

NORTH DAKOTA ADMINISTRATIVE CODE

Supplement 17

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



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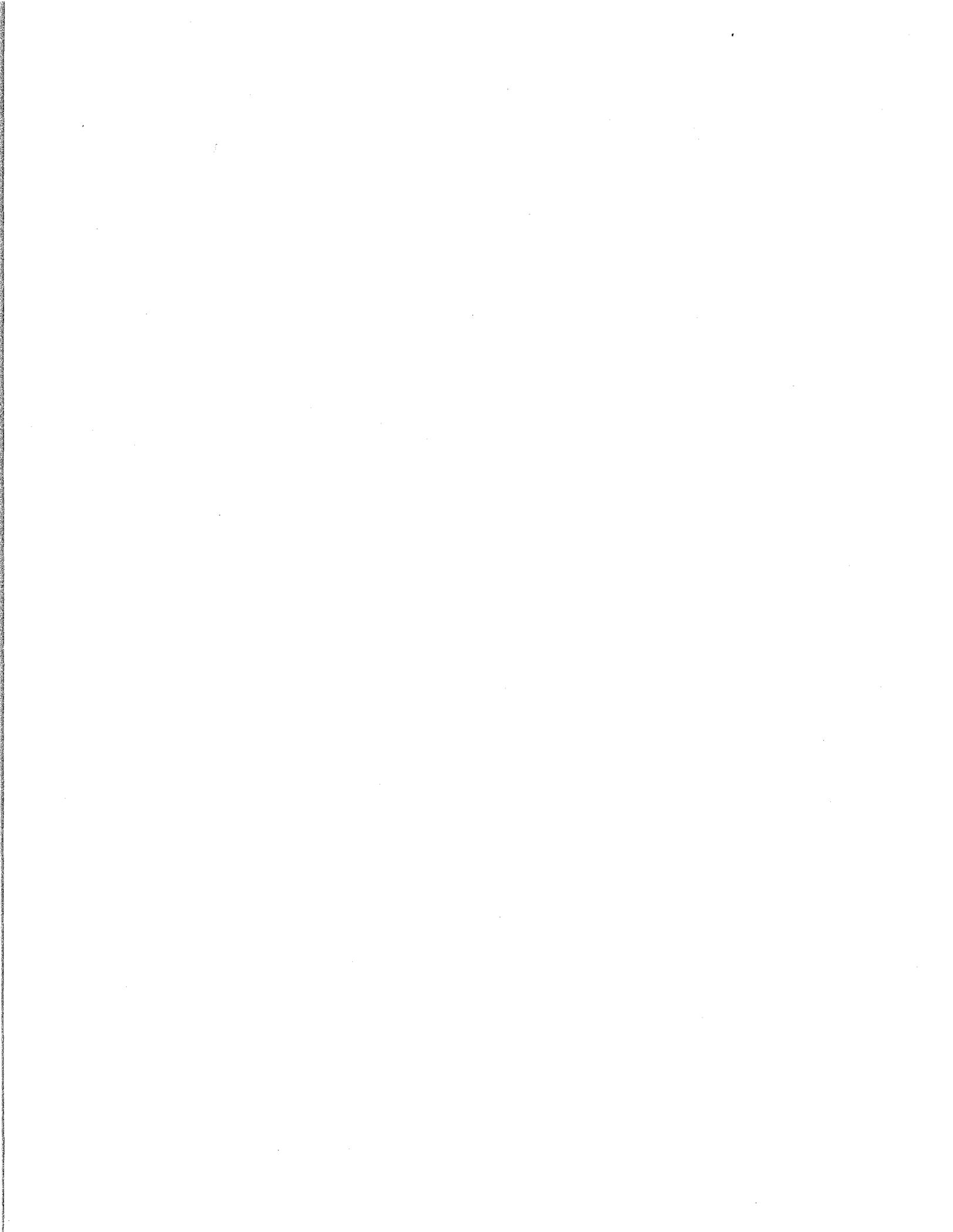
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TITLE 13

BANKING AND FINANCIAL INSTITUTIONS, DEPARTMENT OF

STAFF COMMENT: Article 13-01.1 contains all new material and thus it is not underscored.

Article

- 13-01 General Administration
- 13-01.1 Practice and Procedure
- 13-02 Banking and Savings and Loan Associations
- 13-03 Credit Unions
- 13-04 Consumer Finance

ARTICLE 13-01.1

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13-01.1-01-01. APPLICABILITY. This article shall apply to all practice and procedure before the state banking board unless rendered inconsistent by a specific statute or rule, in which instance the more specific statute or rule shall apply.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-01-02. ADDRESS - SESSIONS. The principal office of the state banking board shall be in the state capitol, Bismarck, North Dakota. The board shall be considered as in session in January, March, May, July, September, and November of each year and specially when so called by the commissioner as chairman of the board.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-01-03. COMMUNICATIONS. All correspondence and filings forwarded to the board shall be addressed to:

State Banking Board
State Capitol
Bismarck, North Dakota 58505

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-01-04. CASE TITLE. Each matter coming formally before the board will be known as a case and shall be given a title descriptive of the subject matter. Such title shall be used on all papers in the case and, as far as

possible, any communication to the board in any particular case shall bear or reference the title of the case.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-01-05. PERSONAL AND REPRESENTATIVE APPEARANCES. Participants may appear in any proceeding in person or by an attorney or other qualified representative. The following persons may appear in any proceeding: (1) an individual in the individual's own behalf; (2) a member of a partnership; (3) a bona fide officer or duly authorized employee of a corporation, association, or group; and (4) an officer or employee of a state agency, department, or political subdivision of the state or other governmental authority representing the state agency, department, or political subdivision in any proceeding.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-01-06. PRACTICE BEFORE THE BOARD.

1. Person in own interest. Any person may appear before the board in the person's own right if the person has a bona fide interest in the subject matter of the proceeding.
2. Attorneys. Attorneys at law who are admitted to practice before the courts of the state of North Dakota may represent any party to a proceeding. Any member of the bar of another state may be permitted by the commissioner to appear in and conduct a cause or matter while retaining the member's residence in another state.
3. Other persons. Any other person who shall file proof to the satisfaction of the commissioner that the person is possessed of necessary legal or technical qualifications to enable the person to render valuable service may be permitted to practice before the board.
4. Rules of conduct. All persons appearing before the board or a hearing examiner must conform to the standards of ethical conduct required of practitioners before the courts of the state of North Dakota.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-01-07. PARTIES.

1. Classification. Parties to proceedings before the board are designated as applicants, complainants, petitioners, intervenors, protestants, or respondents, according to the nature of the proceeding and the relationship of the parties thereto.
2. Applicant. Persons filing formal written requests with the board for some right, privilege, or authorization which the board may give under statutory or other authority granted to it are designated as applicants.
3. Complainant. Persons who complain to the board of acts done or omitted to be done in violation of some law administered by the board, or in violation of some rule, regulation, or order issued by the board, are designated as complainants.
4. Petitioner. Persons seeking relief, not otherwise designated herein, are designated as petitioners.
5. Intervenor. Persons, other than the original parties to a pending proceeding, who voluntarily become parties thereto with leave of the commissioner are designated as intervenors. Admission as an intervenor shall not be construed as recognition by the board that the intervenor might be aggrieved by any order of the board in the proceeding.
6. Protestant. Persons opposing on grounds of private or public interest the approval of an application, petition, motion, or other matter under consideration by the board are designated as protestants.
7. Respondent. Persons subject to any statute or other delegated authority administered by the board to whom an order or notice is issued by the board instituting a proceeding or investigation on its own initiative and persons subject to any statute or other delegated authority administered by the board or any rule, order, or regulation issued or promulgated thereunder against whom any complaint is filed are designated as respondents.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-01-08. INVESTIGATION ON BOARD'S OWN MOTION. The board may at any time, upon its own motion or upon the complaint of any person, institute investigation proceedings and order hearing in any action or thing done or omitted to be done by any party under the board's jurisdiction which the board may believe is in violation of the law or of any order, rule, or regulation of the board. It

may, through its staff or otherwise, secure and present such evidence as it may consider necessary or desirable in any proceeding in addition to the evidence presented by the parties.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-01-09. DEFINITIONS. As used in this article except as otherwise required by the context:

1. "Board" and "board member" means the state banking board, and a member thereof, respectively.
2. "Board's staff" means and includes the board's experts, employees and attorneys, and the staff of the department of banking and financial institutions.
3. "Commissioner" means the commissioner of banking and financial institutions.
4. "Hearing examiner" means and includes any one or more of the members of the board duly designated, or one or more trial examiners appointed according to law and duly designated to preside at hearings or conferences.
5. "Participants" means and includes any party or person admitted by the board or commissioner to participate in a proceeding, including the board's staff.
6. "Person" means and includes individuals, partnerships, corporations, and associations or organized groups.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-01-10. LIBERAL CONSTRUCTION. This article shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-01-11. SUSPENSION OF RULES. The board reserves the right to suspend, either upon its own motion or upon the motion of any party, the operation of or necessity for compliance with any rule of procedure or part thereof, upon due notice to all parties, whenever the public interest or the interest of any party to a proceeding will not be substantially prejudiced thereby. The power to suspend these rules may be exercised by the commissioner. Every such exercise of power by the commissioner is subject to review by the board.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

CHAPTER 13-01.1-02
PLEADINGS

Section

13-01.1-02-01	Informal Complaint
13-01.1-02-02	Formal Complaints
13-01.1-02-03	Answers
13-01.1-02-04	Application
13-01.1-02-05	Protest
13-01.1-02-06	Intervention
13-01.1-02-07	Extensions of Time
13-01.1-02-08	Extensions of Time for Satisfaction of Conditions Subsequent
13-01.1-02-09	Amendments and Withdrawal
13-01.1-02-10	Motion
13-01.1-02-11	Show Cause Orders

13-01.1-02-01. INFORMAL COMPLAINT. Form and disposition. Informal complaints may be made orally or in writing addressed to the board. Letters to the board will be considered as informal complaints. Matters thus presented will be handled by any of the following methods:

1. Correspondence or other informal communications.
2. Conference with the party or parties complained of.
3. Formal investigation instituted by the board upon its own motion.
4. Such other manner as the commissioner shall deem to be appropriate and warranted by the facts and the nature of the complaint in an endeavor to bring about satisfaction of the complaint without formal hearing.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-02-02. FORMAL COMPLAINTS.

1. Complaints may be made by the board on its own motion, by the commissioner on the commissioner's own motion, or by any person. Complaints shall be made in writing setting forth any act or thing done or omitted to be done by any party under the board's jurisdiction in violation of or claimed to be in violation of any provision of law, or any order, rule, or regulation of the board. Any party under the board's jurisdiction shall have the right to complain on any of the grounds upon which complaint may be made by other parties.

2. Form and content. Each formal complaint shall show the venue, "Before the State Banking Board of North Dakota" and shall contain a heading showing the name of the complainant and the name of the respondent and will bear the name and address of each complainant's attorney, if any. The complaint shall be so drawn as to fully and completely advise the respondent and the board of the facts constituting the ground of the complaint, the provisions of the statutes, rules, regulations, and orders relied upon involving the authority of the board, the injury complained of, and a clear, concise statement of the relief sought.
3. Verification. All formal complaints shall be verified under oath by the person filing same, or officer or other person having knowledge of the facts set forth.
4. Number of copies. At the time the complainant files the original complaint, the complainant must also file copies thereof equal in number to seven more than the number of respondents named in the complaint.
5. Service. The board shall serve a true copy of the complaint and notice for hearing upon the respondent personally, or by certified mail, as the commissioner may direct, at least forty-five days before the time specified for hearing thereof unless the service of such complaint or notice of hearing is waived, in writing, by the respondent, or unless the parties agree upon a definite time and place for hearing thereof with the consent of the commissioner. However, in case of an emergency the commissioner in the commissioner's discretion may notice a proceeding for hearing upon its merits upon less than forty-five days' notice.
6. Satisfaction of complaint. If the respondent desires to satisfy the complaint, the respondent may file with the board, within five days after the service of the complaint, a statement of the relief which the respondent is willing to give. The commissioner shall immediately forward a copy thereof to the complainant. If, in the complainant's opinion, the satisfaction meets the complaint, the complainant shall make written request to the board that the complaint be dismissed. Such request shall be forwarded to the board not less than ten days prior to the time of hearing. If the complainant is of the opinion that the satisfaction does not meet the complaint, the complainant shall so notify the board, whereupon the commissioner shall notify the respondent that the latter must answer the complaint.
7. Sufficiency of complaint. Upon the filing of a formal complaint, the commissioner shall examine same to ascertain whether or not it states a prima facie case and conforms to this article. If the commissioner finds that the complaint does not state a prima facie case or does not conform to this article, it shall notify the complainant or the complainant's attorney to that effect, and the complainant shall be given an opportunity to amend within a specified time. If the complaint is not so amended within such time or extension thereof as the commissioner may for good cause shown grant, it will be dismissed. The

filing of an answer will not be deemed an admission of the sufficiency of the complaint, but a motion to dismiss may be made at the hearing.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-02-03. ANSWERS.

1. Content. Each answer filed with the board shall contain: (a) the correct title of the proceeding; (b) the name and address of each answering party; (c) a specific denial of such material allegations of the complaint as are controverted by the respondent; and (d) a statement of any new matter which may constitute a defense. If the answering party has no information or belief upon the subject sufficient to enable the party to answer an allegation of the complaint, the party may so state in the answer and place the denial upon that ground.
2. Verification. An answer must be signed and verified by the respondent filing the same.
3. Service and number of copies. The original answer and seven copies thereof must be filed with the board, and, at the same time, a copy of the answer shall be served personally, or by certified mail, upon each complainant or the complainant's attorney by the respondent making such answer. The respondent shall certify to the board that the service has been made.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-02-04. APPLICATION. An application is a proceeding seeking some right, privilege, or authorization which the board may give under statutory or other authority administered by it.

1. Contents. All applications shall be in writing and, under oath, shall: (a) set forth the full name and post-office address of the applicant; (b) state clearly and concisely the authorization or permission sought; (c) cite by appropriate reference the statutory provision or other authority which the board authorization or permission is sought; and (d) comply with the applicable statutory provision or rule specifying form or content.
2. Application forms. When the board requires the application to be submitted on a form specifically designed for the particular

application, such application shall be submitted on that form. Forms are available from the board upon request.

3. Additional documents. When the submission of documents is required in addition to an application, all such documents must be submitted to the board in proper form before the application will be accepted for filing.
4. Fees. Application fees must be submitted before the application is accepted for filing.
5. Signature. Every application must be signed by the party filing the same.
6. Number of copies. At the time the original application is filed, seven additional copies thereof must also be filed.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-02-05. PROTEST. In any formal application proceeding, any person having substantial interest in the application may protest the application upon compliance with the provisions of this section.

1. Notice of intent to protest. Any person intending to protest an application must notify the board of that intent.
2. Content. The notice shall be in writing, unless made at the commencement of a hearing, and must set forth the grounds of the protest and the position and interest of the protestant.
3. When made. Notice of intent to protest shall be made prior to or at the commencement of the hearing.
4. Number of copies. The protestant shall furnish a copy of the notice of intent to protest to each party to the proceeding and shall furnish the board with the original and seven copies thereof.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-02-06. INTERVENTION. In any formal proceeding, any person having substantial interest in the subject matter of any proceeding may petition the commissioner for leave to intervene in such proceeding and may become a party thereto upon compliance with the provisions of this section. In general such

petitions will not be granted unless it shall be found: (1) that such person has a statutory right to be made a party to such proceeding; or (2) that such person has a property or financial interest which may not be adequately represented by existing parties, and such intervention would not unduly broaden the issues or delay the proceeding.

1. Contents of petition to intervene. A petition for leave to intervene shall be in writing, unless made at the commencement of a hearing, and must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and whether the petitioner's position is in support of or in opposition to the relief sought.
2. When filed. A petition for leave to intervene in any proceeding shall be filed prior to or at the commencement of the hearing, but not after except for good cause shown.
3. Number of copies. The petitioner shall furnish a copy of the petition to each party to the proceeding and shall furnish the board with the original and seven copies thereof.
4. Effect. Admission as an intervenor shall not be construed as recognition by the board that such intervenor might be aggrieved by an order of the board in such proceeding.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-02-07. EXTENSIONS OF TIME. A request for an extension of time in which to perform an act required or allowed to be done at or within a specified time by any rule, regulation, or order of the board shall be by motion in writing timely filed with the board, stating the facts on which the motion rests and conforming to the provisions of section 13-01.1-02-10. Except as provided in section 13-01.1-02-08, such extensions of time will be granted or denied by the commissioner in the commissioner's discretion.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-02-08. EXTENSIONS OF TIME FOR SATISFACTION OF CONDITIONS SUBSEQUENT. A request for an extension of time in which to satisfy any condition subsequent to an order of the board granting an application shall be by motion in writing timely filed with the board.

1. Content of motion. The motion shall specify the particular conditions subsequent which have not been satisfied and upon which an extension of time is requested, and shall state the facts upon which the motion rests.
2. Service. All such motions shall be served by the movant on the other parties to the original application proceeding.
3. Number of copies. At the time the original motion is filed, seven additional copies shall be filed with the board.
4. Argument. The movant or any other party may argue the motion before the board.
5. Disposition. Such motions will be granted or denied by the board in its discretion.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-02-09. AMENDMENTS AND WITHDRAWAL. The commissioner may in the commissioner's discretion, after notice to the other parties to a proceeding, allow any pleading to be amended or corrected or any omission therein to be supplied, provided that if any such amendment, when allowed, so alters or broadens the issues that it appears proper, the commissioner may permit any party affected thereby a reasonable time to prepare to meet the changed issues. A participant desiring to withdraw a pleading filed with the board may file a notice of withdrawal thereof with the board. The notice shall set forth the reason for the withdrawal. A copy of the withdrawal notice must be served upon all other participants to the proceeding and a certificate of service to that effect filed with the notice of withdrawal. This section shall not be construed as allowing, without express permission of the commissioner, withdrawal of any pleading in any proceeding in which a hearing has been held or convened.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-02-10. MOTION. After a hearing has commenced in a proceeding, a request may be made by motion for any procedural or interlocutory ruling or relief desired. All other motions shall be in writing and shall be served on the other parties to the proceeding by the moving parties. Except as provided in section 13-01.1-02-08 the commissioner is authorized to rule upon all motions unless the action on the motion involves or constitutes a final determination of the proceeding, in which case the motion shall be ruled upon by the board.

1. Argument. The commissioner may, in the commissioner's discretion, set any motion for oral argument.
2. Disposition. The hearing examiner designated to preside at a hearing is authorized to rule upon any motion not formally acted upon by the board or commissioner prior to the commencement of the hearing, wherein the immediate ruling is essential in order to proceed with the hearing, and upon any motion filed and made after the commencement thereof and prior to the decision in the proceeding. However, no motion made before or during a hearing, a ruling upon which would involve or constitute a final determination of the proceeding, shall be ruled upon by a hearing examiner.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-02-11. SHOW CAUSE ORDERS.

1. The board may, by order, compel any person to whom it has granted authority to show cause why the authority should not be suspended, changed, or revoked in whole or in part. The term "authority" includes a certificate, license, and permit.
2. The show cause order shall specifically advise the respondent of the alleged violation and of the time and place of the hearing on such order.
3. When the board finds that the respondent has committed, or is committing, the alleged violation, the board may enter a cease and desist order or any order the board deems just and reasonable.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

CHAPTER 13-01.1-03
PREHEARING CONFERENCES

Section	
13-01.1-03-01	To Adjust or Settle Proceedings
13-01.1-03-02	To Expedite Hearings
13-01.1-03-03	Initiation of Conferences
13-01.1-03-04	Conference Results Stipulated

13-01.1-03-01. TO ADJUST OR SETTLE PROCEEDINGS. In order to provide an opportunity for a settlement of a proceeding, or any of the issues therein, there may be held at any time prior to or during hearings before the board or a hearing examiner such informal conferences of parties for the admission and consideration of facts, arguments, offers of settlement, or proposals of adjustments as time, the nature of the proceeding, and the public interest may permit. Unaccepted proposals of settlement, adjustment, procedure to be followed, or proposed stipulations not agreed to shall be privileged and not admissible in evidence against any party.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-03-02. TO EXPEDITE HEARINGS. To expedite the orderly conduct and disposition of any hearing, at such prehearing conferences as may be held, there may be considered, in addition to any offer of settlement or proposals of adjustment, the possibility of the following:

1. The simplification of issues.
2. The necessity or desirability of amendments to the pleadings.
3. The exchange and acceptance of service of exhibits proposed to be offered in evidence.
4. The obtaining of admission as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which may properly shorten the hearing.
5. The limitation of the number of witnesses.
6. The limitation of the time allowed for the testimony of expert witnesses.

7. Such other matters as may properly be dealt with to aid in expediting the orderly conduct of the proceeding.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-03-03. INITIATION OF CONFERENCES. The board or the commissioner, with or without motion, may direct that a prehearing conference be held. Upon motion by a party, the hearing examiner may direct the parties to such proceedings to appear for prehearing conference to consider the matters outlined in section 13-01.1-03-02. Due notice of the time and place of such conference will be given to all parties to the proceeding.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-03-04. CONFERENCE RESULTS STIPULATED. Upon conclusion of the prehearing conference, the parties shall immediately reduce the results thereof to the form of a written stipulation which recites the matters agreed upon, and the original and seven copies thereof shall be filed with the board. Any such stipulation may be received in evidence at a hearing and, when and so received, shall be binding on the parties with respect to the matters therein stipulated.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

CHAPTER 13-01.1-04
HEARINGS

Section

13-01.1-04-01	Notice
13-01.1-04-02	Appearances
13-01.1-04-03	Continuance
13-01.1-04-04	Consolidation
13-01.1-04-05	Waiver of Hearing - Shortened Procedure
13-01.1-04-06	Order of Procedure
13-01.1-04-07	Hearing Examiner
13-01.1-04-08	Appeal to Board from Ruling of Hearing Examiner
13-01.1-04-09	Oral Argument
13-01.1-04-10	Briefs - Proposed Findings of Fact and Conclusions of Law

13-01.1-04-01. NOTICE. In those proceedings in which a hearing is to be held, the board will, by order or otherwise, assign a time and place for hearing, and notice will be issued. Where specified by statute, notice will be given as specified in the statute. When the notice procedure is not specified by statute, notice will be given at least fourteen days prior to the date of the hearing, except in cases of emergency.

