted so as to make the intern embalmer's registration continuous from the date of the intern embalmer's original registration.
6. **Monthly report.** Each registered intern embalmer shall submit a report to the executive secretary of the board by the fifteenth of the month

stating all cases in which the intern embalmer has assisted during the preceding month. This report is to be made on forms furnished by the board. Reports must be signed by the supervising funeral practitioner. Ten reports of funeral arrangements and funeral services must be submitted during the final six months of internship.

**History:** Amended effective April 1, 1979; July 1, 1983; May 1, 1993; May 1, 1998; January 1, 2015.

**General Authority:** NDCC 43-10-05

**Law Implemented:** NDCC ~~43-10-10, 43-10-22~~ 43-10-01, 43-10-15.4, 43-10-15.5



## CHAPTER 25-03-01

### 25-03-01-01. Funeral establishment license.

1. **Application for license.** An application for licensing of a funeral establishment, ~~except a funeral chapel,~~ must be made on a form provided by the board and be accompanied by a fee of one hundred dollars.
2. **License renewal.** A funeral establishment license ~~must be issued for one~~ expires after December thirty-first of every year, and may be renewed by the board by submitting to the board a completed renewal application and the renewal fee of one hundred dollars.
3. **Change of owner, supervising personnel, funeral home name, or location.** A funeral ~~home~~ establishment license ~~shall~~ may not be transferred from one owner to another. The new owner shall submit an application for a new license to the executive secretary of the board, accompanied by a fee of one hundred dollars. The funeral ~~home~~ establishment license is issued in conjunction with a ~~North Dakota~~ funeral ~~service~~ practitioner license. Should the ~~licensee~~ funeral practitioner signing the funeral ~~home~~ establishment license application no longer be associated with the funeral ~~home~~ establishment, the ~~licensee~~ funeral practitioner shall notify the board. No funeral ~~home~~ establishment license shall be valid unless the funeral ~~home~~ establishment is under the supervision of a funeral practitioner. A change in the ~~licensed personnel~~ funeral practitioner supervising the funeral ~~home~~ establishment or funeral ~~home~~ establishment name or location ~~shall require~~ requires a new funeral ~~home~~ establishment license.

**History:** Amended effective July 1, 1983; May 1, 1993; May 1, 1998; April 1, 2005; January 1, 2015.

**General Authority:** NDCC 43-10-05

**Law Implemented:** NDCC 43-10-05, 43-10-22

**25-03-01-02. Requirements for funeral establishment.** All funeral establishments, ~~except for branch facilities and~~ funeral chapels, must contain a preparation and embalming room and office space for making arrangements. A preparation and embalming room ~~at a minimum~~ must meet all of the following requirements:

1. Be of sufficient size and dimensions to accommodate a preparation or embalming table, an open fixture with water connects, and an instrument table, cabinet, or shelves;\_
2. Be properly lit and ventilated with an exhaust fan that provides at least twelve air changes per hour, and is so located that air is drawn away from the person preparing the preparations;\_

3. Have plumbing fixtures, water supply lines, plumbing vents, and waste drains properly vented and connected ~~pursuant to the North Dakota state plumbing code;~~ in compliance with article 62-03.1.
4. Have nonporous flooring, so that a sanitary condition is provided. The walls and ceiling of the preparation and embalming room must run from floor to ceiling and be covered with tile, or by plaster or sheetrock painted with washable paint, or other appropriate material so that a sanitary condition is provided. The doors, walls, ceiling, and windows must be constructed to prevent odors from entering into any other part of the building. All windows or other openings to the outside must be screened and all windows must be treated in a manner that prevents viewing into the preparation room from the outside;\_
5. Have a preparation and embalming table and a functioning aspirator. The preparation and embalming table must have a nonporous top, preferably a rustproof metal or porcelain, with raised edges around the top of the entire table and a drain opening at the lower end. Where embalmings are actually performed in the room, the room must be equipped with a functional method for injection of fluids, an eyewash station, a drench shower, and sufficient supplies and instruments for normal operations;\_
6. Be private and have no general passageway through it. Each door allowing ingress or egress must carry a sign that indicates that the room is private and access is limited;\_ ~~and\_~~
7. Be maintained in a clean and sanitary condition at all times, and not be used for any other purposes.

**History:** Effective May 1, 1998; amended effective January 1, 2015.

**General Authority:** NDCC 43-10-05

**Law Implemented:** NDCC 43-10-05, 43-10-06, 43-10-22, 43-10-23

## CHAPTER 25-05-01

**25-05-01-01. Licensure of crematoriums.** An application to license a crematorium must be made on a form provided by the board and include the application fee of one hundred dollars. The license ~~is good for a period of one~~ expires after December thirty-first of every year, and may be renewed by submitting a renewal application and the renewal fee of one hundred dollars. Each crematory operator must obtain and display a certificate of operation training provided by the retort manufacturer, cremation association of North America, or the national funeral directors association. The certificate must be renewed at a minimum of every five years or as required by the training entity.

**History:** Effective May 1, 1993; amended effective May 1, 1998; April 1, 2005; January 1, 2015.

**General Authority:** NDCC 43-10-05

**Law Implemented:** NDCC 43-10-05, 43-10-25

**25-05-01-02. Crematorium establishment.** Any crematorium in the state of North Dakota shall comply with all criteria of federal and state law regarding environmental impact on the area in which it is located, including interior design and placement of the crematoria retort which must be ~~in a completely fireproof building, and exterior design which includes size and placement of smokestack and emissions of sediment or smoke from it~~ installed in accordance with the manufacturer's instructions. The crematorium shall also conform to all applicable federal, state, and local building codes.

**History:** Effective May 1, 1993; amended effective January 1, 2015.

**General Authority:** NDCC 43-10-05, 43-10-25

**Law Implemented:** NDCC 43-10-05

**25-05-01-06. Crematoriums must apprise funeral directors and ~~consumer families~~ of requirements.** All crematoriums in the state of North Dakota must fully apprise funeral directors ~~and consumer families~~ of the type of container the crematorium can cremate, and that a minimum cremation unit as adjudged practical by the ~~national~~ cremation association of North America be used. Should caskets be used in cremation, the crematorium must apprise the funeral director ~~and family~~ in writing what materials in caskets will be completely consumed and what caskets cannot be consumed. The crematorium must apprise the funeral director ~~and consumer family~~ if caskets or casket hardware are nonconsumable. It is the responsibility of the cremation authority involved to destroy on a ~~daily~~ regular basis and through proper sanitation and disposition channels available to it those caskets or their dependent parts that may remain after the cremation process. No stockpile of used caskets or parts may remain in or around the crematorium facility.

**History:** Effective May 1, 1993; amended effective January 1, 2015.

**General Authority:** NDCC 43-10-05, ~~43-10-25~~

**Law Implemented:** NDCC 43-10-05

**25-05-01-07. Cremation requirements.** All ~~cremation facilities~~ crematoriums shall clean their retorts at the conclusion of each cremation, and bone fragments that remain must be duly reduced by equipment sanctioned by the ~~National Cremation Association~~ cremation association of North America, ~~and~~ placed in a rigid sealed container of fiberglass, metal, wood, or plastic, and duly marked with the name of the person cremated, ~~the ultimate disposition of the cremains~~, the name of the funeral director involved in the cremation, the age and date of birth and death of the person cremated, and the name and complete address of the ~~cremation authority~~ crematorium. ~~Cremains sent through the mail must be duly marked, registered, insured, and sealed in the form for mailing and delivery as devised by the United States postal service. Cost of mailing is to be borne by the cremation authority together with the registration and insurance costs involved. If cremated remains are to be shipped by a common carrier, they must be duly marked, sealed, insured, and shipped only by a method which has an internal tracking system available. Cremated remains shall be shipped to the address as stated on the cremation authorization form signed by the authorizing agent.~~

**History:** Effective May 1, 1993; amended effective May 1, 1998; January 1, 2015.

**General Authority:** NDCC 43-10-05, ~~43-10-25~~

**Law Implemented:** NDCC 43-10-05

## CHAPTER 25-07-01

**25-07-01-01. Licensure of funeral chapels.** An application to license a funeral chapel must be made on a form provided by the board and include the application fee of thirty-five dollars. The license ~~is good for a period of one~~ expires after December thirty-first of every year, and may be renewed by submitting a renewal application and the renewal fee of thirty-five dollars.

**History:** Effective May 1, 1998; amended effective January 1, 2015.

**General Authority:** NDCC 43-10-05

**Law Implemented:** NDCC 43-10-05, 43-10-22

## CHAPTER 25-08-02

**25-08-02-04. Offer, solicitation, or acceptance of fees, commissions, or other reimbursement.** A licensee funeral practitioner or intern embalmer may not offer, solicit, or accept a commission, fee, bonus, rebate, or other reimbursement in consideration for recommending or causing a dead human body to be disposed of in a specific crematory crematorium, mausoleum, or cemetery, unless the funeral practitioner, intern embalmer, or their employer has an ownership interest in the crematorium, mausoleum, or cemetery.

**History:** Effective May 1, 1998; amended effective January 1, 2015.

**General Authority:** NDCC 43-10-05

**Law Implemented:** NDCC 43-10-05

**TITLE 33**  
**STATE DEPARTMENT OF HEALTH**





JANUARY 2015

CHAPTER 33-10-04.2  
STANDARDS FOR PROTECTION AGAINST RADIATION

Section	
33-10-04.2-01	Adoption by Reference of Several Sections in 10 CFR Part 20
33-10-04.2-02	Individuals Working With Medical Fluoroscopic Equipment
33-10-04.2-03	Location of Individual Monitoring Devices
33-10-04.2-04	Effective Dose Equivalent Determination During Medical Fluoroscopy
33-10-04.2-05	Radiation Machine Security and Prevention of Unauthorized Use
33-10-04.2-06	Radiation Machine Labels
<u>33-10-04.2-07</u>	<u>Additional Requirements - Vacating Premises</u>

**33-10-04.2-07. Additional requirements - Vacating premises.** Each specific licensee or registrant shall, no less than thirty days before vacating or relinquishing possession or control of premises which may have been contaminated with radioactive material as a result of the licensee's or registrant's activities, notify the department in writing of intent to vacate. When deemed necessary by the department, the licensee shall decontaminate the premises in accordance with the following or in such other manner as the department may specify.

1. **Premises.** Each licensee before vacating any premise, or transferring the premise, shall permanently decontaminate such premises to meet the criteria for decommissioning in 10 CFR part 20, subpart E as adopted by this chapter. A survey shall be made after such decontamination and the department and the landlord or subsequent tenant or transferee shall be provided with a copy of such survey no less than thirty days before vacating or relinquishing possession or control of premises. No such premise may be vacated, sold, or transferred until the decontamination survey has been verified and accepted by the department. For naturally occurring radioactive materials (NORM) and technologically enhanced naturally occurring radioactive materials (TENORM), decontamination shall meet the standards found in table 4.2-07.1.

2. **Equipment.** No machinery, instruments, laboratory equipment, or any other property used in contact with, or close proximity to, NORM or TENORM, or both, at a licensed premise may be assigned, sold, leased, or transferred to an unlicensed person unless such property has been permanently decontaminated below or equal to the standards specified in 10 CFR part 20, subpart E as adopted by this chapter. A survey shall be made after such decontamination and the department and subsequent transferee or owner shall be provided with a copy of such survey. No such equipment may be assigned, sold, leased, or transferred until such documentation survey has been verified and accepted by the department.

**History:** Effective January 1, 2015.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04, 23-20.1-04.1

**Table 4.2-07.1**

**Standards for Unrestricted Release for NORM and TENORM**

(a) Surface contamination limits

(1) Alpha emitters

<u>(i) Removable:</u>	<u>0.555 Bq =</u>	<u>15.0 pCi =</u>	<u>33 dpm</u>	<u>average over</u>
	<u>100 cm<sup>2</sup></u>	<u>100 cm<sup>2</sup></u>	<u>100 cm<sup>2</sup></u>	<u>any one surface</u>
	<u>1.665 Bq =</u>	<u>45.0 pCi =</u>	<u>100 dpm</u>	<u>maximum</u>
	<u>100 cm<sup>2</sup></u>	<u>100 cm<sup>2</sup></u>	<u>100 cm<sup>2</sup></u>	
<u>(ii) Total (fixed):</u>	<u>166.5 Bq =</u>	<u>450.0 pCi =</u>	<u>1,000 dpm</u>	<u>average over</u>
	<u>100 cm<sup>2</sup></u>	<u>100 cm<sup>2</sup></u>	<u>100 cm<sup>2</sup></u>	<u>any one surface</u>
	<u>832.5 Bq =</u>	<u>2,250.0 pCi</u>	<u>5,000 dpm</u>	<u>maximum</u>
	<u>100 cm<sup>2</sup></u>	<u>100 cm<sup>2</sup></u>	<u>100 cm<sup>2</sup></u>	
	<u>2.5 μSv =</u>	<u>(0.25 mrem)</u>	<u>maximum at 1 cm from surface</u>	
	<u>hr</u>	<u>hr</u>		

(2) Beta-gamma emitters

<u>(i) Removable: (all beta-gamma emitters except hydrogen-3)</u>	<u>3.7 Bq =</u>	<u>100.0 pCi =</u>	<u>average over any one surface</u>	
	<u>100 cm<sup>2</sup></u>	<u>100 cm<sup>2</sup></u>		
	<u>18.5 Bq =</u>	<u>500.0 pCi =</u>	<u>maximum</u>	
	<u>100 cm<sup>2</sup></u>	<u>100 cm<sup>2</sup></u>		
<u>(ii) Total (fixed):</u>	<u>2.5 μSv =</u>	<u>(0.25 mrem)</u>	<u>Maximum at 1 cm from surface</u>	
	<u>hr</u>	<u>hr</u>		

(b) Concentration in air and water: Appendix B, table II of chapter 33-10-04.1.

(c) Concentrations in soil and other materials except water:

(1) Radium in soil: Concentration of radionuclides above background concentrations for total radium, averaged over areas of one hundred square meters, shall not exceed:

- (i) Five picocuries per gram of soil, averaged over layers of fifteen centimeters thickness more than fifteen centimeters below the surface.
- (ii) Five picocuries per gram of dry soil, averaged over layers of fifteen centimeters thickness more than fifteen centimeters below the surface.
- (2) Radium in other materials: Concentration of radionuclides above background concentrations for total radium shall not exceed five picocuries per gram.
- (d) The level of gamma radiation measured at a distance of one hundred centimeters from the surface shall not exceed background.

**TITLE 67.1**  
**EDUCATION STANDARDS AND PRACTICES BOARD**



## JANUARY 2015

### CHAPTER 67.1-02-02

#### 67.1-02-02-02. Initial licenses.

1. Initial teacher licensure for in-state graduates or graduates of out-of-state programs requires a minimum of a four-year bachelor's degree from a state agency-approved teacher education program. The approved program must include a general studies component, a North Dakota recognized program area major, and a professional pedagogy core as defined in this section and the North Dakota standards for teacher education program approval:
  - a. The general studies component includes liberal arts preparation in the areas of the humanities, fine arts, mathematics, natural sciences, behavioral sciences, and symbolic systems as prerequisite to entrance into the professional education program.
  - b. North Dakota recognized program area majors are printed on the application form and include content-specific majors at the secondary level, content-specific kindergarten through grade twelve majors as listed below, majors in middle level education, or majors in elementary education. Majors that are transcribed by state-approved teacher education programs using terminology not appearing on the application form must be compared to the North Dakota standards for teacher education program approval to determine whether they meet the same criteria as the listed recognized majors. Majors must include a minimum of thirty-two semester hours of coursework specific to the major beyond the introductory level. All official transcripts from all institutions of higher education must be submitted to the education standards and practices board.
    - (1) The secondary content-specific major must include a minimum of four semester hours in special methods of teaching at the secondary level and special methods of teaching in the specific content area. Effective July 1,

2008, all initial secondary licensure applicants grades seven through twelve in the core and non-core academic areas will need to meet or exceed the cut scores for the content test as set by the education standards and practices board. Effective July 1, 2010, all initial secondary licensure applicants grades seven through twelve in the core and non-core academic areas will need to meet or exceed the cut scores for the pedagogical test as set by the education standards and practices board. For purposes of this section, English, reading and language arts, mathematics, science, foreign languages, music, visual arts, history, civics and government, geography, and economics are considered core academic areas. All other areas are considered non-core academic areas.

- (2) The middle level major must include study of middle level foundations, adolescent development, reading in the content areas at the middle level, and twenty-four semester hours of content coursework in one of the content areas of English and language arts, social studies, science, or mathematics meeting the teacher education program approval standards, and special methods of teaching at the middle level. Study of these areas must total a minimum of thirty-two semester hours, which includes at least two semester hours of special methods of teaching at the middle level and middle level classroom field experience. Effective July 1, 2008, all initial middle level licensure applicants grades five through eight in the core and non-core academic areas will need to meet or exceed the cut scores for the content test as set by the education standards and practices board. Effective July 1, 2012, all initial middle level licensure applicants grades five through eight in the core and non-core academic areas will need to meet or exceed the cut scores for the pedagogical test as set by the education standards and practices board.
- (3) The elementary major must include special methods of teaching elementary content areas with a minimum of twelve semester hours specific to teaching elementary school mathematics, science, social studies, reading, and language arts. Effective July 1, 2006, all initial elementary licensure applicants grades one through six or grades one through eight restricted license will need to meet or exceed the cut scores as set by the education standards and practices board for the elementary test and the pedagogical test. For the school year 2005-06 and beyond, all elementary teachers new to the profession, but previously licensed, will need to complete the elementary test and pedagogical test during the school year. Classroom teaching experience will



be accepted from all other states toward the requirements of this paragraph.

- (4) Prekindergarten through grade twelve preparation programs in special education, foreign language, art, music, physical education, business education, technology education, and computer education must include a minimum of four semester hours of special methods of teaching inclusive of kindergarten through grade twelve, special methods of teaching in the specific content area, and student teaching in elementary and secondary schools, grades prekindergarten through grade twelve. Effective July 1, 2006, all applicants in foreign language, art, and music will need to meet or exceed the cut scores for the content tests and the pedagogical tests grades seven through twelve as set by the education standards and practices board. Effective July 1, 2012, all initial prekindergarten through grade twelve licensure applicants grades seven through twelve in the core and non-core academic areas will need to meet or exceed the cut scores for the content test and the pedagogical test grades seven through twelve as set by the education standards and practices board.
- (5) The early childhood major must include study of child development, birth through age eight, and include special methods of teaching at the early childhood level. Effective July 1, 2012, all initial early childhood licensure applicants birth through grade three will need to meet or exceed the cut scores for the praxis II principles of teaching and learning test and the praxis II early childhood education content specific cut score as set by the education standards and practices board.
- (6) The special education major for regular licensure meeting or exceeding the teacher education program approval standards must include a second major in early childhood, elementary, middle level, or secondary education. Effective July 1, 2008, all applicants in special education majors or endorsements must meet or exceed the praxis II test cut scores as set by the education standards and practices board.

- C. The professional education component includes a minimum of twenty-two semester hours of pedagogical study of teaching and learning in addition to the program-specific major. This coursework must be from the areas of educational foundations, educational psychology, child development, teaching and learning theory, educational diagnosis and assessment, inclusive education, educational technology, classroom and behavioral management,

and human relations specific to teaching. The professional education component must also include classroom professional experience prior to student teaching and a minimum of ten weeks of full-time successful participation in student teaching at appropriate grade levels. The professional education component, including student teaching, must be completed under the supervision of a teacher training institution approved by the education standards and practices board in North Dakota or the appropriate state, provincial, or similar jurisdictional authority for out-of-state institutions.

- d. Student teaching exception - Internship. An applicant who graduated from a state-approved teacher education program prior to January 1, 1988, which did not include a minimum of ten weeks of full-time student teaching may qualify under one of the two options under this subdivision. These options are available only if the applicant has met all other requirements for licensure of the education standards and practices board and North Dakota Century Code sections 15.1-18-02 and 15.1-18-03, except the requirement of ten weeks of student teaching.
  - (1) The applicant must document a minimum of eight full weeks of student teaching at the appropriate level in the major field of study under the supervision of a state-approved teacher education program and document five years of successful teaching within the last ten years; or
  - (2) An applicant who can document a minimum of eight weeks of successful student teaching but cannot document a minimum of five years of successful teaching experience must either complete the additional student teaching hours or may choose to complete an internship under the supervision of a state-approved college of teacher education to fulfill the additional hours.
    - (a) The internship contact hours in the classroom must consist of classroom time blocks not less than one-half day and when added to the applicant's existing student teaching hours total a minimum of ten weeks of full-time equivalent student teaching and supervised internship experience.
    - (b) The internship must occur in a regular kindergarten through grade twelve classroom setting and allow the intern to experience the full range of curriculum and classroom operations.

(c) The internship must be approved by the education standards and practices board and transcribed through a state-approved teacher education institution.

- e. Teaching minors. A teaching minor may only be earned or added to a teaching major. An individual may not be licensed or change grade levels of licensure with only a teaching minor.

A teaching minor is defined as a minimum of sixteen semester or twenty-four quarter credit hours in a single designated academic area and the methods of teaching the content area. These sixteen semester or twenty-four quarter credit hours must be in courses for which the institution gives credit toward graduation in the major and be included in the teacher education program approval process.

2. Grade point average.

- a. An applicant must have a minimum overall grade point average of 2.50. The education standards and practices board will use the college-figured grade point average if all previous college coursework is on the transcript. If the student has transferred from another institution, and the grade point average calculated by the institution granting the degree is only for those credits at that institution, the education standards and practices board will refigure the grade point average using all previous college coursework.

- b. An applicant must have a minimum grade point average (GPA) of 2.50 for all coursework required for the applicant's degree. Coursework not needed for a degree in teacher education need not be included in GPA calculations. Coursework used in any way for licensure or endorsements must be included in GPA calculations. If the student has coursework from more than one institution, the education standards and practices board will review the grade point average using the program of studies approved by the approved North Dakota teacher education institution.

3. Verification of eligibility for home state licensure may be requested.

4. Acceptable translations for preparations received in foreign institutions will be requested at the applicant's expense.

5. Application form.

- a. An application fee of thirty dollars must accompany a request for an initial application form.

- b. The original completed application form, including the original signature of the applicant and recommendation by the

state-approved teacher education program will be considered for licensure by the education standards and practices board.

- c. A fee of seventy dollars must accompany the application for initial licensure for in-state and out-of-state graduates. An additional fee of one hundred seventy-five dollars for transcript review from out-of-state graduates must also accompany the licensure application.
  - d. The application will be kept on file at the education standards and practices board office for six months. Upon expiration of the six-month period, applicable fees will be refunded to the applicant if the license has not been issued.
6. All initial licenses are valid for at least two consecutive years and will expire on the applicant's birthday.
7. Fingerprinting. In addition to completing the licensure application process outlined in this section, an applicant applying for licensure in North Dakota for the first time after August 1, 1997, must submit to a fingerprint screening for criminal records in accordance with North Dakota Century Code section 15.1-13-14.
- a. An applicant graduating from a North Dakota teacher preparation program may obtain the fingerprinting materials from college officials. Previous graduates and out-of-state graduates must contact the education standards and practices board directly for the fingerprinting materials. Fingerprint screening reports from other agencies are not available to the education standards and practices board. Applicants must complete the process with cards and release forms designating the education standards and practices board as the agency to receive the report.
  - b. The applicant must have the fingerprinting done by an authorized law enforcement agency such as a sheriff's office, police department, or campus police. Both cards are to be completed with a ten-finger check. The criminal record inquiry authorization form must also be completed, including an original signature. The fingerprint cards and authorization form must be returned directly to the education standards and practices board office.
  - c. Unofficial, incomplete, altered, or damaged cards and forms will not be accepted.
  - d. The applicant is responsible for all local, state, and federal law enforcement agency fees related to the fingerprint background check.

- e. The applicant is advised to allow a minimum of eight weeks for the fingerprint screening process. An applicant must hold a valid North Dakota license to be employed or permitted to teach in North Dakota. Individuals who have completed all requirements for the professional educator's license except final completion of the fingerprint background check may obtain a provisional license under section 67.1-02-04-04.
  - f. Fingerprint screening reports must be recent and may only be used for licensure for eighteen months from the date the report is received by the education standards and practices board.
8. Reeducation for initial licensure. Applicants who hold nonteaching degrees in content areas taught in public schools may receive initial licensure by completing the professional education requirements at a state-approved program authorized through program approval to recommend applicants for licensure in the approved program area. This reeducation may be completed at the undergraduate or graduate level. The institution with the approved program must document that the applicant's specialty area degree is equivalent to its approved program's specialty area requirements in subdivisions b and c of subsection 1, and recommend the applicant for licensure. Applicants applying under this section must file a completed application form as other initial applicants, comply with the fingerprint background check in subsection 9, complete all tests, and pay all applicable fees.
9. Preprofessional skills test. On July 1, 2002, all initial applicants for licensure will be required to submit their test scores in reading, writing, and mathematics. Beginning July 1, 2003, all applicants for initial licensure will need to submit their test scores in reading, writing, and mathematics which meet or exceed the state cut score or composite score. Documentation of the scores must be submitted with the application form.

**History:** Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998; April 14, 1999; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004; April 1, 2006; July 1, 2008; July 1, 2010; April 1, 2012; July 1, 2012; October 1, 2014; January 1, 2015.

**General Authority:** NDCC 15.1-13-08, 15.1-13-09, 15.1-13-10

**Law Implemented:** NDCC 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-13-12, 15.1-13-14



**TITLE 69.5**  
**NORTH DAKOTA RACING COMMISSION**





## JANUARY 2015

### CHAPTER 69.5-01-05 LICENSEES

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**69.5-01-05-16. Owners — Business corporations Licensing requirements for multiple owners.** ~~The following duties and restrictions apply to profit corporations owning or having any interest in a horse governed by the commission:~~

- ~~1. The corporation must be duly licensed and authorized to do business with this state. A copy of the certificate of incorporation must be attached to the corporation's application to the commission. The fee for each corporation licensed hereunder is one hundred dollars.~~
- ~~2. In a corporation the following individuals must be licensed by the commission:
  - ~~a. The chief executive officer and all other corporation officers.~~
  - ~~b. All members of the board of directors.~~
  - ~~c. All stockholders owning a beneficial interest of five percent or more. For purposes of all sections in this title, beneficial interest includes all direct and indirect forms of ownership or control, voting power, or investment power, held through any contract, lien, lease, partnership, stockholding syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.~~~~
- ~~3. Any and all changes in either the corporation structure or the respective interest of stockholders, as described in subdivision c of subsection 2, must be notarized, promptly filed with the commission, and a copy sent to the applicable horsemen's organization.~~
- ~~4. A corporation, in lieu of the chief executive officer, shall appoint a racing manager or an authorized agent, or both, for purposes of entry, scratches, and the signing of claims slips among other obligations.~~
- ~~5. The commission may deny, suspend, or revoke the licenses of a corporation in which a beneficial interest includes or involves any person or entity which would be, or is, ineligible in any respect, such as through character, moral fitness, or any other criteria employed by the commission to be licensed as an owner or to participate in racing, regardless of the percentage of ownership interest involved.~~
- ~~6. A corporation must have on file with the commission a copy of the articles of incorporation. A corporation must also have on file with the commission, and must provide a copy of same to the racing secretary's office attached to the registration papers, or eligibility certificate, and a copy to the applicable horsemen's organization a notarized statement signed by the chief executive officer of the corporation agreeing to represent the entire ownership and be responsible for the corporation's horses. Such responsibility does not include the responsibility of the~~

~~trainer imposed by subsection 2 of section 69.5-01-05-26 in connection with the condition of the horse unless such chief executive officer is also the trainer.~~

- ~~7. Any stockholder holding a beneficial interest of five percent or more of a corporation shall, in addition to being licensed, list any interest in all racing horses in which such stockholder owns any beneficial interest.~~
- ~~8. All horses owned by a corporation must race in the name of the corporation or in the name of the chief executive officer with a designation "(C)" following the name.~~
- ~~9. The commission or the stewards shall review the ownership of each horse entered to race and ensure that each registration certificate or eligibility certificate is properly endorsed by the transfer or to the present owners. The commission or stewards, or both, may determine the validity for racing purposes of all liens, transfers, and agreements pertaining to ownership of a horse, and may call for adequate evidence of ownership at any time. The commission or stewards, or both, may declare ineligible to race any horse, the ownership of control of which is in question.~~
- ~~10. For purposes of this section only, "ownership" means any individual person or entity required to be licensed as an owner pursuant to these rules and, in the instance of corporations, individuals, or entities possessing an aggregate commonality of ownership of twenty-five percent interest in any of the respective horses provided, however, that when a trainer enters two or more horses in a stakes, handicap, futurity, or other special event under beneficial separate ownerships, the horse, at the request of the association, and with the approval of the commission or stewards, may be permitted to race as a separate wagering entity.~~
- ~~11. If the race is split in two or more divisions, horses in an "entry" must be seeded in separate divisions insofar as possible, but the divisions in which they compete, and post position, must be determined by lot.~~
- ~~12. The corporation stockholders owning less than five percent of the stock of a corporation need not be licensed, however, a list of all such stockholders must be supplied to the commission and the applicable horsemen's organization by the corporation annually. Without limitation, such list must include the stockholder's name, percentages owned, addresses, social security number, date of birth, and such other information as the commission may require. Such stockholders need not be licensed and will not have access to the backstretch, to the paddock area, or to the winner's circle. Such stockholders may be required to submit additional information as requested by the commission, which may include a release for confidential information and submission of fingerprint cards, and the commission may assess~~

~~costs, as required for criminal history checks. Such information must be supplied to the commission within thirty days of the date of the request. Copies of all such requests and responses must be furnished to the applicable horsemen's organization.~~

- ~~13. The full nature and extent of all beneficial interest must be disclosed. The list must include the names of all such individuals and entities, the nature of their relationships, and the exact nature of their beneficial interests.~~
  - ~~14. Disclosure of ownership must be made when registering each horse with the racing secretary upon arrival on the grounds of any permit holder, but no less than forty-eight hours prior to entry and must be revised immediately upon any subsequent change in such ownership.~~
  - ~~15. Such disclosure, together with all written agreements and affidavits setting out oral agreements, pertaining to the ownership of or rights in and to a horse, must be attached to the registration certificate for such horse and filed with the racing secretary, who is responsible for the care and security of such papers while such horses pertaining thereto are located on the permittee's grounds.~~
  - ~~16. Such disclosure is made for the benefit of the public and all documents pertaining to the ownership or lease of a horse filed with the commission shall be available for public inspection, as provided by law.~~
1. If the legal owner of any horse is a partnership, corporation, limited liability company, syndicate, or other association or entity, each shareholder, member, or partner holding a five percent or greater beneficial interest shall be licensed as required in this rule.
  2. Each partnership, corporation, limited liability company, syndicate, or other association or entity shall disclose to the commission all owners holding a five percent or greater beneficial interest, unless otherwise required by the commission.
  3. Each partnership, corporation, limited liability company, syndicate, or other association or entity which includes an owner with less than a five percent ownership or beneficial interest shall file with the commission an affidavit which attests that, to the best of their knowledge, every owner, regardless of their ownership of beneficial interest, is not presently ineligible for licensing or suspended in any racing jurisdiction.
  4. To obtain an owner's license, an owner with less than a five percent ownership or beneficial interest in a horse shall establish a bona fide need for the license and the issuance of such license shall be approved by the stewards. In the event that no owner has greater than a five

percent ownership or beneficial interest in a horse, no less than one owner shall be licensed by the commission.