The notice procedures of the board are as follows, unless emergency circumstances require otherwise:

1. Proposed rules. Notice of proposed rules, inviting comments, will be given to all known interested parties by mail. Notice will also be published in the following newspapers:
 - a. Bismarck Tribune, Bismarck.
 - b. Devils Lake Daily Journal, Devils Lake.
 - c. Dickinson Press, Dickinson.
 - d. The Forum, Fargo.
 - e. Grand Forks Herald, Grand Forks.
 - f. Jamestown Sun, Jamestown.
 - g. The Minot Daily News, Minot.
 - h. Williston Plains Reporter, Williston.

If a hearing is held on a proposed rule, notice of hearing will be given in the same manner and to the same parties as was notice of proposed rule, and in addition, notice of hearing will be given to

anyone who submitted oral or written comments. The notice will be given at least fifteen days prior to the date of the hearing.

2. Bank applications. Notice of hearing on an application for an organization certificate for a new bank will be issued at least thirty days prior to the hearing on the application. Notice will be mailed to all banks within the same service area as the location of the proposed new bank and published three times in the official newspaper of the county where the proposed bank is to be located.
3. Paying and receiving station applications. Notice of hearing on an application for a paying and receiving station will be issued in the same manner and to the same parties as specified in subsection 2.
4. Separate facility applications. Notice of application for a separate drive-in and walk-up facility will be issued as specified in sections 13-02-05-05 and 13-02-05-08.
5. Electronic funds transfer center applications. Notice of intent to apply for authorization to establish an electronic funds transfer center shall be issued as specified in section 13-02-06-12.
6. Move of bank to new location. Notice of hearing on an application to move a bank to some place within the state other than the town in which it is presently located will be issued in the same manner and to the same parties as specified in subsection 2.
7. Trust company and powers applications. Notice of hearing on an application for an organization certificate for a trust company, or for authority for a bank to exercise trust powers will be issued in the same manner and to the same parties as specified in subsection 2.
8. Savings and loan branch applications. Notice of hearing on an application for a savings and loan branch will be issued at least thirty days prior to the hearing on the application, and will be published three times in the official newspaper of the county in which the proposed branch is to be located.

The board may mail a copy of the notice to the chairperson of the board of county commissioners in each county wherein citizens who are or will be affected reside, and to the chief executive officer of each city affected in the county.

In addition, the board may, in those instances where it regularly issues notice to the official newspaper of the county to be affected, also issue the same notice to the official newspapers of the adjoining counties, if those areas would similarly be affected.

The board may also give additional notice where it deems such action appropriate.

The procedures outlined above may be altered by the commissioner in cases of an emergency.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04,
6-02-05,
6-03-02(8),
6-03-13,
6-03-13.3,
6-03-16,
6-05-01,
7-01-01,
28-32-02

13-01.1-04-02. APPEARANCES. Interested parties shall enter their appearances at the beginning of the hearing by giving their name and address and briefly stating whether they appear in support of the complaint or application, in opposition thereto, or otherwise. All such appearances shall be noted on the record with a notation in whose behalf each appearance is made. Included in such appearances shall be the names of the members of the board's staff participating in the hearing or investigation.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-04-03. CONTINUANCE. After hearings are scheduled, continuances may be granted by the commissioner, but will ordinarily not be granted except for good and sufficient cause. A motion for continuance may be made orally at a hearing or in writing, filed with the board, and served on opposing counsel or parties. Such motions shall be presented as far in advance of date fixed for hearing as possible to ensure adequate consideration. The board or commissioner may effect a continuance upon its or the commissioner's own motion.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-04-04. CONSOLIDATION. The commissioner, upon the commissioner's motion or upon motion by any party, may order two or more proceedings involving a

similar question of law or facts to be consolidated for hearing where rights of the parties or the public interest will not be prejudiced by such procedure.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-04-05. WAIVER OF HEARING - SHORTENED PROCEDURE. In any proceeding in which the board is authorized to act after opportunity for hearing, such opportunity shall be deemed to have been afforded by service of notice of the application or other initial pleading or filing, where the board fixes a reasonable period of time within which any person desiring to be heard may file a protest or petition for a hearing. Upon the expiration of such period of time, in the absence of a protest or a request for hearing, the board may forthwith dispose of the matter upon the basis of the pleading and other submittals and the studies and recommendations of the staff. A party not requesting oral hearing in the party's pleading shall be deemed to have waived a hearing for the purpose of such decision, but shall not be bound by such waiver for the purposes of an application for rehearing with respect to an order so entered. This section shall not apply to hearings required by North Dakota Century Code title 6.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-04-06. ORDER OF PROCEDURE. In hearings on formal complaints, petitions, and applications, the complainant, petitioner, or applicant, as the case may be, shall open and close. In all other hearings, the hearing examiner may direct who shall open and close. In hearings on an order to show cause, the respondent shall open and close. When proceedings have been consolidated for hearing, the hearing examiner shall designate who shall open and close. Intervenors shall follow the parties in whose behalf the intervention is made; where the intervention is not in support of an original party, the presiding officer shall designate at which stage such intervenor shall be heard. In proceedings where the evidence is materially within the knowledge or control of another party or participant, the foregoing order or presentation may be varied by the hearing examiner.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-04-07. HEARING EXAMINER. When evidence is to be taken in a proceeding, either the board, any member thereof, or one or more of its hearing examiners, when duly designated for that purpose, may preside at the hearing.

1. Authority delegated. A hearing examiner duly designated by the board to preside at a hearing shall have the authority, within the board's powers and subject to its rules, to:
 - a. Regulate the course of hearing.
 - b. Administer oath.
 - c. Issue subpoenas.
 - d. Take depositions or cause depositions to be taken.
 - e. Rule upon offers of proof and to receive evidence.
 - f. Hold appropriate conferences before or during hearings.
 - g. Dispose of procedural matters but not to dispose of motions made during hearings to dismiss proceedings or other motion which involves a final determination of proceedings.
 - h. Within the hearing examiner's discretion or upon direction of the board or the commissioner, certify any question to the board for its consideration and disposition.
 - i. Take any other action necessary or appropriate to discharge the duties vested in the hearing examiner, consistent with statutory or other authorities under which the board functions and with the rules, regulations, and policies of the board.
 - j. Exclude evidence which is cumulative or repetitious.
 - k. Authorize any party to furnish and serve designated late filed exhibits within a specified time after the close of the hearing.
 - l. Order discovery.
2. Limitations. Hearing examiners shall perform no duties inconsistent with their responsibilities as such. No hearing examiner shall, in any proceeding for an adjudication required by statute to be determined on the record after opportunity for hearing, consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-04-08. APPEAL TO BOARD FROM RULING OF HEARING EXAMINER. An appeal may be taken to the full board from a ruling of a hearing examiner during the course of a hearing only where extraordinary circumstances necessitate a prompt decision by the board to prevent detriment to the public interest. Any offer of proof made in connection with an objection taken to any ruling of the hearing examiner rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-04-09. ORAL ARGUMENT.

1. Before hearing examiner. When in the opinion of the hearing examiner, time permits and the nature of the proceedings, the complexity or the importance of the issues of fact or law involved, and the public interest warrant, such hearing examiner may, either on the hearing examiner's own motion or at the request of any party at or before the close of the taking of testimony, allow and fix a time for the presentation of oral argument imposing such limits of time on the argument as deemed appropriate. Such arguments shall be transcribed and bound with the transcript of testimony.
2. Before the full board. A request for authority to present oral argument before the full board may be made at any time during the hearing, at the conclusion of the taking of evidence, or on brief. The board will announce and fix the time for oral argument, if allowed.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-04-10. BRIEFS - PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. Each party to any proceeding may file proposed findings of fact and conclusions of law, briefs, or memoranda of law. However, the hearing examiner may direct any party to file proposed findings of fact and conclusions of law, briefs, or memoranda of law.

2. The hearing examiner shall fix the time for the filing and service of proposed findings of fact and conclusions of law, briefs, or memoranda of law, giving due regard to the nature of the proceeding, the magnitude of the record, and the complexity or importance of the issues involved, and the hearing examiner shall fix the order in which such briefs shall be filed.
3. Should a party find that it is unable to meet the date for filing and serving proposed findings of fact and conclusions of law, briefs, or memoranda of law, said party should so notify the board and the other parties in writing, therein setting forth the reasons for such inability together with a request for an extension of time to a date certain for filing and service.
4. When it is ordered that proposed findings of fact and conclusions of law, briefs, or memoranda of law be filed and served, and where the party that initiated the proceeding fails to file and serve by the date specified without complying with subsection 3, the board on its own motion or the motion of any party may, in its discretion, dismiss the proceeding. Such failure in the case of an intervenor, protestant, or respondent may be deemed a waiver of the right to participate further in the proceeding, and the board on its own motion or the motion of any party may so order.
5. Exhibits should not be reproduced in a brief, but may, if desired, be reproduced in an appendix to the brief. Every brief of more than twenty pages shall contain a subject index, with page references, and a list of all cases cited, alphabetically arranged, with references to the pages where the citations appear. All briefs shall be as concise as possible.
6. All briefs shall be accompanied by certificate showing service upon all parties or their attorneys who appeared at the hearing. Seven copies of each brief shall be furnished for the use of the board unless otherwise directed by the hearing examiner.
7. The time within which any pleading, motion, brief, or exceptions may be filed, or the time within which any act is required to be performed or may be performed, as provided by any rule or order of the board or commissioner, shall be so computed as to exclude the first day and include the last day; provided, that when the last day of such period falls on Saturday, Sunday, a legal holiday under the laws of this state, or a day on which the offices of the commissioner for any reason are not open for business, the computation of time shall omit such day and begin on the first day thereafter which does not fall on such day.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

CHAPTER 13-01.1-05
EVIDENCE

Section	
13-01.1-05-01	Rules
13-01.1-05-02	Witnesses
13-01.1-05-03	Subpoena
13-01.1-05-04	Depositions
13-01.1-05-05	Stipulations
13-01.1-05-06	Expert Witnesses
13-01.1-05-07	Documentary Evidence
13-01.1-05-08	Exhibits
13-01.1-05-09	Official Notice
13-01.1-05-10	Former Employees
13-01.1-05-11	Interrogatories to Parties

13-01.1-05-01. RULES. The admissibility of evidence shall be determined generally in accordance with the practice in the district courts of this state. The board, commissioner, or hearing examiner, however, may waive the usual common law or statutory rules of evidence where such waiver is necessary to ascertain the substantial rights of the public and interested parties. When objection is made to the admissibility of evidence, the hearing examiner may receive such evidence subject to later ruling by the board. Any ex parte written communication to the board regarding a particular proceeding before the board shall be delivered to the secretary of the board who shall place the ex parte communication in public files associated with the pending proceeding, but separate from the record material upon which the board can rely in reaching its decision.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-05-02. WITNESSES. Witnesses will be orally examined under oath before the hearing examiner unless their testimony is taken by deposition as provided in section 13-01.1-05-04. Written testimony of any witness may be received when properly supported by the oral testimony of its author on direct examination subject to cross-examination and motion to strike.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-05-03. SUBPOENA. Subpoenas for the attendance of witnesses or for the production of documentary evidence, unless directed by the board or commissioner upon the board's or commissioner's own motion, will issue only upon application in writing to the board or hearing examiner, except that during a hearing such application may be orally on the record before the board or the hearing examiner who shall have the authority to determine the relevancy and the materiality of the evidence sought and to issue such subpoena if warranted. Written application shall specify the general relevance and materiality of the testimony or documentary evidence sought, including, as to documentary evidence, specifications as nearly as may be of the documents desired and the facts to be proved by them. The cost of serving such subpoena shall be paid by the party requesting it. Any witness who is subpoenaed under the provisions of this section and who appears at the hearing shall receive the same fees and mileage as witnesses in the district courts of this state, and such costs will be paid by the party at whose instance the witness appears. No witness fees will be allowed except on a subpoena.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-05-04. DEPOSITIONS. The deposition of a witness required in any proceeding before the board may be taken in the same manner and on the same notice as in any action pending in the district court of this state. Any witness whose deposition is taken shall receive the same fees and mileage as a witness in a civil case in the district court, and such costs shall be paid by the party at whose instance the witness's deposition is taken.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-05-05. STIPULATIONS. The parties to any proceeding or investigation before the board may, by stipulation in writing filed with the board or orally entered in the record, agree upon the facts or any portion thereof involved in the controversy, and such stipulation shall be regarded and used as evidence at the hearings.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-05-06. EXPERT WITNESSES.

1. Notification required. Parties intending to present expert testimony shall notify the board and all parties to the proceeding of that intent. The notification shall indicate the nature of the expert testimony, whether or not one or more exhibits supplementing the testimony are intended, and the name and qualifications of the expert witness.
2. Supplemental exhibits. Within the times specified in this section, the party on whose behalf the testimony is given shall file with the board seven copies of any exhibits supplementing the expert testimony, and shall also provide copies to all parties to the proceeding.
3. Applicants. Applicants under section 13-01.1-02-04 who intend to present expert testimony shall comply with subsection 1 within ten days after receipt of notification that the application has been accepted for filing and shall comply with subsection 2 at least twenty days prior to the hearing on the application.
4. Protestants. Protestants under section 13-01.1-02-05 who intend to present expert testimony shall comply with subsection 1 at least twenty days prior to the date of the hearing on the application and shall comply with subsection 2 at least ten days prior to the hearing on the application.
5. Others. All other parties intending to present expert testimony shall comply with subsection 1 at least twenty days prior to the date set for hearing and may comply with subsection 2 at the time the exhibit is introduced.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-05-07. DOCUMENTARY EVIDENCE. Where relevant and material matter offered in evidence by any party is embraced in a book, paper, or a document containing other matter not material or relevant, the party must plainly designate the matter so offered. If the other matter is in such volume as would unnecessarily encumber the record, such book, paper, or document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant and material matter may be read into the record, or, if the hearing examiner directs, a true copy of such matter in proper form shall be received as an exhibit and like copies delivered by the party offering the same to all parties or their attorneys appearing at the hearing who shall be afforded an opportunity to examine the entire book, paper, or document and to offer in evidence in like manner any portions thereof found to be material and relevant.

Any matter contained in a report or other document on file with the board may be offered in evidence by merely specifying the report, document, or other file containing the matter so offered.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-05-08. EXHIBITS. Exhibits must be on paper of good quality and so prepared as to be plainly legible and durable whether printed, typewritten, mimeographed, photographed, or otherwise, and if possible should be folded to a size not to exceed eight and one-half by fourteen inches [21.59 by 35.56 centimeters]. Whenever practicable the sheets of each exhibit and line of each sheet should be numbered, and, if the exhibit consists of five or more sheets, the first sheet or title page should contain a brief statement of what the exhibit purports to show with reference by sheet and line to illustrative or typical example contained in the exhibit. Whenever practicable, documents produced by a single witness shall be assembled and bound together, suitably arranged, and indexed so that they may be identified and offered as one exhibit. The source of all material contained in any exhibit should be definitely shown.

Seven copies of each exhibit will be furnished for the use of the board whenever practicable. Copies must also be available for all parties of record in a proceeding.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-05-09. OFFICIAL NOTICE. The board may take notice of any fact or facts set forth in its orders, duly established regulations, examination reports, annual reports, or any statistical data, to which reference is made on the record at the hearing, or any facts which are judicially noticed by the courts of this state.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-05-10. FORMER EMPLOYEES. Except with the written permission of the commissioner, no former employee of the board, the department, or member of the attorney general's staff assigned to the board may appear in a representative

capacity or as an expert witness on behalf of other parties at any time within six months after severing the employee's or member's association with the board, nor may the employee or member appear after said six-months' period in any proceeding wherein the employee or member previously took an active part when associated with the board.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-05-11. INTERROGATORIES TO PARTIES. Any interrogatories required in any proceeding before the board may be requested in the same manner as in an action pending in the district court of this state.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

CHAPTER 13-01.1-06
REOPENING, REHEARING, REVIEW

Section

13-01.1-06-01 Petition to Reopen
13-01.1-06-02 Petition for Rehearing

13-01.1-06-01. PETITION TO REOPEN. At any time after the conclusion of a hearing in a proceeding, but before entering and issuance by the board of its final order or rule, any party to a proceeding may file with the board a petition to reopen the proceeding for the purpose of taking additional evidence.

1. Contents. The petition shall set forth clearly the facts claimed to constitute the grounds requiring reopening of the proceeding, including the material changes of fact or law alleged to have occurred since the conclusion of the hearing.
2. Service. A copy of the petition to reopen shall be served by the petitioning party upon all parties to the proceedings or their attorneys of record, and a certificate to that effect will be attached to the petition when filed with the board. The original and seven copies must be filed with the board.
3. Responses. Within ten days following the service of any petition to reopen, any other party to the proceeding may file with the board the party's answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such petition.
4. Order to reopen. If, after the hearing in a proceeding, either before or after the issuance of its final order, the board shall have reason to believe the conditions of fact or law have so changed as to require, or that public interest requires, the reopening of such proceeding, the board will issue an order for the reopening of the proceeding.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

13-01.1-06-02. PETITION FOR REHEARING.

1. Time for filing. A petition for rehearing of a proceeding must be filed within fifteen days after a copy of the decision has been delivered to the petitioning party by the board.
2. Content. The petition shall state concisely the alleged errors in the board's decision or order and the specific grounds relied upon by the

petitioner. If an order of the board is sought to be vacated, reversed, or modified by reason of matters that have arisen since the hearing and decision or order, or by reason of a consequence that would result from the compliance therewith, the matters relied upon by the petitioner shall be set forth in the petition.

3. Service. A petition for rehearing shall be served by the petitioner upon all parties to the proceeding or their attorneys of record, and a certificate to that effect will be forwarded to the board at the time the petition is filed. The original and seven copies must be filed with the board.
4. Responses. Within ten days following the service of the petition, any party to the proceeding may file with the board the party's answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of the petition.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

CHAPTER 13-01.1-07
RULES AND REGULATIONS

Section
13-01.1-07-01 Generally

13-01.1-07-01. GENERALLY. An application for the promulgation, amendment, repeal, or adoption of any board rule or regulation shall state the precise wording of the proposed rule and regulation and shall state briefly the reasons for such promulgation, amendment, repeal, or adoption. The board may, at any time, propose adoption, amendment, or repeal of any rule or regulation.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04

CHAPTER 13-01.1-08
MEETINGS

Section
13-01.1-08-01 Generally

13-01.1-08-01. GENERALLY. The board must conduct open meetings at which the public may attend but will not be permitted to participate. The agenda for each open meeting will be made available in advance of the session. Items may be added to, or stricken from, the agenda without further notice. Public documents relating to the items on the agenda may be examined in the board's offices. As permitted by law, the board may conduct closed meetings to consider confidential matters covered in North Dakota Century Code section 6-01-07.1.

History: Effective January 1, 1980.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 6-01-04,
6-01-07.1

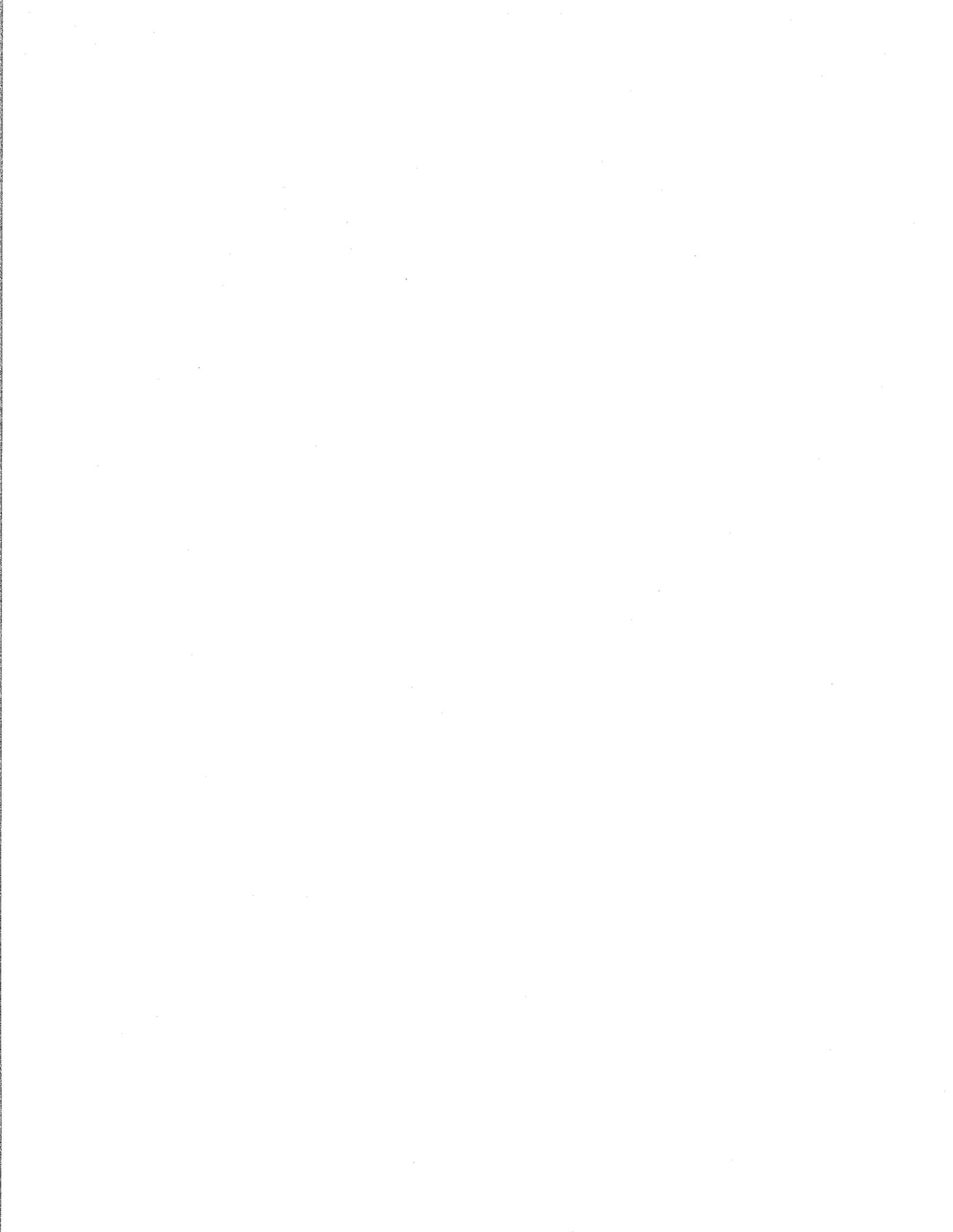
CHAPTER 13-02-07
BRANCH OFFICES - STATE-CHARTERED
SAVINGS AND LOAN ASSOCIATIONS

13-02-07-03. APPLICATION - HEARING - NOTICE. A savings and loan association desiring to establish a new branch office within the state shall make written application to the state banking board. The commissioner will thereupon set a date for public hearing not later than ninety days from the date of filing ~~nor less than fifteen days from date of publication. The secretary of the board shall promptly publish, in a newspaper having general circulation in the community to be served by the proposed branch, a notice of filing and hearing.~~ Notice of hearing on an application for a savings and loan branch will be issued as specified in subsection 8 of section 13-01.1-04-01.