5. Application for joint ownership shall include a designation of a managing owner and a business address. Receipt of any correspondence, notice, or order at such address shall constitute official notice to all persons involved in the ownership of such horse.
6. The written appointment of a managing owner of authorized agent shall be filed with the commission.

**History:** Effective July 1, 1989; amended effective January 1, 2015.

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

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

**69.5-01-05-17. Owners - General partnership.** ~~The following duties and restrictions apply to general partnerships owning or having an interest in a horse governed by the commission and these rules: Repealed effective January 1, 2015.~~

1. ~~A copy of a certificate of authority must be attached to the application filed with the commission. Each partner in a general partnership shall obtain a license. The license fee for each partner is one hundred dollars. The commission will deny, suspend, or revoke the license of any partnership in which a member whose interest is qualified or limited by rights or interests held or controlled by any individual or entity which would be ineligible to be licensed as an owner or to participate.~~
2. ~~A partnership must have on files with the commission, and must have a copy of same attached to the registration certificate on file in the racing secretary's office, an agreement whereby one member of the partnership shall be designated to be responsible for each horse. Such responsibility does not include the responsibility of the trainer imposed by subsection 2 of section 69.5-01-05-26 in connection with the condition of the horse, unless the responsible person under the agreement is also the trainer. This agreement must be notarized, and must be signed by all partners, and a copy sent to the jockey club.~~
3. ~~An authorized agent must be appointed to represent the partnership in all matters and be responsible for all stakes, forfeits, powers of entry, scratches, signing of claims slips, and other obligations. The authorized agent may also be a partner.~~
4. ~~The commission or the stewards, or both, shall review the ownership of each horse entered to race and ensure that each registration certificate or eligibility certificate is properly endorsed by the transferor to the present owners. The commission or stewards, or both, may determine the validity for racing purposes of all liens, transfers, and agreements pertaining to ownership of a horse and may call for adequate evidence of ownership at any time. The commission or stewards, or both, may~~

~~declare ineligible to race any horse, the ownership or control of which is in question.~~

- ~~5. Any alteration in a partnership structure or percentages must be reported promptly in writing and notarized, and signed by all members of the partnership and filed with the commission and sent to the applicable horsemen's organization.~~
- ~~6. Any owner who is a member of a partnership shall list all horses in which such owner owns an interest whether whole or part.~~
- ~~7. All horses owned by a partnership must race in the same name with a designation "(P)" following the name.~~
- ~~8. For the purpose of this section only, "ownership" must be construed to mean any individual person or other entity required to be licensed as an owner pursuant to these rules and in the instance of a partnership, individual persons, or other entities possessing a commonality of interest in each of the respective horses; provided, however, that when a trainer enters two or more horses in a stakes, handicap, futurity, or other special event under beneficial separate ownerships, the horses, at the request of the racetrack operator and with the approval of the commission or stewards, may be permitted to race as separate wagering entities. If the race is split in two or more divisions, horses in an "entry" must be seeded in separate divisions insofar as possible, but the divisions in which they compete and the post positions must be determined by lot.~~
- ~~9. A licensed member of a partnership may not have an interest in more than one horse in any race unless that horse is coupled, except by permission of the stewards.~~

~~History: Effective July 1, 1989.~~

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

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

~~**69.5-01-05-18. Owners - Limited partnership.** The following duties and restrictions apply to limited partnerships owning or having any interest in a horse governed by the commission and these rules: Repealed effective January 1, 2015.~~

- ~~1. A copy of the partnership certificate of authority must be attached to the application filed with the commission. A limited partnership must supply to the commission and the jockey club certified copies of its proof of compliance with filing and registration requirements as required by law.~~
- ~~2. a. The general partners in a limited partnership must be licensed by the commission and so must any member of the limited partnership with a beneficial interest of five percent or more of the limited partnership. It is the responsibility of the limited partnership~~

~~to ensure that every member of the limited partnership is eligible to be licensed by the commission.~~

- ~~b. A limited partnership must have on file with the commission, and a copy of which is attached to the registration certificate of each horse in the limited partnership, a notarized designation of the general partner to represent the entire ownership of and be responsible for each horse in the limited partnership. Such responsibility does not include the responsibility of the trainer imposed by subsection 2 of section 69.5-01-05-26 in connection with the condition of the horse, unless the general partner is also the trainer.~~
- ~~3. An authorized agent must be appointed to represent the limited partnership in all matters and be responsible for all stakes, powers of entry, scratches, signing of claims slips, among other obligations. The general partner, or other member, may be the authorized agent.~~
- ~~4. a. The alteration in the structure or percentages of the limited partnership must be promptly reported in writing to the commission, and to the jockey club.~~
  - ~~b. The general partner will be responsible for reporting to the commission any interest in all racing horses in which a licensed member owns an interest.~~
- ~~5. The commission may deny, suspend, or revoke the license of a limited partnership in which a member whose interest is qualified or limited by rights or interests held or controlled by an individual or entity which would be ineligible to be licensed as an owner or to participate regardless of percentage of interest.~~
- ~~6. All members of a limited partnership owning less than five percent must be listed with the commission and the applicable horsemen's organization. All beneficial interests must be listed. Such list must include names, addresses, portion owned, social security number, date of birth, and such other information as the commission may require. Such list must be supplied to the commission by the limited partnership as required by the commission, and a copy sent to the jockey club. Any limited partner owning less than five percent, need not be licensed and will not have access to the backstretch, paddock area, or to the winner's circle, and may be required to submit additional information as requested by the commission which may assess additional fees for the purpose of criminal history checks or other investigative purposes.~~
- ~~7. a. Licensed owners and licensed trainers must be held jointly and severally responsible for making a full disclosure of the entire ownership of each horse in their care.~~

- ~~b. Such disclosure must identify in writing all individuals or entities who, directly or indirectly, through a contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise hold any interest in and to such horse, and those individuals or entities who by virtue of any form of such interest might exercise control over such horse or can benefit from the racing of such horse. The degree and type of such ownership held by each individual person must be designated.~~
- ~~c. Such disclosure must be made when registering each horse with the racing secretary upon arrival on association grounds, or at time of entry, whichever event occurs first, and must be revised immediately upon any subsequent change in such ownership.~~
- ~~d. Such disclosure together with all written agreements and affidavits setting out oral agreements, pertaining to the ownership of or rights in and to a horse, must be attached to the registration certificate for such horse and filed with the racing secretary, who is responsible for the care and security of such papers while such horses pertaining thereto are located on association grounds.~~
- ~~e. Such disclosure is made for the benefit of the public and all documents pertaining to the ownership or lease of a horse filed with the racing secretary must be available for public inspection as provided by law.~~
- ~~8. The commission or stewards, or both, shall review the ownership of each horse entered to race and ensure that each registration certificate or eligibility certificate is properly endorsed by the transferor to the present owners. The commission or stewards may determine the validity for racing purposes of all liens, transfers, and agreements pertaining to ownership of a horse, and may call for adequate evidence of ownership at any time. The commission or stewards may declare ineligible to race any horse, the ownership or control of which is in question.~~
- ~~9. A member of a limited partnership may not have an interest in more than one uncoupled horse in any race except by permission of the stewards. For purposes of this section only, "ownership" must be construed to mean any individual person or entity required to be licensed as an owner pursuant to these rules and, in the instance of a limited partnership, any individual person or other entity possessing at least a five percent beneficial interest provided, however, that when a trainer enters two or more horses in a stakes, handicap, futurity, or other special event under beneficial separate ownerships, the horses, at the request of the association and with the approval of the commission or stewards, may be permitted to race as separate wagering entities.~~



- ~~10. If the race is split in two or more divisions, horses in an "entry" must be seeded in separate divisions insofar as possible but the divisions in which they compete and the post positions must be determined by lot.~~
- ~~11. The horses owned by a limited partnership must run in the name of the general partner with a designated "(LP)" following the name.~~

**History:** ~~Effective July 1, 1989.~~

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

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

## CHAPTER 69.5-01-07

### 69.5-01-07-18. Medication.

1. ~~No horse participating in a race shall carry in its body any substance foreign to the natural horse except as hereinafter provided.~~
2. ~~No foreign substance may be administered to a horse entered to race by injection, oral administration, rectal infusion or suppository, or by inhalation within twenty-four hours prior to the scheduled post time for the first race, except as hereinafter provided.~~
3. ~~Foreign substances prohibited. No horse participating in a race may carry in its body any foreign substance.~~
4. ~~The use of phenylbutazone shall be permitted under the following conditions:~~
  - a. ~~Any horse to which phenylbutazone has been administered shall be subject to having a blood and or urine samples taken at the direction of the official veterinarian to determine the quantitative phenylbutazone levels and the presence of other drugs which may be present in the blood or urine samples.~~
  - b. ~~The permitted quantitative test level of phenylbutazone shall not exceed five micrograms per milliliter of plasma.~~
5. ~~Furosemide (lasix):~~
  - a. ~~Furosemide (lasix) may be administered intravenously to a horse which is entered to compete in a race. Except under the instructions of the official veterinarian or the racing veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a postrace urine sample. Furosemide (lasix) shall be permitted only after the official veterinarian has placed the horse on the bleeder list.~~
  - b. ~~The use of furosemide (lasix) shall be permitted under the following circumstances on association grounds where a detention barn may be utilized:~~
    - (1) ~~Furosemide (lasix) shall be administered at the direction of the official veterinarian or the official veterinarian's designee no less than four hours prior to post time for the race for which the horse is entered.~~
    - (2) ~~A horse qualified for a furosemide (lasix) administration must be brought to the detention barn within time to comply with the four-hour administration requirement specified above.~~

~~(3) The dose administered shall not exceed two hundred fifty milligrams nor be less than one hundred fifty milligrams.~~

6. ~~Bleeder list:~~

- ~~a. The official veterinarian shall maintain a bleeder list of all horses which have demonstrated external evidence of exercise-induced pulmonary hemorrhage or the existence of hemorrhage in the trachea post exercise upon endoscopic examination. Such examination must have been performed by or in the presence of the official veterinarian or the racing veterinarian.~~
- ~~b. The confirmation of a bleeder horse must be certified in writing by the official veterinarian or the racing veterinarian and entered into the bleeder list. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's certificate of registration.~~
- ~~c. Every confirmed bleeder, regardless of age, shall be placed on the bleeder list.~~
- ~~d. A horse may be removed from the bleeder list only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal.~~
- ~~e. A horse which has been placed on a bleeder list in another jurisdiction may be placed on a bleeder list in this jurisdiction provided that the other jurisdiction's criteria for the identification of bleeders are satisfactory in this jurisdiction.~~

7. ~~Upon a finding of a violation, the stewards may consider the currently established "uniform classification guidelines of foreign substances", and the "recommended penalties and model rule" promulgated by the association of racing commissioners international drug testing and quality assurance program and impose penalties and disciplinary measures consistent with the recommendations contained therein and their authority under the administrative rules and law.~~

1. Except as otherwise specifically provided by law, the commission adopts by reference:

- a. The association of racing commissioners international controlled therapeutic medication schedule version 2.1.
- b. The association of racing commissioners international uniform classification guidelines for foreign substances and recommended penalties version 7.00.

c. The model rules ARCI-011-020 section B(13)(a) through (j) of the association of racing commissioners international model rules of racing version 5.6.

2. Furosemide.

a. Furosemide may be administered intravenously to a horse, which is entered to compete in a race. Except under the instructions of the official veterinarian or the racing veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a post-race urine sample, furosemide shall be permitted only after the official veterinarian has placed the horse on the furosemide list. In order for a horse to be placed on the furosemide list the following process must be followed.

(1) After the horse's licensed trainer and licensed veterinarian determine that it would be in the horse's best interests to race with furosemide the official veterinarian or his/her designee shall be notified using the prescribed form, that the horse is to be put on the furosemide list.

(2) The form must be received by the official veterinarian or his/her designee by the proper time deadlines so as to ensure public notification.

(3) A horse placed on the official furosemide list must remain on that list unless the licensed trainer and licensed veterinarian submit a written request to remove the horse from the list. The request must be made to the official veterinarian or his/her designee, on the proper form, no later than the time of entry.

(4) After a horse has been removed from the furosemide list, the horse may not be placed back on the list for a period of sixty calendar days unless it is determined to be detrimental to the welfare of the horse, in consultation with the official veterinarian. If a horse is removed from the official furosemide list a second time in a three hundred sixty-five-day period, the horse may not be placed on the list for a period of ninety calendar days.

(5) Furosemide shall only be administered on association grounds.

(6) Furosemide shall be the only authorized bleeder medication.

b. The use of furosemide shall be permitted under the following circumstances on association grounds where a detention barn is utilized:

- (1) Furosemide shall be administered by the official veterinarian or his/her designee no less than four hours prior to post time for the race for which the horse is entered.
- (2) A horse qualified for furosemide administration must be brought to the detention barn within time to comply with the four-hour administration requirement specified above.
- (3) The dose administered shall not exceed five hundred milligrams nor be less than one hundred fifty milligrams.
- (4) Furosemide shall be administered by a single, intravenous injection.
- (5) After treatment, the horse shall be required by the commission to remain in the detention barn in the care, custody, and control of its trainer or the trainer's designated representative under the association and/or commission security supervision until called to the saddling paddock.

c. The use of furosemide shall be permitted under the following circumstances on association grounds where a detention barn is not utilized:

- (1) Furosemide shall be administered by the official veterinarian or his/her designee no less than four hours prior to post time for the race for which the horse is entered.
- (2) The furosemide dosage administered shall not exceed five hundred milligrams nor be less than one hundred fifty milligrams.
- (3) Furosemide shall be administered by a single, intravenous injection.
- (4) After treatment, the horse shall be required by the commission to remain in the proximity of its stall in the care, custody, and control of its trainer or the trainer's designated representative under general association and/or commission security surveillance until called to the saddling paddock.

d. Test result must show a detectable concentration of the drug in the post-race serum, plasma, or urine sample.

- (1) The specific gravity of post-race urine samples may be measured to ensure the samples are sufficiently concentrated for proper chemical analysis. The specific gravity shall not be below 1.010. If the specific gravity of the urine is found

to be below 1.010 or if a urine sample is unavailable for testing, quantitation of furosemide in serum or plasma shall be performed;

(2) Quantitation of furosemide in serum or plasma shall be performed when the specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

e. The administering authority or association may assess a fee approved by the commission on licensed owners of treated horses to recoup the reasonable costs associated with the administration of furosemide in the manner prescribed in these rules.

### 3. Bleeder list.

a. The official veterinarian shall maintain a bleeder list of all horses, which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout as observed by the official veterinarian.

b. Every confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

(1) First incident - Fourteen days;

(2) Second incident within a three hundred sixty-five-day period - Thirty days;

(3) Third incident within a three hundred sixty-five-day period - One hundred eighty days;

(4) Fourth incident within a three hundred sixty-five-day period - Barred for racing lifetime.

c. For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period.

d. The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility as defined by this policy.

e. A horse may be removed from the bleeder list only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal.

- f. A horse which has been placed on a bleeder list in another jurisdiction pursuant to these rules shall be placed on a bleeder list in this jurisdiction.
  
- 4. Antiulcer medications. The following antiulcer medications are permitted to be administered, at the stated dosage, up to 24 hours prior to the race in which the horse is entered:
  - a. Cimetidine (Tagamet®) - 8-20 mg/kg PO BID-TID
  - b. Opeprazole (Gastrogard®) - 2.2 grams PO SID.
  - c. Rantidine (Zantac®) - 8 mg/kg PO BID.

**History:** Effective July 1, 1989; amended effective January 1, 2008; January 1, 2015.

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

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

## CHAPTER 69.5-01-09

### 69.5-01-09-01. Definitions.

1. "Accredited North Dakota-bred race horse" means a horse qualifying for and duly registered in the North Dakota breeders' fund program. For purposes of awards and purse supplements, such accreditation for horses racing shall continue through the age of twelve years. Awards for breeding mares and stallions shall continue indefinitely.
2. "Breeder" means the owner or lessee or the respective breed-registering organization of the dam at the time of foaling in North Dakota.
3. "North Dakota-bred" means a foal born in North Dakota out of a mare registered as a broodmare under section 69.5-01-09-02 with the North Dakota racing commission prior to the foal's birth, and which mare was in North Dakota:
  - a. On or before February first of the year foaled; or
  - b. Within thirty days after the date of a bona fide purchase or lease transaction, whichever of those dates is the latest, and provided, in either case, that mare remained physically within the boundaries of North Dakota until foaling.
4. "North Dakota-foaled" means a horse foaled in North Dakota.
5. "Race horse owner" means the owner or lessee of record with the respective breed-registering organization at the time the horse participates in a race qualifying the horse for breeders' fund awards or purse supplements under the provisions of this chapter.
6. "Stallion owner" means the owner of a stallion registered as a breeding stallion in the North Dakota breeders' fund program. North Dakota breeders' fund awards accruing to the owner of a stallion as a result of qualifying race performances by North Dakota-breds sired by a stallion shall be awarded to the owner of the stallion at the time of conception of such progeny.

In a case involving extraordinary circumstances, the North Dakota racing commission or designated registering agency retains the right to allow or disallow the registration of a foal as North Dakota-bred at its sole discretion.



The requirements of this section apply to all breeds.

**History:** Effective January 1, 1990; amended effective March 1, 2002; July 1, 2011; January 1, 2015.

**General Authority:** NDCC 53-06.2-05

**Law Implemented:** NDCC 53-06.2-04.1, 53-06.2-11



**TITLE 89**  
**STATE WATER COMMISSION**



**JANUARY 2015**

**ARTICLE 89-02**

**DRAINAGE OF WATER**

Chapter	
89-02-01	Drainage of Ponds, Sloughs, Lakes, or Sheetwater, or Any Series Thereof, <del>and of Meandered Lakes</del>
89-02-02	Drainage of Wetlands [Repealed]
89-02-03	Wetlands Bank [Repealed]
89-02-04	Drainage Complaint Appeals
89-02-05	Licenses for Emergency Drainage [Repealed]
89-02-05.1	<del>Licenses for Emergency Drainage</del> <u>Drain Permits</u>

**CHAPTER 89-02-01**

**DRAINAGE OF PONDS, SLOUGHS, LAKES, OR SHEETWATER, OR ANY  
SERIES THEREOF, ~~AND OF MEANDERED LAKES~~**

Section	
89-02-01-01	Intent <u>[Repealed]</u>
89-02-01-02	Definitions
89-02-01-03	Permit Required
89-02-01-04	Permits for Assessment Drains [Repealed]
89-02-01-05	Exceptions to <u>the Need for a</u> Permit Required
89-02-01-06	Determination of Watershed Area
89-02-01-07	Filing Application
89-02-01-08	Referral of Applications to Appropriate District
89-02-01-09	Criteria for Determining Whether Drainage Is of Statewide or Interdistrict Significance
89-02-01-09.1	Board Procedure for Processing Applications to Drain
89-02-01-09.2	Evaluation of Applications - Factors Considered
89-02-01-09.3	Time for Determination by Board
89-02-01-09.4	Evaluation of Applications by the State Engineer of Statewide or Interdistrict Significance - Information to Be Used
89-02-01-09.5	Procedure, Availability, and Contents of Notice of State Engineer's Decision to Grant or Deny Application of Statewide or Interdistrict Significance

89-02-01-09.6	Request for State Engineer's Hearing
89-02-01-09.7	Notice of State Engineer's Hearing
89-02-01-09.8	Evidence at the State Engineer's Hearing
89-02-01-09.9	Time for Determination by the State Engineer - Copies of Decision
89-02-01-09.10	Consideration of Evidence Not Contained in the State Engineer's Record
89-02-01-09.11	Conditions to Permits <del>—Extending Time to Complete Project</del>
89-02-01-09.12	<u>Extending</u> Time <del>Within Which</del> to Complete Construction of Drain
89-02-01-10	District Hearing on Applications of Statewide or Interdistrict Significance [Repealed]
89-02-01-11	Emergency Drainage [Repealed]
89-02-01-12	Notice of District Hearing [Repealed]
89-02-01-13	Content of Notice of Hearing [Repealed]
89-02-01-14	Affidavit of Mailing and Affidavit of Notice [Repealed]
89-02-01-15	Time for Determination by Board of Managers [Repealed]
89-02-01-16	Consideration by the State Engineer and Districts [Repealed]
89-02-01-17	Approval of Drainage Permit Applications by District [Repealed]
89-02-01-18	Denial of Application by the District [Repealed]
89-02-01-18.1	Notice by State Engineer of Public Hearing on Application of Statewide or Interdistrict Significance [Repealed]
89-02-01-18.2	Evidence Presented at the State Engineer's Public Hearing [Repealed]
89-02-01-19	Consideration by State Engineer of Applications of Statewide or Interdistrict Significance [Repealed]
89-02-01-20	Criteria to Determine Whether Drainage Will Adversely Affect Lands of Lower Landowners [Repealed]
89-02-01-20.1	Time for Determination by the State Engineer [Repealed]
89-02-01-20.2	Consideration of Evidence Not Contained in the Record [Repealed]
89-02-01-21	Conditions to Permits [Repealed]
89-02-01-22	Requirements for a Valid Permit to Drain [Repealed]
89-02-01-23	Procedure Upon Complaint of Violation [Repealed]
89-02-01-24	Enforcement Action Without Receipt of Complaint [Repealed]
89-02-01-25	Criminal Complaint [Repealed]
89-02-01-26	Ditches or Drains Existing for Ten Years or More [Repealed]
89-02-01-27	Notice of Drainage Application Denials to Commissioner of Agriculture [Repealed]
89-02-01-28	Landowner Assessment Appeal to State Engineer

**89-02-01-01. Intent.** ~~This chapter establishes rules for processing applications for permits to drain certain ponds, sloughs, lakes, or sheetwater, or~~

~~any series thereof, and meandered lakes, as required by North Dakota Century Code sections 61-15-08 and 61-32-03. Repealed effective January 1, 2015.~~

**History:** Amended effective December 1, 1979; August 1, 1994; February 1, 1997; June 1, 1998.

**General Authority:** NDCC ~~28-32-02, 61-03-13~~

**Law Implemented:** NDCC ~~61-15-08, 61-32-03~~

**89-02-01-02. Definitions.** Unless the context otherwise requires, the following definitions apply to this article:

1. "Assessment drain" ~~means any drain constructed pursuant to is defined in North Dakota Century Code chapter 61-16.1 or 61-21 section 61-16.1-02.~~
2. "Board" ~~means the board of managers of a water resource district is defined in North Dakota Century Code section 61-21-01.~~
3. "District" means water resource district.
4. "Drain" ~~includes any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage and any artificial drains of any nature or description constructed for such purpose, including dikes and other appurtenant works. This definition may include more than one watercourse or artificial channel constructed for the aforementioned purpose when the watercourses or channels drain land within a practical drainage area is defined in North Dakota Century Code section 61-21-01.~~
5. "Emergency" means a situation that will cause significant damage to people or property if not addressed immediately and that would not occur under normal circumstances. An emergency may exist because of an extremely wet hydrologic cycle. Damages caused by deliberate acts may not constitute an emergency.
- 5: 6. "Lake" means a well-defined basin ~~which~~ that characteristically holds water throughout the year. Lakes go dry only after successive years of below normal runoff and precipitation.
- 6: 7. "Lateral drain" ~~for the purpose of regulating the drainage of water means a drain constructed after the establishment and construction of the original drain or drainage system and which flows into such original drain or drainage system from outside the limits of the original drain is defined in North Dakota Century Code section 61-21-01.~~
- 7: 8. "Maintenance" means removal of silt and vegetation from a drain. Maintenance does not include deepening or widening a drain.

8. ~~"Meandered lake" means any pond, slough, or lake which has had its boundaries established by metes and bounds in the survey of public lands by the government of the United States.~~
9. "Party Parties of record" means each person named or admitted as a party; or properly seeking and entitled ~~as of right~~ to be admitted as a party.
40. ~~"Person" means a person, firm, partnership, association, corporation, or any other type of private legal relationship, and any governmental organization, which includes any agency of the United States, a state agency, and any political subdivision of the state.~~
44. 10. "Pond" means a well-defined land depression or basin that holds water in normal years throughout the summer. Ponds generally go dry only in years of below normal runoff and precipitation.
42. 11. ~~"Series of ponds, sloughs, lakes, or Pond, slough, lake, sheetwater, or any series thereof"~~ means two or more ponds, sloughs, lakes, or sheetwater that are hydrologically linked naturally or artificially.
43. 12. "Sheetwater" is defined ~~by~~ in North Dakota Century Code section 61-32-03, ~~which provides that sheetwater means shallow water that floods land not normally subject to standing water.~~
44. 13. "Slough" includes two types:
- a. Seasonal slough: a depression ~~which~~ that holds water in normal years from spring runoff until approximately mid-July. In years of normal runoff and precipitation, a seasonal slough is usually not tilled, but can be used for hayland or pasture. In low runoff, dry years, these areas generally are tilled for crop production, but commonly reflood with frequent or heavy summer or fall rains.
  - b. Temporary slough: a shallow ~~depressional area~~ depression that holds water ~~or is waterlogged~~ from spring runoff until approximately early June. In years of normal runoff and precipitation, a temporary slough is usually tilled for crop production. In years of high runoff or heavy spring rain, a temporary slough may not dry out until mid-July and generally would not be tilled, but may be used for hayland or pasture. A temporary slough frequently refloods during heavy summer ~~and~~ or fall rains.
45. ~~"State engineer" means the state engineer, appointed pursuant to North Dakota Century Code section 61-03-01, or the state engineer's designee.~~
46. 14. "Supplemental public hearing" means a hearing held to review evidence not contained in the record of the state engineer's public hearing.



~~47.~~ 15. "Watercourse" is defined by in North Dakota Century Code section 61-01-06. ~~That section provides: "A watercourse entitled to the protection of the law is constituted if there is a sufficient natural and accustomed flow of water to form and maintain a distinct and a defined channel. It is not essential that the supply of water should be continuous or from a perennial living source. It is enough if the flow arises periodically from natural causes and reaches a plainly defined channel of a permanent character." Watercourse, for the purposes of this chapter, also means an outlet channel utilized to carry drained water from the outlet of the drain to a watercourse, as defined by section 61-01-06.~~

~~48.~~ 16. "Watershed" means the area ~~which~~ that drains into a pond, slough, lake, or sheetwater, or any series thereof.

**History:** Amended effective December 1, 1979; October 1, 1982; February 1, 1997; June 1, 1998; January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC ~~61-15-08,~~ 61-32-03

#### **89-02-01-03. Permit required.**

- ~~1.~~ A permit is required before any person may construct a drain for the purpose of draining waters from a pond, slough, lake, or sheetwater, or any series thereof, having a watershed of eighty acres [32.37 hectares] or more.
- ~~2.~~ A permit is required before any person may drain by pumping a pond, slough, lake, or sheetwater, or any series thereof, having a watershed of eighty acres [32.37 hectares] or more.
- ~~3.~~ A permit is required before any person may drain, cause to be drained, or attempt to drain any meandered lake.
- ~~4.~~ A permit is required for an assessment drain constructed pursuant to North Dakota Century Code chapter 61-16.1 or 61-21.
- ~~5.~~ A permit is required for the construction of any lateral drain.
- ~~6.~~ A permit is required before any person may modify the drainage authorized in the original permit. Modification of drainage includes deepening and widening of a drain, or the extension of any drain.
- ~~7.~~ A permit is required before any person may fill a pond, slough, lake, or sheetwater which has a watershed of eighty acres [32.37 hectares] or more, for the purpose of causing the pond, slough, lake, or sheetwater to be drained by elimination of all or a portion of the existing storage.

In addition to North Dakota Century Code section 61-32-03, a permit is required for:

1. An assessment drain.
2. Construction of a lateral drain.
3. Modification of a previous permit, which includes deepening, widening, or extending a drain.
4. Pumping, gravity, or placement of fill.

**History:** Amended effective December 1, 1979; October 1, 1982; February 1, 1997; June 1, 1998; January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC ~~61-15-08~~, 61-32-03

**89-02-01-05. Exceptions to the need for a permit required.**

1. A drainage permit under section 89-02-01-03 is not required for maintenance of a drain.
2. The provisions of section 89-02-01-03, ~~except subsection 3,~~ do not apply to any drain constructed under the direct and comprehensive supervision of the following federal or state agencies ~~specified in this section. The agencies deemed capable of providing supervision and analyzing downstream impacts are:~~
  - a. The state water commission;
  - b. The army corps of engineers;
  - c. The natural resources ~~and~~ conservation service; for projects constructed ~~pursuant to~~ under the Watershed Protection and Flood Prevention Act [Pub. L. 83-566; 16 U.S.C. 1001];
  - d. The bureau of reclamation; for projects that are part of the originally (1965) authorized Garrison diversion unit ~~authorized in 1965;~~
  - e. The state department of transportation; for federal aid projects; and
  - f. The public service commission for surface mining projects.

However, these agencies ~~shall~~ must notify the state engineer of any proposed drainage projects under their direct supervision during the planning stages.

**History:** Amended effective December 1, 1979; October 1, 1982; February 1, 1997; April 1, 2004; January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC ~~64-15-08~~, 61-32-03

**89-02-01-06. Determination of watershed area.** The determination of the watershed area must be made using ~~accurate or reliable~~ the best available maps or surveys. ~~Published seven and one-half minute topographic maps~~ LIDAR information or a survey conducted under the supervision of a registered land surveyor are preferred. Published seven and one-half minute topographic maps may also be utilized. This information may be supplemented by aerial photographs of the watershed or by an onsite investigation if requested by the applicant or ~~the local water resource~~ board; or if the state engineer determines it is necessary.

**History:** Amended effective December 1, 1979; October 1, 1982; February 1, 1997; January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC ~~64-15-08~~, 61-32-03

**89-02-01-07. Filing application.** Any person desiring a drainage permit ~~shall~~ must file an application with the state engineer on a form provided by the state engineer. ~~The applicant, if~~ If requested by the state engineer or the board, ~~shall~~ the applicant must provide an engineering analysis showing the downstream impacts of the proposed drainage. The analysis, ~~at the discretion of the state engineer or the board,~~ may need to include a determination of the ~~capacity of the drain and the drain's and receiving watercourse~~ watercourse's capacities and a ~~comparison~~ comparison of volume and timing of predrainage and postdrainage flows. If the application is incomplete; or if the information ~~contained therein~~ is insufficient to enable the state engineer or ~~the appropriate district board~~ to make an informed decision on the application, ~~the application must~~ it will be returned to the applicant for correction.

**History:** Amended effective December 1, 1979; October 1, 1982; February 1, 1997; January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC ~~64-15-08~~, 61-32-03

**89-02-01-08. Referral of applications to appropriate district.** Upon receipt of a properly completed application, the state engineer ~~shall~~ must determine whether the application involves drainage of statewide or interdistrict significance ~~using the factors set out in~~ under section 89-02-01-09. The state engineer ~~shall~~ must attach to the application any comments, recommendations, and engineering data that may assist the ~~appropriate~~ district in making a determination on the application. The application must then be referred to the ~~appropriate~~ district within

which ~~is found~~ a majority of the watershed ~~or drainage area~~ of the pond, slough, lake, ~~or~~ sheetwater, or any series thereof is found.

**History:** Amended effective December 1, 1979; October 1, 1982; February 1, 1997; June 1, 1998; January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC ~~61-15-08~~, 61-32-03

**89-02-01-09. Criteria for determining whether drainage is of statewide or interdistrict significance.** In determining whether the proposed drainage is of statewide or interdistrict significance, the state engineer ~~shall be guided by the following criteria~~ must consider:

1. Drainage ~~which would affect~~ affecting property owned by the state or its political subdivisions.
2. Drainage of sloughs, ponds, or lakes having recognized fish and wildlife values.
- ~~3. Drainage or partial drainage of a meandered lake.~~
4. 3. Drainage ~~which would have~~ having a substantial effect on another district.
5. 4. Drainage ~~which would convert~~ converting previously noncontributing areas (based on the National Oceanic and Atmospheric Administration Atlas 14 twenty-five year event - four percent chance) into permanently contributing areas.
- ~~6. 5.~~ For good cause, the state engineer may classify or refuse to classify any proposed drainage as having statewide or interdistrict significance, ~~or the state engineer may determine that certain proposed drainage is not of statewide or interdistrict significance.~~

**History:** Amended effective December 1, 1979; October 1, 1982; February 1, 1997; January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC ~~61-15-08~~ 61-32-03

**89-02-01-09.1. Board procedure for processing applications to drain.**

1. The board ~~shall~~ must use the following procedure ~~in this subsection when it processes to process~~ a drainage permit application ~~that the state engineer has determined is~~ of statewide or interdistrict significance:
  - a. Upon receipt of an application to drain ~~from the state engineer~~, the board ~~shall~~ must set the date, time, and place for a meeting at which it will receive ~~information concerning the merits of, as well as any~~ testimony ~~or information~~ pertinent to the application. At

the applicant's expense, the board ~~shall also~~ must give notice by mail ~~not less than~~ at least twenty days ~~from before~~ the date set for ~~consideration of the drainage application~~ the meeting to:

- (1) The applicant.
  - (2) All record title owners ~~of real estate~~ and holders of a contract for deed whose property ~~would be crossed by~~ the proposed drain would cross.
  - (3) All downstream riparian landowners ~~on the watercourse into which water will be drained~~ who ~~are~~ the board determines have the potential to be adversely impacted ~~as determined by the board~~.
  - (4) Any board ~~that~~ whose district would be substantially affected ~~by the water to be drained~~.
  - (5) The state game and fish department.
  - (6) The state department of health.
  - (7) The ~~state highway commissioner~~ department of transportation, county commissioners, ~~and or~~ board of township supervisors if the proposed ~~drainage drain~~ will affect or cross the right of way of any public highway, street, or road within their ~~jurisdiction~~ jurisdictions.
  - (8) The state engineer.
  - (9) The natural resources conservation service.
  - ~~(9)~~ (10) Any person who has made a written request for notification of ~~that~~ the project and has advanced the cost of providing that notification. ~~Such advance may not exceed ten dollars.~~
- b. Notice must ~~also~~ be published in a newspaper of general circulation in the area of the proposed drainage once a week for two consecutive weeks. Final notice must be published ~~not more than~~ between five and fifteen days ~~nor less than five days from~~ before the date set for the meeting.
- c. The notice must give the essential facts of the proposed drain including ~~name and address of applicant; legal description of the area to be drained; purpose of the drainage; watercourse into which the water will be drained; legal description of the confluence of the drain and the watercourse into which the water will be drained; the time, date, and place of the board's consideration~~

~~of the application; and the location and date of availability of information regarding the project.;~~

- (1) Name and address of applicant;
- (2) Legal description of the area to be drained;
- (3) Drain purpose;
- (4) Watercourse into which the water will be drained;
- (5) Legal description of the drain's confluence with the watercourse into which the water will be drained;
- (6) The time, date, and place of the meeting; and
- (7) The location and date of availability of information regarding the project.

- d. At least fourteen days ~~prior to~~ before the ~~date set by the board for its meeting to receive information on the application,~~ the applicant ~~shall~~ must submit to the board all documentary information the applicant intends to present at the ~~board's~~ meeting. The board ~~shall~~ must immediately place ~~such~~ the information in the board's office if the office is open for public access at least twenty hours each week, ~~or if.~~ If the board's office is not open to the public at least twenty hours each week, ~~in custody of the information must be~~ immediately placed with the county auditor of the county in which the majority of the watershed of the drain ~~is to~~ will be built. The information must be available for public review. The board ~~shall~~ must notify the applicant of this requirement upon its receipt of an application to drain. If the information is placed in the auditor's office, the auditor ~~shall~~ must return the information to the board one working day ~~prior to~~ before the ~~board's~~ meeting.
- e. The board ~~shall~~ must allow submission of all relevant oral or written evidence.
- f. In evaluating applications, the board ~~shall~~ must consider the factors in section 89-02-01-09.2.
- g. ~~The meeting at which the board~~ must stenographically or electronically record the meeting at which it receives information concerning the application must be recorded either stenographically or electronically. If the board approves the permit application, the record and all documentary information the board ~~received by the board~~ must be transferred to the state engineer. ~~Upon request of the state engineer, the~~ The board ~~shall~~ must provide a meeting transcript of the meeting at the request of the

state engineer. The cost of providing a transcript must be borne by the applicant.

- h. At the meeting's conclusion ~~of the meeting at which the board receives information about the proposed drain~~, the board ~~shall~~ must announce that:
- (1) The board's permit denial ~~of a permit~~ constitutes final denial ~~of the permit~~. Appeals ~~of a denial~~ must be taken to the district court within thirty days.
  - (2) A board-approved application will be forwarded to the state engineer.
  - (3) Those who wish to be notified of the board's decision ~~shall~~ ~~so notify the board and shall~~ must provide their names and addresses in writing to the board at the end of the meeting.
  - (4) The board ~~shall~~ must send notice ~~of the board's decision along with~~ and a copy of the board's determination and rationale to all parties of record, ~~to~~ anyone who has requested in writing to be notified, and to the state engineer.
- i. If the board denies the application, it ~~shall~~ must return the application to the applicant, along with a copy of the board's determination and rationale. A copy of the board's denial determination and rationale must also be sent to all parties of record, ~~to~~ anyone who has requested in writing to be notified, and ~~to~~ the state engineer.
- j. If the board approves the application, the ~~board's~~ approval must be noted on the application and a copy of the determination and rationale sent to the applicant. The board ~~shall~~ must send notice ~~of the board's decision along with~~ and a copy of the board's determination and rationale to all parties of record and ~~to~~ anyone who has requested in writing to be notified. The application, a copy of the determination and rationale, and all information reviewed by the board in considering the application must be forwarded to the state engineer for review within twenty days of the determination. The board's decision approving the application must contain a determination of the location and surface acre size, ~~in surface acres~~, of ponds, sloughs, and lakes to be drained by the proposed drain. ~~A seven and one-half minute topographic map indicating the location and size of the ponds, sloughs, and lakes approved for drainage must be attached to the determination.~~
- k. The board's notice to an applicant must state that the ~~board's application~~ approval ~~of the application~~ is not a permit to drain until the state engineer ~~has also approved~~ approves the application.

2. The board ~~shall~~ must use the following procedure ~~when it processes in this subsection to process~~ a drainage permit application that ~~the state engineer has determined~~ is not of statewide or interdistrict significance:
  - a. The board ~~shall~~ must review the permit application and any supporting documentation and determine whether ~~protection of~~ public and private interests would be better served by a specific public meeting to consider the project. ~~If it is determined a specific public meeting is necessary to protect public and private interests, the board shall process the permit application in accordance with procedures established by the board.~~
  - b. If a specific public meeting is necessary, the board must process the permit application under procedures established by the board.
  - ~~b:~~ c. ~~If the board determines a specific public meeting is unnecessary, the board shall~~ must consider the project ~~pursuant to~~ under the criteria ~~set forth~~ in section 89-02-01-09.2 and ~~shall~~ must deny or grant the application ~~with or without~~ and any modifications or conditions based upon those criteria. Written notice of the board's decision must be provided to all parties of record, ~~to anyone requesting who has requested in writing notice of the decision to be notified,~~ and ~~to~~ the state engineer.

**History:** Effective February 1, 1997; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03

**89-02-01-09.2. Evaluation of applications - Factors considered.** ~~The state engineer, for applications of statewide or interdistrict significance, and the board, for all~~ All applications to drain, ~~shall~~ must consider the following factors:

1. The water volume ~~of water~~ proposed to be drained and ~~the~~ its impact ~~of the flow or quantity of this water upon the watercourse into which the water it~~ will be drained.
2. Adverse effects that may occur to ~~the lands of lower proprietors downstream landowners.~~ This factor is limited to the project's hydrologic effects, such as erosion, flood duration of floods, impact of sustained flows impacts, and impact on the operation of downstream water control devices device operation impacts.
3. The engineering design and other physical aspects of the drain.
4. The project's impact on flooding problems in the project watershed.
5. The project's impact on ponds, sloughs, streams, or lakes having recognized fish and wildlife values.



6. The project's impact on agricultural lands.
7. Whether easements are required.
8. Other factors unique to the project.

**History:** Effective February 1, 1997; amended effective April 1, 2000; January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-01-26, 61-16.1-10(3), 61-32-03

**89-02-01-09.3. Time for determination by board.** ~~Within sixty days after receipt from the state engineer of an application to drain, the~~ The board shall must make a determination on the application within one hundred twenty days of receipt. This time limit may be extended only with the written consent of the state engineer. A request for ~~an a time extension of time under this section~~ must be in writing to the state engineer and must set forth the reason for ~~requesting the time extension request.~~ If no determination has been made and no extension has been requested, unless the state engineer determines that a unique or complex situation exists, the application is void.

~~In For~~ applications involving assessment drains, the ~~sixty-day~~ one hundred twenty-day time period does not ~~commence~~ begin until the date the assessments are ~~finally~~ established by the board and ~~are~~ no longer subject to appeal ~~to a court of law or the state engineer.~~

**History:** Effective February 1, 1997; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03

**89-02-01-09.4. Evaluation of applications by the state engineer of statewide or interdistrict significance - Information to be used.** In the state engineer's evaluation ~~of an application~~ of statewide or interdistrict significance applications, the state engineer ~~shall~~ must use all relevant documentary information submitted and oral testimony given for the board's consideration at its meeting. The state engineer may ~~also~~ use any information in the files and records retained by the state engineer's office or engineering information developed or obtained through investigation of the project area by the state engineer's staff. ~~The information used must be relevant and is part of the record.~~

The state engineer may also request information ~~and~~ or comment from independent sources. ~~However, the state engineer, but~~ is not required to delay the ~~state engineer's decision on an application~~ for more than thirty days from the date of request while waiting for comment from these sources. All information used must be relevant and is part of the record.

**History:** Effective February 1, 1997; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 28-32-06, 61-32-03

**89-02-01-09.5. Procedure, availability, and contents of notice of state engineer's decision to grant or deny application of statewide or interdistrict significance.**

1. ~~If the state engineer determines an application of statewide or interdistrict significance should be denied, the~~ The state engineer shall ~~must~~ provide a copy of the determination to the parties of record. ~~If the state engineer determines an application should be granted, with or without conditions, the state engineer shall provide a copy of the determination to all parties of record.~~ Other members of the public may view the record at the office of the state engineer, 900 east boulevard, Bismarck, during normal business hours.
2. ~~One~~ Upon written request, one copy of the determination to grant or deny a permit may be provided to persons any person not provided copies pursuant to a copy under subsection 1 ~~upon written request.~~ Additional copies will be provided upon payment for necessary copying, handling, and postage.
3. ~~Copies of the notice of the state engineer's determination must be provided to persons who made a written request for notice of that project not more than two months, or later than one day, prior to the date of the state engineer's decision.~~
4. ~~3.~~ The notice of decision must include the name of the drain; the applicant's name; whether the application was granted or denied and the date of the decision; the availability of the full text of the decision; and the fact that within thirty days of the date of the state engineer's decision a hearing may be requested on the project. The notice must also state that a valid request for a hearing must be in writing; must specifically state facts from which the person requesting the hearing is factually aggrieved by the state engineer's decision; and must state what material facts, or conclusions, are believed to be erroneous and why they are believed to be erroneous.:
  - a. The name of the drain;
  - b. The applicant's name;
  - c. Whether the application was granted or denied;
  - d. The date of the decision;
  - e. The availability of the full text of the decision;
  - f. That a hearing may be requested on the project within thirty days of the date of service of the state engineer's decision; and

- g. The request for a hearing must be in writing, specifically state facts from which the person requesting the hearing is factually aggrieved by the state engineer's decision, and what material facts or conclusions are believed to be erroneous and why they are believed to be erroneous.

**History:** Effective February 1, 1997; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-03-22, 61-32-03

**89-02-01-09.6. Request for state engineer's hearing.** All requests for a formal hearing on a project must be made in writing to the state engineer. ~~To be valid, a request must be made~~ within thirty days of the date of service of the state engineer's decision. The request must ~~be in writing and must~~ specifically state facts from which it is evident the person requesting the hearing is factually aggrieved by the state engineer's decision; and must state which material facts or conclusions are believed to be erroneous and why they are believed to be erroneous.

**History:** Effective February 1, 1997; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03

**89-02-01-09.7. Notice of state engineer's hearing.** If the state engineer determines that a request for a hearing on an application of statewide or interdistrict significance is valid and well-founded, the state engineer ~~shall~~ must set a date for a hearing and publish notice in the official newspaper of the county ~~within which~~ where a majority of the drainage basin is located. Publication must be once a week for two consecutive weeks. One of the publications must be published ~~no less than~~ at least twenty days before the hearing ~~date~~. The person requesting the hearing ~~shall~~ must give notice by certified mail to the state department of health, the state game and fish department, the state department of transportation, and all parties of record to the board's hearing at least twenty-one days before the ~~date of the~~ hearing. If such notice is not provided, the hearing ~~may~~ will not be held. The notice must give essential information about the proposed drainage application, including the date, time, and location of the hearing. All hearings will be held in Bismarck.

**History:** Effective February 1, 1997; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 28-32-05

**89-02-01-09.8. Evidence at the state engineer's hearing.** Evidence at the state engineer's hearing may be confined to the matters ~~put in issue~~ raised by any ~~valid~~ request of hearing described in section ~~89-02-01-09.7~~ 89-02-01-09.6.

**History:** Effective February 1, 1997; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 28-32-06, 61-32-03

**89-02-01-09.9. Time for determination by the state engineer - Copies of decision.** Unless the state engineer determines the ~~matters put in issue by the request for a hearing~~ raises complex or unique issues, the state engineer ~~shall~~ must render a decision within thirty days of the close of the ~~state engineer's~~ hearing. A copy of the decision must be ~~given to~~ served on all parties of record ~~at the state engineer's hearing~~ either personally, or by certified mail, ~~or by~~ regular mail ~~provided the,~~ or email. The state engineer ~~files an affidavit~~ will retain a certificate of service ~~by mail~~ indicating upon whom a copy of the decision was served.

**History:** Effective February 1, 1997; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 28-32-13, 61-03-13

**Law Implemented:** NDCC 28-32-13

**89-02-01-09.10. Consideration of evidence not contained in the state engineer's record.** The record of the state engineer's hearing must be closed at the conclusion of the state engineer's formal hearing. It is in the state engineer's discretion to receive testimony and evidence ~~that is~~ not contained in the record. However, ~~the state engineer,~~ before considering any evidence not contained in the record, ~~shall transmit the evidence~~ the state engineer must provide notice to the parties of record where the evidence may be obtained for their examination and comment. ~~The costs of reproducing and transmitting the evidence must be paid in advance by the party offering the evidence.~~ Written comment or a request for a supplemental hearing must be submitted to the state engineer within ten days after transmittal of the additional evidence. Any request for a supplemental hearing must provide sufficient information to allow the state engineer to determine if a supplemental hearing is warranted. If a supplemental hearing is warranted, ten days' notice by personal service ~~or,~~ certified mail, or email must be ~~afforded~~ given to the parties of record to inform them of the date, time, place, and nature of the hearing. All supplemental hearings must be held in Bismarck.

**History:** Effective February 1, 1997; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 28-32-07

**89-02-01-09.11. Conditions to permits ~~—Extending time to complete project.~~** Unless otherwise specifically stated:

1. All permits must include the following conditions:
  - a. The project and the rights granted under the permit are subject to modification to protect the public health, safety, and welfare.
  - b. ~~That construction~~ Construction must be completed within two years from the date of final approval or the permit is void. The two-year period does not begin until any appeal is complete.
2. All permits of statewide or interdistrict significance must include the following conditions:

- a. All highly erodible drainage channels must be seeded to a sod-forming grass.
  - b. ~~The vegetative~~ Vegetative cover must be adequately maintained for the life of the project or control structures must be installed, ~~or a combination of these two criteria.~~
  - c. Receipt of a permit does not relieve an applicant from liability for damages resulting from any activity conducted under the permit.
3. ~~A permit may be extended beyond two years for good cause shown. If the permit was not of statewide or interdistrict significance when it was originally approved, a request for an extension must be approved or disapproved by the board. If the permit was of statewide or interdistrict significance when it was originally approved, a request for an extension must be approved or disapproved by the state engineer. No extension may exceed two years.~~

The state engineer or the board may attach other conditions to the permit if ~~deemed~~ necessary.

**History:** Effective February 1, 1997; amended effective April 1, 2000; January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC ~~64-15-08,~~ 61-32-03

**89-02-01-09.12. ~~Time within which~~ Extending time to complete construction of drain.** The recipient of a permit to drain under this chapter shall ~~complete construction within two years of the date the decision granting the permit is final. The two-year period does not begin until any appeal of the state engineer's decision or board's decision is completed, nor does it run during the course of any other legal action brought to challenge the state engineer's decision or board's decision or halt or modify the project.~~

If the two-year period ~~runs~~ expires before construction is ~~completed~~ complete, the permit recipient may make a written request to the board for a one-year extension ~~which must be approved by the board.~~ Only two extensions may be granted. All requests for extensions must be made at least sixty days before the end of the two-year period expiration date and must specifically state why construction has not been completed. ~~Upon expiration of any extension, the permit recipient may request a further extension.~~ If the request is for an extension relating to a permit that the state engineer has determined to be of statewide or interdistrict significance, the extension must be submitted to and approved by both the state engineer and the board.

~~In the event the two-year period passes without the completion of construction, an extension of the period as provided in this section, or legal process staying construction, the permit is void.~~

**History:** Effective February 1, 1997; amended effective April 1, 2004; January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-03-13, 61-32-03

**89-02-01-28. Landowner assessment appeal to state engineer.** A landowner's appeal to the state engineer, claiming that the landowner will receive no benefit from the construction of a new drain, must be made within ten days after the assessments hearing ~~on assessments~~. The appeal must be in writing and must specifically state the facts upon which the claim is based.

**History:** Effective April 1, 2000; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-21-22

## CHAPTER 89-02-04

**89-02-04-01. Scope of chapter.** This chapter contains the procedure for appealing the decision of a water resource board on a complaint of drainage constructed without proper approval ~~after January 1, 1987.~~

**History:** Effective October 1, 1988; amended effective January 1, 2015.

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

**Law Implemented:** NDCC 61-32-08

**89-02-04-02. Definitions.** Unless the context otherwise provides, the following definitions apply:

1. "Affected landowner" means a person with any property interest, including a lease in land ~~on which~~ where the drain complained of is located or land ~~which~~ that is affected by the drain complained of.
2. "Aggrieved party" means any individual or entity who participated in the state engineer's or board's consideration of an appeal and who is actually damaged by the board's or state engineer's decision.
3. "Appeal" means an appeal from the decision of a board concerning a drain constructed ~~after January 1, 1987.~~
4. "Board" means the board of the water resource district in which the complaint is brought.
5. "Complaint" is a document which alleges drainage has been conducted without proper authorization. It is filed on a form supplied to the water resource board by the state engineer.
6. "Party" includes the petitioner and any respondent, the board from which the decision is appealed, and any entity or individual ~~which~~ that participated in the complaint process in front of the board. The designation as a party does not bestow standing to appeal a decision of the board to the state engineer or the decision of the state engineer to a court of law.
7. "Petitioner" means any aggrieved party who files a timely and proper appeal, or an affected landowner who files a timely and proper demand for hearing with the state engineer.
8. "Respondent" is a person who, within twenty days of notice of an appeal of a board's decision on a drainage complaint, files a notice with the state engineer of the person's intent to participate in the appeal. The person who filed the complaint, and the person against whom the complaint was filed, must be either a respondent or a petitioner. These persons and the board must be allowed to participate whether or not any notice of participation is filed with the state engineer. A person

may not be a respondent to an appeal of a board's decision unless the person participated by providing information to the board for its consideration.

**History:** Effective October 1, 1988; amended effective January 1, 2015.

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

**Law Implemented:** NDCC 61-32-08

**89-02-04-03. Filing of complaint.** All complaints are filed with the water resource board in the county ~~in which~~ where the drainage is located. Complaints filed with the state engineer will be forwarded to the appropriate board, unless the complaint is filed because of the board's inaction on a complaint under section 89-02-04-04.

**History:** Effective October 1, 1988; amended effective January 1, 2015.

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

**Law Implemented:** NDCC 61-32-08

**89-02-04-04. Complaint to state engineer - State engineer's action when board fails to act.** If a board does not make a decision upon a drainage complaint within one hundred twenty days of its filing with the board, the person filing the complaint with the board may file a request for state engineer action with the state engineer. The request must include a copy of the complaint filed with the board and any documentation the landowner wishes the state engineer to consider. The state engineer ~~shall~~ must then determine whether to commence action against the board or conduct ~~the an~~ an investigation ~~himself~~.

**History:** Effective October 1, 1988; amended effective January 1, 2015.

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

**Law Implemented:** NDCC 61-32-08

**89-02-04-05. Form of appeal.** If a board makes a decision on a drainage complaint, any appeal to the state engineer by an aggrieved party must be made within thirty days from the date notice of the board's decision was received in writing on the form prescribed by the state engineer, and must include:

1. The identity of all parties to the complaint.
2. Petitioner's interest in the water resource board's decision, including a statement of the impact the decision will have upon the petitioner.
3. The relief petitioner seeks.
4. A statement identifying the errors in the water resource board's decision ~~which~~ that entitle the petitioner to the relief sought.
5. All facts presented to the water resource board ~~which~~ that support the petitioner's position.



6. A legal description of the drainage area involved.
7. A map depicting the drainage area and identifying the drainage complained of.
8. A ~~certified~~ or cashier's check to cover the cost of preparing a transcript of the proceedings before the board.