History: Amended effective June 1, 1979; January 1, 1980.

General Authority
NDCC 6-01-04

Law Implemented
NDCC 6-01-01,
6-01-04,
7-01-01



TITLE 28

ENGINEERS AND LAND SURVEYORS,
BOARD OF REGISTRATION FOR PROFESSIONAL

28-01-01-01. ORGANIZATION OF BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS.

1. HISTORY AND FUNCTION. The 1943 legislative assembly first provided for registration of professional engineers by a law codified as North Dakota Century Code chapter 43-19. The 1957 legislative assembly first provided for registration of land surveyors by a law codified as North Dakota Century Code chapter 43-24. In 1967 the legislative assembly repealed both of these chapters and replaced them with one chapter regulating professional engineers and land surveyors under the board of registration for professional engineers and land surveyors. The chapter is codified as North Dakota Century Code chapter 43-19.1. The function of the board is to regulate the practice of engineering and land surveying by registering qualified engineers and land surveyors.
2. BOARD MEMBERSHIP. The board consists of five members appointed by the governor. Each member is shall be a registered professional engineer, one also being a registered land surveyor, whose name has been submitted to the governor by the North Dakota society for professional engineers for appointment. Members of the board serve five-year terms, and one term expires each year.
3. EXECUTIVE SECRETARY. The executive secretary is appointed by the board and is responsible for administration of the board's activities.
4. INQUIRIES. Inquiries regarding the board may be addressed to the executive secretary:

Mr. A. L. Bavone
Box 1264
Minot, North Dakota 58701

History: Amended effective January 1, 1980.

General Authority
NDCC 28-32-02.1

Law Implemented
NDCC 28-32-02.1

28-01-02-01. MEETINGS. The board shall hold meetings at least quarterly twice each year, on the first Friday in March and the fourth Friday in September. The chairman may call special meetings when the chairman deems such meetings necessary. The executive secretary shall notify all members at least ten days in advance of a meeting, and shall give public notice as required by law. The date, time, and place of each meeting shall be mutually agreed upon by a quorum of the board.

History: Amended effective January 1, 1980.

General Authority
NDCC 43-19.1-08

Law Implemented
NDCC 43-19.1-07

28-01-02-03. BOARD QUORUM. A quorum of the board shall consist of not less than three members, one of whom shall be a registered land surveyor. The executive secretary of the board shall be present at all board meetings.

History: Amended effective January 1, 1980.

General Authority
NDCC 43-19.1-08

Law Implemented
NDCC 43-19.1-07

28-01-02-04. OFFICERS.

1. The board shall hold an election at the first meeting after July first of each year and elect a chairman, vice chairman, and secretary.
2. Each officer will be elected for one year and may be reelected.
3. The chairman:
 - a. Shall be the executive head of the board.
 - b. Shall preside at all meetings when present.
 - c. Shall call meetings of the board when he deems such meetings necessary.
 - d. May subpoena witnesses and compel their attendance.
 - e. May require the production of books, papers, and documents in and involving the revocation of registration or practicing or offering or to practice without registration.
4. The vice chairman shall in the absence or incapacity of the chairman exercise the duties and shall possess all the powers of the chairman.
5. The secretary shall sign all official documents prepared by the board and shall sign all registration certificates.
6. The executive secretary shall perform all duties as may be prescribed by the board.
7. The secretary or executive secretary shall give to the state a surety bond in an amount determined by the board.

8. The office of the board may be established at a place designated by the board.

History: Amended effective January 1, 1980.

General Authority
NDCC 43-19.1-08

Law Implemented
NDCC 43-19.1-03

28-01-02-06. ROSTER. The closing date for all registrants to be included in the roster for any year shall be March first. The roster shall contain among other things the names of all registered professional engineers and registered land surveyors showing home address and--branch--of--engineering--and--the--annual report--of--the--board. Copies of the roster shall be mailed to each person registered and to all county and city auditors and clerks of district courts, and shall be placed on file with the secretary of state. Copies of the roster may be sold to the public ~~for three dollars each.~~

History: Amended effective January 1, 1980.

General Authority
NDCC 43-19.1-08

Law Implemented
NDCC 43-19.1-11

28-01-02-07. OFFICIAL BOARD SEAL. ~~The official seal of the board shall consist of the seal of the state of North Dakota, surrounded with the words "board of registration for professional engineers":~~ Repealed effective January 1, 1980.

General Authority
NBCC-43-19-1-08

Law Implemented
NBCC-43-19-1-21

28-02-01-01. APPLICANT CLASSIFICATIONS. On the basis of their basic qualifications, applicants for registration are divided into four general classes or groups. These and the respective requirements are:

1. Graduates from approved engineering curricula.
 - a. An eight-hour examination in engineering fundamentals. (engineer-in-training certificate)
 - b. An eight-hour examination in professional engineering.
 - c. A minimum of four years experience in engineering work of a character satisfactory to the board.
 - d. An oral examination and personal interview may be held at discretion of board.

2. Graduates from unapproved engineering curricula.
 - a. An eight-hour examination in engineering fundamentals.
 - b. An eight-hour examination in professional engineering.
 - c. An oral examination and personal interview may be held at the discretion of the board.
 - d. A minimum of eight years experience in engineering work of a character satisfactory to the board. The board may permit the candidate to substitute each year of approved curricula for one year of experience.
3. Nongraduates from any engineering or other curricula.
 - a. An eight-hour examination in engineering fundamentals.
 - b. An eight-hour examination in professional engineering.
 - c. An oral examination and personal interview may be held at the discretion of the board.
 - d. A minimum of twenty years of lawful practice in engineering work, the last ten years of which has been in responsible charge of engineering work of a character satisfactory to the board.
4. Teacher of engineering.
 - a. An eight-hour examination in engineering fundamentals.
 - b. An eight-hour examination in professional engineering.
 - c. An oral examination and personal interview may be held at the discretion of the board.
 - d. The individual must have taught in an engineering school of recognized standing a minimum of four years and must have a minimum of two years of practical engineering experience satisfactory to the board.

History: Amended effective January 1, 1980.

General Authority
NDCC 43-19.1-08

Law Implemented
NDCC 43-19.1-14

28-02-02-01. APPLICANT QUALIFICATIONS. On the basis of their qualifications, applicants for registration as land surveyors are divided into four general classes or groups. These and the respective requirements are:

1. Graduates from approved land surveying curricula of four years or more approved by the board.
 - a. A minimum of four years of experience in land surveying work of a character satisfactory to the board, and indicating that the applicant is competent to practice land surveying.
 - b. A sixteen-hour examination in land surveying.
 - c. A personal interview at the discretion of the board.
2. A person registered as a professional engineer by North Dakota, under the provisions of North Dakota Century Code chapter 43-19.1.
 - a. A minimum of two additional years experience in land surveying work of a character satisfactory to the board, and indicating that the applicant is competent to practice land surveying.
 - b. A sixteen-hour examination in land surveying.
 - c. A personal interview at the discretion of the board.
3. Nongraduates from any land surveying curricula.
 - a. A minimum of eight years of experience in land surveying work of a character satisfactory to the board.
 - b. Up to two years of credit may be given for completion of a board-approved curriculum in land surveying as part of the eight-year experience requirement.
 - c. A sixteen-hour examination in land surveying.
 - d. A personal interview at the discretion of the board.
4. A person registered as a land surveyor by North Dakota, under the provisions of North Dakota Century Code chapter 43-24 on June 30, 1967.

History: Amended effective January 1, 1980.

General Authority
NDCC 43-19.1-08

Law Implemented
NDCC 43-19.1-16

28-02-03-01. ACCEPTABLE ENGINEERING AND LAND SURVEYING EXPERIENCE - DEFINITION.

1. The quality of engineering and land surveying experience shall be based on the ~~definition of professional engineer and practice of professional engineering as defined~~ definitions contained in North Dakota Century Code section 43-19.1-02.

2. No applicant twenty-one years of age or less should be considered as having had professional engineering or land surveying experience. Such experience is subprofessional.
3. Any experience gained during summer vacation cannot be considered acceptable professional engineering experience.
4. All experience gained prior to graduation shall be considered subprofessional. The only deviation from this policy is in cases where the applicant has taken eight years or more to obtain a degree and has been engaged in engineering practice acceptable to the board.
5. North Dakota Century Code section 43-19.1-14 provides that in order to be eligible to take the professional engineer examination the candidate shall have four years or more of experience satisfactory to the board. Candidates who have complied with all other requirements may be permitted to take the examination if they are within thirty days of complying with the four-year requirement at the time of examination.
 - a. Generally speaking, experience obtained during military service is unacceptable. Occasionally the applicant has had acceptable engineering experience while serving with the military. In order to obtain credit for such experience, the applicant must document the experience in detail and obtain necessary certifications attesting to the quality of work. The burden of proof rests with the applicant.
 - b. Generally speaking, experience obtained during work with a contractor is unacceptable. Occasionally the applicant has had acceptable engineering experience while working for a contractor. In order to obtain credit for such experience, the applicant must document the experience in detail and obtain necessary certifications attesting to the quality of work. The burden of proof rests with the applicant.

History: Amended effective January 1, 1980.

General Authority
NDCC 43-19.1-08

Law Implemented
NDCC 43-19.1-08

28-02-03-02. EXAMINATION, REGISTRATION, AND RENEWAL FEES.

1. Effective ~~July--1,--1977~~ December 1, 1979, the following fees shall be required:

Registration fees

Professional engineer;-which-includes-a \$20:00-examination-fee	\$50.00
Land surveyor;-which-includes-a \$20:00-examination-fee	\$50.00
Engineer-in-training;-which-includes-a	

\$20-00-examination-fee	\$20-00	<u>\$25.00</u>
Partnership or corporation	\$100.00	
Temporary permits	\$100.00	
Renewal fees		
Professional engineer	\$15-00	<u>\$17.50</u>
Land surveyor	\$12-50	<u>\$17.50</u>
Professional engineer and land surveyor...	\$32.00	
Partnership or corporation	\$50.00	

2. Applicants failing to pass the professional engineer examination may take a second examination after six months by payment of the examination fee.
3. Applicants failing to pass the land surveying examination may take a second examination after six months by payment of the examination fee.
4. Applicants failing to pass the engineer-in-training examination are not entitled to a return of any part of the fee. An examination fee will be charged for each subsequent examination. The engineer-in-training fee shall not be applied as part payment for the professional engineer examination.
5. The professional engineer and land surveying registrations expire on December thirty-first of each year. Renewal notices will be sent out on December first of each year.
 - a. If payment is made by March thirty-first the name of the registrant will appear in the roster for the year.
 - b. Registrants who have permitted their registration to lapse one year or more may become reinstated by paying current yearly dues plus one year back dues.

History: Amended effective January 1, 1980.

General Authority
NDCC 43-19.1-08

Law Implemented
NDCC 43-19.1-18

28-02-03-03. APPLICATION FOR REGISTRATION AND LICENSE.

1. Application forms for registration as a professional engineer or land surveyor may be obtained from the office of the secretary of the board of registration for professional engineers and land surveyors.
2. Applications must be received by the secretary in the board office at least forty-five days before the scheduled date for any professional engineer or land surveyor examination.
3. All information received from references named by the applicant shall be held in confidence by the board. No member of the board shall be named as a reference.

4. No applicant may be admitted to the examination until the applicant's application has been received, processed, and approved by the board.
5. An applicant shall not confer with any member of the board while it is in session about the applicant's case while it is before the board. This, however, shall not apply to any special committee which the board appoints nor to the secretary of the board.
6. Applicants whose applications have been approved, but who fail to appear for examination four consecutive times, shall be deemed to have withdrawn their applications.

History: Amended effective January 1, 1980.

General Authority
NDCC 43-19.1-08

Law Implemented
NDCC 43-19.1-17

28-02-03-04. EXAMINATION.

1. The professional engineer and land surveyor examinations shall be held in April and November of each year, with the time and place to be set by the board. ~~Other-examinations-during-the-year-may-be-given-by-the-board upon-suitable-publication-of-announcement.~~
2. An applicant failing to pass the professional engineer examination may take a second examination after six months by payment of the examination fee.
3. An applicant failing to pass the land surveyor examination may take a second examination after six months by payment of the examination fee.
4. Each applicant must obtain a grade of seventy percent in the written examination; ~~and the oral examination rating must be satisfactory before the applicant may be certified for registration.~~

History: Amended effective January 1, 1980.

General Authority
NDCC 43-19.1-08

Law Implemented
NDCC 43-19.1-19

28-02-03-05. CERTIFICATES.

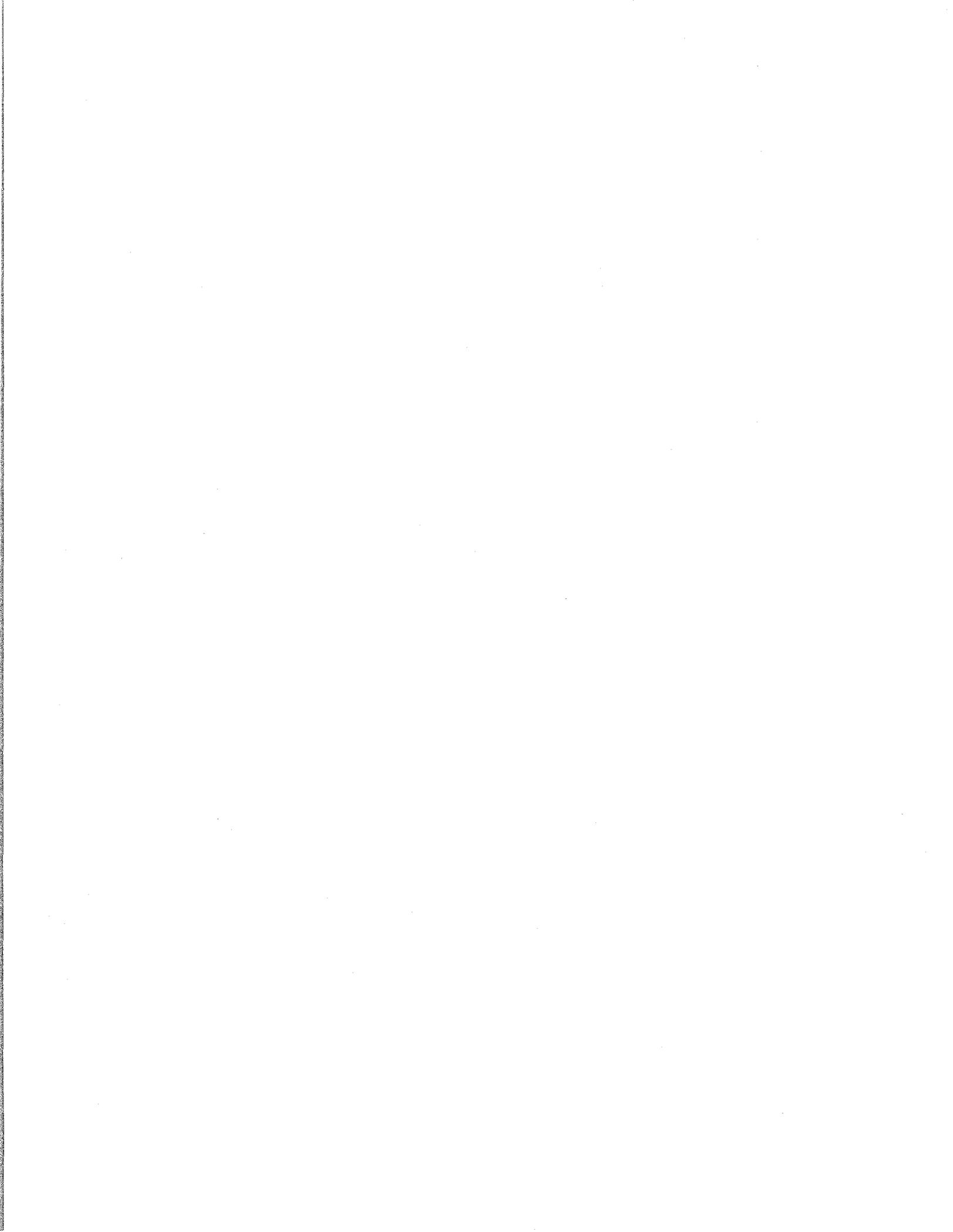
1. Each certificate shall be signed by the chairman; or vice chairman, and secretary of the board.
2. Certificates of registration issued by the board shall be displayed by the registrant in a prominent place in the registrant's office or principal place of business.

3. In case a certificate is lost or destroyed, a duplicate certificate will be issued upon request. The charge for a duplicate certificate is-three dollars shall be as determined by the board.
4. Certificates of authorization are signed by the chairman and secretary and are issued on an annual basis.

History: Amended effective January 1, 1980.

General Authority
NDCC 43-19.1-08

Law Implemented
NDCC 43-19.1-20



TITLE 52

MOTOR VEHICLE DEPARTMENT

STAFF COMMENT: Article 52-06 contains all new material and thus it is not underscored.

Article

- 52-01 General Administration
- 52-02 Motor Vehicle Dealer Licensing
- 52-03 Motorcycle Safety Helmets
- 52-04 Special Motor Vehicles
- 52-05 Compulsory Security Requirements of the
North Dakota Auto Accident Reparations Act
- 52-06 Transport of Hazardous Materials

ARTICLE 52-06

TRANSPORT OF HAZARDOUS MATERIALS

The Motor Vehicle Department is not an administrative agency as defined by North Dakota Century Code section 28-32-01 with respect to the administration of North Dakota Century Code section 39-21-44. Therefore, the department is not subject to the Administrative Agencies Practice Act (North Dakota Century Code chapter 28-32) with respect to its transport of hazardous materials rules. However, for public information purposes the department has placed its transport of hazardous materials rules in the style and format required for the North Dakota Administrative Code and the rules are published as article 52-06.

Chapter

- 52-06-01 General Provisions
- 52-06-02 Reserved
- 52-06-03 Disclosure Requirements
- 52-06-04 Vehicles and Shipments in Transit - Accidents
- 52-06-05 Shipping Instructions - Instructions to Drivers
- 52-06-06 Motor Vehicle Operation, Loading, and Unloading
- 52-06-07 Passenger Carrying Vehicles
- 52-06-08 Vehicle Equipment and Inspection
- 52-06-09 Reserved
- 52-06-10 Placarding Requirements
- 52-06-11 Routes to be Used
- 52-06-12 Miscellaneous Provisions
- 52-06-13 Inspection and Enforcement

CHAPTER 52-06-01
GENERAL PROVISIONS

Section	
52-06-01-01	Definitions
52-06-01-02	Severability
52-06-01-03	Periodic Review of Regulations
52-06-01-04	Federal Regulations to Govern
52-06-01-05	Application of Other Motor Vehicle Code Provisions
52-06-01-06	Persons and Agencies Exempt
52-06-01-07	Shipments Exempt
52-06-01-08	Canadian Shipments

52-06-01-01. DEFINITIONS.

1. "ASTM" means the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. ASTM D323 is titled "Test for Vapor Pressure of Petroleum Products (Reid Method)," 1958 (68) edition. ASTM G 23-69 is titled, "Standard Recommended Practice for Operating Light- and Water-Exposure Apparatus (Carbon-Arc Type) for Exposure of Nonmetallic Materials," 1969 edition (reapproved 1975). ASTM G 26-70 is titled, "Standard Recommended Practice for Operating Light- and Water-Exposure Apparatus (Xenon-Arc Type) for Exposure of Nonmetallic Materials," 1970 edition.
2. "Biological product" means a product prepared and manufactured in accordance with the provisions of 9 C.F.R. Part 10, Licensed Veterinary Biological Products, 42 C.F.R. Part 73, Licensed Human Biological Products, 21 C.F.R. 130.3, New Drugs for Investigational Use in Humans, 9 C.F.R. Part 103, Biological Products for Experimental Treatment of Animals, or 21 C.F.R. 130.3 (a), New Drugs for Investigational Use in Animals, and which, in accordance with such provisions, may be shipped in interstate traffic.
3. "Bureau of explosives" maintains offices at the Association of American Railroads, American Railroads Building, 1920 L Street NW, Washington, DC 20036.
4. "Cargo tank" means any tank permanently attached to or forming a part of any motor vehicle or any bulk, liquid or compressed gas packaging not permanently attached to any motor vehicle which by reason of its size, construction, or attachment to a motor vehicle, is loaded or unloaded without being removed from the motor vehicle. Any packaging fabricated under specifications for cylinders is not a cargo tank.