**History:** Effective October 1, 1988; amended effective January 1, 2015.

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

**Law Implemented:** NDCC 61-32-08

**89-02-04-06. State engineer's review of board's decision.** Upon receipt of a written appeal by an aggrieved party from a decision of a water resource district ~~pursuant to~~ under North Dakota Century Code section 61-32-07, the state engineer ~~shall~~ must review the board's decision. In the review the state engineer will consider only:

1. Ownership of the land on which the drain is located.
2. Topographic maps and aerial photographs of the area.
3. Any existing surveys of the area.
4. The documentation and testimony given to the board for its consideration.
5. Any pertinent rules of the appropriate board.
6. The board's decision.

**History:** Effective October 1, 1988; amended effective January 1, 2015.

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

**Law Implemented:** NDCC 61-32-08

**89-02-04-07. Sufficiency of information on appeal.**

1. Once the state engineer's review under section 89-02-04-06 is complete, the state engineer will determine whether the information reviewed is sufficient to make a sound decision.
2. If the information is not sufficient, the state engineer will either conduct further investigations or return the record to the board for its further investigation.
3. If the information is sufficient, the state engineer ~~shall~~ must determine whether a drain, lateral drain, or ditch has been opened or established contrary to North Dakota Century Code title 61 or any rules adopted by the state engineer or the board. If so, the state engineer will take

one of the three actions set forth in North Dakota Century Code section 61-32-08. If the drain has not been opened contrary to North Dakota Century Code title 61 or a drainage rule, the complaint ~~must~~ will be dismissed. In either case the state engineer will notify all parties of the state engineer's decision by certified mail or by regular mail provided the state engineer files an affidavit of service by mail indicating upon whom the decision was served. The notice of decision will include the names and addresses of all parties.

**History:** Effective October 1, 1988; amended effective August 1, 1994; January 1, 2015.

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

**Law Implemented:** NDCC 28-32-13, 61-32-08

**89-02-04-08. State engineer's independent investigation.** After reviewing the board's decision and the items identified in section 89-02-04-06, the state engineer may conduct an investigation if the information is insufficient. The investigation may include an onsite inspection and survey of the property involved and other activities deemed appropriate by the state engineer. Any investigation the state engineer undertakes in response to a complaint filed with the state engineer because a board has not acted will be conducted ~~pursuant to~~ under this rule.

**History:** Effective October 1, 1988; amended effective January 1, 2015.

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

**Law Implemented:** NDCC 61-32-08

**89-02-04-09. Demand for hearing by affected landowner.** Hearings demanded ~~pursuant to~~ under North Dakota Century Code section 61-32-08 by an affected landowner must be made by certified mail within fifteen days of notice of the state engineer's decision. The affected landowner ~~shall~~ must also notify all parties by certified mail of the landowner's demand for hearing within fifteen days of the state engineer's decision. Hearings will be conducted as set forth in sections 89-02-04-11 through 89-02-04-23. The demand must state the issues to be addressed at the hearing.

**History:** Effective October 1, 1988; amended effective January 1, 2015.

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

**Law Implemented:** NDCC 61-32-08

**89-02-04-10. Request for hearing by others than affected landowners.** Any aggrieved party may request a hearing on the state engineer's decision. A request for a hearing must specifically state the reason for the request, and a copy of the request must be sent by certified mail to the state engineer and to each party within fifteen days after notice of the state engineer's decision ~~has been mailed.~~ If

granted, the hearing must be conducted as set forth in sections 89-02-04-11 through 89-02-04-23.

**History:** Effective October 1, 1988; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-03-22, 61-32-08

**89-02-04-13. Qualifications of witnesses at state engineer's hearings.**

Unless agreed to by both petitioner and respondent and allowed by the hearing officer, ~~no persons~~ people who failed to participate in the water resource board's determination under North Dakota Century Code section 61-32-07 may not be called to present evidence or testimony for consideration. However, the state engineer may call witnesses on the state engineer's own motion without the agreement of any party if the state engineer feels information known by the person will assist the hearing officer in making ~~his~~ a recommended decision.

**History:** Effective October 1, 1988; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-03-22, 61-32-08

**89-02-04-14. Notice of hearing.** When the hearing officer determines a date for a hearing, the hearing officer will notify the water resource board, the petitioner, and the respondent of the time and date of the hearing. In the case of a demand by an affected landowner ~~pursuant to~~ under section 89-02-04-09, the hearing officer ~~shall~~ must give the notice of the hearing date within fifteen days of the demand. The notice must be given by certified mail ~~not less than~~ at least forty-five days ~~prior to~~ before the date set for the hearing. All hearings will be held in Bismarck, North Dakota.

The notice must state that parties may present testimony at the hearing, petitioner and respondent may call witnesses at the hearing, and of the hearing officer's appointment as hearing officer. The notice must also state that each party ~~shall~~ must identify the position it is urging the state engineer to adopt. Those urging the state engineer's decision should be affirmed must be designated respondents. Those urging reversal or modification of the state engineer's decision must be designated petitioners.

**History:** Effective October 1, 1988; amended effective August 1, 1994; January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 28-32-05, 61-03-22, 61-32-08

**89-02-04-16. Notice of witnesses at hearing - Time frame.** At least thirty days ~~prior to~~ before the date set for the hearing, the petitioner ~~shall~~ must notify other parties, the board, the state engineer, and the hearing officer by certified mail of all witnesses the petitioner will call and the content of their testimony. At least thirty days ~~prior to~~ before the date set for the hearing, the respondent ~~shall~~ must notify other parties, the board, the state engineer, and the hearing officer by certified mail of witnesses to be called by the respondent and the content

of their testimony. Within twenty days of the date of the hearing, the petitioner ~~shall~~ must notify the parties, the board, the state engineer, and the hearing officer by certified mail of any rebuttal witnesses to be called and the content of their testimony. The state engineer ~~shall~~ must notify the parties, the board, and the hearing officer of any witnesses the state engineer intends to call in the notice of hearing. However, if testimony or evidence not provided to the board and not considered in the state engineer's determination will be presented by others, the failure of the state engineer to identify a witness should not preclude the state engineer from providing other testimony and evidence of a technical nature.

**History:** Effective October 1, 1988; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-03-22, 61-32-08

**89-02-04-17. Subpoena of witnesses.** If any party desires the hearing officer to subpoena any witness for attendance at the hearing, the hearing officer must be notified of the intent to subpoena the witness at least seven days ~~prior to~~ before the date of the hearing. The hearing officer may not subpoena a witness unless the request for a subpoena:

1. Is written.
2. States the subject matter of the testimony to be given.
3. States the time and date ~~upon which~~ that the witness is to appear.
4. Is accompanied by a certified check for the fees allowed by law for one day for such the witness. The fees allowed by law include, ~~but are not limited to,~~ mileage to and from the hearing, per diem, and in the case of the state engineer's staff, the salary for that individual.

**History:** Effective October 1, 1988; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-05(13), 61-03-13

**Law Implemented:** NDCC 28-32-09, 61-03-05, 61-32-08

**89-02-04-18. Prehearing conference.** A prehearing conference to clarify issues, resolve any conflicts, and stipulate to any matter will be held at least seven days ~~prior to~~ before the date of the hearing. At the conference the parties ~~shall~~ must provide sufficient copies of exhibits to be presented to all parties, the board, the state engineer, and the hearing officer. The hearing officer may allow the prehearing conference to be held by telephone if exhibits are provided to all parties, the board, the state engineer, and the hearing officer at least three days ~~prior to~~ before the prehearing conference.

**History:** Effective October 1, 1988; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-03-22, 61-32-08

**89-02-04-19. Order of presentation at hearing.** At the hearing the petitioner ~~shall~~ must present the petitioner's case first. The respondent then presents the respondent's case, followed by the board and the state engineer. After all participants have presented their case, a participant may present other evidence or testimony to rebut that presented by another participant.

**History:** Effective October 1, 1988; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-03-22, 61-32-08

**89-02-04-20. Cross-examination.** Oral cross-examination of adverse witnesses must will be allowed by the petitioner and the respondent. ~~Each side, petitioner~~ The petitioner and respondent, ~~shall~~ must designate one individual to cross-examine witnesses ~~which~~ that side did not call. In addition, the state engineer and the board may cross-examine any witnesses ~~which~~ they did not call. However, if a party demonstrates to the hearing officer that the party's position is not adequately represented by any other party it may be allowed to cross-examine witnesses on the party's own.

**History:** Effective October 1, 1988; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-03-22, 61-32-08

**89-02-04-21. Record of hearing - Consideration by hearing officer.** After the hearing is over the record will be closed. The hearing officer will consider only material contained in the record and will not accept and consider any information after the hearing unless the evidence was not provided at the hearing because of circumstances beyond the control of the party presenting the evidence. Information submitted after the hearing may be considered by the state engineer in making the state engineer's decision, but only ~~in accordance with~~ under North Dakota Century Code section ~~28-32-07~~ 28-32-25.

**History:** Effective October 1, 1988; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 28-32-07, 61-32-08

**89-02-04-23. Decision of state engineer on record of hearing.** The state engineer will review the record, the hearing officer's recommendation, and any additional evidence received ~~pursuant to~~ under North Dakota Century Code section ~~28-32-07~~ 28-32-25, and make a final determination. If the conclusion is the drain, lateral drain, or ditch was constructed contrary to a board rule or title 61, the state engineer will take one of the actions prescribed by North Dakota Century Code section 61-32-08.

If the report concludes the drain, lateral drain, or ditch was lawfully constructed, the complaint will be dismissed.

**History:** Effective October 1, 1988; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 28-32-07, 61-32-08

**CHAPTER 89-02-05.1**  
**LICENSES FOR EMERGENCY DRAINAGE DRAIN PERMITS**

Section	
89-02-05.1-01	Scope of Chapter [ <del>Repealed</del> ]
89-02-05.1-02	Definitions [ <del>Repealed</del> ]
89-02-05.1-03	<del>Emergency Drain Licensure Permit</del> to be Temporary
89-02-05.1-04	Emergency Defined [ <del>Repealed</del> ]
89-02-05.1-05	<del>Form of Application for an Emergency Drain Form</del>
89-02-05.1-06	<del>Procedure for Consideration of Emergency Drain Applications</del> <u>Permit Application</u>
89-02-05.1-07	Decision on <del>Emergency License</del> <u>Permit</u> Application - Conditions
89-02-05.1-08	Requirement for Permanent <del>Drainage</del> <u>Permit</u> Application
89-02-05.1-09	Closure of <del>Temporary</del> Drain
<u>89-02-05.1-09.1</u>	<u>Extension of Permit</u>
89-02-05.1-10	License Does Not Absolve Liability for Damages [ <del>Repealed</del> ]

**89-02-05.1-01. Scope of chapter.** ~~This chapter contains rules concerning temporary emergency drainage licenses: Repealed effective January 1, 2015.~~

**History:** ~~Effective June 1, 1998.~~

**General Authority:** ~~NDCC 28-32-02, 61-03-13~~

**Law Implemented:** ~~NDCC 61-32-03~~

**89-02-05.1-02. Definitions.** ~~Unless the context otherwise provides, the following definitions apply: Repealed effective January 1, 2015.~~

- ~~1. "Application" means an application for licensure for an emergency drain.~~
- ~~2. "Board" means the board of the water resource district in which the emergency drainage license is sought.~~
- ~~3. "Drain" means any structure or construction which changes the water surface area of a pond, slough, lake, or sheetwater, or any series thereof, having a watershed of eighty acres [32.37 hectares] or more.~~

**History:** ~~Effective June 1, 1998.~~

**General Authority:** ~~NDCC 28-32-02, 61-03-13~~

**Law Implemented:** ~~NDCC 61-32-03~~

**89-02-05.1-03. Emergency drain Licensure Permit to be temporary.** ~~A license Emergency drain permits received under this chapter has a duration of not more than are only valid for six months unless extended as provided in this chapter plus any valid extensions.~~

**History:** ~~Effective June 1, 1998; amended effective January 1, 2015.~~

**General Authority:** ~~NDCC 28-32-02, 61-03-13~~

**Law Implemented:** ~~NDCC 61-32-03~~

**89-02-05.1-04. Emergency defined.** ~~An emergency for purposes of this chapter is a situation which if not addressed immediately will cause significant damage to persons or property which would not occur under normal circumstances. An emergency may exist as a result of an extremely wet cycle. However, damages caused by deliberate acts of any individual do not constitute an emergency under this chapter unless the damage can be alleviated without harm to other persons or property.~~ Repealed effective January 1, 2015.

**History:** ~~Effective June 1, 1998.~~

**General Authority:** ~~NDCC 28-32-02, 61-03-13~~

**Law Implemented:** ~~NDCC 61-32-03~~

**89-02-05.1-05. Form of application for an emergency drain: Application form.** ~~Applications for an An emergency drainage license drain permit application must be written and must contain the following information include:~~

1. Landowner's name and address.
2. Legal description of land ~~on which~~ where the emergency drain will be located.
3. A map showing the drain location ~~of the drain.~~
4. An estimate of the surface acreage of the pond, slough, lake, or sheetwater, or any series thereof; and the volume of water to be drained by the emergency drain.
5. A list of all downstream adjacent landowners ~~whose land is adjacent to the course the water drained will take for a distance of one mile [1.6 kilometers] downstream from the discharge point,~~ along with the addresses and telephone numbers of these landowners.
6. Copies of any written permission received from downstream landowners.
7. A compilation of any written or oral permission and refusals from downstream landowners ~~to give permission.~~
8. A description of the emergency.
9. Written permission allowing the state engineer and board to inspect the drain.

**History:** ~~Effective June 1, 1998;~~ amended effective January 1, 2015.

**General Authority:** ~~NDCC 28-32-02, 61-03-13~~

**Law Implemented:** ~~NDCC 61-32-03~~

**89-02-05.1-06. Procedure for consideration Consideration of emergency drain applications permit application.** ~~An application for an~~



emergency drain permit application must be sent simultaneously to the board and the state engineer. The application will be reviewed for completeness by the board and the state engineer. The ~~board and state engineer shall also~~ must make a preliminary determination as to the existence of an emergency. As soon as possible, a conference call or ~~an~~ onsite meeting among the board, the state engineer, and other affected parties; as determined by the state engineer; must be held. The applicant or any other affected party may make a statement concerning the emergency ~~drainage~~ drain permit application during the conference call or onsite meeting. Any conference call or onsite meeting must be electronically recorded. During the call or onsite meeting, but after all parties have been given an opportunity to present their views, the board ~~shall~~ must make a recommendation to the state engineer whether ~~or not~~ the license permit should be granted.

**History:** Effective June 1, 1998; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03

**89-02-05.1-07. Decision on emergency license permit application - Conditions.** After completion of the conference call or onsite meeting, the state engineer ~~shall~~ must consider the written information received, the matters discussed during the conference call or onsite meeting, and the recommendation of the board. ~~Based upon this information, the state engineer shall decide whether the emergency license should be granted. If the license is granted, the state engineer may place any condition upon it which the state engineer deems necessary to protect public or private interests. A condition may include a requirement for a bond. The license must contain a condition limiting the duration of the license to a timeframe of not greater than six months.;~~

1. The written information received;
2. The matters discussed;
3. The board's recommendation; and
4. Whether the emergency permit should be granted.

If the permit is granted, the state engineer may place any condition upon it, including a requirement for a bond and that receipt of an emergency drain permit does not relieve an applicant from liability for damages resulting from any activity conducted under the permit.

**History:** Effective June 1, 1998; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03

**89-02-05.1-08. Requirement for permanent drainage permit application.** If the emergency drain is to be permanent, the applicant ~~shall~~ must submit a drainage drain permit application to the state engineer ~~in accordance with~~ under chapter 89-02-01. If the application is submitted ~~no later~~

~~than at least thirty days prior to before the date the emergency license permit expires and the permanent drain has the same alignment as the emergency drain, the state engineer may extend the term of the emergency license is extended permit until final action on the drainage drain permit application has been taken unless the state engineer determines that the drain should be closed to prevent damage to public or private interests. If the watershed of the permanent drain is the same as the emergency drain, but has a different alignment, the emergency drain permit must only be extended under section 89-02-05.1-09.1.~~

**History:** Effective June 1, 1998; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03

**89-02-05.1-09. Closure of temporary drain.** ~~If an application for a permanent drainage drain permit application is not submitted thirty days prior to before the date the emergency license permit expires, the applicant shall must immediately make preparations for closure of prepare to close the drain unless the applicant has applied in writing for an extension from the state engineer and that extension has been granted under section 89-02-05.1-09.1. Preparations must include entering by other individuals, obtaining any permission necessary from other landowners, and obtaining any permission or authorizations necessary. Closure of the drain must be completed on or before by the license emergency permit expiration date. The applicant shall must keep the board and the state engineer informed of the applicant's progress in closing the drain. The applicant must notify the board and the state engineer in writing when the emergency drain has been completely closed.~~

**History:** Effective June 1, 1998; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03

**89-02-05.1-09.1. Extension of permit.** ~~The applicant must submit a written request for an extension at least thirty days before the expiration of the emergency permit. If it is determined that an emergency still exists, the state engineer may issue a one-time, six-month extension to the permit's expiration date. If an emergency continues to exist after the one-time extension, an applicant may reapply under chapter 89-02-05.1 for a new emergency drain permit.~~

**History:** Effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-32-03

**89-02-05.1-10. License does not absolve liability for damages.** ~~The receipt of a license for emergency drainage does not relieve an applicant from~~

~~liability for damages resulting from any activity conducted pursuant to the license.  
Repealed January 1, 2015.~~

**History:** ~~Effective June 1, 1998.~~

**General Authority:** ~~NDCC 28-32-02, 61-03-13~~

**Law Implemented:** ~~NDCC 61-32-03~~

## CHAPTER 89-03-01

### **89-03-01-01.3. When a water permit for stored water must be obtained.**

A water permit ~~for stored water must be obtained when the stored water will be put to a beneficial use. A water permit may also~~ authorize the storage of water for flood control or other reasons deemed necessary by the state engineer. However, authorization to store water for flood control or other reasons does not create a water right. If stored water will be put to beneficial use, a water permit must be obtained.

**History:** Effective November 1, 1989; amended effective August 1, 1994; July 1, 2014; January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-04-01.1, 61-04-01.2, 61-04-02

## ARTICLE 89-08

### DAMS, DIKES, AND OTHER DEVICES

Chapter	
89-08-01	Definitions
89-08-02	Construction Permits
89-08-03	Inspections
89-08-04	<del>Operating Plan</del> <u>Operation and Maintenance</u>

#### CHAPTER 89-08-01 DEFINITIONS

Section	
89-08-01-01	Definitions
89-08-01-02	Definition of Unsafe Dam, Dike, or Other Device <u>[Repealed]</u>

**89-08-01-01. Definitions.** The following definitions apply in this article:

1. "Appurtenant works" means all works incident or attached to a dam, dike, or other device, including ~~but not limited to:~~
  - a. A spillway, either in the dam or separate from it;
  - b. The reservoir and its rim;
  - c. A low-level outlet; and
  - d. A water conduit such as a tunnel, pipeline, or penstock, either through the dam, dike, or other device or their abutments.
2. "Construction" or "construct" means any activity for which a permit is required by North Dakota Century Code section 61-16.1-38, including construction, alteration, enlargement, or modification of a dam, dike, or other device.
3. "Dam" means any ~~artificial barrier or obstruction~~, including any appurtenant works, constructed across a stream channel, watercourse, or an area that drains naturally or may to impound or attenuate the flow of water. All structures necessary to impound a single body of water are considered a single dam.
4. "Dike" means ~~an embankment~~ any artificial barrier, including any appurtenant works, constructed along a watercourse or an area that drains naturally to divert the flow of water to protect real or personal property.

5. ~~"District" means a water resource district.~~ "Diversion" means any open channel, culvert, or ditch constructed to reroute a watercourse as defined by North Dakota Century Code section 61-01-06.
6. "Embankment" means a structure created by an artificial deposit of material upon the natural surface of the land that is designed to act as a water control device, support roads or railways, or for other similar purposes.
- 6: 7. "Engineer" means a person who has been duly registered and licensed as an engineer by the North Dakota state board of registration for professional engineers and land surveyors.
- 7: 8. "Height" means the maximum vertical distance ~~in feet~~ from the stream channel bottom ~~at the centerline of the dam~~ or lowest elevation of a naturally draining area to the top of ~~the settled embankment~~ dam.
- 8: 9. "High-hazard dam" means ~~any~~ a dam located upstream of developed or urban areas where failure may cause serious damage to homes, industrial and commercial buildings, and major public utilities. There is potential for the loss of more than a few lives if the dam fails.
10. "Holding pond, lagoon, or dugout" means any artificial, hydraulically disconnected structure, including any appurtenant works, constructed to store water.
- 9: 11. "Inspection" means a visual or mechanical check, a measurement, a boring, or any other method necessary for determination of the adequacy of construction techniques, conformity of work with approved plans and specifications, or the safety and operating performance of a dam, dike, or other device.
- 40: 12. "Low-hazard dam" means a dam located in a rural or agricultural ~~areas~~ area where there is little possibility of future development. Failure of low-hazard dams may result in damage to agricultural land, township and county roads, and farm buildings other than residences. No loss of life is expected if the dam fails.
- 44: 13. "Medium-hazard dam" means a dam located in a predominately rural or agricultural area where failure may damage isolated homes, main highways, or railroads, or cause interruption of minor public utilities. ~~The~~ There is potential for the loss of a few lives ~~may be expected~~ if the dam fails.
- 42: 14. "Other device" means a water control structure, other than a dam or dike, ~~which may include, but is not limited to, diversion ditches, dugouts, lagoons,~~ including diversions and holding ponds, lagoons, or dugouts.

- ~~43.~~ 15. "Owner" means any person who owns, controls, operates, maintains, manages, or proposes to construct a dam, dike, or other device; ~~except that for. For the purpose of signing the a construction permit application for construction permit,~~ "owner" means the person who owns the property or interest in property ~~upon which~~ where the dam, dike, or other device will be built.
- ~~14.~~ "State engineer" means ~~the state officer provided for in North Dakota Century Code section 61-03-01 or any of the state engineer's employees or authorized agents.~~
16. "Top of dam" means the top of the settled embankment or the elevation of the uppermost surface of a nonembankment dam, excluding accessory features, such as railings.
17. "Unsafe dam, dike, or other device" means any such structure that threatens harm to life or property or is improperly maintained.

**History:** Effective November 1, 1989; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-16.1-38

**89-08-01-02. Definition of unsafe dam, dike, or other device.** ~~A dam, dike, or other device is unsafe if it threatens harm to life or property, or is improperly maintained.~~ Repealed effective January 1, 2015.

**History:** ~~Effective November 1, 1989.~~

**General Authority:** ~~NDCC 28-32-02, 61-03-13~~

**Law Implemented:** ~~NDCC 61-03-21.2~~

## CHAPTER 89-08-02 CONSTRUCTION PERMITS

Section	
89-08-02-01	Determining the Capacity of Dams, Dikes, or Other Devices
89-08-02-02	Contents of Application
89-08-02-03	Permit Does Not Absolve Liability for Damages
<u>89-08-02-03.1</u>	<u>Time to Complete Construction of Structure</u>
<u>89-08-02-03.2</u>	<u>Extending Time to Complete Construction of Structure</u>
89-08-02-04	<u>Temporary Emergency Construction Permits</u>
<u>89-08-02-05</u>	<u>Extension of Emergency Construction Permits</u>
<u>89-08-02-06</u>	<u>Removal of Emergency Structures</u>
<u>89-08-02-07</u>	<u>As Built Plans</u>

### **89-08-02-01. Determining the capacity of dams, dikes, or other devices.**

The impounding capacity of a dam is calculated based upon the elevation at the top of the settled embankment of the dam. The diverting capacity of a dike is calculated based upon the area protected as measured from the effective top of the dike. If the absence of the dike could result in more than fifty acre-feet of water inundating the protected area, a permit is required. The diverting capacity of a diversion ~~ditch~~ is calculated based upon the runoff from a the National Oceanic and Atmospheric Administration Atlas 14 twenty-five year, twenty-four hour, precipitation event. No construction ~~on the dam, dike, or other device~~ can begin until a construction permit is obtained.

**History:** Effective November 1, 1989; amended effective April 1, 2004; January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-16.1-38

**89-08-02-02. Contents of application.** A completed construction permit application for a construction permit must be submitted to the state engineer along with include: plans and specifications; evidence ~~recognized in a court of law sufficient to establish a prima facie case of~~ establishing a property right ~~in~~ for the property that will be affected by the construction of the dam, dike, or other device; and any additional ~~data or~~ information required by the state engineer.

**History:** Effective November 1, 1989; amended effective June 1, 1998; April 1, 2004; January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-16.1-38

**89-08-02-03. Permit does not absolve liability for damages.** The receipt of a permit, including a permit for emergency construction, does not relieve an



applicant from liability for damages resulting from any activity conducted pursuant to under the permit.

**History:** Effective June 1, 1998; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-16.1-38

**89-08-02-03.1. Time to complete construction of structure.** Construction must be completed and the state engineer must be notified of completion in writing within two years from the date of final approval or the permit is void. The two-year period does not begin until any appeal is complete.

**History:** Effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-16.1-38

**89-08-02-03.2. Extending time to complete construction of structure.** If the two-year period expires before construction is complete, the permit recipient may make a written request to the state engineer for a one-year extension. Only two extensions may be granted. All requests for extensions must be made at least sixty days before the expiration date and must specifically state why construction has not been completed.

**History:** Effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-16.1-38

**89-08-02-04. Temporary Emergency construction permits.** A completed application for an emergency construction permit must be submitted to the state engineer along with any additional information required by the state engineer. If the state engineer determines an emergency exists, the state engineer may issue a temporary an emergency construction permit to construct a dam, dike, or other device capable of impounding, obstructing, or diverting more than fifty acre-feet of water. A temporary An emergency construction permit shall have a duration of not more than will expire in six months unless extended by the state engineer under section 89-08-02-05.

**History:** Effective April 1, 2004; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-16.1-38

**89-08-02-05. Extension of emergency construction permits.** The applicant must submit a written request for an extension at least thirty days before the expiration of the emergency construction permit. If it is determined that an emergency still exists, the state engineer may issue a one-time, six-month extension to the permit's expiration date. If an emergency continues to exist after

the one-time extension, an applicant may reapply under section 89-08-02-04 for a new emergency construction permit.

**History:** Effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-16.1-38

**89-08-02-06. Removal of emergency structures.** Once the emergency has ended or upon permit expiration, whichever occurs first, all structures constructed under section 89-08-02-04 must be removed in their entirety and the disturbed area restored to preproject conditions. The applicant must notify the state engineer in writing when the emergency structure has been completely removed.

**History:** Effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-16.1-38

**89-08-02-07. As built plans.** As a condition on all construction permits, the owner of the dam, dike, or other device will provide the state engineer with "as built" plans within six months after the dam, dike, or other device has been constructed to provide details of the modifications that occurred during construction.

**History:** Effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-16.1-38

## CHAPTER 89-08-03 INSPECTIONS

Section	
89-08-03-01	Inspections and Reports During Construction of <del>High-Hazard Dams, Medium-Hazard Dams, and Low-Hazard Dams</del> Over Ten Feet [3.05 meters] in Height
89-08-03-02	Monitoring During Construction by the State Engineer
89-08-03-03	Changes in Construction
89-08-03-04	Requested Inspections
89-08-03-05	Periodic Inspections After Construction
89-08-03-06	As Built Plans [ <del>Repealed</del> ]
<u>89-08-03-07</u>	<u>Access to Dams for Inspection</u>

**89-08-03-01. Inspections and reports during construction of ~~high-hazard dams, medium-hazard dams, and low-hazard dams~~ over ten feet [3.05 meters] in height.** ~~In order to~~ To protect property and assure safety, the following are conditions to all construction permits for ~~high-hazard dams, medium-hazard dams, or low-hazard dams~~ over ten feet [3.05 meters] in height:

1. An engineer must be in charge of and responsible for inspections during construction.
2. Inspections during construction must be performed at intervals necessary to ensure conformity with the construction permit and the plans and specifications.
3. ~~Within seven days after~~ The information obtained during each inspection, ~~the engineer in charge shall submit~~ must be documented in a written report ~~to the state engineer specifying the information obtained pursuant to the inspection.~~ The report will specify any changes necessary under ~~this section~~ 89-08-03-03. The inspection reports must be provided to the state engineer upon request.