5. "C.F.R." means the Code of Federal Regulations. It is a codification of the general and permanent rules published in the federal register by the executive departments and agencies of the federal government.
6. "Chemtrec" is an acronym for the Chemical Transportation Emergency Center. Chemtrec is located in Washington, DC at the offices of the Manufacturing Chemists Association (MCA), 1825 Connecticut Avenue NW, 20009. The chemical emergency toll free number is 800-424-9300.
7. "Combustible liquid" means any liquid that does not meet the definition of any other classification specified in this chapter and has a flash point at or above one hundred degrees Fahrenheit [37.8 degrees Celsius] and below two hundred degrees Fahrenheit [93.3 degrees Celsius] or higher, that makes up at least ninety-nine percent of the total volume of the mixture.
8. "Compressed gas" designates any material or mixture having in the container an absolute pressure exceeding forty pounds per square inch [18.14 kilograms per 6.45 square centimeters] at seventy degrees Fahrenheit [21.1 degrees Celsius] or, regardless of the pressure at seventy degrees Fahrenheit [21.1 degrees Celsius], having an absolute pressure exceeding one hundred four pounds per square inch [47.17 kilograms per 6.45 square centimeters] at one hundred thirty degrees Fahrenheit [54.4 degrees Celsius]; or any liquid flammable material having a vapor pressure exceeding forty pounds per square inch [18.14 kilograms per 6.45 square centimeters] absolute at one hundred degrees Fahrenheit [37.8 degrees Celsius] as determined by ASTM Test D-323.
9. "Compressed gas in solution" is a nonliquefied compressed gas which is dissolved in a solvent.
10. "Corrosive" identifies a liquid or solid material that causes visible destruction or irreversible alterations in human skin tissue at the point of contact, or in case of leakage from its packaging, a liquid that has a severe corrosion rate on steel.
11. "Corrosive liquids" are those acids, alkaline caustic liquids, and other corrosive liquids which, when in contact with living tissue, will cause severe damage of such tissue by chemical action; or in case of leakage, will materially damage or destroy other freight by chemical action; or are liable to cause fire when in contact with organic matter or with certain chemicals.
12. "Diagnostic specimen" means any human or animal material including, but not limited to, excreta, secreta, blood and its components, tissue, and tissue fluids being shipped for purposes of diagnosis.
13. "Etiologic agent" means a viable micro-organism or its toxin which causes, or may cause, human disease.
14. "Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by

friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or by destroying life or limb.

15. "Filling density" designates the percent ration of the weight of gas in a container to the weight of water that the container will hold at sixty degrees Fahrenheit [15.6 degrees Celsius]. (One pound of water equals 27.737 cubic inches at sixty degrees Fahrenheit). For example, for a liquefied petroleum gas of 0.504/0.510 specific gravity, a one hundred-pound cylinder holds two hundred thirty-eight and one-tenth pounds of water and the filling density is forty-two percent; therefore, the amount of gas permitted is 0.42×238.1 or one hundred pounds.
16. "Flammable compressed gas" means any compressed gas as defined in subsection 8 if any one of the following occurs:
 - a. Either a mixture of thirteen percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than twelve percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure. The method of sampling and test procedure shall be acceptable to the bureau of explosives.
 - b. Using the bureau of explosives' flame projection apparatus (see Note), the flame projects more than eighteen inches [45.7 centimeters] beyond the ignition source with valve opened fully, or, the flame flashes back and burns at the valve with any degree of valve opening.
 - c. Using the bureau of explosives' open drum apparatus (see Note), there is any significant propagation of flame away from the ignition source.
 - d. Using the bureau of explosives' closed drum apparatus (see Note), there is any explosion of the vapor-air mixture in the drum.

NOTE: A description of the bureau of explosives' flame projection apparatus, open drum apparatus, closed drum apparatus, and method of tests may be procured from the bureau of explosives.

17. "Flammable liquid" means any liquid having a flash point below one hundred degrees Fahrenheit [37.8 degrees Celsius], with the following exceptions:
 - a. Any liquid meeting the definition of a compressed gas, flammable compressed gas, nonliquefied compressed gas, liquefied compressed gas, or compressed gas in solution.
 - b. Any mixture having one component or more with a flash point of one hundred degrees Fahrenheit [37.8 degrees Celsius] or higher, that makes up at least ninety-nine percent of the total volume of the mixture.

18. "Flammable range" designates the difference between the minimum and maximum volume percentages of the material in air that forms a flammable compressed gas.
19. "Flammable solid" is a solid substance other than one classified as an explosive, which is liable, under conditions incident to transportation, to cause fires through friction, through absorption of moisture, through spontaneous chemical changes, or as a result of retained heat from the manufacturing or processing.
20. "Flash point" means the minimum temperature at which a substance gives off flammable vapors which in contact with spark or flame will ignite.
21. "Freight container" means a reusable container having a volume of sixty-four cubic feet [1.81 cubic meters] or more, designed and constructed to permit being lifted with its contents intact and intended primarily for containment of packages (in unit form) during transportation.
22. "Fuel tank" means a tank other than a cargo tank, used to transport flammable or combustible liquid, or compressed gas for the purpose of supplying fuel for propulsion of the transport vehicle to which it is attached, or for the operation of other equipment on the transport vehicle.
23. "Hazardous material" means a substance or material which has been determined by the secretary of transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated in 49 C.F.R. 172.101.
24. "Hermetically sealed" means closed by fusion, gasketing, crimping, or equivalent means so that no gas or vapor can enter or escape.
25. "IME" means Institute of Makers of Explosives, 420 Lexington Avenue, New York, NY 10017.
26. "Implement of husbandry" shall not be construed to include "cargo tanks" used on farm-to-market roads for the transport of anhydrous ammonia or other hazardous materials.
27. "Intermodal container" means a freight container designed and constructed to permit it to be used interchangeably in two or more modes of transport.
28. "Limited quantity", when specified as such in a section applicable to a particular material with the exception of Poison B materials, means the maximum amount of a hazardous material for which there is specific labeling and packaging exception.
29. "Liquefied compressed gas" is a gas which, under the charged pressure, is partially liquid at a temperature of seventy degrees Fahrenheit [21.1 degrees Celsius].
30. "Liquefied petroleum gas" means any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the

same: propane, propylene, butanes, normal butane or isobutane, and butylenes.

31. "Magazine" means any building or structure, other than an explosive manufacturing building, approved for the storage of explosive materials. (The American Table of Distances for Storage of Explosives may be found in NFPA Publication No. 495 (ANSI Z27.1-1973), "Manufacture, Transportation, Storage, and Use of Explosive Materials" (1973).)
32. "Marking" means applying the description name, instruction, cautions, weight, or specification marks or combination thereof required by this article to be placed upon outside containers of hazardous materials.
33. "Mixture" means a material composed of more than one chemical compound or element.
34. "Net weight" means a measure of weight referring only to the contents of a package, and does not include the weight of any packaging material.
35. "NFPA" means National Fire Protection Association, 60 Batterymarch Street, Boston, MA 02110.
36. "Nonliquefied compressed gas" is a gas, other than gas in solution, which under the charged pressure is entirely gaseous at a temperature of seventy degrees Fahrenheit [21.1 degrees Celsius].
37. "Operator" means a person who controls the use of a vehicle.
38. "ORM" means other regulated materials.
39. "Outside container" means the outermost enclosure used in transporting a hazardous material other than a freight container.
40. "Overpack" means an enclosure not intended for reuse that is used by a single consignor to consolidate two or more packages for convenience in handling.
41. "Oxidizing material" is a substance such as chlorate, permanganate, peroxide, or nitrate, that yields oxygen readily to stimulate the combustion of organic matter.
42. "Portable tank" means any packaging (except a cylinder having a one thousand-pound [453.6-kilograms] or less water capacity) over one hundred ten United States gallons [416.4 liters] capacity and designed primarily to be loaded into or on or temporarily attached to a transport vehicle or ship, and equipped with skids, mounting, or accessories to facilitate handling of the tank by mechanical means. It does not include any cargo tank, tank car tank, tank of the DOT-106A or 110A type, or trailers carrying 3AX, 3AAX, or 3T cylinders.
43. "Proper shipping name" means the name of the hazardous material shown in Roman print (not italics) in 49 C.F.R. 172.101.

44. "Technical name" means a recognized chemical name currently used in scientific and technical handbooks, journals, and texts. Generic descriptions authorized for use as technical names are: organic phosphate compound, organic phosphorus compound, organic phosphate compound mixture, organic phosphorus compound mixture, methyl parathion, and parathion.
45. "Toxic" applies to any hazardous substance which has the inherent capacity to produce bodily injury to man through ingestion, inhalation, or absorption through any body surface.
46. "USNRC" means United States Nuclear Regulatory Commission, Washington, DC 20555.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-01-02. SEVERABILITY. If any provision of this article or the applicability thereof to any person or circumstance is held invalid, the remainder of this article and the application of such provision to other persons or circumstances shall not be affected thereby.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-01-03. PERIODIC REVIEW OF REGULATIONS. The motor vehicle department shall, periodically, review this article in the light of omissions, changes, amendments, or new developments in respect of the following Acts: the Transportation of Explosives Act [18 U.S.C. 831-835], the Dangerous Cargo Act [R.S. 4472, as amended, 46 U.S.C. 170], the Department of Transportation Act [49 U.S.C. 1655], the Hazardous Materials Transportation Act [49 U.S.C. 1801-1812], the Atomic Energy Act of 1954, as amended [42 U.S.C. Chapter 23], the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1403], title XI of the Organized Crime Control Act of 1970 [18 U.S.C. Chapter 40], Section 201 of the Energy Reorganization Act of 1974, as amended [42 U.S.C. 5841], the Solid Waste Disposal Act [42 U.S.C. 3251], the Resource Conservation and Recovery Act of 1976 [Pub. L. 94-580], and such other Acts of Congress as may be relevant to regulation

of the transport of hazardous materials. However, no changes in, or amendments to, this article shall be mandated by virtue of such review.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-01-04. FEDERAL REGULATIONS TO GOVERN. No prosecution shall be commenced under this article for violation of any provision of this article which is materially inconsistent with the rules and regulations of the United States department of transportation.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-01-05. APPLICATION OF OTHER MOTOR VEHICLE CODE PROVISIONS.

1. Nothing contained in this article shall be deemed to exempt any vehicle transporting hazardous materials and subject to this article, or the owner or any other person, from other provisions of this code, but all other such provisions relating to the driving and movement of motor vehicles, the size, weight, and equipment thereof, shall be deemed to apply as applicable to each and every vehicle engaged in transporting hazardous materials subject to this article.
2. Every motor carrier subject to regulation by the public service commission shall comply with the provisions of North Dakota Administrative Code chapter 69-03-12.
3. Every motor vehicle containing hazardous materials must be driven and parked in compliance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless they are at variance with the specific regulations of the United States department of transportation or the North Dakota motor vehicle department.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-01-06. PERSONS AND AGENCIES EXEMPT. This article shall not apply to the use and transportation of hazardous materials by the departments of the army, navy, and air force of the United States government, the national guard of the state of North Dakota, or the North Dakota highway patrol, except to the extent specifically indicated in this article.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-01-07. SHIPMENTS EXEMPT.

1. Shipments of hazardous materials in limited quantities, as defined in this article and 49 C.F.R. 172.101, shall be exempt from the requirements of the article.
2. Except as otherwise specifically provided in this article, no person may accept for transportation or transport a hazardous material by highway in North Dakota in a quantity that would require placarding under this article, unless that material is handled and transported in accordance with the article.
3. No person may offer, accept, or transport a hazardous material by highway in North Dakota, regardless of the quantity of hazardous material in the shipment or on the vehicle, if that material poses an imminent danger to the public. The highway patrol is authorized to stop any vehicle that constitutes an imminent danger to the public. For the purpose of this article, an imminent danger exists if, in the opinion of the highway patrol officer or the representative of the registrar at the scene, the offer, acceptance, or transportation of that hazardous material is likely to cause death, serious illness, or severe personal injury.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-01-08. CANADIAN SHIPMENTS. Shipments of hazardous materials which conform to the regulations of the Canadian transport commission (formerly the board of transport commissioners for Canada), may be transported from the point

of entry in the United States to their destination in the United States, or through the United States en route to a point in Canada.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

CHAPTER 52-06-02

RESERVED

CHAPTER 52-06-03
DISCLOSURE REQUIREMENTS

Section
52-06-03-01 Access to Records
52-06-03-02 Yearly Reports

52-06-03-01. ACCESS TO RECORDS. For the purpose of enforcing the provisions of this chapter, every person, company, or corporation engaged in the transport of hazardous materials in interstate or intrastate commerce, and every person, company, or corporation receiving such hazardous materials shall, upon the request of an employee duly designated by the registrar, permit such employee, at reasonable times, to have access to and to copy all records showing the movement in interstate or intrastate commerce of any such hazardous materials, or the holding thereof during or after such movement, and the quantity, shipper and consignee thereof; and it shall be unlawful for any such person, company, or corporation to fail to permit such access to and copying of any record so requested. Provided, that evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-03-02. YEARLY REPORTS.

1. Every person, company, or corporation engaged in the transport from, into, through, or within North Dakota of hazardous materials shall file annually with the registrar a compilation of the aggregate statistics regarding the number of shipments and tonnage of different kinds of hazardous materials transported into, through, or within North Dakota.
2. Reports required to be filed pursuant to this section shall contain the following information:
 - a. Name of reporter.
 - b. Name and address of carrier represented by reporter.
 - c. Number of vehicles involved in the transport of hazardous materials.
 - d. Aggregate yearly tonnage of each of the categories of hazardous materials listed below:
 - (1) Radioactive material.

- (2) Poison A.
 - (3) Flammable gas.
 - (4) Nonflammable gas.
 - (5) Flammable liquid.
 - (6) Oxidizer.
 - (7) Flammable solid.
 - (8) Corrosive material (liquid).
 - (9) Poison B.
 - (10) Corrosive material (solid).
 - (11) Irritating materials.
 - (12) Combustible liquid (in containers having capacities exceeding one hundred ten gallons [416.40 liters]).
 - (13) ORM-B.
 - (14) ORM-A.
 - (15) Combustible liquid (in containers having capacities of one hundred ten gallons [416.40 liters] or less).
- e. Aggregate vehicular mileage of motor vehicles engaged in the transport of hazardous materials from, into, through, or within North Dakota.
3. Reports required to be filed pursuant to this section may contain the following information:
- a. Number of shipments terminating with carrier.
 - b. Number of shipments delivered to another motor carrier.
 - c. A request for exemption from the reporting requirements of this section clearly stating the reasons therefore. (Any request for exemption shall be granted upon an adequate showing that the quantities of hazardous materials transported are of an insignificant amount, that compliance with the reporting requirements of this section would work an undue hardship, or that other valid reason for exemption exists.)

d. A suggestion for changes in the reporting requirements.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

CHAPTER 52-06-04
VEHICLES AND SHIPMENTS IN TRANSIT - ACCIDENTS

Section

52-06-04-01	Notice of Certain Hazardous Materials Incidents
52-06-04-02	Transportation and Delivery of Shipments
52-06-04-03	Disabled Vehicles and Broken or Leaking Packages - Repairs
52-06-04-04	Accidents - Explosives
52-06-04-05	Accidents - Flammable Liquids
52-06-04-06	Accidents - Flammable Solids and Oxidizing Materials
52-06-04-07	Accidents or Leakage - Poison
52-06-04-08	Accidents - Radioactive Materials
52-06-04-09	Accidents - Compressed Gases

52-06-04-01. NOTICE OF CERTAIN HAZARDOUS MATERIALS INCIDENTS.

1. At the earliest practicable moment, each person, company, or corporation which transports hazardous materials shall give notice in accordance with subsection 2 to the highway patrol, state office of disaster emergency services, or state radio communications, as appropriate, after each incident that occurs during the course of transportation (including loading, unloading and temporary storage) in which as a direct result of hazardous materials:
 - a. A person is killed;
 - b. A person receives injuries requiring the person's hospitalization;
 - c. Estimated carrier or other property damage exceeds fifty thousand dollars;
 - d. Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material;
 - e. Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or
 - f. A situation exists of such a nature that, in the judgment of the carrier, it should be reported in accordance with subsection 2 even though it does not meet the criteria of this subsection, e.g., a continuing danger of life exists at the scene of the incident.
2. Each notice required by subsection 1 shall be given to the motor vehicle department in writing within fifteen days of the date of discovery. Each notice must include the following information:
 - a. Name of reporter.

- b. Name and address of carrier represented by reporter.
- c. Phone number where reporter can be contacted.
- d. Date, time, and location of incident.
- e. The extent of injuries, if any.
- f. Classification, name, and quantity of hazardous material involved, if such information is available.
- g. Type of incident and nature of hazardous material involvement and whether a continuing danger of life exists at the scene.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-04-02. TRANSPORTATION AND DELIVERY OF SHIPMENTS.

- 1. No unnecessary delay in movement of shipments. All shipments of hazardous materials shall be transported without unnecessary delay, from and including the time of commencement of the loading of the cargo until its final discharge at destination.
- 2. Delivery at destination. Shipments of hazardous materials which are refused by the consignees, or which cannot be delivered within forty-eight hours after arrival at destination, must be promptly disposed of (a) by return to the shipper, if in proper shipping condition, or (b) by storage, provided a suitable storage place for such articles is available, or (c) by sale, or (d) when necessary to safety, by destruction. However, charged electric batteries may be held for thirty days after arrival at destination, pending delivery or disposition.
- 3. Delivery to authorized person or magazine. Every shipment of dangerous explosives by motor vehicle shall be delivered only to someone authorized to receive it, except such explosives shipments as are placed in magazines which are immediately thereafter locked.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-04-03. DISABLED VEHICLES AND BROKEN OR LEAKING PACKAGES - REPAIRS.

1. Care of lading, hazardous materials. Whenever for any cause other than necessary traffic stops any motor vehicle transporting any hazardous material is stopped upon the traveled portion of any highway or shoulder thereof, special care shall be taken to guard the vehicle and its load or to take such steps as may be necessary to provide against hazard. Special effort shall be made to remove the motor vehicle to a place where the hazards of the materials being transported may be provided against.
2. Disposition of containers found broken or leaking in transit. When leaks occur in packages or containers during the course of transportation, subsequent to initial loading, disposition of such package or container shall be made by the safest practical means afforded under subsections 3, 4, and 5.
3. Repairing packages. Packages may be repaired when safe and practicable, such repairing to be in accordance with the best and safest practice known and available.
4. Disposition of unsafe broken packages. In the event any leaking package or container cannot be safely and adequately repaired for transportation or transported, it shall be stored pending proper disposition in the safest and most expeditious manner possible.
5. Repairs to disabled vehicles. No repairs shall be made on any motor vehicle containing explosives or other dangerous articles except in case such repairs may be made without hazard; nor shall any such loaded motor vehicle be repaired in a closed garage.
6. No repair with flame unless gas-free. No repair of a cargo tank used for the transportation of any flammable liquid or poisonous liquid, or any compartment thereof, or of any container for fuel of whatever nature, may be repaired by any method employing a flame, arc, or other means of welding, unless the tank or compartment shall first have been made gas-free.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-04-04. ACCIDENTS - EXPLOSIVES.

1. Vehicle disabled; warning of nearby persons; removal of explosives. In the event of an accident involving any motor vehicle transporting any explosives, every available means shall be employed to prevent individuals, other than those employed in the protection of persons or property or in the removal of hazards or wreckage, from congregating in the vicinity; such means shall also be employed to prevent smoking, to keep flame away, and to safeguard against the aggravation of the hazard

present and to warn other users of the highway. In the event that any motor vehicle laden with or carrying dangerous explosives is entangled with another or with any other object or structure, following an accident, no attempt shall be made to disentangle either vehicle, or the laden vehicle from the object or structure, until the lading, together with any fragments thereof, be removed to a place at least two hundred feet [60.96 meters] from the vehicle (and preferably two hundred feet [60.96 meters] from any habitation). In the event of fire involving a motor vehicle laden with any explosive, every practicable effort shall be made to give warning of danger of explosion to habitants in the vicinity and to other users of the highway.

2. Disposition of spilled or leaking explosives. In the event of an accident involving any motor vehicle transporting any explosive in which packages are broken, all unbroken packages and as much of any broken packages as possible shall be carefully gathered and removed to a place of safety, in order to prevent fire or explosion. In clearing any wreck in which a motor vehicle containing any explosive is involved, care shall be exercised not to produce sparks with tools or by other means in moving of or working about the wreckage, so as to avoid as far as possible fires or explosions.
3. Liquid nitroglycerin, desensitized liquid nitroglycerin or diethylene glycol dinitrate. When any liquid nitroglycerin, desensitized liquid nitroglycerin, or diethylene glycol dinitrate has been spilled on any portion of any motor vehicle, it shall be washed with a suitable neutralizing agent until all of any such spillage shall have become completely neutralized.

NOTE: Liquid nitroglycerin, desensitized liquid nitroglycerin, or diethylene glycol dinitrate may be destroyed by use of a solution composed of:

60 percent commercial sodium sulfide	1 ounce
Denatured alcohol	7 1/2 fluid ounces
Acetone	2 fluid ounces
Water	3 fluid ounces

4. Explosives other than liquid nitroglycerin, desensitized liquid nitroglycerin, or diethylene glycol dinitrate. When particles of any explosives composition other than liquid nitroglycerin, desensitized liquid nitroglycerin, or diethylene glycol dinitrate have escaped from a damaged container to the floor of the body of the carrier's motor vehicle the floor shall be thoroughly swept and any absorbed portion removed.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-04-05. ACCIDENTS - FLAMMABLE LIQUIDS.

1. Accident to vehicle; warnings; no sparks or flame. In the event of an accident involving any motor vehicle transporting any flammable liquid, every available means shall be employed to prevent individuals, other than those employed in the protection of person or property or in the removal of hazards or wreckage, from congregating in the vicinity; such means shall also be employed to prevent smoking, to keep fires or flame away, to safeguard against the hazard present, and to warn other users of the highway.
2. Prevent leakage from spreading. Whenever any flammable liquid is escaping from a container, all practical means shall be taken to prevent such liquid from spreading over a wide area, from flowing into sewers and streams, and from becoming ignited.
3. Disposition of contents of cargo tank when unsafe to continue. In the event of a leak in a cargo tank of such a character as to make further transportation unsafe, the leaking vehicle should be removed from the traveled portion of the highway; and every available means employed for the safe disposal of the leaking liquid by preventing, so far as practicable, its spread over a wide area, such as by digging trenches to drain to a hole or depression in the ground, diverting the liquid away from streams or sewers if possible, or catching the liquid in containers if practicable. Smoking and the lighting of cigarettes, cigars, or pipes in the vicinity is prohibited, and fires or flames in the vicinity of the leaking cargo tank must be extinguished.
4. Transfer of flammable liquids en route. No flammable liquid shall be transferred from one container to another, or from one motor vehicle to another vehicle, or from another vehicle to a motor vehicle, on any public highway, street, or road, except in case of emergency. All practicable means, in addition to those hereinbefore prescribed, shall be taken to protect and warn other users of the highway against the hazard involved in any such transfer, or against the hazard occasioned by the emergency making such transfer necessary. Nothing contained in this rule shall be so construed as to prohibit the fueling of machinery or vehicles used in road construction and maintenance.
5. Transportation of leaking cargo tanks. A leaking cargo tank may only be transported the minimum distance necessary to reach a place where the contents of the tank or compartment may be disposed of with safety. Every available means must be utilized to prevent the leakage or spillage of the liquid upon the highway.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-04-06. ACCIDENTS - FLAMMABLE SOLIDS AND OXIDIZING MATERIALS.