**History:** Effective November 1, 1989; amended effective April 1, 2004; January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-16.1-38

**89-08-03-03. Changes in construction.** ~~If, pursuant to an inspection under section 89-08-03-01 or 89-08-03-02,~~ the state engineer or engineer in charge determines changes in construction are necessary to ensure safety, ~~whether the changes are necessary because the dam, dike, or other device does not comply with the construction permit or plans and specifications, or an unforeseen condition is discovered, or for any other reason,~~ the state engineer may order the

appropriate changes and may order construction be stopped until the changes are made.

**History:** Effective November 1, 1989; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-04-11

**89-08-03-04. Requested inspections.**

1. Upon receipt of ~~an affidavit complaining~~ a written complaint that a dam, dike, or other device is unsafe because of its construction, maintenance, or operation, the state engineer shall will examine the available information and determine if the complaint is justified.
2. If the state engineer determines the complaint is unjustified, the state engineer shall must notify the complainant in writing of that fact. ~~If the complainant continues to request an inspection even though the state engineer determines the complaint is unjustified, the state engineer shall make the inspection upon receiving from the complainant a certified check or cashier's check in an amount sufficient to cover the total cost of inspection.~~
3. If the state engineer determines the complaint is justified, the state engineer shall ~~make the~~ will complete the necessary inspection ~~upon receiving from the complainant a certified check or cashier's check in an amount sufficient to cover the total cost of inspection and make a determination regarding the structure's safety. If construction is ongoing, all construction activities must cease until the state engineer completes the inspection.~~
4. ~~If the dam, dike, or other device is defective, the state engineer shall require the owner of the dam, dike, or other device to pay the cost of inspection, and upon payment shall return the amount deposited by the complainant. If the cost of inspection is not paid within thirty days by the owner of the defective dam, dike, or other device, the cost of inspection shall become a lien against any of the owner's property.~~
5. ~~If the dam, dike, or other device is not found defective, any money deposited by the complainant for the inspection may not be returned.~~

**History:** Effective November 1, 1989; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-04-11, 61-03-21.1, 61-03-21.2

**89-08-03-05. Periodic inspections after construction.** ~~As a condition on all construction permits, the~~ The state engineer may require inspection of a dam,

dike, or other device as often as necessary after construction to protect property and assure safety.

**History:** Effective November 1, 1989; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-04-11, 61-16.1-38

**89-08-03-06. As built plans.** ~~As a condition on all construction permits, the owner of the dam, dike, or other device will provide the state engineer with "as built" plans after the dam, dike, or other device has been constructed. Repealed effective January 1, 2015.~~

**History:** ~~Effective November 1, 1989.~~

**General Authority:** ~~NDCC 28-32-02, 61-03-13~~

**Law Implemented:** ~~NDCC 61-16.1-38~~

**89-08-03-07. Access to dams for inspection.** The state engineer has authority to enter upon land to inspect a dam during construction, conduct periodic dam inspections after construction, or conduct a dam inspection in response to a complaint that the dam is unsafe. Except in emergency situations as determined by the state engineer, the state engineer will request permission from the landowner to enter the property. If the landowner refuses to give permission or fails to respond within five days of the request, the state engineer may request a district court order for authorization to enter the property to inspect the dam.

**History:** Effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-03-21.1

**CHAPTER 89-08-04**  
**OPERATING PLAN OPERATION AND MAINTENANCE**

Section

89-08-04-01	Operating Plan
<u>89-08-04-02</u>	<u>Maintenance Plan</u>
<u>89-08-04-03</u>	<u>Emergency Action Plan</u>

**89-08-04-01. Operating plan.** By the fifteenth of February of each year, the operator of a reservoir with a capacity of more than one thousand acre-feet ~~shall must~~ submit an ~~operation~~ operating plan for that year to the state engineer. The state engineer ~~shall will~~ review the operating plan, and if deficiencies or discrepancies exist, the state engineer ~~shall must~~ notify the owner of the dam of the deficiencies or discrepancies ~~within thirty days of discovering the deficiencies or discrepancies.~~ The owner of the dam ~~shall must~~ correct the deficiencies or discrepancies and return the corrected operating plan to the state engineer within fourteen days of receiving notice of the deficiencies or discrepancies. The ~~operation~~ operating plan must be approved by the state engineer ~~prior to~~ before the operation of the dam. If the operator receives no response from the state engineer within thirty days, the ~~operation~~ operating plan is approved. ~~The operation plan must contain at a minimum:~~

- ~~1. A reservoir operation procedure;~~
- ~~2. A maintenance procedure for the dam and appurtenant works; and~~
- ~~3. Emergency procedures and warning plans.~~

**History:** Effective November 1, 1989; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-03-21

**89-08-04-02. Maintenance plan.** Dam owners must maintain their structures in an adequate manner. The state engineer may require the owner of a dam with a capacity of more than one thousand acre-feet to submit a maintenance plan for the dam and appurtenant works.

**History:** Effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-03-21

**89-08-04-03. Emergency action plan.** The owner of a dam with a storage capacity of more than one thousand acre-feet must submit an emergency action plan for the dam to the state engineer. The plan must be approved by the state

engineer. The plan must be maintained and updated on a regular basis, and copies of all updates must be submitted to the state engineer.

**History:** Effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-03-21

**CHAPTER 89-12-01  
MUNICIPAL, RURAL, AND INDUSTRIAL WATER SUPPLY PROGRAM**

Section	
89-12-01-01	Definitions
89-12-01-02	<del>Eligibility for Program Funds</del> <u>Eligible Projects</u>
89-12-01-03	Application for <u>Feasibility Study Funding</u>
89-12-01-04	Application to Determine Eligibility - Initial Review by the State Engineer <u>[Repealed]</u>
89-12-01-05	Preliminary Engineering Reports - Initial Review by State Engineer - Bureau Requirements <u>[Repealed]</u>
89-12-01-06	<del>Feasibility Study - Review - Report</del> <u>Application for Design and Construction Funding</u>
89-12-01-07	Design and Construction Requirements <u>[Repealed]</u>
89-12-01-08	Funding - Priority
89-12-01-09	Reports to Commission and C-District <u>[Repealed]</u>
89-12-01-10	Contract Awards <u>[Repealed]</u>

**89-12-01-01. Definitions.** As used in this chapter, unless the context or subject matter otherwise requires:

1. ~~"Applicant" means the party submitting a proposal.~~
2. ~~"Bureau" means the bureau of reclamation or its duly authorized agent.~~
3. ~~"C-district" means the Garrison Diversion Conservancy District or its duly authorized agent.~~
4. ~~"City" means any city organized under the laws of this state.~~
5. 1. "Commission" means the North Dakota state water commission ~~or its designee.~~
6. 2. "Design and construction" means preparation of the final design plans and the ~~ultimate~~ construction of a project.
7. 3. "Feasibility study" means a report of sufficient detail to provide a sound estimate of capital costs, water costs to users, and operation, maintenance, and replacement costs.
4. 4. "Garrison Diversion" means Garrison Diversion Conservancy District.
8. 5. "Preliminary engineering report" means a reconnaissance level report containing sufficient information to determine whether additional detailed studies are merited.
9. 6. "Program funds" means money available for municipal, rural, and industrial projects ~~including money available through the Garrison Diversion Reformulation Act of 1986,~~ as amended by the Water



Resources Development Act of 2000, Pub. L. 106-541, 114 Stat. 2572 (2000), administered by the bureau of reclamation.

- ~~10.~~ "Proposal" means ~~an application submitted to the commission for financial assistance from program funds for municipal, rural, and industrial projects and associated costs.~~
- ~~41.~~ 7. "Public water system" means a piped potable water system ~~for the provision to the public of piped water for human consumption, if the system has with~~ at least fifteen service connections or regularly ~~serves~~ serving at least twenty-five individuals.
- ~~42.~~ 8. "Regional water system" is a system that provides water to at least four public water systems and may also include rural water users.
- ~~43.~~ 9. "Rural water users" means all users, ~~including farms, unincorporated cities, villages, trailer courts, and livestock,~~ excluding incorporated cities.
- ~~44.~~ "State engineer" means the individual appointed by the commission pursuant to North Dakota Century Code section ~~61-03-01~~ or the state engineer's designee.

**History:** Effective June 1, 1994; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-02-14

**Law Implemented:** NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

**89-12-01-02. Eligibility for program funds Eligible projects.** The following projects and associated costs are eligible for financial assistance from program funds:

- 1. ~~Water supply projects.~~ Design and construction activities for the following types of projects are eligible for financial assistance from program funds:
  - ~~a.~~ Design and construction of projects for supplying water including:
    - (1) New ground water wells including mechanical and electrical components.
    - (2) Pipelines from water sources to public water systems and principal supply works for rural water systems.
    - (3) Booster pumping plants for supply lines.
    - (4) Intake works and pumping plants for new surface water source.

- (5) ~~New or enlarged storage facilities.~~
  - (6) ~~New rural water systems or enlargements or extensions of rural water systems.~~
  - (7) ~~New regional water systems or enlargements or extensions of regional water systems.~~
- b. ~~Design and construction of water treatment projects including:~~
- (1) ~~New water treatment plants.~~
  - (2) ~~Modifications to and upgrades of existing water treatment plants.~~
- a. New ground water wells, including mechanical and electrical components.
  - b. Pipelines from water sources to public water systems and principal supply water works for systems.
  - c. Booster pumping plants for supply lines.
  - d. Intake works and pumping plants for new surface water sources.
  - e. New or enlarged storage facilities.
  - f. New rural water systems or enlargements or extensions of existing rural water systems.
  - g. New regional water systems or enlargements or extensions of existing regional water systems.
  - h. New water treatment plants.
  - i. Modifications to and upgrades of existing water treatment plants.
2. Program funds may be used for engineering, ~~and legal, and right-of-way costs, excluding the purchase of easements, and~~ costs incurred in conducting environmental reviews or cultural resources investigations, right-of-way costs, excluding the purchase of easements, and costs associated with the planning and design, and construction of eligible projects listed in subdivisions a and b of subsection 1.
3. Program funds are not available for costs associated with operation, maintenance, and replacement of water supply or treatment systems or

the costs associated with the preparation of the preliminary engineering report.

**History:** Effective June 1, 1994; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-02-14

**Law Implemented:** NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

**89-12-01-03. Application for feasibility study funding.**

1. ~~An applicant~~ To be considered for program funds, the project sponsor must submit an application ~~for program funds to the state chief engineer at the following address~~ and Garrison Diversion that includes:

~~North Dakota State Water Commission  
900 East Boulevard Avenue  
Bismarck, North Dakota 58505-0850~~

~~The application must include the following:~~

- a. Information explaining the need for the ~~proposal project~~, including its objectives and benefits.
  - b. The area to be served by the ~~proposal project~~.
  - c. ~~Maps, diagrams, or other illustrated documentation if these will make the proposal more understandable~~ A preliminary engineering report.
  - d. The approximate cost of ~~carrying out the proposal, if available project~~.
  - e. The amount of funding sought from program funds and the amount the ~~applicant project sponsor~~ intends to contribute to ~~carry out the proposal feasibility study~~.
  - f. ~~Efforts made, and the~~ The results; of all efforts made to secure funds from sources other than program funds. ~~If available, provide~~ Provide the current rate schedule for the water supply and treatment ~~system systems~~.
  - g. Other information the ~~applicant project sponsor~~ believes pertinent or ~~requested by that the state chief engineer requests~~.
2. ~~A copy of the application must also be sent to the c-district at the following address:~~

~~Garrison Diversion Conservancy District  
P.O. Box 140  
Carrington, North Dakota 58421~~

2. During review of the application, the chief engineer, in consultation with Garrison Diversion, may decide which parts of the project are eligible for funding from program funds.
3. After review of the application, the chief engineer may prepare a report setting forth the recommendations regarding the project feasibility study funding. If a report is prepared, it must address whether the project is consistent with statewide plans and programs, and the chief engineer will provide a copy to the commission and Garrison Diversion.
4. The commission and Garrison Diversion will jointly approve program funds within the district.

**History:** Effective June 1, 1994; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-02-14

**Law Implemented:** NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

**89-12-01-04. Application to determine eligibility - Initial review by the state engineer.** ~~After the initial review of an application, the state engineer may decide:~~ Repealed effective January 1, 2015.

1. ~~The proposal is eligible for funding from program funds. If the proposal is eligible for funding, the state engineer shall notify the applicant in writing.~~
2. ~~The information provided is inadequate to review the proposal and may order the applicant to provide more information, or may obtain more information.~~
3. ~~The proposal is not eligible for funding from program funds. The state engineer shall notify the applicant of and include the reasons for ineligibility in writing.~~
4. ~~The state engineer shall submit a copy of all notifications to the c-district.~~

**History:** ~~Effective June 1, 1994.~~

**General Authority:** ~~NDCC 28-32-02, 61-02-14~~

**Law Implemented:** ~~NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08~~

**89-12-01-05. Preliminary engineering reports - Initial review by state engineer - Bureau requirements.** Repealed effective January 1, 2015.

1. ~~An applicant notified that its project is eligible for funding must submit a preliminary engineering report to the state engineer. The applicant shall contact the bureau at the initiation of the preliminary engineering report to discuss applicable federal requirements. The preliminary engineering report must contain:~~

- a. ~~Name of the project sponsor and contact persons.~~
- b. ~~A brief summary of the proposed project including:~~
  - (1) ~~Identification of the use of water and estimated water for each use.~~
  - (2) ~~Description of existing water quantity and quality.~~
  - (3) ~~Explanation of inadequacy of existing supplies.~~
  - (4) ~~Estimate of potential users.~~
  - (5) ~~User interest and how it was determined.~~
- c. ~~A map of the project area showing:~~
  - (1) ~~Water sources (aquifers, lake, stream, other systems).~~
  - (2) ~~Proposed facilities.~~
  - (3) ~~Distribution systems.~~
  - (4) ~~Alternatives.~~
- d. ~~Preliminary costs estimate for feasibility study, capital costs, and costs for all alternatives.~~
- e. ~~Repayment concepts.~~
- f. ~~Funding source for the applicant's share.~~
- g. ~~Proposed project schedule.~~
- h. ~~Identification of entity responsible for applicable reports or studies.~~
- i. ~~Availability and cost of construction material.~~
- j. ~~Social and local economic climate.~~
- k. ~~Special or unusual considerations such as public and construction safety, repayment contracts, biota transfer, and environmental.~~
- l. ~~Special site conditions such as ground water table, soil conditions, right of way, and zoning constraints, and manmade features.~~
- m. ~~Project's energy requirements and date of service.~~

- ~~h: Documentation of the engineering selection process.~~
  - ~~i: Project's potential effect on economic development within project area.~~
  - ~~j: Documentation of cultural resources in the affected project area.~~
  - ~~k: An outline of the water conservation plan.~~
  - ~~l: Action necessary and action taken to comply with all applicable state and federal laws including the National Environmental Policy Act, Fish and Wildlife Coordination Act, Endangered Species Act, Clean Water Act, and state and federal laws pertaining to identification and preservation of cultural resources with letters from the appropriate agencies.~~
  - ~~m: Other information requested by the state engineer.~~
- ~~2: The applicant must consider whether an alternative project could satisfy the objectives of the applicant. The preliminary engineering report must set forth a general discussion of all other alternatives considered before and during report preparation, a description of the preferred alternative, and a no action alternative.~~
  - ~~3: The applicant shall submit one copy of the preliminary engineering report to the e-district and copies to the bureau as specified by the state engineer.~~
  - ~~4: After initial review of the preliminary engineering report, the state engineer may decide:
 
    - ~~a: The proposal is, or parts of the proposal are, eligible for program funds. The state engineer shall notify the applicant in writing that the proposal is, or parts of it are, eligible for funding.~~
    - ~~b: The information provided is inadequate and may order the applicant to provide more information, or may obtain more information.~~
    - ~~c: The proposal or parts of the proposal are not eligible for program funds. The state engineer shall notify the applicant and include the reasons for ineligibility in writing.~~~~

- d. ~~The state engineer shall submit a copy of all notifications to the e-district.~~

**History:** ~~Effective June 1, 1994.~~

**General Authority:** ~~NDCC 28-32-02, 61-02-14~~

**Law Implemented:** ~~NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08~~

**89-12-01-06. Feasibility study - Review - Report Application for design and construction funding.**

1. ~~An applicant whose project is eligible to receive program funds~~ A project sponsor requesting design or construction funding must submit a copy of a feasibility study to the state chief engineer. The feasibility study must include the following information:
  - a. ~~All the information required by subdivisions a, b, c, e, f, g, h, i, j, k, l, m, n, o, and r of subsection 1 of section 89-12-01-05. This information, however, must be updated and submitted in more detail and clarity.~~
  - b. ~~Project plans and alternative plans with a description of the preferred alternative.~~
  - c. ~~A description of proposed water treatment and storage facilities.~~
  - d. ~~Design criteria including population projections and water demands.~~
  - e. ~~Ability and willingness of beneficiaries to pay capital and other costs.~~
  - f. ~~Cost estimates for capital and other costs.~~
  - g. ~~Economic and engineering project cost analyses.~~
  - h. ~~Design and operation alternatives.~~
  - i. ~~Methods of construction.~~
  - j. ~~Operation, maintenance, and replacement plan.~~
  - k. ~~Entity responsible for operation, maintenance, and replacement.~~
  - l. ~~Entity responsible for administration of contracts.~~
  - m. ~~A county soil map with prime farmland indicated.~~

- ~~f. Water conservation plan.~~
- ~~g. Any other information requested by the state engineer.~~
- 2. For projects that deliver Missouri River water to the Hudson Bay drainage area, a determination must be made that treatment will be provided to meet requirements of the Boundary Waters Treaty Act of 1909.
- 3. The ~~applicant shall~~ project sponsor must submit ~~one copy~~ two copies of the feasibility study to the ~~e-district~~ Garrison Diversion and ~~copies one copy~~ to the bureau as specified by the state chief engineer.
- 4. After review of the feasibility study, the ~~state chief engineer shall, in consultation with Garrison Diversion, may~~ prepare a report setting forth ~~its~~ the recommendations regarding the project design or construction funding. ~~The report shall~~ If a report is prepared, it must address whether the project is consistent with statewide plans and programs. The chief engineer will provide a copy to the commission and Garrison Diversion.
- 5. ~~The state engineer shall provide a copy of the report to the commission and e-district.~~ The commission and Garrison Diversion will jointly approve program funds within the district.

**History:** Effective June 1, 1994; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-02-14

**Law Implemented:** NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

**89-12-01-07. Design and construction requirements.** Repealed effective January 1, 2015.

- ~~1. In order to receive program funds for design and construction, an applicant must submit to the state engineer:
 
  - ~~a. Documentation of the engineering selection process for design and construction engineering services and a copy of the contract for engineering services for design and construction.~~
  - ~~b. Engineering plans, designs, and specifications not less than forty days prior to the start of the invitation to bid date.~~~~
- ~~2. No construction contract may be awarded or construction initiated until the plans, designs, and specifications have been approved by the state engineer, e-district, and bureau. Any changes in plans must be approved by the state engineer, e-district, and bureau.~~
- ~~3. Construction contracts over two thousand dollars must incorporate the Davis-Bacon wage rate unless otherwise specified.~~



4. ~~The entity responsible for operation, maintenance, and replacement shall contract with water users for payment of:~~
  - a. ~~Water delivery.~~
  - b. ~~Hookup.~~
  - c. ~~Standby service charges.~~
  - d. ~~Other fees necessary.~~
  
5. ~~Documentation of the following must be made available to the state engineer and c-district prior to the applicant receiving construction funds:~~
  - a. ~~Procurement process for services and goods.~~
  - b. ~~Necessary state water right permits.~~
  - c. ~~Necessary state permits controlling diversion and distribution.~~
  - d. ~~Rights of way for construction (easements).~~
  - e. ~~All contracts relating to the project.~~
  - f. ~~Applicable federal permits.~~

**History:** ~~Effective June 1, 1994.~~

**General Authority:** ~~NDCC 28-32-02, 61-02-14~~

**Law Implemented:** ~~NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08~~

**89-12-01-08. Funding - Priority.**

1. The commission ~~shall~~ may evaluate each eligible project based on the following criteria:
  - a. Need for improving water supply quantity ~~and~~ or quality problems ~~or both.~~
  - b. Local contribution to project funding.
  - c. Location of project.
  - d. ~~Equitable distribution of municipal, rural and industrial funds.~~
  - e. d. Ability to pay.

- f. ~~e.~~ Economic development.
- ~~g.~~ f. Water conservation plan and drought management plan.
- ~~h.~~ g. Other criteria determined to be relevant by the commission.

Based upon these evaluations, the commission ~~shall, after consultation with Garrison Diversion, may~~ rank the eligible projects in priority order ~~which, based on its judgment, are in most need of funding. A report ranking the eligible projects must be in writing and include data substantiating the determinations. This data must be available to the public upon written request.~~

2. Program funds ~~must~~ may be ~~provided to~~ approved for eligible projects to the extent funding is available as determined by the commission, after consultation with ~~the c-district~~ Garrison Diversion. Program funds may be ~~provided~~ in the form of grants or loans, ~~or both, and may be provided for a feasibility study or for design or construction of a project, or a combination of the three.~~ The commission, ~~after consultation with the c-district, shall decide whether to provide program funds, and the amount of funds, to an applicant for a feasibility study or for design or construction of a project, or a combination of the three~~ for feasibility, design, or construction.

**History:** Effective June 1, 1994; amended effective January 1, 2015.

**General Authority:** NDCC 28-32-02, 61-02-14

**Law Implemented:** NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

**89-12-01-09. Reports to commission and c-district.** ~~After a project has been determined to be eligible for program funds, a report must be submitted to the commission and c-district by the end of each quarter regardless of whether funds have been requested. The quarterly report must include: Repealed effective January 1, 2015.~~

- ~~1. A schedule and cost of work for the upcoming quarter.~~
- ~~2. A written report describing progress during the preceding quarter and the cost of work performed during the preceding quarter.~~
- ~~3. Other information requested by the commission.~~

**History:** Effective June 1, 1994.

**General Authority:** ~~NDCC 28-32-02, 61-02-14~~

**Law Implemented:** ~~NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08~~

**89-12-01-10. Contract awards.** Repealed effective January 1, 2015.

1. ~~Prior to the award of any contract, the applicant shall provide the state engineer and e-district the following:~~
  - a. ~~A bid abstract.~~
  - b. ~~A statement of the low bidder's qualifications even if the contract is not awarded to the low bidder.~~
  - c. ~~A statement of intent to award the contract at least fifteen days prior to proposed contract award.~~
  - d. ~~A written justification describing the reasons for nonselection of the low bidder, and reasons for the proposed selection if the applicant plans to award the contract to other than the low bidder.~~
2. ~~Contracts must be pursuant to applicable federal procurement laws.~~
3. ~~The following items must be submitted to the state engineer and e-district after the award of the contract:~~
  - a. ~~The contractor's performance and payment bond.~~
  - b. ~~The contractor's certificate of insurance.~~
  - c. ~~The contractor's license.~~
  - d. ~~The contract.~~
4. ~~A construction management plan must be submitted to the state engineer and bureau within thirty days after the award of the contract. The construction management plan must include the following:~~
  - a. ~~Construction schedules.~~
  - b. ~~Contract requirements.~~
  - c. ~~Contractor qualifications, duties, and responsibilities.~~
  - d. ~~Agreement for engineering services, including description of coordination activities with the commission.~~
  - e. ~~Field office location, addresses, and phone numbers of project personnel.~~
  - f. ~~Resumes of professional staff.~~
  - g. ~~Safety program.~~

h. ~~Other information requested by the state engineer.~~

**History:** ~~Effective June 1, 1994.~~

**General Authority:** ~~NDCC 28-32-02, 61-02-14~~

**Law Implemented:** ~~NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1,  
61-02-64, 61-24-08~~

## CHAPTER 89-14-01

**89-14-01-01. Standards.** Except as provided in section 89-14-01-06, all highways constructed or reconstructed by the department of transportation, board of county commissioners, board of township supervisors, their contractors, subcontractors, or agents, or by any individual, firm, corporation, or limited liability company must be designed to meet the standards contained in this chapter. The department, ~~or any of transportation,~~ board of county commissioners, board of township supervisors, their contractors, subcontractors, or agents, or any individual, firm, corporation, or limited liability company that fails to comply with these standards is not entitled to the immunity provided in section North Dakota Century Code section 24-03-06, 24-03-08, or 24-06-26.1 ~~of the North Dakota Century Code.~~

**History:** Effective May 1, 2001; amended effective July 27, 2001; January 1, 2015.

**General Authority:** NDCC 24-02-01.1, 24-02-01.5, 28-32-02, 61-03-13

**Law Implemented:** NDCC 24-03-06, 24-03-08, 24-06-26.1

### 89-14-01-02. Definitions.

1. ~~"Construct~~ Constructed" means to construct a new highway on a new location or corridor.
2. ~~"Highway, street, or road"~~ is defined in North Dakota Century Code section 24-01-01.1.
2. 3. ~~"Reconstruct~~ Reconstructed" means to regrade ~~or widen an existing roadbed, add a lane adjacent to the existing alignment, or do full depth road surface replacement on the an~~ existing highway location. For purposes of this chapter, ~~reconstruct~~ reconstructed also includes replacing, ~~modifying,~~ or installing a stream crossing.
4. ~~"Stream crossing"~~ means an opening to permit the flow of water under, adjacent to, or because of a highway.

**History:** Effective May 1, 2001; amended effective January 1, 2015.

**General Authority:** NDCC 24-02-01.1, 24-02-01.5, 28-32-02, 61-03-13

**Law Implemented:** NDCC 24-03-06, 24-03-08, 24-06-26.1

**89-14-01-03. Design flood frequency.** The following table provides the minimum design standard recurrence interval of the event for which each type of stream crossing must be designed. ~~This represents a minimum design standard.~~ Nothing contained in this chapter is intended to restrict ~~the road authority~~ an entity from providing greater capacity.

Type of Crossing	State Highway System						County	
	Urban System		Rural System				Rural System	
	Regional	Urban Roads	Principal Arterial		Minor Arterial	Major Collector	Major Collector	Off <sup>4</sup> System
Interstate			Other					
Bridges & Reinforced Concrete Boxes	25 year <sup>2</sup>	25 year <sup>1</sup>	50 year <sup>2</sup>	50 year <sup>2</sup>	50 year <sup>2</sup>	25 year <sup>2</sup>	25 year <sup>2,3</sup>	15 year <sup>2,3</sup>
Roadway Culverts	25 year <sup>2</sup>	25 year <sup>1</sup>	50 year <sup>2</sup>	25 year <sup>2</sup>	25 year <sup>2</sup>	25 year <sup>2</sup>	25 year <sup>2,3</sup>	15 year <sup>2,3,5</sup>
Storm Drains	10 year <sup>1</sup>	5 year <sup>1</sup>	10 year <sup>2</sup>	10 year <sup>2</sup>	10 year <sup>2</sup>	10 year <sup>2</sup>		
Underpass Storm Drains	25 year <sup>1</sup>	25 year <sup>1</sup>	50 year <sup>2</sup>	25 year <sup>2</sup>	25 year <sup>2</sup>	25 year <sup>2</sup>		

<sup>1</sup>Discharges shall must be computed using the rational method or other recognized hydrologic methods.

<sup>2</sup>Discharges shall must be computed using United States geological survey report 92-4020 or other recognized hydrologic methods.

<sup>3</sup>If an overflow section is provided, the pipes and the overflow section, in combination, must pass the appropriate design event within the headwater limitations provided in this chapter.

<sup>4</sup>Off system roads include all township roads.

<sup>5</sup>For township roads, the recurrence interval is 10 years.

**History:** Effective May 1, 2001; amended effective July 27, 2001; January 1, 2015.

**General Authority:** NDCC 24-02-01.1, 24-02-01.5, 28-32-02, 61-03-13

**Law Implemented:** NDCC 24-03-06, 24-03-08, 24-06-26.1

**89-14-01-04. Floodplain consideration - Upstream development.** All stream crossings must comply with applicable floodplain regulations and regulatory floodway requirements. If a stream crossing is being replaced and buildings or structures are located upstream from the crossing, the stream crossing must not be ~~constructed or~~ reconstructed in a manner that increases the likelihood of impacts to those upstream buildings or structures ~~from that which existed with the stream crossing being replaced,~~ even if the capacity of the crossing being replaced was greater than the capacity otherwise required by this chapter. Any stream crossing constructed as part of a newly constructed roadway shall must be constructed to pass a one hundred-year event without the resulting increase in headwater impacting any existing buildings or structures. Structures, for the purposes of this section, include grain bins, silos, feedlots, and corrals. Structures do not include pasture fencing.

**History:** Effective May 1, 2001; amended effective January 1, 2015.

**General Authority:** NDCC 24-02-01.1, 24-02-01.5, 28-32-02, 61-03-13

**Law Implemented:** NDCC 24-03-06, 24-03-08, 24-06-26.1

**89-14-01-05. Allowable headwater.** The allowable maximum headwater when passing the design discharge must be measured from the bottom of the channel. For arch pipes, the maximum allowable headwater must be based on the rise of the pipe, and the pipe size category must be the equivalent round pipe size. For multiple pipe installations, the pipe diameter used to calculate the allowable headwater must be the diameter of the largest pipe. Tailwater resulting from downstream conditions, either natural or manmade, must be accounted for in the determination of the crossing's capacity and the resulting headwater. Additional guidance is provided in the North Dakota department of transportation design manual. If a crossing results in less than one-half foot [15.24 centimeters] of headloss when passing the appropriate design discharge, this section does not apply.

Streambed Slope (feet/mile)	Pipe Size	Allowable Headwater
< 5	24" - 54"	pipe diameter + 2 feet
	≥ 60"	1.5 pipe diameters
5 to 10	24" - 36"	pipe diameter + 2 feet
	42" - 54"	1.5 pipe diameters
	≥ 60"	2 pipe diameters
> 10	≥ 24"	2 pipe diameters

**History:** Effective May 1, 2001; amended effective January 1, 2015.  
**General Authority:** NDCC 24-02-01.1, 24-02-01.5, 28-32-02, 61-03-13  
**Law Implemented:** NDCC 24-03-06, 24-03-08, 24-06-26.1

**89-14-01-06. Deviations.** The board of county commissioners, board of township supervisors, their contractors, subcontractors, or agents, or any individual, firm, corporation, or limited liability company may deviate from the standards contained in this chapter if the deviation is approved in writing by the state engineer and the director of the department of transportation. A request to deviate from the standards must be made in writing and must set forth the reasons for the proposed deviation. The state engineer and department of transportation may grant a deviation for good and sufficient cause after considering public safety, upstream and downstream impacts, and other relevant matters. ~~The department of transportation may deviate from these standards if the director of the department determines it is appropriate to do so and the crossings are designed in accordance with scientific highway construction and engineering standards. The basis for the director's decision must be documented in writing. If a crossing results in less than one-half foot [15.24 centimeters] of headloss when passing the appropriate design discharge, the headwater limitations of section 89-14-01-05 do not apply.~~

The department of transportation may deviate from these standards if the department determines it is appropriate to do so and the crossings are designed under scientific highway construction and engineering standards. The basis for the department's decision must be documented in writing.

~~Roads constructed as part of a surface coal mining operation for use solely as part of the mining operation are not subject to the requirements of this chapter. Roads constructed as a result of a surface coal mining operation for use by the public are bound by the requirements of this chapter, but deviations may be requested in accordance with this section.~~

Roads constructed as part of a surface coal mining operation for use solely as part of the mining operation are not subject to the requirements of this chapter. Roads constructed because of a surface coal mining operation for use by the public are bound by the requirements of this chapter, but deviations may be requested under this section.

**History:** Effective May 1, 2001; amended effective January 1, 2015.

**General Authority:** NDCC 24-02-01.1, 24-02-01.5, 28-32-02, 61-03-13

**Law Implemented:** NDCC 24-03-06, 24-03-08, 24-06-26.1



**TITLE 101**  
**REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD**



**JANUARY 2015**

**CHAPTER 101-02-01**

**101-02-01-03. Filing fees.** Fees will not be prorated.

1. The following application fees will be charged:

a. Apprentice appraiser permit	\$100
b. Licensed appraiser permit	\$400
c. Certified residential appraiser permit	\$400
d. Certified general appraiser permit	\$400

2. The following annual renewal fees will be charged:

a. Apprentice appraiser permit	\$350
b. Licensed appraiser permit	\$350 + national registry fee
c. Certified residential permit	\$350 + national registry fee
d. Certified general permit	\$350 + national registry fee
e. Inactive status	\$100
f. Late filing fee (per month)	\$100

3. Other fees:

a. Temporary practice permit-per contract	<del>\$150</del>
	<u>250</u>
b. Approval of prelicensing or precertification educational courses	\$150
c. Approval of continuing educational courses:	
(1) Courses two to eight hours in length	\$50
(2) Courses over eight hours in length	\$150
d. Appraiser list on disk	\$25
e. Pocket card replacement	\$25
f. Wall certificate replacement	\$25
g. Change of name or address	\$25

**History:** Effective October 1, 1992; amended effective January 1, 1995; October 1, 1998; February 1, 2003; January 1, 2008; July 1, 2012; January 1, 2015.

**General Authority:** NDCC 43-23.3-20

**Law Implemented:** NDCC 43-23.3-05

## CHAPTER 101-02-02

### 101-02-02-03. Apprentice appraiser.

1. **Definition.** An apprentice appraiser permit must be issued to an individual who successfully meets all of the board requirements for such a permit. An apprentice appraiser permit is considered the entry level (training ground level) for a North Dakota appraiser.
2. **Competency.** ~~An apprentice appraiser permit is considered the entry level (training ground level) for a North Dakota appraiser.~~ The apprentice appraiser shall assist ~~either a licensed or~~ a certified appraiser in appraisal work, provided the ~~licensed or~~ certified appraiser accepts full responsibility for the appraisal performed. The scope of practice for the apprentice appraiser is the appraisal of those properties that the supervising appraiser is permitted and qualified to appraise. The apprentice appraiser shall be subject to the uniform standards of professional appraisal practice.
3. **Background check.** An applicant for an apprentice appraiser permit must undergo background screening to ensure that the applicant does not possess a background that could call into question public trust. The applicant shall submit fingerprints and any appropriate identifying information for submission to the federal bureau of investigation or government agency or entity authorized to receive such information in connection with a state and national background check.
  - a. All costs associated with obtaining a background check are the responsibility of the applicant.
  - b. An applicant will not be considered for an apprentice permit if:
    - (1) The applicant has had an appraiser apprentice, license, or certification revoked in any governmental jurisdiction within the five-period immediately preceding the date of application.
    - (2) The applicant has been convicted of, or pled guilty or nolo contendere to, a felony in domestic or foreign court:
      - (a) During the five-year period immediately preceding the date of the application for an apprentice permit.
      - (b) At any time preceding the date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.
    - (3) The applicant has failed to demonstrate character and general fitness, such as to command the confidence of the community and to warrant a determination that the appraiser

will operate honestly, fairly, and efficiently within the purposes of these criteria.

C. The following additional background issues will be evaluated and considered prior to issuing an apprentice permit:

- (1) Convictions of any criminal offense involving dishonesty, breach of trust, or money laundering against the applicant or organizations controlled by the applicant, or agreements to enter into a pretrial diversion or similar program in connection with the prosecution for such an offense.
- (2) Civil judicial actions against the individual in connection with financial services-related activities, dismissals with settlements, or judicial findings that the individual violated financial services-related statutes or regulations, except for actions dismissed without a settlement agreement.
- (3) Actions or orders by a state or federal regulatory agency or foreign financial regulatory authority that:
  - (a) Found the applicant to have made a false statement or omission or been dishonest, unfair, or unethical; to have been involved in a violation of a financial services-related regulation or statute; or to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked, or restricted.
  - (b) Are entered against the applicant in connection with a financial services-related activity.
  - (c) Denied, suspended, or revoked the applicant's apprentice, license, or certification permit to engage in a financial services-related business or restricted the applicant activities.
  - (d) Barred the applicant from association with an entity or its officers regulated by the agency or authority or from engaging in a financial services-related business.
- (4) Final orders issued by a state or federal regulatory agency or foreign financial regulatory authority based on violations of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct.
- (5) Revocation or suspension of the applicant's authorization to act as an attorney, accountant, or state or federal contractor.

(6) Customer-initiated financial services-related arbitration or civil action against the applicant that required action, including settlements, or which resulted in a judgment.

~~3.~~ 4. Examination. An applicant for an apprentice permit shall pass an open-book examination covering North Dakota Century Code chapter 43-23.3 and North Dakota Administrative Code title 101.

~~4.~~ 5. Education. An applicant for the apprentice appraiser permit shall meet all of the following education requirements.

~~a. An applicant for an apprentice appraiser permit must have successfully completed seventy-five~~ Seventy-five class hours in subjects related to real estate appraisal which cover the required core curriculum as established by the appraisal qualifications board of the appraisal foundation and approved as such, by the board. ~~Coverage must include a minimum of all of the following:~~

~~(1) Thirty hours of basic appraisal principles.~~

~~(2) Thirty hours of basic appraisal procedures.~~

~~(3) The fifteen-hour national uniform standards of appraisal practice course or its equivalent.~~

~~b. Class hours will be credited only for educational offerings with content that follows the required core curriculum.~~

~~c. A class hour is defined as sixty minutes, of which at least fifty minutes are instruction attended by the student.~~

~~d. Credit toward the class hour requirement may only be granted when the length of the educational offering is at least fifteen hours, and the individual successfully completes a closed-book examination pertinent to that educational offering.~~

~~e. The prescribed number of class hours includes time for examinations.~~

~~f. Uniform standards of professional appraisal practice qualifying education credit shall only be awarded when the class is instructed by at least one appraisal qualifications board-certified instructor who is state-certified.~~

~~g. Credit for the class requirement may be obtained from the following:~~

~~(1) Colleges or universities.~~

~~(2) Community or junior colleges.~~

- ~~(3) Real estate appraisal or real estate-related organizations.~~
  - ~~(4) State or federal agencies or commissions.~~
  - ~~(5) Proprietary schools.~~
  - ~~(6) Providers approved by the board.~~
  - ~~(7) The appraisal foundation or its boards.~~
- h. ~~Credit toward qualifying education requirements may also be obtained by the completion of a graduate (master's or doctoral) degree in real estate from an accredited college or university approved by the American association of collegiate schools of business, or a regional or national accreditation agency recognized by the United States secretary of education, provided that the college or university has had its curriculum reviewed and approved by the appraisal qualifications board. Applicants for the apprentice level who are awarded graduate degrees from approved institutions are required to complete all additional education required for the credential in which the approved degree is judged to be deficient by the appraisal qualifications board.~~
- i. ~~All hours may be by distance education. Distance education is an educational process in which the student and instructor are geographically separated. Distance education includes online learning, internet-based instruction, CD-ROM instruction, correspondence courses, and videoconferencing. An acceptable distance education course must meet all of the following requirements:~~
- ~~(1) Provide interaction between the student and the instructor. Interaction is a reciprocal environment in which the student has verbal or written communication with the instructor.~~
  - ~~(2) Be approved for content by the board, the appraisal qualifications board of the appraisal foundation, or an accredited college, community college, or university, that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the United States secretary of education. Nonacademic credit college courses provided by a college shall be approved by the appraisal qualifications board of the appraisal foundation or the board.~~
  - ~~(3) Obtain course delivery mechanism approval from one of the following sources:~~



- (a) ~~Appraisal qualifications board approved organizations providing approval of course design and delivery.~~
  - (b) ~~A college that qualifies for content approval in paragraph 2 and that awards academic credit for the distance education course.~~
  - (c) ~~A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity.~~
- (4) ~~Require the student to successfully complete a written examination proctored by an official approved by the presenting college or university, or sponsoring organization.~~
  - (5) ~~Meet the requirements for qualifying education established by the appraisal qualifications board of the appraisal foundation.~~
  - (6) ~~Be equivalent to at least fifteen class hours.~~
- j. ~~Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may be acceptable to the board without additional state review.~~
  - k. ~~Courses taken to satisfy the qualifying education requirements must not be repetitive. Uniform standards of professional appraisal practice courses taken in different years are not repetitive. Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method when applicable.~~
  - l. ~~Courses taken to meet the seventy-five hour apprentice requirement can be creditable toward the licensure and certification education requirement.~~
  - m. ~~Courses taken for the class hour requirement when an individual seeks a different classification than that held may also be counted for the continuing education requirement of the classification held.~~
  - n. ~~The applicant must be familiar with North Dakota Century Code chapter 43-23.3 and North Dakota Administrative Code title 101.~~
- (1) Coverage must include a minimum of all of the following:
    - (a) Thirty hours of basic appraisal principles.
    - (b) Thirty hours of basic appraisal procedures.

- (c) The fifteen-hour national uniform standards of appraisal practice course or its equivalent.
- (2) Class hours will be credited only for educational offerings with content that follows the required core curriculum.
- (3) A class hour is defined as sixty minutes, of which at least fifty minutes are instruction attended by the student.
- (4) Credit toward the class hour requirement may only be granted when the length of the educational offering is at least fifteen hours, and the individual successfully completes a closed-book examination pertinent to that educational offering.
- (5) The prescribed number of class hours includes time for examinations.
- (6) Uniform standards of professional appraisal practice qualifying education credit shall only be awarded when the class is instructed by at least one appraisal qualifications board-certified instructor who is state-certified.
- (7) Credit for the class requirement may be obtained from the following:
  - (a) Colleges or universities.
  - (b) Community or junior colleges.
  - (c) Real estate appraisal or real estate-related organizations.
  - (d) State or federal agencies or commissions.
  - (e) Proprietary schools.
  - (f) Providers approved by the board.
  - (g) The appraisal foundation or its boards.
- (8) Credit toward qualifying education requirements may also be obtained by the completion of a degree in real estate from an accredited degree-granting college or university approved by the association to advance collegiate schools of business, or a regional or national accreditation agency recognized by the United States secretary of education, provided that the college or university has had its curriculum reviewed and approved by the appraisal qualifications board.

- (9) Applicants for the apprentice level who are awarded degrees from approved institutions are required to complete all additional education required for the permit in which the approved degree is judged to be deficient by the appraisal qualifications board.
- (10) All hours may be by distance education. Distance education is an educational process in which the student and instructor are geographically separated. Distance education includes online learning, internet-based instruction, CD-ROM instruction, correspondence courses, and videoconferencing. An acceptable distance education course must meet all of the following requirements:
- (a) Provide interaction between the student and the instructor. Interaction is a reciprocal environment in which the student has verbal or written communication with the instructor.
  - (b) Be approved for content by the board, the appraisal qualifications board of the appraisal foundation, or an accredited college, community college, or university, that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the United States secretary of education. Nonacademic credit college courses provided by a college shall be approved by the appraisal qualifications board of the appraisal foundation or the board.
  - (c) Obtain course delivery mechanism approval from one of the following sources:
    - [1] Appraisal qualifications board-approved organizations providing approval of course design and delivery.
    - [2] A college that qualifies for content approval in subparagraph b and that awards academic credit for the distance education course.
    - [3] A qualifying college or university for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity.
  - (d) Require the student to successfully complete a written examination proctored by an official approved by

the presenting college or university, or sponsoring organization. Written examination refers to an examination written on paper or administered electronically on a computer workstation or other device.

- (e) Meet the requirements for qualifying education established by the appraisal qualifications board of the appraisal foundation.
  - (f) Be equivalent to at least fifteen class hours.
- (11) Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may be acceptable to the board without additional state review.
  - (12) Courses taken to satisfy the qualifying education requirements must not be repetitive. Uniform standards of professional appraisal practice courses taken in different years are not repetitive. Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method when applicable.
  - (13) Courses taken to meet the seventy-five hour apprentice requirement can be creditable toward the licensure and certification education requirement.
  - (14) Courses taken for the class hour requirement when an individual seeks a different classification than that held may also be counted for the continuing education requirement of the classification held.
  - (15) The applicant must be familiar with North Dakota Century Code chapter 43-23.3 and North Dakota Administrative Code title 101.
  - (16) All qualifying education must be completed within the five-year period prior to the date of submission of an apprentice application.
- b. The apprentice shall be required to complete a course that complies with the specifications for course content established by the appraisal qualifications board, which is specifically oriented to the requirements and responsibilities of supervisory appraisers and apprentice appraisers.
- (1) The course must be completed by the apprentice prior to obtaining an apprentice permit.

(2) The course is not eligible toward the required seventy-five hours of qualifying education.

5. 6. **Experience.** No experience is required for the apprentice appraiser.
6. 7. **Apprentice appraiser responsibilities.** The apprentice appraiser must be subject to direct supervision by a supervising appraiser who must be state ~~licensed~~ or certified in good standing.
- a. Prior to issuance of an apprentice appraiser permit the applicant for the apprentice level is required to register the name, office, and address of each supervising appraiser with the board on a form prescribed by the board. Registration of a supervising appraiser is effective the day the registration forms from both the supervising appraiser and apprentice appraiser are received and approved. These forms can be obtained by contacting the board office.
- (1) The apprentice and supervising appraiser shall notify the board in writing within ten days of terminating supervision.
- (2) The apprentice appraiser is permitted to have more than one supervising appraiser.
- b. The scope of practice for the apprentice appraiser is the appraisal of those properties that the supervising appraiser is permitted by the supervising appraiser's current ~~credential~~ permit and that the supervising appraiser is qualified to appraise.
- c. To obtain experience credit for appraisals, the apprentice must sign the report, sign the certification, or be given credit in the certification as having provided significant professional assistance.
- d. The apprentice appraiser and supervising appraiser shall jointly maintain a log of all appraisals for which the apprentice completed seventy-five percent or more of the assignment. It is the responsibility of both the supervisory appraiser and apprentice to ensure the experience log is accurate and current. The log, at a minimum, must include the following for each appraisal:
- (1) Type of property.
- (2) Date of report.
- (3) Address of appraised property.
- (4) Description of work performed by the apprentice and scope of the review and supervision of the supervising appraiser.

- (5) Number of actual work hours ~~per~~ by the apprentice on the assignment.
  - (6) Signature and state license or certification number of the supervising appraiser.
- e. Separate appraisal logs must be maintained for each supervising appraiser.
  - f. The apprentice appraiser is entitled to obtain copies of appraisal reports the apprentice appraiser prepared.

7. ~~8.~~ **Supervisor responsibilities.** A ~~licensed~~ or certified appraiser who wishes to supervise an apprentice must register with the board on a form prescribed by the board. Registration of a supervising appraiser is effective the day the registration forms from both the supervising appraiser and from the apprentice appraiser are received and approved. These forms can be obtained by contacting the board office.

- a. The apprentice and supervising appraiser shall notify the board in writing within ten days of terminating supervision.
- b. The apprentice appraiser is permitted to have more than one supervising appraiser.
- c. The supervising appraiser shall be required to complete a course that complies with the specifications for course content established by the appraisal qualifications board, which is specifically oriented to the requirements and responsibilities of supervisory appraisers and apprentice appraisers. The course must be completed by the supervisory appraiser prior to supervising an apprentice appraiser.
- e. ~~d.~~ The supervising appraiser must either have or must complete an open-book examination covering North Dakota Century Code chapter 43-23.3 and North Dakota Administrative Code title 101.
- d. ~~e.~~ The supervising appraiser is responsible for the training, guidance, and direct supervision of the apprentice appraiser. Training, guidance, and direct supervision means:
  - (1) Each supervising appraiser must accept responsibility for the appraisal report by signing and certifying that the report complies with generally accepted appraisal procedures and is in compliance with the uniform standards of professional appraisal practice.
  - (2) Each supervising appraiser must review and sign the apprentice appraisal reports.

- (3) Each supervising appraiser must personally inspect each appraised property interior and exterior with the apprentice appraiser on at least the first twenty-five appraisal assignments requiring inspection and until the supervising appraiser determines the apprentice appraiser is competent in accordance with the competency provision of the uniform standards of professional appraisal practice for the property type. A separate log must be maintained for these twenty-five appraisals.
- ~~e.~~ f. A supervising appraiser may be disciplined if the board determines that the supervisor has failed to directly supervise an apprentice appraiser.
- ~~g.~~ g. A supervising appraiser shall be certified and in good standing in the jurisdiction in which the apprentice appraiser practices for a period of at least three years.
- ~~f.~~ h. A supervising appraiser must have a ~~license or~~ certified permit in good standing and not subject to any disciplinary action within the last ~~two~~ three years that affects the supervising appraiser's legal eligibility to engage in appraisal practice.
- ~~i.~~ i. A supervisory appraiser subject to disciplinary action would be considered to be in good standing three years after the successful completion or termination of the sanction imposed against the appraiser.
- ~~j.~~ j. A supervising appraiser must comply with the competency rule of the uniform standards of professional appraisal practice for the property type and geographic location the apprentice is being supervised.
- ~~g.~~ k. A supervising appraiser is limited to supervising no more than three apprentice appraisers at one time.
- ~~h.~~ l. A supervising appraiser shall keep copies of appraisal reports for a period of five years or at least two years after final disposition of any judicial proceedings in which testimony was given, whichever period expires last.

**History:** Effective October 1, 1992; amended effective October 1, 1998; February 1, 2003; January 1, 2008; July 1, 2012; January 1, 2015.

**General Authority:** NDCC 43-23.3-03

**Law Implemented:** NDCC 43-23.3-03, 43-23.3-06, 43-23.3-08, 43-23.3-09, 43-23.3-17, 43-23.3-18

**101-02-02-05. Licensed appraiser.**

1. **Definitions.** A licensed appraiser permit must be issued to an individual who successfully meets all of the board requirements for such a permit.
2. **Competency.** The licensed appraiser is allowed to appraise noncomplex, one-to-four family residential properties that have a transaction value of up to one million dollars and complex one-to-four family residential properties that have a transaction value of up to two hundred fifty thousand dollars. In addition, a licensed appraiser is allowed to appraise noncomplex, nonresidential properties, that have a transaction value of up to two hundred fifty thousand dollars. The licensed appraiser is bound by the competency provisions of the uniform standards of professional appraisal practice.
3. **Background check.** An applicant for a licensed appraiser permit must undergo background screening to ensure that the applicant does not possess a background that could call into question public trust. The applicant shall submit fingerprints and any appropriate identifying information for submission to the federal bureau of investigation or government agency or entity authorized to receive such information in connection with a state and national background check.
  - a. All costs associated with obtaining a background check are the responsibility of the applicant.
  - b. An applicant will not be considered for a licensed permit if:
    - (1) The applicant has had an appraiser apprentice, license, or certification permit revoked in any governmental jurisdiction within the five-year period immediately preceding the date of application.
    - (2) The applicant has been convicted of, or pled guilty or nolo contendere to, a felony in domestic or foreign court:
      - (a) During the five-year period immediately preceding the date of the application for licensure.
      - (b) At any time preceding the date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.
    - (3) The applicant has failed to demonstrate character and general fitness, such as to command the confidence of the community and to warrant a determination that the appraiser will operate honestly, fairly, and efficiently within the purposes of these criteria.
  - c. The following additional background issues will be evaluated and considered prior to issuing a licensed permit:



- (1) Convictions of any criminal offense involving dishonesty, breach of trust, or money laundering against the applicant or organizations controlled by the applicant, or agreements to enter into a pretrial diversion or similar program in connection with the prosecution for such an offense.
- (2) Civil judicial actions against the individual in connection with financial services-related activities, dismissals with settlements, or judicial findings that the individual violated financial services-related statutes or regulations, except for actions dismissed without a settlement agreement.
- (3) Actions or orders by a state or federal regulatory agency or foreign financial regulatory authority that:
  - (a) Found the applicant to have made a false statement or omission or been dishonest, unfair, or unethical; to have been involved in a violation of a financial services-related regulation or statute; or to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked, or restricted.
  - (b) Are entered against the applicant in connection with a financial services-related activity.
  - (c) Denied, suspended, or revoked the applicant's apprentice, license, or certification permit to engage in a financial services-related business or restricted the applicant activities.
  - (d) Barred the applicant from association with an entity or its officers regulated by the agency or authority or from engaging in a financial services-related business.
- (4) Final orders issued by a state or federal regulatory agency or foreign financial regulatory authority based on violations of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct.
- (5) Revocation or suspension of the applicant's authorization to act as an attorney, accountant, or state or federal contractor.
- (6) Customer-initiated financial services-related arbitration or civil action against the applicant that required action, including settlements, or which resulted in a judgment.

3. 4. Examination. An applicant for a licensed appraiser permit must have successfully completed the board-approved uniform licensing

examination or its equivalent. The only alternative to the licensure examination is successful completion of the certified residential examination or certified general examination. Successful completion of the examination is valid for a period of twenty-four months. The licensure permit must be obtained within twenty-four months of successful completion of the examination or the examination must be retaken. An applicant for the uniform licensure examination ~~as a licensed appraiser must~~ shall furnish proof to the board that the applicant has ~~successfully completed the applicable education required by subsection 4.~~

- a. Successfully completed the applicable education required by subsection 5.
- b. Met the applicable experience, in hours and years, as required by subsection 6.

~~4.~~ 5. Education. An applicant for a licensed appraiser permit shall meet all of the following education requirements:

- a. Thirty semester hours of college level education or higher from an accredited college, junior college, community college, or university.
  - (1) The college or university must be a degree-granting institution accredited by the commission on colleges, a regional or national accreditation association, or an accrediting agency that is recognized by the United States secretary of education. If the college or university accepts the college-level examination program and examinations and issues a transcript for the examinations, showing its approval, it will be considered as credit for the college course. For college-level courses taken in a quarterly system, one quarter credit-hour is equivalent to two-thirds semester credit-hour.
  - (2) College-level education completed at a foreign college or university will be acceptable provided the education has been evaluated and deemed equivalent by one of the following:
    - (a) An accredited degree-granting domestic college or university.
    - (b) The American association of collegiate registrars and admissions officers.
    - (c) A foreign degree credential evaluation service company that is a member of the national association of credential evaluation services.

(d) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues a credential in another discipline.

~~a. b. One~~ In addition to thirty hours of college level education, an applicant for licensure must complete one hundred fifty class hours in subjects related to real estate appraisal which cover the required core curriculum as established by the appraisal qualifications board of the appraisal foundation and approved as such, by the board. Coverage must include a minimum of all of the following:

~~(1) Thirty hours of basic appraisal principles.~~

~~(2) Thirty hours of basic appraisal procedures.~~

~~(3) The fifteen-hour national uniform standards of appraisal practice course or its equivalent.~~

~~(4) Fifteen hours of residential market analysis and highest and best use.~~

~~(5) Fifteen hours of residential appraiser site valuation and cost approach.~~

~~(6) Fifteen hours of residential sales comparison and income approaches.~~

~~(7) Fifteen hours of residential report writing and case studies.~~

~~b. Class hours will be credited only for educational offerings with content that follows the required core curriculum.~~

~~c. A class hour is defined as sixty minutes, of which at least fifty minutes are instruction attended by the student.~~

~~d. Credit toward the class hour requirement may only be granted when the length of the educational offering is at least fifteen hours, and the individual successfully completes a closed-book examination pertinent to that educational offering.~~

~~e. The prescribed number of class hours includes time for examinations.~~

~~f. Uniform standards of professional appraisal practice education credit shall only be awarded when the class is instructed by at~~

~~least one appraisal qualifications board-certified instructor who is state-certified.~~

~~g. Credit for the class hour requirement may be obtained from the following:~~

~~(1) Colleges or universities.~~

~~(2) Community or junior colleges.~~

~~(3) Real estate appraisal or real estate-related organizations.~~

~~(4) State or federal agencies or commissions.~~

~~(5) Proprietary schools.~~

~~(6) Providers approved by the board.~~

~~(7) The appraisal foundation or its boards.~~

~~h. There is no time limit regarding when qualifying education credit must have been obtained.~~

~~i. All hours may be by distance education. Distance education is an educational process in which the student and instructor are geographically separated. Distance education includes online learning, internet-based instruction, CD-ROM instruction, correspondence courses, and videoconferencing. An acceptable distance education course must meet all of the following requirements:~~

~~(1) Provide interaction between the student and the instructor. Interaction is a reciprocal environment when the student has verbal or written communication with the instructor.~~

~~(2) Be approved for content by the board, the appraisal qualifications board of the appraisal foundation, or an accredited college, community college, or university, that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the United States secretary of education. Nonacademic credit college courses provided by a college shall be approved by the appraisal qualifications board of the appraisal foundation, or the board.~~

~~(1) Coverage must include a minimum of all of the following:~~

~~(a) Thirty hours of basic appraisal principles.~~

- (b) Thirty hours of basic appraisal procedures.
  - (c) The fifteen-hour national uniform standards of appraisal practice course or its equivalent.
  - (d) Fifteen hours of residential market analysis and highest and best use.
  - (e) Fifteen hours of residential appraiser site valuation and cost approach.
  - (f) Thirty hours of residential sales comparison and income approaches.
  - (g) Fifteen hours of residential report writing and case studies.
- (2) An apprentice appraiser may satisfy the educational requirements for the licensed level by completing the following additional educational hours:
- (a) Fifteen hours of residential market analysis and highest and best use.
  - (b) Fifteen hours of residential appraiser site valuation and cost approach.
  - (c) Thirty hours of residential sales comparison and income approaches.
  - (d) Fifteen hours of residential report writing and case studies.
- (3) Class hours will be credited only for educational offerings with content that follows the required core curriculum.
- (4) A class hour is defined as sixty minutes, of which at least fifty minutes are instruction attended by the student.
- (5) Credit toward the class hour requirement may only be granted when the length of the educational offering is at least fifteen hours, and the individual successfully completes a closed-book examination pertinent to that educational offering.
- (6) The prescribed number of class hours includes time for examinations.