1. Dangerous articles spilled; warning of nearby persons. In the event of any accident involving any motor vehicle in which any flammable solid or oxidizing material may have become spilled, every practicable and available means shall be taken to warn all approaching persons of the hazard of fire.
2. Prevent spread of fire where possible. Care shall be exercised in the event of damage to packages of flammable solids or oxidizing materials which either have been or may be on fire to limit the spread of the fire.
3. Disposition of spilled or leaking materials. In the event of any accident involving any motor vehicle transporting any flammable solid or oxidizing material in which packages are broken, as much as possible of any broken packages shall be carefully gathered and removed to a place of safety, and if the removal of unbroken packages from the motor vehicle would decrease the hazard of fire or other hazard, they shall be removed. The handling of any such materials not contained in packages shall be such as to promote the greatest safety to other users of the highway.
4. Reloading of damaged packages of matches; repairs. In the event of damage to matches or packages of matches by fire or by water in extinguishing a fire in transit, they shall be reloaded in accordance with the applicable requirements for the packing and loading of matches. Great care shall be taken, however, first to examine and repair any damage to outside containers before reloading, and all loose matches shall be destroyed. Smoking boxes of matches shall not be opened in the vicinity of the remainder of the lading. Such boxes shall be destroyed at a safe distance from the motor vehicle, preferably by burning, and shall not be left, either smoking or burning.
5. Calcium hypochlorite compounds, dry, involved in fires. Calcium hypochlorite compounds, dry, packed in metal drums when involved in motor vehicles where fire has occurred from any cause must be held at least five days before forwarding. Drums showing evidence of spontaneous heating or stress from internal pressure must not be reshipped.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-04-07. ACCIDENTS OR LEAKAGE - POISON.

1. Accident to vehicle; warnings; no sparks or flame. In the event of an accident involving any motor vehicle transporting any poison which is flammable, noxious, or toxic, every available means shall be employed in the protection of persons or property or in the removal of hazards or wreckage, from congregating in the vicinity; such means shall also be employed to prevent smoking, to keep flame away, to safeguard against the aggravation of the hazard present, and to warn other users of the highway. Care shall also be taken to prevent any poison, whether flammable or nonflammable, from contaminating streams or flowing or being spilled into sewers, and poison in powdered form from being scattered by wind.
2. Leakage. A vehicle which has been used to transport material marked as or known to be poison (class A or B) must be inspected for contamination before reuse. A vehicle which has been contaminated must not be returned to service until such contamination has been removed. This subsection does not apply to vehicles used solely for transporting such poisons so long as they are used in that service.
3. Leaking cargo tanks. In the event of leakage of liquid from any cargo tank or any compartment thereof used for the transportation of any poison which is also flammable, or which would come also with the definition of a flammable liquid, or of any gas or combination of gas and liquid, or any poison which would come within the definition of a compressed gas, the requirements shall be the same as those set forth for flammable liquids and compressed gases. In addition, all possible care shall be taken to warn bystanders or other users of the highway against the hazard of inhaling vapors or coming in contact with the poison.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-04-08. ACCIDENTS - RADIOACTIVE MATERIALS. In addition to the incident reporting requirements of this article the carrier must also notify the shipper at the earliest practicable moment following any incident in which there has been breakage, spillage, or suspected radioactive contamination involving radioactive materials shipments. Vehicles, buildings, areas, or equipment in which radioactive materials have been spilled may not be again placed in service or routinely occupied until the radiation dose rate at any accessible surface is less than 0.5 millirem per hour and there is no significant removable radioactive surface contamination.

NOTE 1: In these instances, the package or materials should be segregated as far as practicable from personal contact. If radiological advice or assistance is needed, the USNRC should also be notified. In case of obvious leakage, or if

it appears likely that the inside container may have been damaged, care should be taken to avoid inhalation, ingestion, or contact with the radioactive material. Any loose radioactive material should be left in a segregated area and held pending disposal instructions from qualified persons.

NOTE 2: Details involving the handling of radioactive materials in the event of an accident can be found in Bureau of Explosives' Pamphlets 1 and 2.

NOTE 3: In the event of any hazardous materials incident involving radioactive material it is recommended that the radiation control branch of the North Dakota state department of health be notified, which agency shall evaluate the situation and establish decontamination criteria pursuant to North Dakota Century Code chapter 23-20.1.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-04-09. ACCIDENTS - COMPRESSED GASES.

1. Accident to vehicle; warnings; keep fire away. In the event of an accident involving any motor vehicle transporting any compressed gas, the release of which would constitute a hazard to other users of the highway, due care shall be taken that only persons employed in the removal of hazards or wreckage shall be allowed in proximity to the motor vehicle, and the shipper should be notified. In such cases, every practicable and available means shall be taken to warn all approaching persons of the danger involved and to caution them against the use of matches or flame-producing devices, if the gas is flammable.
2. Transfer of flammable gas en route; no flame or sparks. No flammable compressed gas shall be transferred from one container to another, or from one tank motor vehicle to another tank vehicle, or from another tank vehicle to a tank motor vehicle, on any public highway, street, or road, except in case of emergency. In such cases every precaution shall be taken to prevent the escape of gas. All cargo tanks involved in such transfer shall be grounded. The transfer shall be made only during daylight, unless the emergency occurs at night or extends into hours of darkness and the hazard would be increased by waiting until daylight. In any such event, all practicable means, in addition to those hereinbefore prescribed, shall be taken to protect and warn other users of the highway against the hazard involved in any such transfer, or against the hazard occasioned by the emergency making such transfer necessary. Every precaution shall be taken to prevent the ignition of any flammable compressed gas from any source; and when it is possible to prevent the congregation of persons not directly concerned with the emergency, this shall be done. Every practicable precaution shall be taken to keep flames or fire away from the scene of the emergency and to prevent smoking or the lighting of pipes, cigars, or cigarettes.

Similarly, special care shall be exercised in the operation of any engine, whether of the motor vehicles involved or any other, and where the operation of any such engine would be likely to produce ignition of the flammable compressed gas, the transfer shall be accomplished by other means, if possible. Nothing contained in this subsection shall be so construed as to prohibit the fueling of machinery or vehicles used in road construction and maintenance.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

CHAPTER 52-06-05
SHIPPING INSTRUCTIONS - INSTRUCTIONS TO DRIVERS

Section	
52-06-05-01	Shipping Instructions
52-06-05-02	Instructions to Drivers
52-06-05-03	Exceptions

52-06-05-01. SHIPPING INSTRUCTIONS. Persons operating vehicles, or combinations of vehicles, in the transportation of hazardous materials and subject to this article, shall not accept any hazardous materials for transportation unless the shipment is accompanied by a bill of lading or other shipping paper supplied by the shipper, showing the kind of hazardous materials and bearing a statement that they have been packaged, labeled, and marked in accordance with regulations of the United States department of transportation, and the bill of lading or other shipping paper shall be carried in the vehicle while en route and shall be displayed upon demand of any member of the North Dakota highway patrol or any police officer of a city or county who is on duty for the exclusive purpose of enforcing the provisions of this article.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-05-02. INSTRUCTIONS TO DRIVERS. Every owner of a vehicle used in the transport into, through, or within North Dakota of hazardous materials shall: (1) make available to the driver of such vehicle a bill of lading or other shipping paper supplied by the shipper, showing the kind of hazardous materials and bearing a statement that they have been packaged, labeled, and marked in accordance with regulation of the United States department of transportation, and the bill of lading or other shipping paper shall be carried in the vehicle while en route and shall be displayed upon demand of any member of the North Dakota highway patrol; and (2) require that the driver be thoroughly familiar with the provisions of this article before operating a vehicle in the transportation of hazardous materials.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-05-03. EXCEPTIONS. This chapter does not apply to any material that is an ORM-A, B, C, or D. The shipper's certification is not required for shipments to be transported entirely by private carriage and for bulk shipments to be transported in a cargo tank supplied by the carrier.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

CHAPTER 52-06-06
MOTOR VEHICLE OPERATION, LOADING, AND UNLOADING

Section

52-06-06-01	Loading Vehicle - Engine Off - Parking Brake Set
52-06-06-02	Load Within Vehicle - Tailgate Closed
52-06-06-03	Protection of Load
52-06-06-04	Passing Near Fire
52-06-06-05	Vehicle to be Attended
52-06-06-06	Fire or Flame Near Vehicle
52-06-06-07	Loading and Unloading - General Requirements

52-06-06-01. LOADING VEHICLE - ENGINE OFF - PARKING BRAKE SET. No driver or other person in charge of any vehicle on any public or private property shall permit any class A or class B explosives to be loaded into, or on, or to be loaded from any motor vehicle with the engine running, and, whenever any loading operation is in progress, the parking brake on the motor vehicle shall be securely set and all reasonable precautions taken to prevent movement of the motor vehicle during loading or unloading.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-06-02. LOAD WITHIN VEHICLE - TAILGATE CLOSED. No driver or other person in charge of such vehicle shall operate or permit the operation of any vehicle transporting class A or class B explosives unless all of that portion of the lading which consists of class A or class B explosives is contained entirely within the body of the motor vehicle or within the horizontal outline thereof, without overhang or projection of any part of the load, and if such motor vehicle has a tailboard or tailgate, it shall be closed and secured in place during such transportation.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-06-03. PROTECTION OF LOAD. Every motor vehicle transporting class A or class B explosives shall have either a closed body or have the explosive cargo covered with a fire-and-water-resistant tarpaulin, and in either event, care shall

be taken to protect the load from moisture and sparks. Subject to other exceptions as are permitted by the United States department of transportation regulations, class A or class B explosives may be transported on flatbed vehicles if the explosive portion of the load on each vehicle is packed in fire-and-water-resistant containers or covered with a fire-and-water-resistant tarpaulin.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-06-04. PASSING NEAR FIRE. No person shall operate any vehicle transporting class A or class B explosives past any fire of any kind burning on or near the highway until the driver ascertains that such passing can be made with safety.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-06-05. VEHICLE TO BE ATTENDED. No motor vehicle transporting class A or class B explosives shall be left unattended upon any street or highway except in extreme emergency. The vehicle shall be deemed attended whenever a driver or person in charge thereof is in or upon the vehicle or is in a position to observe the vehicle at all times. The driver or person in charge of a vehicle transporting class A or class B explosives may, however, leave the vehicle unattended at any place designated as a safe parking place unless conditions exist, which are known to the driver, which make it unreasonable to do so.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-06-06. FIRE OR FLAME NEAR VEHICLE. No driver or other person shall smoke or light any match or otherwise have or produce any fire or flame while in, upon, or near any vehicle transporting class A or class B explosives.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-06-07. LOADING AND UNLOADING - GENERAL REQUIREMENTS.

1. Packages secured in a vehicle. Any tank, barrel, drum, cylinder, or other packaging, not permanently attached to a motor vehicle, which contains any flammable liquid, compressed gas, corrosive material, poisonous material, or radioactive material must be secured against movement within the vehicle on which it is being transported, under conditions normally incident to transportation.
2. No hazardous materials on pole trailers. No hazardous materials may be loaded into or on, or transported in or on, any pole trailer.
3. No smoking while loading or unloading. Smoking on or about any motor vehicle while loading or unloading any explosive, flammable liquid, flammable solid, oxidizing material, or flammable compressed gas is forbidden.
4. Keep fire away, loading and unloading. Extreme care shall be taken in the loading or unloading of any explosive, flammable liquid, flammable solid oxidizing material, or flammable compressed gas into or from any motor vehicle to keep fire away and to prevent persons in the vicinity from smoking, lighting matches, or carrying any flame or lighted cigar, pipe, or cigarette.
5. Handbrake set while loading and unloading. No hazardous material shall be loaded into or on, or unloaded from, any motor vehicle unless the handbrake be securely set and all other reasonable precautions be taken to prevent motion of the motor vehicle during such loading or unloading process.
6. Use of tools, loading and unloading. No tools which are likely to damage the effectiveness of the closure of any package or other container, or likely adversely to affect such package or container, shall be used for the loading or unloading of any explosive or other dangerous article.
7. Prevent relative motion between containers. Containers of explosives, flammable liquids, flammable solids, oxidizing materials, corrosive materials, compressed gases, and poisonous liquids or gases, must be so braced as to prevent motion thereof relative to the vehicle while in transit. Containers having valves or other fittings must be so loaded

that there will be the minimum likelihood of damage thereto during transportation.

8. Precautions concerning containers in transit; fueling road units. Reasonable care should be taken to prevent undue rise in temperature of containers and their contents during transit. There must be no tampering with such container or the contents thereof nor any discharge of the contents of any container between point of origin and point of billed destination. Discharge of contents of any container, other than a cargo tank, must not be made prior to removal from the motor vehicle. Nothing contained in this subsection shall be so construed as to prohibit the fueling of machinery or vehicles used in road construction or maintenance.
9. Attendance requirements.
 - a. Loading. A cargo tank must be attended by a qualified person at all times when it is being loaded. The person who is responsible for loading the cargo tank is also responsible for ensuring that it is so attended.
 - b. Unloading. A motor carrier who transports hazardous materials by a cargo tank must ensure that the cargo tank is attended by a qualified person at all times during unloading. However, the carrier's obligation to ensure attendance during unloading ceases when:
 - (1) The carrier's obligation for transporting the materials is fulfilled;
 - (2) The cargo tank has been placed upon the consignee's premises; and
 - (3) The motive power has been removed from the cargo tank and removed from the premises.
 - c. A person "attends" the loading or unloading of a cargo tank if, throughout the process, the person is awake, has an unobstructed view of the cargo tank, and is within 7.62 meters [25 feet] of the cargo tank.
 - d. A person is "qualified" if the person has been made aware of the nature of the hazardous material which is to be loaded or unloaded, has been instructed on the procedures to be followed in emergencies, is authorized to move the cargo tank, and has the means to do so.
 - e. A delivery hose, when attached to the cargo tank, is considered a part of the vehicle.
10. Prohibited loading combinations. In any single driven motor vehicle or in any single unit of a combination of motor vehicles, hazardous materials shall not be loaded together if prohibited by loading and storage chart, 49 C.F.R. 177.848. This subsection shall not be so

construed as to forbid the carrying of materials essential to safe operation of motor vehicles.

11. Access to mixed loadings. Flammable solids, oxidizing materials, or corrosive liquids, when transported on a motor vehicle with other loading not otherwise forbidden, shall be so loaded as to provide ready access thereto for shifting or removal.
12. Use of cargo heaters when transporting certain hazardous material. Transportation includes loading, carrying, and unloading.
 - a. When transporting explosives. A motor vehicle equipped with a cargo heater of any type may transport explosives only if the cargo heater is rendered inoperable by:
 - (1) Draining or removing the cargo heater fuel tank; and
 - (2) Disconnecting the heater's power source.
 - b. When transporting certain flammable material - Use of combustion cargo heaters. A motor vehicle equipped with a combustion cargo heater may be used to transport flammable liquid or flammable gas only if each of the following requirements are met:
 - (1) It is a catalytic heater.
 - (2) The heater's surface temperature cannot exceed one hundred thirty degrees Fahrenheit [54 degrees Celsius] - either on a thermostatically controlled heater or on a heater without thermostatic control when the outside or ambient temperature is sixty degrees Fahrenheit [15.6 degrees Celsius] or less.
 - (3) The heater is not ignited in a loaded vehicle.
 - (4) There is no flame, either on the catalyst or anywhere in the heater.
 - (5) The manufacturer has certified that the heater meets the requirements under paragraph 2 of this section by permanently marking the heater "MEETS DOT REQUIREMENTS FOR CATALYTIC HEATERS USED WITH FLAMMABLE LIQUID AND GAS."
 - (6) The heater is also marked "DO NOT LOAD INTO OR USE IN CARGO COMPARTMENTS CONTAINING FLAMMABLE LIQUID OR GAS IF FLAME IS VISIBLE ON CATALYST OR IN HEATER."

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

CHAPTER 52-06-07
PASSENGER CARRYING VEHICLES

Section	
52-06-07-01	No Explosives or Other Hazardous Materials on Passenger-Carrying Vehicles - Exceptions
52-06-07-02	Explosives in Passenger-Carrying Space Forbidden
52-06-07-03	Hazardous Materials on Passenger-Carrying Vehicles - Quantity
52-06-07-04	Articles Other Than Explosives on Passenger-Carrying Vehicles
52-06-07-05	Poisons on Passenger-Carrying Vehicles
52-06-07-06	Radioactive Materials

52-06-07-01. NO EXPLOSIVES OR OTHER HAZARDOUS MATERIALS ON PASSENGER-CARRYING VEHICLES - EXCEPTIONS. No hazardous materials except small-arms ammunition, emergency shipments of drugs, chemicals and hospital supplies, and the accompanying munitions of war of the departments of the army, navy, and air force of the United States government, are authorized to be transported on motor vehicles carrying passengers for hire where other practicable means of transportation is available.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-07-02. EXPLOSIVES IN PASSENGER-CARRYING SPACE FORBIDDEN. No explosive, except small-arms ammunition, may be carried in the passenger-carrying space of any motor vehicle transporting passengers for hire.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-07-03. HAZARDOUS MATERIALS ON PASSENGER-CARRYING VEHICLES - QUANTITY. Where no other practicable means of transportation is available, the following articles in the quantities as shown may be transported in motor vehicles carrying passengers for hire in a space other than that provided for passengers: Not to exceed one hundred pounds [45.36 kilograms] gross weight of any or all of the

kinds of explosives permitted to be transported by rail express or rail baggage services may be transported on a motor vehicle transporting passengers. However, samples of explosives for laboratory examination, not exceeding a net weight of one-half pound [226.80 grams] each, and not exceeding twenty samples or not to exceed a total of one hundred blasting caps at one time in a single motor vehicle, may be transported in a motor vehicle transporting passengers.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-07-04. ARTICLES OTHER THAN EXPLOSIVES ON PASSENGER-CARRYING VEHICLES. The gross weight of any given class of hazardous material other than explosives shall not exceed one hundred pounds [45.36 kilograms], and the aggregate weight of all such other dangerous articles shall not exceed five hundred pounds [226.80 kilograms]. This provision does not apply to nontoxic, nonflammable refrigerants, when such refrigerant is for servicing operations of a motor carrier on whose motor vehicles the refrigerant is used. A cylinder secured against movement while in transit and not exceeding two hundred fifty pounds [113.40 kilograms] gross weight may be transported.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-07-05. POISONS ON PASSENGER-CARRYING VEHICLES. No motor carrier may transport any extremely dangerous poison, class A, any tear gas or irritating substance, class C, any less dangerous poison, class B, which is a liquid, or any paranitraniline, in any amount, in or on any bus while engaged in the transportation of passengers; or any less dangerous poison, class B, which is other than a liquid, in any amount exceeding an aggregate of one hundred pounds [45.36 kilograms] gross weight in or on any such bus.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-07-06. RADIOACTIVE MATERIALS. No person may transport any radioactive material requiring labels under 49 C.F.R. 173.416 in or on any motor

vehicle carrying passengers for hire except where no other practicable means of transportation is available. Packages of radioactive materials must be stored only in the trunk or baggage compartment of the vehicle, and must not be stored in any compartment occupied by persons.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

CHAPTER 52-06-08
VEHICLE EQUIPMENT AND INSPECTION

Section	
52-06-08-01	Equipment Generally
52-06-08-02	Tires

52-06-08-01. EQUIPMENT GENERALLY. Every vehicle or combination of vehicles used in the transportation of hazardous materials and subject to this article, in addition to any other equipment required by law, shall be equipped and maintained as required by this section.

1. Brakes and the brake system shall be maintained in good and safe operating condition.
2. The ignition and lighting systems shall be maintained in good operating condition. Every vehicle or combination of vehicles shall be equipped with at least one spare electric bulb for each kind of electric lamp used for any lighting devices and one spare fuse for each type fuse used in the electrical system.
3. All tires shall be in good condition, properly matched and inflated. Except as may be necessary to cause immediate replacement, no vehicle shall be driven unless all tires in actual use on the vehicle are properly inflated.
4. There shall be carried at least two fire extinguishers, filled and ready for use, one bearing the approval of the Underwriters Laboratories as a 2:A Unit, the other as a 4:B:C Unit. In lieu of the two extinguishers, one extinguisher having the combined Underwriters Laboratories unit rating may be carried. The extinguishing agent shall be one that does not require protection from freezing.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-08-02. TIRES.

1. If a motor vehicle which contains hazardous materials is equipped with dual tires on any axle, its driver must stop the vehicle in a safe location at least once during each two hours or one hundred miles [160.93 kilometers] of travel, whichever is less, and must examine its tires. The driver must also examine the vehicle's tires at the beginning of each trip and each time the vehicle is parked.

2. If, as a result of an examination pursuant to subsection 1, or otherwise, a tire is found to be flat, leaking, or improperly inflated, the driver must cause the tire to be repaired, replaced, or properly inflated before the vehicle is driven. However, the vehicle may be driven to the nearest safe place to perform the required repair, replacement, or inflation.
3. If, as the result of an examination pursuant to subsection 1, or otherwise, a tire is found to be overheated, the driver shall immediately cause the overheated tire to be removed and placed at a safe distance from the vehicle. The driver shall not operate the vehicle until the cause of the overheating is corrected.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

CHAPTER 52-06-09

RESERVED

CHAPTER 52-06-10
PLACARDING REQUIREMENTS

Section

52-06-10-01	Applicability of Placarding Requirements
52-06-10-02	Prohibited Placarding
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52-06-10-04	Providing and Affixing Placards
52-06-10-05	Freight Container
52-06-10-06	Cargo Tanks and Portable Tanks
52-06-10-07	Visibility and Display of Placards
52-06-10-08	General Specifications for Placards
52-06-10-09	Dimensional Specification for Placards

52-06-10-01. APPLICABILITY OF PLACARDING REQUIREMENTS.

1. Each person who offers for transportation or transports any hazardous materials subject to this article shall comply with the applicable placarding requirements of this chapter.
2. This chapter does not apply to:
 - a. Etiologic agents.
 - b. Hazardous materials classed as ORM-A, B, C, or D.
 - c. Hazardous materials authorized by this article to be offered for transportation as limited quantities when identified as such on shipping papers in accordance with the following: the description for a material defined as "limited quantities" must include the words "Limited Quantities" or "Ltd. Qty." following the basic description.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-10-02. PROHIBITED PLACARDING.

1. No person may affix or display on a portable tank, freight container, or motor vehicle any placard described in this chapter unless:
 - a. The material being offered or transported is a hazardous material;
and

- b. The placard represents a hazard of the hazardous material being offered or transported.
- 2. No person may affix or display any sign or other device on a motor vehicle, portable tank, or freight container, that by its color, design, shape, or content could be confused with any placard prescribed in this chapter.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-10-03. GENERAL PLACARDING REQUIREMENTS.

- 1. Except as otherwise provided in this article, each motor vehicle and freight container containing any quantity of a hazardous material must be placarded on each end and each side with the type of placards specified in the following tables and other placarding requirements of this chapter, including the specifications for the placards named in the tables and described in detail in section 52-06-10-09.
- 2. A freight container or motor vehicle containing two or more classes of materials requiring different placards specified in Table 2 may be placarded DANGEROUS in place of the separate placarding specified for each of those classes of material specified in Table 2. However, when five thousand pounds [2,267.96 kilograms] or more of one class of material is loaded therein at one loading facility, the placard specified for that class in Table 2 must be applied. This subsection does not apply to a portable tank or cargo tank.
- 3. No placard is required on a motor vehicle or a freight container, if transported by highway only, containing less than one thousand pounds [453.59 kilograms] (aggregate gross weight) of one or more materials covered by Table 2. This subsection does not apply to portable tanks or cargo tanks.

TABLE 1

If the motor vehicle or freight container contains a material classed (described) as:

Class A explosives
 Class B explosives
 Poison A
 Flammable solid (DANGEROUS WHEN WET label only)
 Radioactive material
 Radioactive materials:

The motor vehicle or freight container must be placarded on each side and each end:

EXPLOSIVES A
 EXPLOSIVES B *
 POISON GAS
 FLAMMABLE SOLID W **
 RADIOACTIVE ***

Uranium hexafluoride, fissile (containing more than 0.7 percent U235)	RADIOACTIVE *** and CORROSIVE ****
Uranium hexafluoride, low specific activity (containing 0.7 percent or less U235)	RADIOACTIVE *** and CORROSIVE ****

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- * EXPLOSIVES B placard not required if the freight container or motor vehicle contains class A explosives and is placarded EXPLOSIVES A as required.
 - ** FLAMMABLE SOLID "W" placard is required only when the DANGEROUS WHEN WET label is specified in 49 C.F.R. 172.101 for a material classed as a Flammable Solid.
 - *** Applies only to any quantity of packages bearing the RADIOACTIVE YELLOW III label.
 - **** CORROSIVE placard not required for shipments of less than one thousand pounds [453.59 kilograms] gross weight.
-

TABLE 2

If the motor vehicle or freight container contains a material classed (described) as:	The motor vehicle or freight container must be placarded on each end:
Class C explosives	FLAMMABLE *
Nonflammable gas	NONFLAMMABLE GAS
Nonflammable gas (Chlorine)	CHLORINE ++
Nonflammable gas (Fluoride)	POISON
Nonflammable gas (Oxygen, pressurized liquid)	OXYGEN **
Flammable gas	FLAMMABLE GAS
Combustible liquid	COMBUSTIBLE *** ****
Flammable liquid	FLAMMABLE
Flammable solid	FLAMMABLE SOLID ***
Oxidizer	OXIDIZER
Organic peroxide	ORGANIC PEROXIDE
Poison B	POISON
Corrosive material	CORROSIVE +
Irritating material	DANGEROUS

-
- * Applies only to a class C explosive required to be labeled with an EXPLOSIVE C label.
 - ** OXYGEN placards may be used to identify liquefied pressurized oxygen contained in a manner so it does not meet the definition of "compressed gas" and "liquefied compressed gas".
 - *** COMBUSTIBLE placard required only when a material classed as a combustible liquid is transported in a packaging having a rated capacity of more than one hundred ten gallons [416.40 liters].
 - **** A FLAMMABLE placard may be used on a cargo tank and a

portable tank during transportation by highway.
A FLAMMABLE placard may be displayed in place of a
FLAMMABLE SOLID placard except when a DANGEROUS WHEN WET
label is specified for the material.

- + Authorized exemptions: A material classed as a corrosive material that is corrosive only to steel and does not meet the definition of any other hazard class defined in this article, is excepted from the requirements of this article when transported in a portable tank or cargo tank constructed of materials that will not react dangerously with or be degraded by the material being transported.
- ++ CHLORINE placard required only for a packaging having a rated capacity of more than one hundred ten gallons [416.40 liters]; the NONFLAMMABLE GAS placard for packagings having a rated capacity of one hundred ten gallons [416.40 liters] or less.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-10-04. PROVIDING AND AFFIXING PLACARDS. Each person offering a motor carrier a hazardous material for transportation by highway shall provide to the motor carrier the required placards for the material being offered prior to or at the same time the material is offered for transportation, unless the carrier's motor vehicle is already placarded for the material as required by this article. No motor carrier may transport a hazardous material in a motor vehicle, unless the placards required for the hazardous material are affixed thereto as required by this chapter.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-10-05. FREIGHT CONTAINER.

1. Capacity of six hundred forty cubic feet [18.12 cubic meters] or more. Each person who offers for transportation a hazardous material in a freight container having a capacity of six hundred forty cubic feet [18.12 cubic meters] or more shall affix to the freight container the placards specified for the material. However:

- a. The placarding exception provided by subsection 3 of section 52-06-10-03 applies; and
 - b. The placarding exception provided by subsection 3 of section 52-06-10-03 applies to each freight container being transported for delivery to a consignee immediately following an air or water shipment.
2. Capacity less than six hundred forty cubic feet [18.12 cubic meters]. When hazardous materials are offered for transportation in a freight container having a capacity of less than six hundred forty cubic feet [18.12 cubic meters], the freight container need not be placarded.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-10-06. CARGO TANKS AND PORTABLE TANKS.

1. Each person who offers for transportation a cargo tank or a portable tank containing a hazardous material shall affix the placards specified for the material in accordance with this article. However, if placarded, a portable tank having a rated capacity of less than one thousand gallons [3,785.41 liters] need be placarded on only two opposite sides.
2. Each cargo tank and portable tank that is required to be placarded when it contains a hazardous material must remain placarded when it is emptied unless it is:
 - a. Reloaded with a material not subject to this article; or
 - b. Sufficiently cleaned and purged of vapors to remove any potential hazard.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-10-07. VISIBILITY AND DISPLAY OF PLACARDS.

1. Each placard on a motor vehicle must be readily visible from the direction it faces except from the direction of another motor vehicle to which the motor vehicle is coupled. This requirement may be met by the

placards displayed on the freight containers or portable tanks loaded on a motor vehicle.

2. The required placarding of the front of a motor vehicle may be on the front of a truck tractor instead of or in addition to the placarding on the front of the cargo body to which a truck tractor is attached.
3. Each placard on a transport vehicle, portable tank or freight container must:
 - a. Be securely attached or affixed thereto or placed in a holder thereon.
 - b. Be located clear of appurtenances and devices such as ladders, pipes, doors, and tarpaulins.
 - c. So far as practicable, be located so that dirt or water is not directed to it from the wheels of the transport vehicle.
 - d. Be located away from any marking (such as advertising) that could substantially reduce its effectiveness, and in any case at least three inches [76.2 millimeters] away from such marking.
 - e. Have the words printed on it displayed horizontally, reading from left to right.
 - f. Be maintained by the carrier in a condition so that the format, legibility, color, and visibility of the placard will not be substantially reduced due to damage, deterioration, or obscurement by dirt or other matter.
4. The means used to attach a placard may not obscure any part of its surface other than the borders.
5. A placard or placard holder may be hinged provided the required format, color, and legibility of the placard are maintained.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-10-08. GENERAL SPECIFICATIONS FOR PLACARDS.

1. A placard may be made of any plastic, metal, or other material that is equal to or better in strength and durability than the tagboard specified in subsection 2. Also, reflective or retroreflective materials may be used on a placard providing the prescribed colors, strength and durability are maintained.

2. A placard made of tagboard must be of material that has:
 - a. A quality at least equal to that designated commercially as white tagboard;
 - b. A weight of one hundred twenty-five pounds [56.70 kilograms] per ream of twenty-four by thirty-six-inch [60.96 centimeters by 91.44 centimeters] sheets;
 - c. The ability to pass a sixty pounds per square inch [27.22 kilograms per 6.45 square centimeters] Mullen test; and
 - d. The ability to withstand open weather exposure for thirty days without a substantial reduction in effectiveness.
3. A placard may contain form identification information, including the name of its maker if that information is printed in the outer one-half-inch [12.7-millimeter] border in no larger than ten-point type.
4. The hazard class and division number prescribed for dangerous goods in the United Nations Recommendations entitled "Transport of Dangerous Goods (1970)" may be entered on each placard in the lower corner of the diamond. The numerals should be approximately seventy-five hundredths inch [19.0 millimeter] in height and black on each placard except the NONFLAMMABLE GAS, FLAMMABLE GAS and CORROSIVE placards. The numbers on the NONFLAMMABLE GAS, FLAMMABLE GAS and FLAMMABLE placards may be white, and numbers on the CORROSIVE placards should be white.
5. Surface pigmentation on a placard must meet the following requirements:
 - a. Black and any color must be able to withstand, without substantial change:
 - (1) A seventy-two-hour fadeometer test (for a description of equipment designed for this purpose, see ASTM G 23-69 (1975), or ASTM G 26-70); and
 - (2) A thirty-day exposure to open weather conditions.
 - b. A color on a placard, upon visual examination, must fall within the color tolerances displayed on the appropriate Office of Hazardous Materials Label and Placard Color Tolerance Chart.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-10-09. DIMENSIONAL SPECIFICATION FOR PLACARDS.

1. The print type on each placard must be Franklin Gothic Condensed.
2. Each square-on-point placard must measure ten and three-fourths inches [237.0 millimeters] on each side, the outer, one-half inch [12.7 millimeters] of which must be white.

NOTE: The measurements in these specifications may be rounded to the nearest one-thirty-second of an inch and to the nearest whole millimeter.

3. Specifications for each placard are as follows:
 - a. DANGEROUS placard. The word "DANGEROUS" must be across the center of the placard and made with letters twenty-seven-thirty-seconds inch [56.4 millimeters] high with a three-eighths-inch [9.5-millimeters] stroke. The white section of the placard must be centered across the placard and five inches [127 millimeters] wide. The two ends of the white area must have a one-eighth-inch [3.2-millimeters] red solid line border to indicate the outer one-half-inch [12.7-millimeters] white placard border. The placard color must be red, white, and black.
 - b. EXPLOSIVES A placard. The word "EXPLOSIVES" must be across the center area of the placard and made with letters one and seven-eighths inches [47.6 millimeters] high with a five-sixteenth-inch [7.9-millimeters] stroke. The top of the letters in the words "EXPLOSIVES" must be one and one-half inches [38.1 millimeters] above the placard horizontal center line. The top of the letter "A" must be one-half inch [12.7 millimeters] below the horizontal center line. The letter "A" must be approximately two inches [50.8 millimeters] high. The base of the symbol must be two and one-sixteenth inches [52.4 millimeters] above the placard horizontal center line and must be four and one-twelfth inches [114.3 millimeters] high when measured from a horizontal line touching the lowest extremity. The width of the symbol must be seven and seven-eighths inches [200.0 millimeters] when measured between two lines perpendicular to the base line and touching the widest extremities on each side. The radius of the bomb must be three-fourths inch [19.1 millimeters]. The placard color must be orange, black, and white.
 - c. EXPLOSIVES B placard. Except for the letter "B" the EXPLOSIVES B placard specifications are the same as those for the EXPLOSIVES A placard. The location, height, and stroke for the letter "B" are the same as those prescribed for the letter "A".
 - d. NONFLAMMABLE GAS placard. The word "NONFLAMMABLE" must be across the center area with the word "GAS" centered beneath the word "NONFLAMMABLE". The letters in both words must be one and nine-sixteenths inches [39.6 millimeters] high and made with a nine-thirty-seconds-inch [7.1-millimeter] stroke. The top of the letters in the words "NONFLAMMABLE" must be one and three-eighths inches [35.9 millimeters] above the placard horizontal center line and the top of the letters in the word "GAS" must be nine-sixteenths inch

[14.3 millimeters] below the placard horizontal center line. The base of the symbol must be three and one-eighth inches [79.3 millimeters] above the horizontal center line with the top four and fifteen-sixteenths inches [125.4 millimeters] above the placard horizontal center line. The lower portion of the cylinder (symbol) must be seventeen-thirty-seconds inch [13.5 millimeters] wide with the neck one-fourth inch [6.3 millimeters] wide. The symbol must be three and nine-sixteenths inches [90.4 millimeters] long. The placard color must be green and white.

- e. OXYGEN placard. The word "OXYGEN" must be centered on the placard horizontal center line in letters two and one-half inches [63.5 millimeters] high and made with a seven-sixteenths-inch [11.1-millimeters] stroke. The base of the bar in the symbol must be two and one-sixteenth inches [52.4 millimeters] above the placard horizontal center line. The overall height of the symbol must be four and five-sixteenths inches [109.5 millimeters] with the bar measuring one-eighth inch [3.2 millimeters] wide and three and three-sixteenths inches [55.5 millimeters] long. The symbol must be two and three-eighths inches [60.3 millimeters] across the widest part. The outer one-half inch [12.7 millimeters] of the ten and three-fourths inches [273.0 millimeters] square-on-point placard must be white. The placard color must be yellow, black, and white.
- f. FLAMMABLE GAS placard. The word "FLAMMABLE" must be across the placard center area with the word "GAS" centered beneath the word "FLAMMABLE" must be one and five-eighths inches [41.3 millimeters] above the placard horizontal center line and the top of the word "GAS" must be five-eighths inch [15.9 millimeters] below the placard horizontal center line. The base of the symbol bar must be two and one-fourth inches [57.1 millimeters] above the placard horizontal center line, and must be four and seventeen-thirty-seconds inches [115.1 millimeters] high and three and five-sixteenths inches [84.1 millimeters] wide. The bar must be five-thirty-seconds inch [4.0 millimeters] wide and three and five-sixteenths inches [84.1 millimeters] long. The outer one-half inch [12.7 millimeters] of the ten and three-fourths inches [273.0 millimeters] square-on-point placard must be white. The placard color must be red and white.
- g. CHLORINE placard. The specifications for the CHLORINE placard are the same as those for the POISON GAS placard except for the word "CHLORINE" and the symbol. The word "CHLORINE" must be centered on the placard horizontal center line in letters two and one-half inches [63.5 millimeters] high and made with a seven-sixteenths-inch [11.1-millimeters] stroke. The lowest part of the symbol must be one and three-fourths inches [44.5 millimeters] above the placard horizontal center line. The symbol must be three and eleven-sixteenths inches [93.6 millimeters] high and five and one-eighth inches [130.2 millimeters] across the widest extremities.
- h. POISON GAS placard. The word "POISON" must be across the center area of the placard with the word "GAS" centered beneath the word "POISON". The letters in both words must be two and three-sixteenths inches [55.5 millimeters] high and made with a thirteen-

thirty-seconds-inch [10.3-millimeters] stroke. The top of the letters in the word "POISON" must be two and one-fourth inches [57.1 millimeters] above the horizontal center line. The lowest part of the symbol must be two and three-fourths inches [69.8 millimeters] above the horizontal center line and must be three and one-fourth inches [82.5 millimeters] high and four and five-sixteenths inches [109.5 millimeters] across the widest extremities. The one-eighth-inch [3.2-millimeters] black border must be one-half inch [12.7 millimeters] in from the placard edge. The placard color must be black and white.

- i. FLAMMABLE placard. The word "FLAMMABLE" must be centered on the placard horizontal center line. The letters in the word "FLAMMABLE" must be two inches [50.8 millimeters] high and made with an eleven-thirty-seconds-inch [8.7-millimeters] stroke. The base of the symbol bar must be two and one-fourth inches [57.1 millimeters] above the placard horizontal center line. The symbol must be four and nine-sixteenths inches [115.9 millimeters] wide and three and five-sixteenths inches [84.1 millimeters] wide. The bar must be one-eighth inch [3.2 millimeters] wide and three and five-sixteenths inches [84.1 millimeters] long. The outer one-half inch [12.7 millimeters] of the ten and three-fourths inches [273.0 millimeters] square-on-point placard must be white.
- j. EMPTY placard. The specifications for the FLAMMABLE-EMPTY placard is representative of the requirements for the following EMPTY placards: NONFLAMMABLE GAS; POISON; CHLORINE; OXYGEN; FLAMMABLE GAS; FLAMMABLE; FLAMMABLE SOLID; FLAMMABLE SOLID W; OXIDIZER; ORGANIC PEROXIDE; POISON; and CORROSIVE. The specification for each EMPTY placard must be the same as those prescribed for each placard except for the top triangle in the placard.

The base of the black triangle must be one-fourth inch [6.3 millimeters] above the top of the letters in the placard name. The base of the letters in the word EMPTY must be three and one-fourth inches [82.5 millimeters] above the placard horizontal center line.

The letters in the word "EMPTY" must be one inch [25.4 millimeters] high and made with a seven-thirty-seconds-inch [5.5-millimeters] stroke.

The EMPTY placards may be made in any of the three ways cited in section 172.525(c), subpart F of Part 172.

- k. COMBUSTIBLE placard. The specifications for the COMBUSTIBLE placard are the same as those prescribed for the FLAMMABLE placard except the letters in the word "COMBUSTIBLE" must be one and seven-eighths inches [47.6 millimeters] high and made with an eleven-thirty-seconds-inch [8.7-millimeters] stroke.
- l. FLAMMABLE SOLID placard. The word "FLAMMABLE" must be across the center of the placard with the word "SOLID" centered beneath the word "FLAMMABLE". The letters in the word "FLAMMABLE" must be two inches [50.8 millimeters] high and made with a three-eighths-inch

[9.5-millimeters] stroke. The letters in the word "SOLID" must be one and one-fourth inches [38.1 millimeters] high and made with a one-fourth-inch [6.3-millimeters] stroke. The top of the letters in the word "FLAMMABLE" must be one and three-sixteenths inches [30.1 millimeters] above the placard horizontal center line and the top of the word "SOLID" must be one inch [25.5 millimeters] below the placard horizontal center line. The base of the symbol bar must be two and one-fourth inches [57.1 millimeters] above the placard horizontal center line. The symbol must be four and nine-sixteenths inches [115.9 millimeters] high and three and five-sixteenths inches [84.1 millimeters] wide. The outer one-half inch [12.7 millimeters] of the ten and three-fourths inches [273.0 millimeters] square-on-point placard must be white. Each red and white stripe must be approximately one inch [25.4 millimeters] wide. The placard must have seven red stripes and six white stripes. One red stripe must be approximately centered on the vertical center line of the placard. The placard color must be black, white, and red.

- m. FLAMMABLE SOLID W placard. The specifications for the FLAMMABLE SOLID W are the same as the specifications for the FLAMMABLE SOLID placard except for the top triangle. The base of the blue triangle must be two inches [50.8 millimeters] above the placard horizontal center line with the base of the symbol two and three-eighths inches [60.3 millimeters] above the placard horizontal center line. The symbol must be two and one-fourth inches [57.1 millimeters] high; two and three-fourths inches [69.8 millimeters] across the top; one and three-fourths inches [44.4 millimeters] across the base, and made with the five-sixteenths-inch [7.9-millimeters] stroke. The white stripe in the symbol must be seven-thirty-seconds inch [5.5 millimeters] wide and three and one-half inches [88.9 millimeters] long. The white stripe must slant upward from right to left at an angle of approximately twenty-one degrees from the horizontal.
- n. OXIDIZER placard. The word "OXIDIZER" must be centered on the placard horizontal center line in letters two and one-half inches [63.5 millimeters] high with a fifteen-thirty-seconds-inch [11.9-millimeters] stroke. The base of the bar of the symbol must be two and one-sixteenth inches [52.4 millimeters] above the placard horizontal center line. The overall height of the symbol must be four and five-sixteenths inches [109.5 millimeters] with the bar measuring one-eighth inch [3.2 millimeters] wide and two and three-sixteenths inches [55.6 millimeters] long. The symbol must be two and three-eighths inches [60.3 millimeters] across the widest part. The outer one-half inch [12.7 millimeters] of the ten and three-fourths-inches [273.0-millimeters] placard must be white. The placard color must be yellow, black, and white.
- o. ORGANIC PEROXIDE placard. The word "ORGANIC" must be across the center line of the placard with the word "PEROXIDE" centered beneath the word "ORGANIC". The letters in both words must be two inches [50.8 millimeters] high and made with an eleven-thirty-seconds-inch [8.7-millimeters] stroke. The top of the letters in the word "ORGANIC" must be two and one-eighth inches [54.0 millimeters] above the placard horizontal center line, and the top of the letters in

the words "PEROXIDE" must be five-sixteenths inch [7.9 millimeters] below the placard horizontal center line. The base of the symbol bar must be two and seven-eighths inches [73.0 millimeters] above the horizontal center line. The symbol must be three and eleven-sixteenths inches [93.6 millimeters] high and two and one-sixteenth inches [52.3 millimeters] wide with the bar three-sixteenths inch [4.8 millimeters] wide and one and seven-eighths inches [47.6 millimeters] long. The outer one-half inch [12.7 millimeters] of the ten and three-fourths inches [273.0 millimeters] square-on-point placard must be white. The placard color must be yellow, black, and white.