- (7) Uniform standards of professional appraisal practice education credit shall only be awarded when the class is instructed by at least one appraisal qualifications board-certified instructor who is state-certified.
- (8) Credit for the class hour requirement may be obtained from the following:
- (a) Colleges or universities.
  - (b) Community or junior colleges.
  - (c) Real estate appraisal or real estate-related organizations.
  - (d) State or federal agencies or commissions.
  - (e) Proprietary schools.
  - (f) Providers approved by the board.
  - (g) The appraisal foundation or its boards.
- (9) There is no time limit regarding when qualifying education credit must have been obtained.
- (10) All hours may be by distance education. Distance education is an educational process in which the student and instructor are geographically separated. Distance education includes online learning, internet-based instruction, CD-ROM instruction, correspondence courses, and videoconferencing. An acceptable distance education course must meet all of the following requirements:
- (a) Provide interaction between the student and the instructor. Interaction is a reciprocal environment when the student has verbal or written communication with the instruction.
  - (b) Be approved for content by the board, the appraisal qualifications board of the appraisal foundation, or an accredited college, community college, or university, that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the United States secretary of education. Nonacademic credit college courses provided by a college shall be

approved by the appraisal qualifications board of the appraisal foundation, or the board.

~~(a)~~ (c) Obtain course delivery mechanism approval from one of the following sources:

[1] Appraisal qualifications board-approved organizations providing approval of course design and delivery.

[2] A college that qualifies for content approval in paragraph 2 that awards academic credit for the distance education course.

[3] A qualifying college or university for content approval with a distance education delivery program that approves the course design and delivery that incorporate interactivity.

~~(b)~~ (d) Require the student to successfully complete a written examination proctored by an official approved by the presenting college, university, or sponsoring organization. Written examination refers to an examination written on paper or administered electronically on a computer workstation or other device.

~~(c)~~ (e) Meet the requirements for qualifying education established by the appraisal qualifications board of the appraisal foundation.

~~(d)~~ (f) Be equivalent to at least fifteen class hours.

~~j:~~ Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may be acceptable to the board without additional state review.

~~k:~~ Courses taken to satisfy the qualifying education requirements must not be repetitive. Uniform standards of professional appraisal practice courses taken in different years are not repetitive. Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method when applicable.

~~l:~~ Courses taken for the class hour requirement when an individual seeks a different classification than that held may also be counted for the continuing education requirement of the classification held.

- ~~m. Credit toward qualifying education requirements may also be obtained by the completion of a graduate (master's or doctoral) degree in real estate from an accredited college or university approved by the American association of collegiate schools of business, or a regional or national accreditation agency recognized by the United States secretary of education, provided that the college or university has had its curriculum reviewed and approved by the appraisal qualifications board. Applicants for the licensed level who are awarded graduate degrees from approved institutions are required to complete all additional education required for the credential in which the approved degree is judged to be deficient by the appraisal qualifications board.~~
- ~~fn. The applicant must be familiar with North Dakota Century Code chapter 43-23.3 and North Dakota Administrative Code title 101.~~
- ~~o. Experience may not be substituted for education.~~
- (11) Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may be acceptable to the board without additional state review.
- (12) Courses taken to satisfy the qualifying education requirements must not be repetitive. Uniform standards of professional appraisal practice courses taken in different years are not repetitive. Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method when applicable.
- (13) Courses taken for the class hour requirement when an individual seeks a different classification than that held may also be counted for the continuing education requirement of the classification held.
- (14) Credit toward qualifying education requirements may also be obtained by the completion of a degree in real estate from an accredited degree-granting college or university approved by the association to advance collegiate schools of business, or a regional or national accreditation agency recognized by the United States secretary of education, provided that the college or university has had its curriculum reviewed and approved by the appraisal qualifications board.
- (15) Applicants for the licensed level who are awarded graduate degrees from approved institutions are required to complete all additional education required for the credential in which the approved degree is judged to be deficient by the appraisal qualifications board.



(16) The applicant must be familiar with North Dakota Century Code chapter 43-23.3 and North Dakota Administrative Code title 101.

(17) Experience may not be substituted for education.

5- 6. **Experience.** A licensed appraiser must have the equivalent of two thousand hours of credible appraisal experience prior to obtaining the licensing permit. The experience requirements must be satisfied by time spent on the appraisal process. The appraisal process consists of analyzing factors that affect value, defining the problem, gathering and analyzing data, applying the appropriate analysis and methodology, and arriving at an opinion and correctly reporting the data, analysis, and opinion in compliance with the uniform standards of professional appraisal practice. The applicant for licensure must submit a log from which the board will select for review a minimum of three ~~summary or self-contained~~ residential appraisal reports. All three of the reports must meet the current uniform standards of professional appraisal practice as of the effective date of the appraisal and must reflect that the applicant has an acceptable level of competency and understanding of the principles, practices, and procedures consistent with the body of knowledge for the licensed level.

a. Adequate experience will be determined by the actual hours spent on an assignment, subject to a maximum established by the board.

(1) Maximum hours are based on the types of appraisals performed and the types of properties appraised.

(2) Types of appraisals performed include standard appraisal, review appraisal, and condemnation appraisal.

(a) A standard appraisal is the process of developing an appraisal using those methods commonly accepted by real estate appraisers as constituting the appraisal process and preparing a written appraisal report or file memorandum describing the appraisal and reporting the estimate of value. The appraisal process consists of an analysis of factors that affect value, definition of the problem, gathering and analyzing data, applying the appropriate value approaches and methodology, arriving at an opinion of value, and correctly reporting the opinion of value in compliance with the uniform standards of professional appraisal practice.

(b) A review appraisal is the process of critically reviewing an appraisal report prepared by another appraiser and preparing a separate written report or file memorandum setting forth the results of the review

process. The review appraiser reviews the report and forms an opinion as to the adequacy of the report, the appropriateness of the methods used by the appraiser, and the reasonableness of the appraiser's conclusions. A review appraiser may or may not perform a field review. A field review includes inspecting the subject and comparables to verify data, to determine the appropriateness of the comparables selected and adjustments made, and to assist in determining the reasonableness of the value estimate. Review appraisal experience must conform to standard three of the uniform standards of professional appraisal practice. Review appraisal experience should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under applicable uniform standards of professional appraisal practice standards.

- (c) A condemnation appraisal is an appraisal of real property for condemnation purposes, including situations where a partial taking is involved and the appraiser must develop both a before taking value estimate and an after taking value estimate. The appraiser uses those methods commonly accepted by real estate appraisers as constituting the appraisal process including a field inspection and preparation of a written appraisal report or file memorandum describing the appraisal and reporting the before and after value estimates.

(3) Types of property appraised may include the following:

- (a) Land may include farms of one hundred acres [40.47 hectares] or more in size, undeveloped tracts, residential multifamily sites, commercial sites, industrial sites, and land in transition.
- (b) Residential multifamily, five-12 units may include apartments, condominiums, townhouses, and mobile home parks.
- (c) Residential multifamily, thirteen-plus units may include apartments, condominiums, townhouses, and mobile home parks.
- (d) Commercial single-tenant may include office building, retail store, restaurant, service station, bank, and day care center.

- (e) Commercial multitenant may include office building, shopping center, and hotel.
  - (f) Industrial may include warehouse and manufacturing plant.
  - (g) Institutional may include rest home, nursing home, hospital, school, church, and government building.
- (4) The number of allowable hours assigned for each appraisal type are assigned by the board and are included on the application for licensure and certification. A copy of this form can be obtained by contacting the board office.
- b. The two thousand hours of experience must be obtained using at least one year of appraisal practice gained over a period of at least twelve months.
  - c. There is no other time limit regarding when qualifying experience may be obtained.
  - d. Hours may be treated as cumulative in order to achieve the necessary two thousand hours of appraisal experience.
  - e. Acceptable appraisal experience includes, but is not limited to, the following:
    - (1) Fee and staff appraisal, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, real estate consulting (excludes related fields such as real estate lending), highest and best use analysis, and feasibility analysis or study.
      - (a) Mass appraisal experience must conform to standard six of the uniform standards of professional appraisal practice. Mass appraisal experience claimed by the applicant should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under applicable standards of the uniform standards of professional appraisal practice.
      - (b) Review of real estate appraisals or real property consulting services, including market analysis, cash flow and investment analysis, and feasibility analysis, must conform to standards three, four, and five of the uniform standards of professional appraisal practice. Experience involving these functions should be given credit to the extent that it demonstrates proficiency

in appraisal principles, techniques, or skills used by appraisers practicing under standard one of the uniform standards of professional appraisal practice.

- (c) A market analysis typically performed by a real estate broker or sales person should be awarded experience credit when the analysis is prepared in conformity with standards one and two of the uniform standards of professional appraisal practice, the individual can demonstrate that the individual is using techniques and methods consistent with those used by appraisers to value property and the individual is effectively utilizing the appraisal process.
  - (d) Real property appraisal experience should be awarded for appraisals of real estate components, estates, or interests unless the appraiser has not complied with standards one, two, and six of the uniform standards of professional appraisal practice.
- (2) No more than two hundred hours of the total experience credit may be in related areas. Related experience includes consulting.
- f. Documentation in the form of reports, certifications, and file memoranda must be provided to support the experience claimed. If reports and file memoranda are unavailable for good cause, the board may accept other evidence of compliance with the uniform standards of professional appraisal practice.
9. The verification for the two thousand hours of experience credit claimed by an applicant shall be on forms prescribed by the board which shall include all of the following:
- (1) Type of property.
  - (2) Date of report.
  - (3) Address of appraised property.
  - (4) Description of work performed by the applicant and scope of the review and supervision of the supervising appraiser.
  - (5) Number of actual work hours ~~per~~ on the assignment.
  - (6) The signature and permit number of the supervising appraiser, if applicable.

- ~~(7) Separate appraisal logs maintained for each supervising appraiser, if applicable.~~
- h. Separate appraisal logs must be maintained for each supervising appraiser, if applicable.
- ~~h.~~ i. There need not be a client in order for an appraisal to qualify for experience. Appraisals made without clients can fulfill up to fifty percent of the total experience requirement.
- ~~i.~~ j. Case studies or practicum courses that are approved by the board or through the appraisal qualifications board of the appraisal foundation course approval program can satisfy the nonclient experience requirement.
- (1) A practicum course must include the generally applicable methods of appraisal practice for the ~~credential~~ permit category. Content includes all of the following:
- (a) Requiring the student to produce credible appraisals that utilize an actual subject property.
  - (b) Performing market research containing sales analysis.
  - (c) Applying and reporting the applicable appraisal approaches in conformity with the uniform standards of professional appraisal practice.
- (2) Assignments must require problem-solving skills for a variety of property types for the ~~credential~~ permit category.
- (3) Experience credit shall be granted for the actual class hours of instruction and hours of documented research and analysis as awarded from the practicum course approval process.
- ~~j.~~ k. All experience must be obtained after January 30, 1989, and must be uniform standards of professional appraisal practice compliant, where the appraiser demonstrates proficiency in appraisal principles, methodology, procedures (development), and reporting conclusions.
- ~~k.~~ l. After accumulating a minimum of fifty percent of the required appraisal experience, an applicant for licensure may voluntarily submit work product to the board to be reviewed by a board reviewer for educational purposes only. A maximum of two reports

may be submitted for review. The board will not initiate a complaint for violations identified in this review.

**History:** Effective October 1, 1992; amended effective January 1, 1995; October 1, 1998; February 1, 2003; January 1, 2008; July 1, 2012; January 1, 2015.

**General Authority:** NDCC 43-23.3-03, 43-23.3-09

**Law Implemented:** NDCC 43-23.3-03, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-17, 43-23.3-18

### **101-02-02-05.1. Certified residential appraiser.**

1. **Permit.** A certified residential appraiser permit must be issued to an individual who successfully meets all of the board requirements for such a permit.
2. **Competency.** The certified residential appraiser may appraise one-family to four-family family residential properties without regard to value or complexity. In addition, a certified residential appraiser may appraise noncomplex, nonresidential properties, that have a transaction value of up to two hundred fifty thousand dollars. The certified residential appraiser is bound by the competency provision of the uniform standards of professional appraisal practice.
3. **Background check.** An applicant for a certified residential appraiser permit must undergo background screening to ensure that the applicant does not possess a background that could call into question public trust. The applicant shall submit fingerprints and any appropriate identifying information for submission to the federal bureau of investigation or government agency or entity authorized to receive such information in connection with a state and national background check.
  - a. All costs associated with obtaining a background check are the responsibility of the applicant.
  - b. An applicant will not be considered for the certified residential permit if:
    - (1) The applicant has had an appraiser apprentice, license, or certification permit revoked in any governmental jurisdiction within the five-year period immediately preceding the date of application.
    - (2) The applicant has been convicted of, or pled guilty or nolo contendere to, a felony in domestic or foreign court:
      - (a) During the five-year period immediately preceding the date of the application for certification.

(b) At any time preceding the date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.

(3) The applicant has failed to demonstrate character and general fitness, such as to command the confidence of the community and to warrant a determination that the appraiser will operate honestly, fairly, and efficiently within the purposes of these criteria.

c. The following additional background issues will be evaluated and considered prior to issuing a certified residential permit:

(1) Convictions of any criminal offense involving dishonesty, breach of trust, or money laundering against the applicant or organizations controlled by the applicant, or agreements to enter into a pretrial diversion or similar program in connection with the prosecution for such an offense.

(2) Civil judicial actions against the individual in connection with financial services-related activities, dismissals with settlements, or judicial findings that the individual violated financial services-related statutes or regulations, except for actions dismissed without a settlement agreement.

(3) Actions or orders by a state or federal regulatory agency or foreign financial regulatory authority that:

(a) Found the applicant to have made a false statement or omission or been dishonest, unfair, or unethical; to have been involved in a violation of a financial services-related regulation or statute; or to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked, or restricted.

(b) Are entered against the applicant in connection with a financial services-related activity.

(c) Denied, suspended, or revoked the applicant's apprentice, license, or certification permit to engage in a financial services-related business or restricted the applicant activities.

(d) Barred the applicant from association with an entity or its officers regulated by the agency or authority or from engaging in a financial services-related business.

- (4) Final orders issued by a state or federal regulatory agency or foreign financial regulatory authority based on violations of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct.
- (5) Revocation or suspension of the applicant's authorization to act as an attorney, accountant, or state or federal contractor.
- (6) Customer-initiated financial services-related arbitration or civil action against the applicant that required action, including settlements, or which resulted in a judgment.

3- 4. **Examination.** An applicant for a certified residential appraiser permit must have successfully completed the board-approved uniform ~~state~~-certified residential examination or its equivalent. The only alternative to the certified residential examination is successful completion of the certified general examination. Successful completion of the examination is valid for a period of twenty-four months. The certified residential permit must be obtained within twenty-four months of successful completion of the examination or the examination must be retaken. An applicant for the uniform certified residential examination ~~as a certified residential appraiser must~~ shall furnish proof to the board that the applicant has ~~successfully completed the applicable education required by subsection 4-;~~

- a. Successfully completed the applicable education required by subsection 5.
- b. Met the applicable experience, in hours and years, as required by subsection 6.

4- 5. **Education.** An applicant for a certified residential appraiser permit shall meet all of the following education requirements:

- a. ~~An associate~~ A bachelor's degree, or higher from an accredited college or university.
  - (1) ~~In lieu of the associate degree, an applicant for the certified residential permit shall successfully complete a minimum of three semester credit hours in each of the following collegiate level subject matter courses:~~ The college or university must be a degree-granting institution accredited by the commission on colleges, a regional or national accreditation association, or an accrediting agency that is recognized by the United States secretary of education. If the college or university accepts the college-level examination program and examinations, and issues a transcript for the examinations, showing its approval, it will be considered as credit for the college course. For college-level courses taken



in a quarterly system, one quarter credit-hour is equivalent to two-thirds semester credit-hour.

- (a) ~~English composition.~~
- (b) ~~Principles of economics (micro or macro).~~
- (c) ~~Finance.~~
- (d) ~~Algebra, geometry, or higher mathematics.~~
- (e) ~~Statistics.~~
- (f) ~~Computer science.~~
- (g) ~~Business or real estate law.~~

~~All courses used in lieu of the required degree must have been completed at a college or university that is an accredited degree-granting institution. The accreditation must have been obtained from the commission on colleges, a regional or national accreditation association, or an accrediting agency that is recognized by the United States secretary of education. If the college or university accepts the college-level examination program, and issues a transcript for the examinations, showing its approval, it will be considered as credit for the college course. For college-level courses taken in a quarterly system, one quarter credit hour is equivalent to two-thirds semester credit hour.~~

- (2) College-level education completed at a foreign college or university will be acceptable provided the education has been evaluated and deemed equivalent by one of the following:
  - (a) An accredited degree-granting domestic college or university.
  - (b) The American association of collegiate registrars and admissions officers.
  - (c) A foreign degree credential evaluation service company that is a member of the national association of credential evaluation services.
  - (d) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or

university or by a state licensing board that issues a credential in another discipline.

- b. In addition to ~~an associate~~ a bachelor's degree or higher, an applicant for certified residential must complete two hundred class hours in subjects related to real estate appraisal which cover the required core curriculum as established by the appraisal qualifications board of the appraisal foundation and approved as such by the board.

(1) Coverage must include a minimum of all of the following:

- (a) Thirty hours of basic appraisal principles.
- (b) Thirty hours of basic appraisal procedures.
- (c) The fifteen-hour national uniform standards of appraisal practice course or its equivalent.
- (d) Fifteen hours of residential market analysis and highest and best use.
- (e) Fifteen hours of residential appraiser site valuation and cost approach.
- (f) Thirty hours of sales comparison and income approaches.
- (g) Fifteen hours of residential report writing and case studies.
- (h) Fifteen hours of statistics, modeling, and finance.
- (i) Fifteen hours of advanced residential applications and case studies.
- (j) Twenty hours of appraisal subject matter electives.

[1] An apprentice appraiser may satisfy the educational requirements for the certified residential level by completing the following additional educational hours:

[a] Fifteen hours of residential appraiser market analysis and highest and best use.

[b] Fifteen hours of residential appraiser site valuation and cost approach.

[c] Thirty hours of residential sales comparison and income approaches.

[d] Fifteen hours of residential report writing and case studies.

[e] Fifteen hours of statistics, modeling, and finance.

[f] Fifteen hours of advanced residential applications and case studies.

[g] Twenty hours of appraisal subject matter electives.

[2] A licensed appraiser may satisfy the educational requirements for the certified residential level by completing the following additional educational hours:

[a] Fifteen hours of statistics, modeling, and finance.

[b] Fifteen hours of advanced residential applications and case studies.

[c] Twenty hours of appraisal subject matter electives.

- (2) Class hours will be credited only for educational offerings with content that follows the required core curriculum.
- (3) A class hour is defined as sixty minutes, of which at least fifty minutes are for instruction attended by the student.
- (4) Credit toward the class hour requirement may only be granted when the length of the educational offering is at least fifteen hours, and the individual successfully completes a closed-book examination pertinent to that educational offering.
- (5) The prescribed number of class hours includes time for examinations.
- (6) Uniform standards of professional appraisal practice education credit shall only be awarded when the class is instructed by at least one appraisal qualifications board-certified instructor who is state-certified.

- (7) Credit for the class requirement may be obtained from the following:
- (a) Colleges or universities.
  - (b) Community or junior colleges.
  - (c) Real estate appraisal or real estate-related organizations.
  - (d) State or federal agencies or commissions.
  - (e) Proprietary schools.
  - (f) Providers approved by the board.
  - (g) The appraisal foundation or its boards.
- (8) There is no time limit regarding when qualifying education credit must have been obtained.
- (9) All hours may be by distance education. Distance education is an educational process in which the student and instructor are geographically separated. Distance education includes online learning, internet-based instruction, CD-ROM instruction, correspondence courses, and videoconferencing. An acceptable distance education course must meet all of the following requirements:
- (a) Provide interaction between the student and the instructor. Interaction is a reciprocal environment where the student has verbal or written communication with the instructor.
  - (b) Be approved for content by the board, the appraisal qualifications board of the appraisal foundation, or an accredited college, community college, or university that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the United States secretary of education. Nonacademic credit college courses provided by a college shall be approved by the appraisal qualifications board of the appraisal foundation or the board.
  - (c) Obtain course delivery mechanism approval from one of the following sources:

- [1] Appraisal qualifications board-approved organizations providing approval of course design and delivery.
  - [2] A college that qualifies for content approval in subparagraph b and that awards academic credit for the distance education course.
  - [3] A qualifying college or university for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity.
- (d) Require the student to successfully complete a written examination proctored by an official approved by the presenting college, university, or sponsoring organization. Written examination refers to an examination written on paper or administered electronically on a computer workstation or other device.
  - (e) Meet the requirements for qualifying education established by the appraisal qualifications board of the appraisal foundation.
  - (f) Be equivalent to at least fifteen class hours.
- (10) Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may be acceptable to the board without additional state review.
  - (11) Courses taken to satisfy the qualifying education requirements must not be repetitive. Uniform standards of professional appraisal practice courses taken in different years are not repetitive. Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method when applicable.
  - (12) Courses taken for the class hour requirement when an individual seeks a different classification than that held may also be counted for the continuing education requirement of the classification held.
  - (13) Credit toward qualifying education requirements may also be obtained by the completion of a ~~graduate~~ degree in real estate from an accredited degree-granting college or university approved by the ~~American~~ association ~~of~~ to advance collegiate schools of business or a regional or

national accreditation agency recognized by the United States secretary of education, provided that the college or university has had its curriculum reviewed and approved by the appraisal qualifications board.

- (14) Applicants for the certified residential level who are awarded ~~graduate~~ degrees from approved institutions are required to complete all additional education required for the ~~credential~~ permit in which the approved degree is judged to be deficient by the appraisal qualifications board.
- (15) The applicant must be familiar with North Dakota Century Code chapter 43-23.3 and North Dakota Administrative Code title 101.
- (16) Experience may not be substituted for education.

~~5.~~ 6. **Experience.** A certified residential appraiser must have the equivalent of two thousand five hundred hours of credible appraisal experience prior to obtaining the certified residential appraiser certification permit. The experience requirements must be satisfied by time spent on the appraisal process. The appraisal process consists of analyzing factors that affect value, defining the problem, gathering and analyzing data, applying the appropriate analysis and methodology, and arriving at an opinion and correctly reporting the data, analysis, and opinion in compliance with the uniform standards of professional appraisal practice. The applicant for certified residential appraiser must submit a log from which the board will select for review a minimum of three ~~summary or self-contained~~ appraisal reports. Collectively the reports must include and demonstrate competence and a working knowledge of all three approaches to value. The reports submitted must meet the current uniform standards of professional appraisal practice as of the effective date of the appraisal and must reflect that the applicant has an acceptable level of competency and understanding of the principles, practices, and procedures consistent with the body of knowledge for the certified residential level.

- a. Adequate experience will be determined by the actual hours spent on an assignment, subject to a maximum established by the board.
  - (1) Maximum hours awarded are based on the types of appraisals performed and the types of properties appraised.
  - (2) Types of appraisals performed include standard appraisal, review appraisal, and condemnation appraisal.
    - (a) A standard appraisal is the process of developing an appraisal using those methods commonly accepted by real estate appraisers as constituting the appraisal

process and preparing a written appraisal report or file memorandum describing the appraisal and reporting the estimate of value. The appraisal process consists of an analysis of factors that affect value, definition of the problem, gathering and analyzing data, applying the appropriate value approaches and methodology, arriving at an opinion of value, and correctly reporting the opinion of value in compliance with the uniform standards of professional appraisal practice.

- (b) A review appraisal is the process of critically reviewing an appraisal report prepared by another appraiser and preparing a separate written report or file memorandum setting forth the results of the review process. The review appraiser reviews the report and forms an opinion as to the adequacy of the report, the appropriateness of the methods used by the appraiser, and the reasonableness of the appraiser's conclusions. A review appraiser may or may not perform a field review. A field review includes inspecting the subject and comparables to verify data, to determine the appropriateness of the comparables selected and adjustments made, and to assist in determining the reasonableness of the value estimate. Review appraisal experience must conform to standard three of the uniform standards of professional appraisal practice. Review appraisal experience should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under applicable uniform standards of professional appraisal practice standards.
- (c) A condemnation appraisal is an appraisal of real property for condemnation purposes, including situations where a partial taking is involved and the appraiser must develop both a before taking value estimate and an after taking value estimate. The appraiser uses those methods commonly accepted by real estate appraisers as constituting the appraisal process, including a field inspection and preparation of a written appraisal report or file memorandum describing the appraisal and reporting the before and after value estimates.

(3) Types of property appraised may include the following:

- (a) Land may include farms of one hundred acres [40.47 hectares] or more in size, undeveloped tracts,

residential multifamily sites, commercial sites, industrial sites, and land in transition.

- (b) Residential multifamily, five-12 units may include apartments, condominiums, townhouses, and mobile home parks.
  - (c) Residential multifamily, thirteen-plus units may include apartments, condominiums, townhouses, and mobile home parks.
  - (d) Commercial single-tenant may include office building, retail store, restaurant, service station, bank, and day care center.
  - (e) Commercial multitenant may include office building, shopping center, and hotel.
  - (f) Industrial may include warehouse and manufacturing plant.
  - (g) Institutional may include rest home, nursing home, hospital, school, church, and government building.
- (4) The number of allowable hours assigned for each appraisal type are assigned by the board and are included on the application for licensure and certification. A copy of this form can be obtained by contacting the board office.
- b. The two thousand five hundred hours of experience must be obtained using at least two years of appraisal practice gained over a period of at least twenty-four months.
  - c. There is no other time limit regarding when qualifying experience may be obtained.
  - d. Hours may be treated as cumulative in order to achieve the necessary two thousand five hundred hours of appraisal experience.
  - e. Acceptable appraisal experience includes the following:
    - (1) Fee and staff appraisal, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, real estate consulting (excludes related fields such as real estate lending), highest and best use analysis, and feasibility analysis or study.



- (a) Mass appraisal experience must conform to standard six of the uniform standards of professional appraisal practice. Mass appraisal experience claimed by the applicant should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under applicable uniform standards of professional appraisal practice standards.
  - (b) Review of real estate appraisals or real property consulting services, including market analysis, cash flow and investment analysis, and feasibility analysis must conform to standards three, four, and five of the uniform standards of professional appraisal practice. Experience involving these functions should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under standard one of the uniform standards of professional appraisal practice.
  - (c) A market analysis typically performed by a real estate broker or salesperson should be awarded experience credit when the analysis is prepared in conformity with standards one and two of the uniform standards of professional appraisal practice, and the individual can demonstrate that the individual is using techniques and methods consistent with those used by appraisers to value property and the individual is effectively utilizing the appraisal process.
  - (d) Real property appraisal experience should be awarded for appraisals of real estate components, estates, or interests unless the appraiser has not complied with standards one, two, and six of the uniform standards of professional appraisal practice.
- (2) No more than two hundred fifty hours of the total experience credit may be in related areas. Related experience includes consulting.
- f. Documentation in the form of reports, certifications, and file memoranda must be provided to support the experience claimed. If reports and memoranda are unavailable for good cause, the board may accept other evidence of compliance with the uniform standards of professional appraisal practice.
  - g. The verification for the two thousand five hundred hours of experience credit claimed by an applicant shall be on forms prescribed by the board which shall include all of the following:

- (1) Type of property.
  - (2) Date of report.
  - (3) Address of appraised property.
  - (4) Description of work performed by the applicant and scope of the review and supervision of the supervising appraiser.
  - (5) Number of actual work hours ~~per~~ on the assignment.
  - (6) The signature and permit number of the supervising appraiser, if applicable.
  - ~~(7) Separate appraisal logs maintained for each supervising appraiser, if applicable.~~
- h. Separate appraisal logs must be maintained for each supervising appraiser, if applicable.
- ~~h.~~ i. There need not be a client in order for an appraisal to qualify for experience. Appraisals made without clients can fulfill up to fifty percent of the total experience requirement.
- ~~i.~~ j. Case studies or practicum courses that are approved by the board or through the appraisal qualifications board of the appraisal foundation course approval program can satisfy the nonclient experience requirement.
- (1) A practicum course must include the generally applicable methods of appraisal practice for the ~~credential~~ permit category. Content includes all of the following:
    - (a) Requiring the student to produce credible appraisals that utilize an actual subject property.
    - (b) Performing market research containing sales analysis.
    - (c) Applying and reporting the applicable appraisal approaches in conformity with the uniform standards of professional appraisal practice.
  - (2) Assignments must require problem-solving skills for a variety of property types for the ~~credential~~ permit category.
  - (3) Experience credit shall be granted for the actual class hours of instruction and hours of documented research and analysis as awarded from the practicum course approval process.