- p. POISON placard. The word "POISON" must be centered on the placard horizontal center line in letters three and one-sixteenth inches [77.8 millimeters] high and made with a nine-sixteenths-inch [14.3-millimeters] stroke. The lowest point on the symbol must be two and one-eighth inches [54.0 millimeters] above the placard horizontal center line. The symbol must be three and eleven-sixteenths inches [93.6 millimeters] high and four and fifteen-sixteenths inches [125.4 millimeters] across the widest extremities. The one-eighth-inch [3.2-millimeter] black border must be one-half inch [12.7 millimeters] in from the placard edge. The placard color must be black and white.
- q. RADIOACTIVE placard. The word "RADIOACTIVE" must be centered on the placard horizontal center line in letters two inches [50.8 millimeters] with an eleven-thirty-seconds-inch [8.7-millimeters] stroke. The lower edge of the yellow triangle must be one and one-eighth inches [28.6 millimeters] above the placard horizontal center line. The lower edge of the symbol must be one and one-fourth inches [31.7 millimeters] above the placard horizontal center line. The lower white area must have a one-eighth-inch [3.2-millimeters] black solid line border extended from the edge of the yellow area to indicate the outer one-half-inch [12.7-millimeters] white placard border. The placard color must be yellow, black, and white.
- r. CORROSIVE placard. The word "CORROSIVE" must be across the center of the placard and made with letters two and one-sixteenth inches [52.4 millimeters] high with an eleven-thirty-seconds-inch [8.7-millimeters] stroke. The base of the top white triangle must be one and one-half inches [38.1 millimeters] above the placard horizontal center line. The lowest part of the symbol must be one and five-eighths inches [41.3 millimeters] above the placard horizontal center line. The height of the symbol measured from a horizontal line extended from the lowest part of the symbol must be three and one-fourth inches [82.5 millimeters] and the width across the widest

part must be seven and three-eighths inches [187.3 millimeters]. The upper white area must have a one-eighth-inch [3.2-millimeters] black solid line border as an extension from the edge of the black area to indicate the outer one-half-inch [12.7-millimeters] white placard border. The placard color must be black and white.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

CHAPTER 52-06-11
ROUTES TO BE USED

Section	
52-06-11-01	Populated Routes
52-06-11-02	Written Route Plans
52-06-11-03	Advance Notification

52-06-11-01. POPULATED ROUTES. Unless there is no practicable alternative, a motor vehicle which contains hazardous materials must be operated over routes which do not go through or near heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys. Operating convenience is not a basis for determining whether it is practicable to operate a motor vehicle in accordance with this section.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-11-02. WRITTEN ROUTE PLANS. Before a motor carrier requires or permits a motor vehicle containing class A or class B explosives to be operated, the carrier must prepare a written plan of a route that complies with section 52-06-11-01 for that vehicle and must furnish a copy of the written plan to the driver. However, the driver may prepare the written plan as agent for the motor carrier when the driver begins the trip at a location other than the carrier's terminal.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-11-03. ADVANCE NOTIFICATION. The motor vehicle department shall study the feasibility of requiring advance notification of the transport of etiologic agents and radioactive material.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

CHAPTER 52-06-12
MISCELLANEOUS PROVISIONS

Section	
52-06-12-01	Certain Cargoes Prohibited
52-06-12-02	Transportation of Etiologic Agents
52-06-12-03	Bung Labels
52-06-12-04	Reserved
52-06-12-05	Matter Incorporated by Reference

52-06-12-01. CERTAIN CARGOES PROHIBITED. There shall not be included in any cargo of explosives any flammable liquids, acids, or corrosive liquids, oxidizers, or combustible materials, other than the explosives themselves, which may have such characteristics. Blasting caps or detonators shall not be transported upon the same vehicle with other explosives, nor shall electric blasting caps be transported upon any vehicle equipped with a radio transmitter. (It is recommended, but not required, that transporters of electric blasting caps comply with the guidelines of IME Safety Library Publication No. 20 (ANSI C-95.4), "Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Electric Blasting Caps" (October, 1978).) The foregoing provisions of this section shall be subject to such exceptions as are permitted by 49 C.F.R. 177.848, "Loading and Storage Chart for Hazardous Materials".

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-12-02. TRANSPORTATION OF ETIOLOGIC AGENTS. No person may knowingly transport or cause to be transported in interstate traffic, directly or indirectly, any material, including but not limited to, diagnostic specimens and biological products, containing, or reasonably believed by such person to contain, an etiologic agent unless such material is packaged to withstand leakage of contents, shocks, pressure changes, and other conditions incident to ordinary handling in transportation. Each package containing an etiologic agent, except a diagnostic specimen or a biological product, must be labeled as follows: a rectangle measuring fifty-one millimeters [2 inches] high and one hundred two and five-tenths millimeters [4 inches] long, predominantly red printing on a white background.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-12-03. BUNG LABELS. When the vapor pressure exceeds sixteen pounds per square inch [7.26 kilograms per 6.45 square centimeters], absolute, at one hundred degrees Fahrenheit [37.78 degrees Celsius], but does not exceed forty pounds per square inch [18.14 kilograms per 6.45 square centimeters] absolute, at one hundred degrees Fahrenheit [37.78 degrees Celsius], a flammable liquid shipped in a metal drum or barrel must be labeled near the bung with a white rectangular label or tag measuring five by three inches [12.7 by 7.62 centimeters], bearing the following wording:

CAUTION. Unscrew this bung SLOWLY. Do not unscrew entirely until all interior pressure has escaped through the loosened threads. REMOVE BUNG IN OPEN AIR. Keep all open flame lights and fires away. Enclosed electric lights are safe.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

52-06-12-04. (RESERVED).

52-06-12-05. MATTER INCORPORATED BY REFERENCE. There is incorporated by reference in this article all matter referred to that is not specifically set forth. These materials are hereby made a part of the regulations of this article. Specifically incorporated by reference are the following: "Hazardous Materials Table", 49 C.F.R. 172.101, and "Loading and Storage Chart for Hazardous Materials," 49 C.F.R. 177.848.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44

CHAPTER 52-06-13
INSPECTION AND ENFORCEMENT

Section
52-06-13-01 Inspection of Vehicles
52-06-13-02 Enforcement

52-06-13-01. INSPECTION OF VEHICLES. Inspection of vehicles engaged in the transport of hazardous materials may be made pursuant to the provisions of North Dakota Century Code chapter 39-21.1, this article, or any other relevant provision of the statutes or administrative regulations of North Dakota. However, a separate inspection shall not be required for the purposes of this article.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

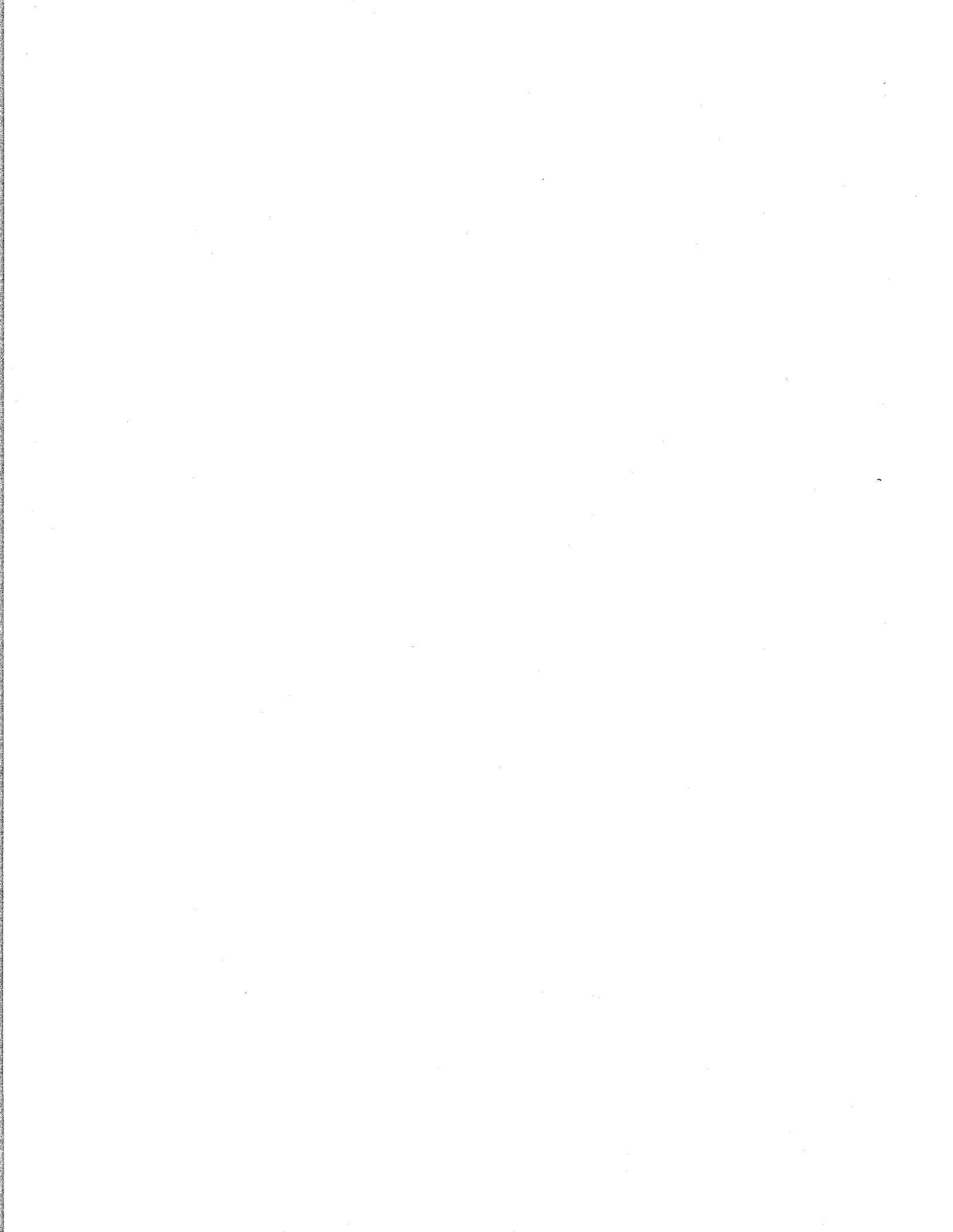
Law Implemented
NDCC 39-04-05,
39-21-44

52-06-13-02. ENFORCEMENT. The powers of enforcing the requirements of this article shall reside in the state highway patrol pursuant to the authority granted in North Dakota Century Code section 39-03-09. The requirements of this article may also be enforced by officers and inspectors designated by the commissioner of the state highway department. No county or municipal government shall be authorized to enforce the provisions of this article unless a written communication is first provided to the motor vehicle department indicating that the sole function of the authorized enforcement personnel is the enforcement of the provisions of this article.

History: Effective January 1, 1980.

General Authority
NDCC 39-02-03

Law Implemented
NDCC 39-04-05,
39-21-44





TITLE 69

PUBLIC SERVICE COMMISSION

STAFF COMMENT: Article 69-05.3 contains all new material and is not underscored.

Article

- 69-01 General Administration
- 69-02 Practice and Procedure
- 69-03 Motor Carrier Division
- 69-04 Traffic Division
- 69-05 Surface Coal Mining and Reclamation Operations [Superseded]
- 69-05.1 Surface Coal Mining and Reclamation Operations
- 69-05.2 Reserved
- 69-05.3 Abandoned Mine Land Reclamation
- 69-06 Energy Conversion and Transmission Facility Siting
- 69-07 Public Warehousing and Roving Grain and Hay Buyers Division
- 69-08 Auctioneers and Auction Clerks
- 69-09 Public Utility Division
- 69-10 Weights and Measures Division

ARTICLE 69-05.2

RESERVED

ARTICLE 69-05.3

ABANDONED MINE LAND RECLAMATION

Chapter
69-05.3-01 Abandoned Mine Land Reclamation

CHAPTER 69-05.3-01
ABANDONED MINE LAND RECLAMATION

Section
69-05.3-01-01 Definitions
69-05.3-01-02 Eligible Lands and Water - Bond Forfeiture
69-05.3-01-03 Abandoned Mine Reclamation Plan - Reclamation
Project Evaluation - Factors
69-05.3-01-04 Reclamation Contracts
69-05.3-01-05 Extraction of Remaining Coal Deposits
69-05.3-01-06 Affected Lands - Right of Entry - Notice
69-05.3-01-07 Consent to Entry
69-05.3-01-08 Entry for Studies or Exploration - Notice
69-05.3-01-09 Entry for Emergency Reclamation
69-05.3-01-10 Land Acquisition - Limitations
69-05.3-01-11 Land Acquisition - Procedures
69-05.3-01-12 Acceptance of Gifts of Land
69-05.3-01-13 Management of Acquired Lands
69-05.3-01-14 Disposition of Reclaimed Lands
69-05.3-01-15 Appraisals

69-05.3-01-01. DEFINITIONS.

1. "Emergency" means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal abandoned mine reclamation program procedures.
2. "Reclamation activities" means restoration, reclamation, abatement, control, or prevention of adverse effects of mining.

History: Effective January 1, 1980.

General Authority
NDCC 38-14.2-03

Law Implemented
NDCC 38-14.2-02

69-05.3-01-02. ELIGIBLE LANDS AND WATER - BOND FORFEITURE. In addition to the lands covered by North Dakota Century Code section 38-14.2-06, lands and water are eligible for reclamation activities if there is no continuing responsibility for reclamation by an operator or permittee under North Dakota Century Code chapter 38-14.1 as the result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation.

History: Effective January 1, 1980.

General Authority
NDCC 38-14.2-03

Law Implemented
NDCC 38-14.2-02

69-05.3-01-03. ABANDONED MINE RECLAMATION PLAN - RECLAMATION PROJECT EVALUATION - FACTORS. Proposed reclamation projects and completed reclamation work shall be evaluated in terms of the factors stated in this section. The factors shall be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the same objective under North Dakota Century Code section 38-14.2-07. Completed reclamation shall be evaluated in terms of the factors set forth below as a means of identifying conditions which should be avoided, corrected, or improved in plans for future reclamation work. The factors shall include:

1. The need for reclamation work to accomplish one or more specific reclamation objectives as stated in North Dakota Century Code section 38-14.2-07.
2. The availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts.
3. The specific benefits of reclamation which are desirable in the area in which the work will be carried out. Benefits to be considered include but are not limited to:
 - a. Protection of human life, health, or safety.
 - b. Protection of the environment, including air and water quality, abatement of erosion and sedimentation, fish, wildlife, and plant habitat, visual beauty, historic or cultural resources, and recreation resources.
 - c. Protection of public or private property.
 - d. Improvement of environmental conditions which may be considered to generally enhance the quality of human life.
 - e. Improvement of the use of natural resources, including postreclamation land uses which:

- (1) Increase the productive capability of the land to be reclaimed.
 - (2) Enhance the use of surrounding lands consistent with existing land use plans.
 - (3) Provide for construction or enhancement of public facilities.
 - (4) Provide for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located.
- f. Demonstration to the public and industry of methods and technologies which can be used to reclaim areas disturbed by mining.
4. The acceptability of any additional adverse impacts to people or the environment that will occur during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation.
 5. The costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation.
 6. The availability of additional coal or other mineral or material resources within the project area which:
 - a. Results in a reasonable probability that the desired reclamation will be accomplished during the process of future mining; or
 - b. Requires special consideration to assure that the resource is not lost as a result of reclamation and that the benefits of reclamation are not negated by subsequent, essential resource recovery operations.
 7. The acceptability of postreclamation land uses in terms of compatibility with land uses in the surrounding area, consistency with applicable state and local land use plans and laws, and the needs and desires of the community in which the project is located.
 8. The probability of postreclamation management, maintenance, and control of the area consistent with the reclamation completed.

History: Effective January 1, 1980.

General Authority
NDCC 38-14.2-03

Law Implemented
NDCC 38-14.2-02,
38-14.2-03,
38-14.2-07

69-05.3-01-04. RECLAMATION CONTRACTS. The commission may enter into any public and private contractual agreements deemed necessary to effectively

accomplish the purposes of the abandoned mine reclamation program, including contracts for:

1. Reclamation and restoration of land and water resources;
2. Construction and construction inspection;
3. Operation and maintenance of facilities;
4. Planning and engineering;
5. Research and demonstration projects;
6. Extraction of remaining coal deposits; and
7. Such other purposes as the commission deems necessary.

History: Effective January 1, 1980.

General Authority
NDCC 38-14.2-03

Law Implemented
NDCC 38-14.2-03

69-05.3-01-05. EXTRACTION OF REMAINING COAL DEPOSITS. In order to maximize resource recovery, the commission may require the extraction of any remaining coal deposits in areas to be reclaimed under North Dakota Century Code chapter 38-14.2, and may enter into a contractual agreement with the owner of the coal, if necessary, subject to the following conditions:

1. Extraction must be performed by a qualified contractor approved by the commission;
2. Extraction must comply with the applicable performance standards of North Dakota Century Code section 38-14.1-24 as specified by the commission in the agreement;
3. Compensation may be paid to the owner of the coal, if warranted, under such terms and conditions as the commission may prescribe; and
4. Such other conditions as the commission may prescribe in the agreement.

History: Effective January 1, 1980.

General Authority
NDCC 38-14.2-03

Law Implemented
NDCC 38-14.2-03

69-05.3-01-06. AFFECTED LANDS - RIGHT OF ENTRY - NOTICE. The commission shall give at least thirty days notice before entry upon property pursuant to North Dakota Century Code section 38-14.2-09.

History: Effective January 1, 1980.

General Authority
NDCC 38-14.2-03

Law Implemented
NDCC 38-14.2-09

69-05.3-01-07. CONSENT TO ENTRY. The commission shall take all reasonable actions to obtain written consent from the owner of record of the land or property to be entered in advance of such entry. The consent shall be in the form of a signed statement by the owner of record of the owner's authorized agent which, at a minimum, includes a legal description of the land to be entered, the projected nature of work to be performed on the lands, and any special conditions for entry. The statement shall not include any commitment by the commission to perform reclamation work nor to compensate the owner for entry.

History: Effective January 1, 1980.

General Authority
NDCC 38-14.2-03

Law Implemented
NDCC 38-14.2-08,
38-14.2-09

69-05.3-01-08. ENTRY FOR STUDIES OR EXPLORATION - NOTICE.

1. If the owner of the land to be entered under North Dakota Century Code section 38-14.2-08 will not provide consent to entry, the commission shall give notice in writing to the owner of its intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining or noncoal mining practices which may be harmful to the public health, safety, or general welfare.
2. The notice shall be by mail to the owner, if known, and shall include a statement of the reasons why entry is believed necessary.
3. If the owner is not known, or the current mailing address of the owner is not known, or the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertized once in the official newspaper of each county and in other daily newspapers of general circulation in each county wherein the land lies.
4. Notice shall be given at least thirty days before entry.

5. Entry required to investigate and explore reported emergency conditions will be governed by the provisions of subsection 3 of section 69-05.3-01-09.

History: Effective January 1, 1980.

General Authority
NDCC 38-14.2-03

Law Implemented
NDCC 38-14.2-08

69-05.3-01-09. ENTRY FOR EMERGENCY RECLAMATION.

1. The commission, its agents, employees, or contractors shall have the right to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining or noncoal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare.
2. Prior to entry under this section, the commission shall make a written finding with supporting reasons that:
 - a. An emergency exists constituting a danger to the public health, safety, or general welfare.
 - b. Emergency restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining or noncoal mining is necessary.
 - c. No other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining or noncoal mining practices.
3. Notice to the owner shall not be required prior to entry for emergency reclamation.
 - a. The commission shall make reasonable efforts to notify such owner and obtain consent prior to entry consistent with the emergency conditions that exist.
 - b. Written notice shall be given to the owner as soon after entry as practical.
 - c. The notice shall be mailed to the owner, if known, and shall include a copy of the findings required by this section.
 - d. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted on the property entered in one or more places where it is readily visible to the public and advertised once in the official newspaper of each county and in other daily newspapers of general circulation in each county wherein the land lies.

- e. The notice posted on the property and advertised in the newspapers shall include a statement that an emergency existed and where the findings required by this section may be inspected or obtained.
4. The moneys expended for such work, and the benefits accruing to any such premises so entered, shall be chargeable against such land to the extent allowed in North Dakota Century Code section 38-14.2-14 and shall mitigate or offset any claim in, or any action brought by any owner of any interest in such premises for any alleged damages as a result of the entry, provided however, that this provision is not intended to create new rights of action or to eliminate existing immunities.
5. The reclamation work performed under this section shall be limited to that which is necessary to eliminate the existing emergency conditions.

History: Effective January 1, 1980.

General Authority
NDCC 38-14.2-03

Law Implemented
NDCC 38-14.2-08,
38-14.2-09

69-05.3-01-10. LAND ACQUISITION - LIMITATIONS. The commission shall acquire only such interests in land under North Dakota Century Code section 38-14.2-10 as are necessary for the reclamation work planned or the postreclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if:

1. Such interests are necessary to the reclamation work planned or the postreclamation use of the land; and
2. Adequate written assurances cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

History: Effective January 1, 1980.

General Authority
NDCC 38-14.2-03

Law Implemented
NDCC 38-14.2-10

69-05.3-01-11. LAND ACQUISITION - PROCEDURES.

1. An appraisal of the fair market value of all land or interest in land to be acquired shall be obtained from an independent professional appraiser by the commission. The appraisal shall be acknowledged before a notary public or other officer authorized by law to administer oaths and shall state the fair market value of the land as adversely affected by past

coal or noncoal mining and shall otherwise conform to generally accepted appraisal practices.

2. When practical, acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past coal or noncoal mining.
3. When necessary, land or interests in land may be acquired by condemnation pursuant to the procedures of North Dakota Century Code chapter 32-15 and other laws governing eminent domain. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interest in land from a willing seller.

History: Effective January 1, 1980.

General Authority
NDCC 38-14.2-03

Law Implemented
NDCC 38-14.2-10

69-05.3-01-12. ACCEPTANCE OF GIFTS OF LAND.