- ~~j.~~ k. All experience must be obtained after January 30, 1989, and must be uniform standards of professional appraisal practice compliant, where the appraiser demonstrates proficiency in appraisal principles, methodology, procedures (development), and reporting conclusions.
- ~~k.~~ l. After accumulating a minimum of fifty percent of the required appraisal experience, an applicant for certified residential may voluntarily submit work product to the board to be reviewed by a board reviewer for educational purposes only. A maximum of two reports may be submitted for review. The board will not initiate a complaint for violations identified in this review.

**History:** Effective January 1, 2008; amended effective July 1, 2012; January 1, 2015.

**General Authority:** NDCC 43-23.3-03

**Law Implemented:** NDCC 43-23.3-03, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43.23.3-09, 43-23.3-17, 43-23.3-18

#### **101-02-02-06. Certified general appraiser.**

1. **Definitions.** A certified general appraiser permit must be issued to an individual who successfully meets all of the board requirements for such a permit.
2. **Competency.** The certified general appraiser may appraise all types of properties. The certified general appraiser is bound by the competency provision of the uniform standards of professional appraisal practice.
3. **Background check.** An applicant for a certified general appraiser permit must undergo background screening to ensure that the applicant does not possess a background that could call into question public trust. The applicant shall submit fingerprints and any appropriate identifying information for submission to the federal bureau of investigation or government agency or entity authorized to receive such information in connection with a state and national background check.
  - a. All costs associated with obtaining a background check are the responsibility of the applicant.
  - b. An applicant will not be considered for a certified general permit if:
    - (1) The applicant has had an appraiser apprentice, license, or certification permit revoked in any governmental jurisdiction within the five-year period immediately preceding the date of application.
    - (2) The applicant has been convicted of, or pled guilty or nolo contendere to, a felony in domestic or foreign court:

- (a) During the five-year period immediately preceding the date of the application for licensing or certification.
    - (b) At any time preceding the date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.
  - (3) The applicant has failed to demonstrate character and general fitness, such as to command the confidence of the community and to warrant a determination that the appraiser will operate honestly, fairly, and efficiently within the purposes of these criteria.
- C. The following additional background issues will be evaluated and considered prior to issuing a certified general permit:
  - (1) Convictions of any criminal offense involving dishonesty, breach of trust, or money laundering against the applicant or organizations controlled by the applicant, or agreements to enter into a pretrial diversion or similar program in connection with the prosecution for such an offense.
  - (2) Civil judicial actions against the individual in connection with financial services-related activities, dismissals with settlements, or judicial findings that the individual violated financial services-related statutes or regulations, except for actions dismissed without a settlement agreement.
  - (3) Actions or orders by a state or federal regulatory agency or foreign financial regulatory authority that:
    - (a) Found the applicant to have made a false statement or omission or been dishonest, unfair, or unethical; to have been involved in a violation of a financial services-related regulation or statute; or to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked, or restricted.
    - (b) Are entered against the applicant in connection with a financial services-related activity.
    - (c) Denied, suspended, or revoked the applicant's apprentice, license, or certification permit to engage in a financial services-related business or restricted the applicant activities.

(d) Barred the applicant from association with an entity or its officers regulated by the agency or authority of from engaging in a financial services-related business.

(4) Final orders issued by a state or federal regulatory agency or foreign financial regulatory authority based on violations of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct.

(5) Revocation or suspension of the applicant's authorization to act as an attorney, accountant, or state or federal contractor.

(6) Customer-initiated financial services-related arbitration or civil action against the applicant that required action, including settlements, or which resulted in a judgment.

~~3.~~ 4. **Examination.** An applicant for a certified general appraiser permit must have successfully completed the board approved uniform state certification examination or its equivalent. There is no alternative to successful completion of the examination. Successful completion of the examination is valid for a period of twenty-four months. The certified general permit must be obtained within twenty-four months of successful completion of the examination or the examination must be retaken. An applicant for the uniform certified general examination ~~as a certified appraiser must~~ shall furnish proof to the board that the applicant has ~~successfully completed the applicable education required by subsection 4.~~

a. Successfully completed the applicable education required by subsection 5.

b. Met the applicable experience, in hours and years, as required by subsection 6.

~~4.~~ 5. **Education.** An applicant for a certified general appraiser permit shall meet all of the following education requirements:

a. A bachelor's degree or higher from an accredited college or university.

(1) ~~In lieu of the bachelor's degree, an applicant for the certified general permit shall successfully complete a minimum of three semester credit hours in each of the following collegiate level subject matter courses:~~ The college or university must be a degree-granting institution accredited by the commission on colleges, a regional or national accreditation association, or an accrediting agency that is recognized by the United States secretary of education. If the college or university accepts the college-level examination

program and examinations, and issues a transcript for the examinations, showing its approval, it will be considered as credit for the college course. For college-level courses taken in a quarterly system, one quarter credit-hour is equivalent to two-thirds semester credit-hour.

- ~~(a) English composition.~~
- ~~(b) Micro-economics.~~
- ~~(c) Macro-economics.~~
- ~~(d) Finance.~~
- ~~(e) Algebra, geometry, or higher mathematics.~~
- ~~(f) Statistics.~~
- ~~(g) Computer science.~~
- ~~(h) Business or real estate law.~~
- ~~(i) Two elective courses in accounting, geography, agriculture economics, business management, or real estate.~~

~~All courses used in lieu of the required degree must have been completed at a college or university that is an accredited degree-granting institution. The accreditation must have been obtained from the commission on colleges, a regional or national accreditation association, or an accrediting agency that is recognized by the United States secretary of education. If the college or university accepts the college-level examination program, and issues a transcript for the examination, showing its approval, it will be considered as credit for the college course. For college-level courses taken in a quarterly system, one quarter credit hour is equivalent to two-thirds semester credit hour.~~

- (2) College-level education completed at a foreign college or university will be acceptable provided the education has been evaluated and deemed equivalent by one of the following:
  - (a) An accredited degree-granting domestic college or university.
  - (b) The American association of collegiate registrars and admissions officers.

- (c) A foreign degree credential evaluation service company that is a member of the national association of credential evaluation services.
  - (d) A foreign degree credential valuation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.
- b. In addition to a bachelor's degree or higher, an applicant for certified general must complete three hundred class hours in subjects related to real estate appraisal which cover the required core curriculum as established by the appraisal qualifications board of the appraisal foundation, and approved as such, by the board.
- (1) Coverage must include a minimum of all of the following:
    - (a) Thirty hours of basic appraisal principles.
    - (b) Thirty hours of basic appraisal procedures.
    - (c) The fifteen-hour national uniform standards of appraisal practice course or its equivalent.
    - (d) Thirty hours of general appraiser market analysis and highest and best use.
    - (e) Fifteen hours of statistics, modeling, and finance.
    - (f) Thirty hours of general appraiser sales comparison approach.
    - (g) Thirty hours general appraiser site valuation and cost approach.
    - (h) Sixty hours of general appraiser income approach.
    - (i) Thirty hours of general appraiser report writing and case studies.
    - (j) Thirty hours of appraisal subject matter electives.

[1] An apprentice appraiser may satisfy the educational requirements for the certified general level by completing the following additional educational hours:

- [a] Thirty hours of general appraiser market analysis and highest and best use.
  - [b] Fifteen hours of statistics, modeling, and finance.
  - [c] Thirty hours of general appraiser sales comparison approach.
  - [d] Thirty hours of general appraiser site valuation and cost approach.
  - [e] Sixty hours of general appraiser income approach.
  - [f] Thirty hours of general appraiser report writing and case studies.
  - [g] Thirty hours of appraisal subject matter electives.
- [2] A licensed appraiser may satisfy the educational requirements for the certified general level by completing the following additional educational hours:
- [a] Fifteen hours of general appraiser market analysis and highest and best use.
  - [b] Fifteen hours of statistics, modeling, and finance.
  - [c] Fifteen hours of general appraiser sales comparison approach.
  - [d] Fifteen hours of general appraiser site valuation and cost approach.
  - [e] Forty-five hours of general appraiser income approach.
  - [f] Fifteen hours of general appraiser report writing and case studies.
  - [g] Thirty hours of appraisal subject matter electives.
- [3] A certified residential appraiser may satisfy the educational requirements for the certified general



level by completing the following additional educational hours:

[a] Fifteen hours of general appraiser market analysis and highest and best use.

[b] Fifteen hours of general appraiser sales comparison approach.

[c] Fifteen hours of general appraiser site valuation and cost approach.

[d] Forty-five hours of general appraiser income approach.

[e] Ten hours of general appraiser report writing and case studies.

- (2) Class hours will be credited only for educational offerings with content that follows the required core curriculum.
- (3) A class hour is defined as sixty minutes, of which at least fifty minutes are for instruction attended by the student.
- (4) Credit toward the class hour requirement may only be granted when the length of the educational offering is at least fifteen hours, and the individual successfully completes a closed-book examination pertinent to that educational offering.
- (5) The prescribed number of class hours includes time for examinations.
- (6) Uniform standards of professional appraisal practice education credit shall only be awarded when the class is instructed by at least one appraisal qualifications board-certified instructor who is state-certified.
- (7) Credit for the class requirement may be obtained from the following:
  - (a) Colleges or universities.
  - (b) Community or junior colleges.
  - (c) Real estate appraisal or real estate-related organizations.
  - (d) State or federal agencies or commissions.

- (e) Proprietary schools.
  - (f) Providers approved by the board.
  - (g) The appraisal foundation or its boards.
- (8) There is no time limit regarding when qualifying education credit must have been obtained.
- (9) All hours may be by distance education. Distance education is an educational process in which the student and instructor are geographically separated. Distance education includes online learning, internet-based instruction, CD-ROM instruction, correspondence courses, and videoconferencing. An acceptable distance education course must meet all of the following requirements:
- (a) Provide interaction between the student and the instructor. Interaction is a reciprocal environment where the student has verbal or written communication with the instructor.
  - (b) Be approved for content by the board, the appraisal qualifications board of the appraisal foundation, or an accredited college, community college, or university, that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the United States secretary of education. Nonacademic credit college courses provided by a college shall be approved by the appraisal qualifications board of the appraisal foundation or the board.
  - (c) Obtain course delivery mechanism approval from one of the following sources:
    - [1] Appraisal qualifications board-approved organizations providing approval of course design and delivery.
    - [2] A college that qualifies for content approval in subparagraph b that awards academic credit for the distance education course.
    - [3] A qualifying college or university for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity.

- (d) Require the student to successfully complete a written examination proctored by an official approved by the presenting, college, university, or sponsoring organization. Written examination refers to an examination written on paper or administered electronically on a computer workstation or other device.
  - (e) Meet the requirements for qualifying education established by the appraisal qualifications board of the appraisal foundation.
  - (f) Be equivalent to at least fifteen class hours.
- (10) Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may be acceptable to the board without additional state review.
  - (11) Courses taken to satisfy the qualifying education requirements must not be repetitive. Uniform standards of professional appraisal practice courses taken in different years are not repetitive. Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method when applicable.
  - (12) Courses taken for the class hour requirement when an individual seeks a different classification than that held may also be counted for the continuing education requirement of the classification held.
  - (13) Credit toward qualifying education requirements may also be obtained by the completion of a ~~graduate~~ degree in real estate from an accredited degree-granting college or university approved by the ~~American~~ association of to advance collegiate schools of business or a regional or national accreditation agency recognized by the United States secretary of education, provided that the college or university has had its curriculum reviewed and approved by the appraisal qualifications board.
  - (14) Applicants for the certified general level who are awarded ~~graduate~~ degrees from approved institutions are required to complete all additional education required for the ~~credential~~ permit in which the approved degree is judged to be deficient by the appraisal qualifications board.

- (15) The applicant must be familiar with North Dakota Century Code chapter 43-23.3 and North Dakota Administrative Code title 101.
- (16) Experience may not be substituted for education.

5. 6. **Experience.** A certified general appraiser must have the equivalent of three thousand hours of credible appraisal experience prior to obtaining the certified general appraiser certification permit. The experience requirements must be satisfied by time spent on the appraisal process. The appraisal process consists of analyzing factors that affect value, defining the problem, gathering and analyzing data, applying the appropriate analysis and methodology, and arriving at an opinion and correctly reporting the data, analysis, and opinion in compliance with the uniform standards of professional appraisal practice. The applicant for certification must submit a log from which the board will select for review a minimum of three ~~summary or self-contained~~ nonresidential appraisal reports. Collectively the reports must include and demonstrate competence and a working knowledge of all three approaches to value. The reports submitted must meet the current uniform standards of professional appraisal practice as of the effective date of the appraisal and must reflect that the applicant has an acceptable level of competency and understanding of the principles, practices, and procedures consistent with the body of knowledge for the certified general level.

- a. Adequate experience will be determined by the actual hours spent on an assignment, subject to a maximum established by the board.
  - (1) Maximum hours awarded are based on the types of appraisals performed and the types of properties appraised.
  - (2) Types of appraisals performed include standard appraisal, review appraisal, and condemnation appraisal.
    - (a) A standard appraisal is the process of developing an appraisal using those methods commonly accepted by real estate appraisers as constituting the appraisal process and preparing a written appraisal report or file memorandum describing the appraisal and reporting the estimate of value. The appraisal process consists of an analysis of factors that affect value, definition of the problem, gathering and analyzing data, applying the appropriate value approaches and methodology, arriving at an opinion of value, and correctly reporting the opinion of value in compliance with the uniform standards of professional appraisal practice.

- (b) A review appraisal is the process of critically reviewing an appraisal report prepared by another appraiser and preparing a separate written report or file memorandum setting forth the results of the review process. The review appraiser reviews the report and forms an opinion as to the adequacy of the report, the appropriateness of the methods used by the appraiser, and the reasonableness of the appraiser's conclusions. A review appraiser may or may not perform a field review. A field review includes inspecting the subject and comparables to verify data, to determine the appropriateness of the comparables selected and adjustments made, and to assist in determining the reasonableness of the value estimate. Review appraisal experience must conform to standard three of the uniform standards of professional appraisal practice. Review appraisal experience should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under applicable uniform standards of professional appraisal practice standards.
- (c) A condemnation appraisal is an appraisal of real property for condemnation purposes, including situations where a partial taking is involved and the appraiser must develop both a before taking value estimate and an after taking value estimate. The appraiser uses those methods commonly accepted by real estate appraisers as constituting the appraisal process including a field inspection and preparation of a written appraisal report or file memorandum describing the appraisal and reporting the before and after value estimates.

(3) Types of property appraised may include the following:

- (a) Land may include farms of one hundred acres [40.47 hectares] or more in size, undeveloped tracts, residential multifamily sites, commercial sites, industrial sites, and land in transition.
- (b) Residential multifamily, five-12 units may include apartments, condominiums, townhouses, and mobile home parks.
- (c) Residential multifamily, thirteen-plus units may include apartments, condominiums, townhouses, and mobile home parks.

- (d) Commercial single-tenant may include office building, retail store, restaurant, service station, bank, and day care center.
  - (e) Commercial multitenant may include office building, shopping center, and hotel.
  - (f) Industrial may include warehouse and manufacturing plant.
  - (g) Institutional may include rest home, nursing home, hospital, school, church, and government building.
- (4) The number of allowable hours assigned for each appraisal type are assigned by the board and are included on the application for licensure or certification. A copy of this form can be obtained by contacting the board office.
- b. The three thousand hours of experience must be obtained using at least two and one-half years of appraisal practice gained over a period of at least thirty months.
  - c. There is no other time limit regarding when qualifying experience may be obtained.
  - d. Hours may be treated as cumulative in order to achieve the necessary three thousand hours of appraisal experience.
  - e. Acceptable appraisal experience includes the following:
    - (1) Fee and staff appraisal, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, real estate consulting (excludes related fields such as real estate lending), highest and best use analysis, and feasibility analysis or study.
      - (a) Mass appraisal experience must conform to standard six of the uniform standards of professional appraisal practice. Mass appraisal experience claimed by the applicant should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under applicable uniform standards of professional appraisal practice standards.
      - (b) Review of real estate appraisals or real property consulting services, including market analysis, cash flow and investment analysis, and feasibility analysis must conform to standards three, four, and five of the

uniform standards of professional appraisal practice. Experience involving these functions should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under standard one of the uniform standards of professional appraisal practice.

(c) A market analysis typically performed by a real estate broker or sales person should be awarded experience credit when the analysis is prepared in conformity with standards one and two of the uniform standards of professional appraisal practice, the individual can demonstrate that the individual is using techniques and methods consistent with those used by appraisers to value property and the individual is effectively utilizing the appraisal process.

(d) Real property appraisal experience should be awarded for appraisals of real estate components, estates, or interests unless the appraiser has not complied with standards one, two, and six of the uniform standards of professional appraisal practice.

(2) No more than three hundred hours of the total experience credit may be in related areas. Related experience includes consulting.

f. Documentation in the form of reports, certifications, and file memoranda must be provided to support the experience claimed. If reports and file memoranda are unavailable for good cause, the board may accept other evidence of compliance with the uniform standards of professional appraisal practice.

g. The verification for the three thousand hours of experience credit claimed by an applicant shall be on forms prescribed by the board which shall include all of the following:

(1) Type of property.

(2) Date of report.

(3) Address of appraised property.

(4) Description of work performed by the applicant and scope of the review and supervision of the supervising appraiser.

(5) Number of actual work hours per on the assignment.

- (6) The signature and permit number of the supervising appraiser, if applicable.
- ~~(7) Separate appraisal logs maintained for each supervising appraiser, if applicable.~~
- ~~h.~~ h. Separate appraisal logs must be maintained for each supervising appraiser, if applicable.
- ~~h.~~ i. The applicant must have at least fifty percent of nonresidential appraisal experience. Residential is defined as one-unit to four-unit residential units.
- ~~i.~~ j. There need not be a client in order for an appraisal to qualify for experience. Appraisals made without clients can fulfill up to fifty percent of the total experience requirement.
- ~~j.~~ k. Case studies or practicum courses that are approved by the board or through the appraisal qualifications board of the appraisal foundation course approval program can satisfy the nonclient experience requirement.
  - (1) A practicum course must include the generally applicable methods of appraisal practice for the ~~credential~~ permit category. Content includes all of the following:
    - (a) Requiring the student to produce credible appraisals that utilize an actual subject property.
    - (b) Performing market research containing sales analysis.
    - (c) Applying and reporting the applicable appraisal approaches in conformity with the uniform standards of professional appraisal practice.
  - (2) Assignments must require problem-solving skills for a variety of property types for the ~~credential~~ permit category.
  - (3) Experience credit shall be granted for the actual class hours of instruction and hours of documented research and analysis as awarded from the practicum course approval process.
- ~~k.~~ l. All experience must be obtained after January 30, 1989, and must be uniform standards of professional appraisal practice compliant, where the appraiser demonstrates proficiency in appraisal principles, methodology, procedures (development), and reporting conclusions.



- ↳ m. After accumulating a minimum of fifty percent of the required appraisal experience, an applicant for certified general may voluntarily submit work product to the board to be reviewed by a board reviewer for educational purposes only. A maximum of two reports may be submitted for review during the experience portion of the certification process. The board will not initiate a complaint for violations identified in this review.

**History:** Effective October 1, 1992; amended effective January 1, 1995; October 1, 1998; February 1, 2003; January 1, 2008; July 1, 2012; January 1, 2015.

**General Authority:** NDCC 43-23.3-03, 43-23.3-09

**Law Implemented:** NDCC 43-23.3-03, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-17, 43-23.3-18

## CHAPTER 101-02-02.1

### 101-02-02.1-01. Issuance of permits to applicants licensed or certified by another state.

1. The board shall issue a permit to an applicant who is licensed or certified in good standing by another state if the other state's current requirements to be licensed or certified are at least substantially equivalent to the current requirements imposed by this state, and if grounds for denial of the applications under North Dakota Century Code section 43-23.3-18 do not exist. ~~If an applicant was licensed or certified by another state by reciprocity or a similar process, the current requirements of the state in which the applicant was originally licensed or certified must be at least substantially equivalent to the current requirements imposed by this state.~~
2. To qualify, the applicant must meet all of the following requirements:
  - a. Submit an application on a form provided by the board.
  - b. Certify that the applicant is licensed or certified in good standing in another state.
  - c. Certify that disciplinary proceedings are not pending against the applicant in any jurisdiction.
  - d. Provide documentation of the current requirements of the state in which the applicant was originally licensed or certified.
  - e. Pay the application fee.
3. The board may request work product from an applicant if the applicant has a history of disciplinary action.

**History:** Effective January 1, 1995; amended effective October 1, 1998; January 1, 2008; July 1, 2012; January 1, 2015.

**General Authority:** NDCC 43-23.3-03, 43-23.3-11

**Law Implemented:** NDCC 43-23.3-04.1

## CHAPTER 101-02-04

### 101-02-04-01. Permit renewal.

1. All permits expire on December thirty-first of each year.
2. A holder of an appraiser permit desiring the renewal of such permit shall, during the month preceding the expiration date of such permit, apply for same in writing upon a form approved by the board and shall forward the required fee. Forms are available upon request to the board.
3. Permits may be renewed up to ninety days after the date of expiration, with payment of late fee. The applicant who does not file a renewal application by the ninety-day deadline is subject to all requirements governing new applicants.
4. A person who, in any way, acts as an apprentice, licensed, or certified appraiser while that individual's permit is expired will be subject to disciplinary action and penalties as described in North Dakota Century Code chapter 43-23.3.

**History:** Effective October 1, 1992; amended effective February 1, 2003; January 1, 2008; July 1, 2012; January 1, 2015.

**General Authority:** NDCC 43-23.3-03

**Law Implemented:** NDCC 43-23.3-12, 43-23.3-23

## CHAPTER 101-04-01

### 101-04-01-01. Continuing education requirements.

1. **Purpose.** The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases that individual's skill, knowledge, and competency in real estate appraising.
2. **Requirements.** All apprentice, licensed, and certified permittees must meet a minimum level of continuing education. This minimum level has been set at twenty-eight hours over a two-year education renewal period. Of the twenty-eight hours, appraisers must complete the seven-hour national uniform standards of professional appraisal practice update course, or its equivalent, every two years. Equivalency must be determined through the appraisal qualifications board course approval program or by an alternate method approved by the appraisal qualifications board. Fourteen hours of the twenty-eight hours must include appraisal-specific education related to the valuation of real estate, and seven hours may be comprised of appraisal-related subject matter, approved as such by the board.
  - a. The necessary twenty-eight hours may be obtained at any time during the two-year renewal period, except for the required national uniform standards of professional appraisal practice requirement.
  - b. Verification of the necessary twenty-eight hours must be submitted by the end of the two-year renewal period.
  - c. Uniform standards of professional practice (USPAP) continuing education credit shall only be awarded when the class is instructed by at least one appraisal qualifications board-certified instructor who is state-certified.
  - d. All continuing education courses taken in this state must be approved by the board.
  - e. Courses taken out of this state may be approved for credit, provided the state in which the course was taken has approved the course for appraiser education.
  - f. A course which has not had prior approval may be approved on an individual basis.
  - g. All continuing education must be taken in blocks of at least two hours.
  - h. A ~~classroom~~ class hour is defined as fifty minutes out of each sixty-minute segment.

- i. With the exception of distance education, no examination is required for continuing education courses.
- j. Credit for the class requirement may be obtained from the following:
  - (1) Colleges or universities.
  - (2) Community or junior colleges.
  - (3) Real estate appraisal or real estate-related organizations.
  - (4) State or federal agencies or commissions.
  - (5) Proprietary schools.
  - (6) Other providers approved by the board.
- k. Credit may be granted for education offerings which are consistent with the purpose of continuing education stated in subsection 1 and cover real estate-related appraisal topics such as:
  - (1) Ad valorem taxation.
  - (2) Arbitration and dispute resolution.
  - (3) Courses related to practice of real estate appraisal or consulting.
  - (4) Development cost estimating.
  - (5) Ethics and standards of professional practice.
  - (6) Land use planning and zoning.
  - (7) Management, leasing, and timesharing.
  - (8) Property development and partial interests.
  - (9) Real estate law, easements, and legal interests.
  - (10) Real estate litigation, damages, and condemnation.
  - (11) Real estate financing and investment.
  - (12) Real estate appraisal-related computer applications.
  - (13) Real estate securities and syndications.

(14) Developing opinions of real property value in appraisals that also include personal property and business value.

(15) Seller concessions and impact on value.

(16) Energy efficient items and green building appraisals.

- l. A professional real estate appraisal organization meeting may be granted credit, provided it is a formal education program of learning which contributes to the real estate appraisal profession.
- m. Three hours of continuing education credit, per continuing education cycle, may be granted for attendance at a face-to-face meeting of the board of at least three hours. The attendee must attend the meeting in its entirety.
- n. Real estate appraisal-related field trips may be granted credit. However, transit time to or from the field trip location should not be included when awarding credit if instruction does not occur.
- o. Up to one-half of an individual's continuing education credit may be granted for participation, other than as a student in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities which are determined to be equivalent to obtaining continuing education. Teaching of a course with the same, or substantially the same subject content may be claimed only once for credit within a two-year renewal cycle.
- p. Continuing education credit may be granted for distance education. Distance education is defined as any educational process based on the geographical separation of instructor and student. Distance education includes CD-ROM instruction, online learning, internet-based instruction, correspondence courses, and videoconferencing. Acceptable distance education courses must meet all of the following requirements:
  - (1) Provide interaction between the student and the instructor. Interaction is a reciprocal environment where the student has verbal or written communication with the instructor.
  - (2) Be approved for content by the board, the appraisal qualifications board of the appraisal foundation, or an accredited college, community college, or university, that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the United States secretary of education. Nonacademic credit college courses provided by

a college shall be approved by the appraisal qualifications board of the appraisal foundation or the board.

- (3) Be approved for delivery mechanism by one of the following sources:
    - (a) Appraiser qualifications board-approved organizations providing approval of course design and delivery.
    - (b) A college that qualifies for content approval in paragraph 2 and that awards academic credit for the distance education course.
    - (c) A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity.
  - (4) Be equivalent to a minimum of two ~~classroom~~ class hours in length and meet the requirements for real estate appraisal-related courses established by the appraiser qualifications board.
  - (5) If intended for use as continuing education, include at least one of the following:
    - (a) The student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization.
    - (b) The student successfully completes the prescribed course mechanisms required to demonstrate knowledge of the subject matter.
- q. A course with the same or substantially the same subject content may be claimed only once for credit within a two-year renewal cycle.
  - r. Excess hours of education earned in one renewal period cannot be carried over to the next renewal period.
  - s. Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may be accepted by the board without additional state review.
  - t. Courses that are taken as a result of a disciplinary action may not be credited toward continuing education.

- u. Courses taken for the class hour requirement when an individual seeks a different classification than that held may be simultaneously counted for the continuing education requirement of the classification held.
- v. Appraisers are required to complete continuing education for a partial year in a continuing education cycle as follows:
  - (1) For continuing education cycle periods of one hundred eighty-five days or more, fourteen hours of continuing education are required.
  - (2) For continuing education cycle periods of less than one hundred eighty-five days, no continuing education is required.

**History:** Effective October 1, 1992; amended effective October 1, 1998; February 1, 2003; January 1, 2008; July 1, 2012; January 1, 2015.

**General Authority:** NDCC 43-23.3-12, 43-23.3-19

**Law Implemented:** NDCC 43-23.3