1. The commission may accept donations of title to land or interest in land that is necessary for reclamation activities.
2. A donation shall not be accepted if the terms and conditions of acceptance are inconsistent with the objectives or requirements of the abandoned mine reclamation program or North Dakota Century Code chapter 38-14.2.
3. Offers to make a gift of such land or interest in land shall be in writing and shall include.
 - a. A statement of the interest which is being offered.
 - b. A legal description of the land and a description of any improvements on it.
 - c. A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor.
 - d. A statement that:
 - (1) The offeror is the record owner of the interest being offered.
 - (2) The interest offered is free and clear of all encumbrances except as clearly stated in the offer.
 - (3) There are no adverse claims against the interest offered.

- (4) There are no unredeemed tax deeds outstanding against the interest offered.
 - (5) There is no continuing responsibility for reclamation by an operator or permittee under North Dakota Century Code chapter 38-14.1 or other North Dakota reclamation laws.
- e. An itemization of any unpaid taxes or assessments levied, assessed, or due which could operate as a lien on the interest offered.
4. If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed shall state that it is made "as a gift under North Dakota Century Code chapter 38-14.2." Title to donated land shall be in the name of the state of North Dakota.

History: Effective January 1, 1980.

General Authority
NDCC 38-14.2-03

Law Implemented
NDCC 38-14.2-10

69-05.3-01-13. MANAGEMENT OF ACQUIRED LANDS.

1. Land acquired by the commission under North Dakota Century Code section 38-14.2-10 may be used pending disposition for any lawful purpose that is not inconsistent with the reclamation activities and postreclamation uses for which it was acquired.
2. Any user of land acquired under this chapter shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the costs to the commission for providing the benefit, whichever is appropriate. The commission may waive the fee if it is found in writing that such a waiver is in the public interest.
3. All use fees shall be deposited in the state abandoned mine reclamation fund, after expenditures for maintenance have been deducted.

History: Effective January 1, 1980.

General Authority
NDCC 38-14.2-03

Law Implemented
NDCC 38-14.2-04,
38-14.2-10

69-05.3-01-14. DISPOSITION OF RECLAIMED LANDS.

1. Prior to the disposition of any land acquired under North Dakota Century Code section 38-14.2-10, the commission shall:

- a. Publish a notice which describes the proposed disposition of the land in the official newspaper of each county and in other daily newspapers of general circulation in each county wherein the land lies once a week for four successive weeks.
 - (1) The notice shall provide at least thirty days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted.
 - (2) The notice shall also state that a public hearing will be held if requested by any person.
 - b. Hold a public hearing if requested as a result of the public notice.
 - (1) The commission may determine that a hearing is appropriate even if a request is not received.
 - (2) The hearing shall be scheduled at a time and place that affords local citizens and governments the maximum opportunity to participate.
 - (3) The time and place of the hearing shall be advertised in the official newspaper in each county and in other daily newspapers of general circulation in each county wherein the land lies at least thirty days before the hearing.
 - (4) All comments received at the hearing shall be recorded.
 - c. Make a written finding that the proposed disposition is appropriate considering all comments received and consistent with any local, state, or federal laws or regulations which apply.
2. The commission may transfer, with the approval of the regional director of the office of surface mining reclamation and enforcement, United States department of the interior, the administrative responsibility for land acquired under North Dakota Century Code section 38-14.2-10 to any agency or political subdivision of the state of North Dakota, with or without cost to that agency or political subdivision. The agreement, including amendments, under which a transfer is made shall specify:
 - a. The purposes for which the land may be used; and
 - b. That the administrative responsibility for the land will revert to the commission if, at any time in the future, the land is not used for the purposes specified.
 3. The commission may, with approval by the regional director of the office of surface mining reclamation and enforcement, United States department of the interior, transfer title to abandoned and unreclaimed land to the United States to be reclaimed and administered by the office of surface mining reclamation and enforcement.

- a. The commission shall have a preference right to purchase such land from the office of surface mining reclamation and enforcement after reclamation is completed.
 - b. The price to be paid by the commission shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the commission.
4. The commission, with the approval of the regional director of the office of surface mining reclamation and enforcement, United States department of the interior, may sell land acquired under North Dakota Century Code section 38-14.2-10 by public sale if such land is suitable for industrial, commercial, residential, or recreational development and if such development is consistent with local or state land use plans, if any, for the area in which the land is located.
 5. Land may be sold by public sale by the commission pursuant to North Dakota Century Code section 38-14.2-12 only if it is found that retention by the commission, or disposal under other subsections of this section, is not in the public interest.
 6. All moneys received from disposal of land under this section shall be deposited in the state abandoned mine reclamation fund.

History: Effective January 1, 1980.

General Authority
NDCC 38-14.2-03

Law Implemented
NDCC 38-14.2-12,
38-14.2-13

69-05.3-01-15. APPRAISALS.

1. An appraisal of the fair market value of land to be reclaimed shall be obtained by the commission from an independent professional appraiser. The appraisal shall be acknowledged before a notary public or other officer authorized by law to administer oaths and shall conform to generally accepted appraisal practices. The appraisal shall be obtained before any reclamation activities are started, unless the work must start without delay to abate an emergency. If work must start because of an emergency, the appraisal shall be completed at the earliest practical time and before related nonemergency work is commenced. The appraisal shall state the fair market value of the land as adversely affected by past coal or noncoal mining.
2. An appraisal of the fair market value of all land reclaimed shall be obtained after all reclamation activities have been completed. The appraisal shall be obtained in accordance with subsection 1 and shall state the market value of the land as reclaimed.
3. For reclamation on private lands, the landowner, if known, shall be provided with a statement of the increase in market value, an itemized

statement of reclamation expenses, and notice that a lien will or will not be filed in accordance with North Dakota Century Code section 38-14.2-14.

4. Appraisals for privately owned land which fall under subdivisions a, b, and c of subsection 1 and subsection 2 of North Dakota Century Code section 38-14.2-14 may be obtained from either an independent or staff professional appraiser.

History: Effective January 1, 1980.

General Authority
NDCC 38-14.2-03

Law Implemented
NDCC 38-14.2-07,
38-14.2-14

STAFF COMMENT: Chapter 69-09-06 contains all new material and thus is not underscored.

ARTICLE 69-09

PUBLIC UTILITY DIVISION

Chapter

69-09-01	Standards of Service - Gas
69-09-02	Standards of Service - Electric
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CHAPTER 69-09-01

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CHAPTER 69-09-06
PROHIBITION ON SALE AND DIRECT INDUSTRIAL
USE OF NATURAL GAS FOR OUTDOOR LIGHTING

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69-09-06-01. DEFINITIONS. As used throughout this chapter, except where otherwise indicated:

1. "Commission" means the public service commission. The commission is the state regulatory authority for all purposes relating to section 402 of the Powerplant and Industrial Fuel Use Act of 1978 [Pub. L. 95-620; 92 Stat. 3315].
2. "Direct industrial customer" means an industrial user of natural gas who obtains the natural gas under a contract with a natural gas pipeline company, or any agent thereof.
3. "Local distribution company" means any person engaged in the business of interstate or intrastate transportation and local distribution of natural gas for ultimate consumption.
4. "Natural gas" means any fuel consisting in whole or in part of natural gas, liquid petroleum gas, or synthetic gas derived from petroleum or natural gas liquids.
5. "Natural gas outdoor lighting fixture" means a complete stationary natural gas outdoor lighting unit, or any parts thereof, which may include a mantle or mantles together the parts designed to distribute

the light, to position and protect the mantle or mantles and fuel supply lines, and to connect the mantle or mantles to the fuel supply.

6. "Pipeline company" means any person engaged in the business of interstate or intrastate transportation of natural gas by pipeline other than as a local distribution company.
7. "Residence" means any single or multiple family dwelling unit, including commonly held areas associated with such unit and including multiple family dwelling units which may be classified by the local distribution company as "commercial" customers.
8. "Substitute lighting" means outdoor lighting which does not directly burn natural gas.

History: Effective January 1, 1980.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-06-02. GENERAL PROHIBITION ON THE INSTALLATION OF NATURAL GAS OUTDOOR LIGHTING FIXTURES.

1. Prohibition. No local distribution company or direct industrial customer shall install any natural gas outdoor lighting fixture.
2. Effective date. The prohibition stated in subsection 1 shall be effective beginning on November 9, 1978.

History: Effective January 1, 1980.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-06-03. GENERAL PROHIBITION ON THE SALE OF NATURAL GAS FOR USE IN OUTDOOR LIGHTING.

1. Prohibition. No local distribution company shall knowingly supply natural gas for use in outdoor lighting.
2. Effective dates.
 - a. In the case of any residential, commercial, or industrial customer, the prohibition stated in subsection 1 shall be effective on May 8, 1979, unless a later effective date is applicable under subdivisions b, c, or d of this subsection.

- b. In the case of any industrial or commercial structure to which natural gas was being supplied by the local distribution company for outdoor lighting use on November 9, 1978, the prohibition stated in subsection 1 shall be effective on November 5, 1979.
- c. In the case of any municipal outdoor lighting fixture to which natural gas was being supplied by the local distribution company for outdoor lighting use on November 9, 1978, the prohibition stated in subsection 1 shall be effective January 1, 1982.
- d. In the case of any outdoor lighting fixture used in connection with a residence to which natural gas was being supplied by the local distribution company for outdoor lighting use on November 9, 1978, the prohibition stated in subsection 1 shall be effective January 1, 1982.

History: Effective January 1, 1980.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-06-04. PROHIBITION ON THE USE OF NATURAL GAS BY DIRECT INDUSTRIAL CUSTOMERS FOR OUTDOOR LIGHTING.

- 1. Prohibition. No direct industrial customer shall use natural gas for outdoor lighting.
- 2. Effective dates.
 - a. In the case of a direct industrial customer who was using natural gas for outdoor lighting on November 9, 1978, the prohibition stated in subsection 1 shall be effective on November 5, 1979.
 - b. In the case of a direct industrial customer using a natural gas outdoor lighting fixture that:
 - (1) Was installed prior to the ban on the installation of such fixture set out in section 69-09-06-02; and
 - (2) Was not using natural gas for such fixture on May 10, 1979,the prohibition stated in subsection 1 shall be effective on May 8, 1979.

History: Effective January 1, 1980.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-06-05. POWERS AND DUTIES OF THE COMMISSION. The commission shall have and may exercise the following powers and duties:

1. To issue orders exempting certain natural gas outdoor lighting fixtures from the prohibitions set forth in this chapter. Such exemption orders may be issued on the basis of:
 - a. Lighting of historical significance;
 - b. Memorial lighting;
 - c. Commercial lighting of historical significance;
 - d. Lighting which is necessary to protect the safety of persons and property;
 - e. The necessity to permit the installation of substitute lighting where no adequate outdoor lighting other than that using natural gas existed on November 9, 1978;
 - f. Substantial expense which would not be cost justified; or
 - g. The public interest and consistency with the purposes of the Powerplant and Industrial Fuel Use Act of 1978 [Pub. L. 95-620; 92 Stat. 3315].
2. To establish criteria to be used in making any determination to issue orders relating to exemptions from the prohibitions set forth in this chapter.
3. To establish procedures for the acceptance, processing, consideration, and the grant or denial of applications and requests for exemptions from the prohibitions set forth in this chapter.
4. To establish enforcement policies, criteria, and procedures with respect to the prohibitions set forth in this chapter.
5. To enforce the prohibitions set forth in this chapter, including the assessment of civil penalties for noncompliance with such prohibitions as provided in North Dakota Century Code chapter 49-07.
6. To initiate investigations and to compel the submission of data or relevant documents.
7. To make annual reports to the economic regulatory administration, United States department of energy, as required by 10 C.F.R. 516.31.

8. To consult with the state historical board when decisions are made or options are considered relating to historic preservation.

History: Effective January 1, 1980.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-06-06. EXEMPTIONS - LIGHTING OF HISTORICAL SIGNIFICANCE.

1. A federal, state, or local government agency, or an appropriate historical association, may petition the commission for an exemption from the prohibitions set forth in sections 69-09-06-02 and 69-09-06-03 for any property on the basis of historical significance.
2. In the case of a petition for an exemption from the prohibition set forth in section 69-09-06-02, an exemption shall be granted only for replacement of a natural gas outdoor lighting fixture that was installed prior to November 9, 1978. Such replacement shall include:
 - a. Replacement of an extant original or reproduction fixture; or
 - b. Installation of an original or reproduction fixture to replace a fixture which existed during the life of the specified historic property.
3. The criteria for an exemption on the basis of historic significance shall be satisfied upon certification, by the petitioner, that the specifically identified natural gas outdoor lighting fixture directly contributes to the quality or significance of the specifically identified historic property or district, as applicable, and upon a finding by the commission that the specifically identified historic property:
 - a. Is listed on the state historic sites registry;
 - b. Is listed on or is officially determined by the secretary of the interior to be eligible for listing on the national register of historic places; or
 - c. Is in a district where state or local statutes are certified as providing adequate protection of historic places by the secretary of the interior pursuant to the Tax Reform Act of 1976 [26 U.S.C. 191, 280B], and the regulations promulgated thereunder.
4. An exemption request shall result in a stay from the prohibitions set forth in this chapter if:
 - a. The petitioner has certified that the specifically identified natural gas outdoor lighting fixture directly contributes to the

quality of significance of the specifically identified historic property or district, as applicable; and

- b. An application is pending before the department of the interior for inclusion in one of the categories specified in subdivisions b or c of subsection 3.

History: Effective January 1, 1980.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-06-07. EXEMPTIONS - MEMORIAL LIGHTING.

1. A federal, state, or local government agency, or an appropriate historical association, may petition the commission for an exemption from the prohibitions set forth in sections 69-09-06-02 and 69-09-06-03 on the basis of memorial lighting.
2. In the case of a petition for an exemption from the prohibition set forth in section 69-09-06-02, an exemption shall be granted only for replacement of a natural gas outdoor lighting fixture that was installed prior to November 9, 1978. Such replacement shall include replacement of an extant fixture only.
3. The criteria for an exemption on the basis of memorial lighting shall be satisfied upon a finding by the commission that the specifically identified outdoor lighting fixture directly contributes to preserving the memory of a deceased person or persons.

History: Effective January 1, 1980.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-06-08. EXEMPTIONS - COMMERCIAL LIGHTING OF HISTORICAL SIGNIFICANCE.

1. A person using natural gas outdoor lighting for commercial purposes may petition the commission for an exemption from the prohibitions set forth in sections 69-09-06-02 and 69-09-06-03 on the basis of historical significance.
2. In the case of a petition for an exemption from the prohibition set forth in section 69-09-06-02, an exemption shall be granted only for replacement of a natural gas outdoor lighting fixture that was installed prior to November 9, 1978. Such replacement shall include:
 - a. Replacement of an extant original or reproduction fixture; or

- b. Installation of an original or reproduction fixture to replace a fixture which existed during the life of the specified historic property.
3. The criteria for an exemption on the basis of historical significance shall be satisfied upon certification, by the petitioner, that the specifically identified natural gas outdoor lighting fixture directly contributes to the quality of significance of the specifically identified historic property or district, as applicable, and upon a finding by the commission that the specifically identified historic property:
 - a. Is listed on the state historic sites registry;
 - b. Is listed on or is officially determined by the secretary of the interior to be eligible for listing on the national register of historic places; or
 - c. Is in a district where state or local statutes are certified as providing adequate protection of historic places by the secretary of the interior pursuant to the Tax Reform Act of 1976 [26 U.S.C. 191, 280B], and the regulations promulgated thereunder.
4. An exemption request shall result in a stay from the prohibitions set forth in this chapter if:
 - a. The petitioner has certified that the specifically identified natural gas outdoor lighting fixture directly contributes to the quality of significance of the specifically identified historic property or district, as applicable; and
 - b. An application is pending before the department of the interior for inclusion in one of the categories specified in subdivisions b or c of subsection 3.

History: Effective January 1, 1980.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-06-09. EXEMPTIONS - SAFETY OF PERSONS AND PROPERTY.

1. A local distribution company, a direct industrial customer, or an interested person, may petition the commission for an exemption from the prohibitions set forth in sections 69-09-06-03 and 69-09-06-04 on the basis of the necessity to protect the safety of persons and property if such natural gas was being supplied on November 9, 1978.
2. The criteria for an exemption on the basis of the necessity to protect the safety of persons and property shall be satisfied upon a finding by the commission that:

- a. Compliance with the prohibition would significantly increase the chances of bodily injury or damage to property; and
- b. Compliance with the prohibition would significantly increase the chances of the occurrence of crime; or
- c. The lighting is necessary because other existing lighting does not provide lighting adequate to ensure conformance with american national standards institute standard no. D 12.1, "The American National Standard Practice for Roadway Lighting;" and
- d. Compliance with the prohibition:
 - (1) Would impose a substantial hardship on a person other than a local distribution company, a pipeline company, or a company that manufactures or supplies natural gas outdoor lighting fixtures, in terms of personal income or savings; or
 - (2) Would not be justified by the savings likely to be accrued over the useful life of the substitute lighting facility.

History: Effective January 1, 1980.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-06-10. EXEMPTIONS - SUBSTANTIAL EXPENSE.

1. A local distribution company, a direct industrial customer, or an interested person, may petition the commission for an exemption from the prohibitions contained in sections 69-09-06-03 and 69-09-06-04 on the basis of substantial expense which would not be cost justified, if such natural gas was being supplied on November 9, 1978.
2. The criteria for an exemption based on substantial expense which would not be cost justified shall be satisfied upon a finding by the commission that compliance with the prohibitions set forth in sections 69-09-06-03 and 69-09-06-04 would substantially and negatively affect the profit margin, return on investment, or rates of a local distribution company or direct industrial customer.

History: Effective January 1, 1980.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-06-11. EXEMPTIONS - PUBLIC INTEREST.

1. A local distribution company, a direct industrial customer, or an interested person, may petition the commission for an exemption from the prohibitions set forth in sections 69-09-06-03 and 69-09-06-04 on the basis of public interest and consistency with the purposes of the Powerplant and Industrial Fuel Use Act of 1978 [Pub. L. 95-620; 92 Stat. 3315] if such natural gas was being supplied on November 9, 1978.
2. The criteria for an exemption on the basis of the public interest and consistency with the purposes of the Powerplant and Industrial Fuel Use Act of 1978 [Pub. L. 95-620; 92 Stat. 3315] shall be satisfied upon a finding by the commission that converting a specific natural gas outdoor lighting fixture or fixtures to substitute lighting would not reduce the use of natural gas.

History: Effective January 1, 1980.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

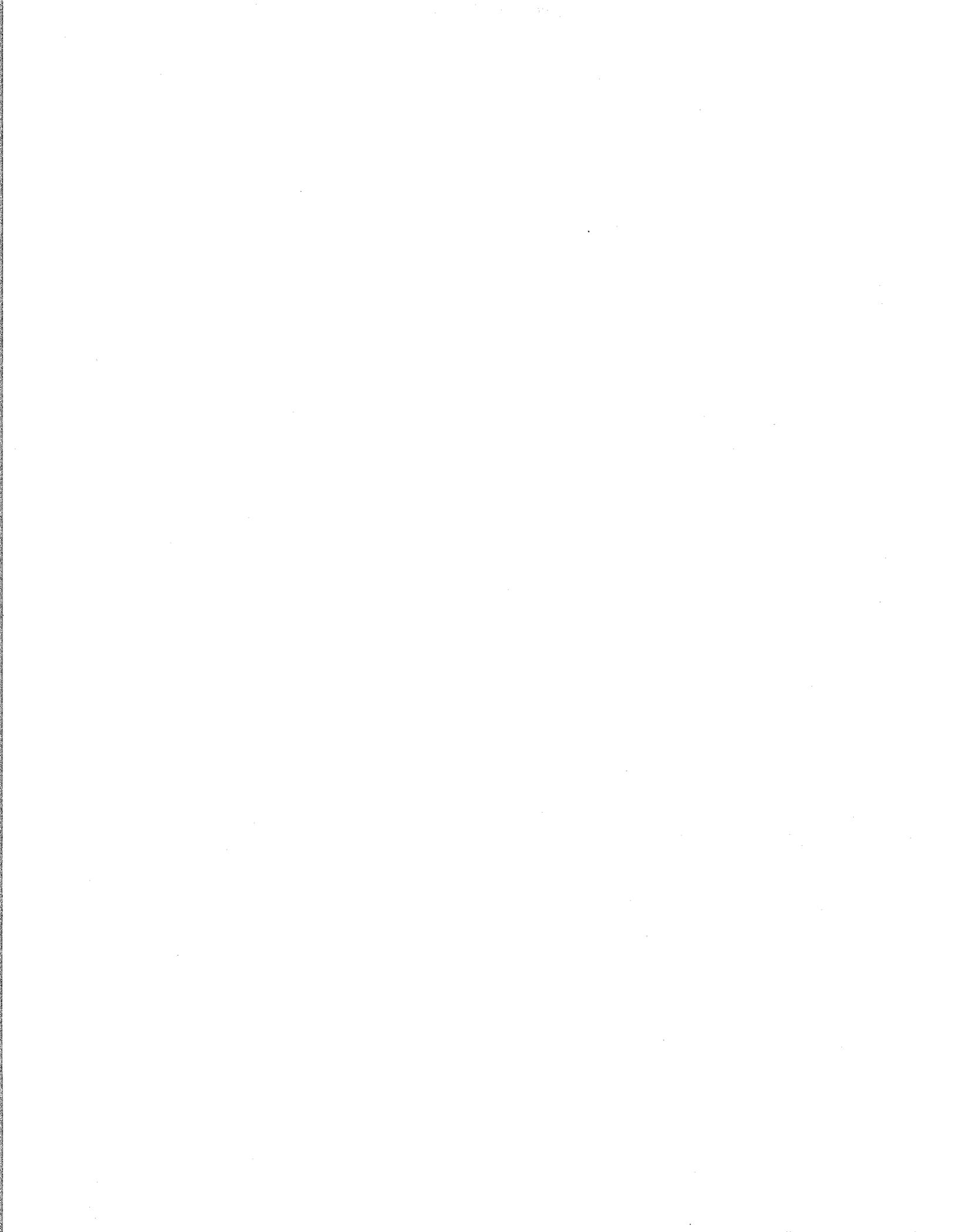
69-09-06-12. TEMPORARY EXEMPTION - TIME TO INSTALL SUBSTITUTE LIGHTING.

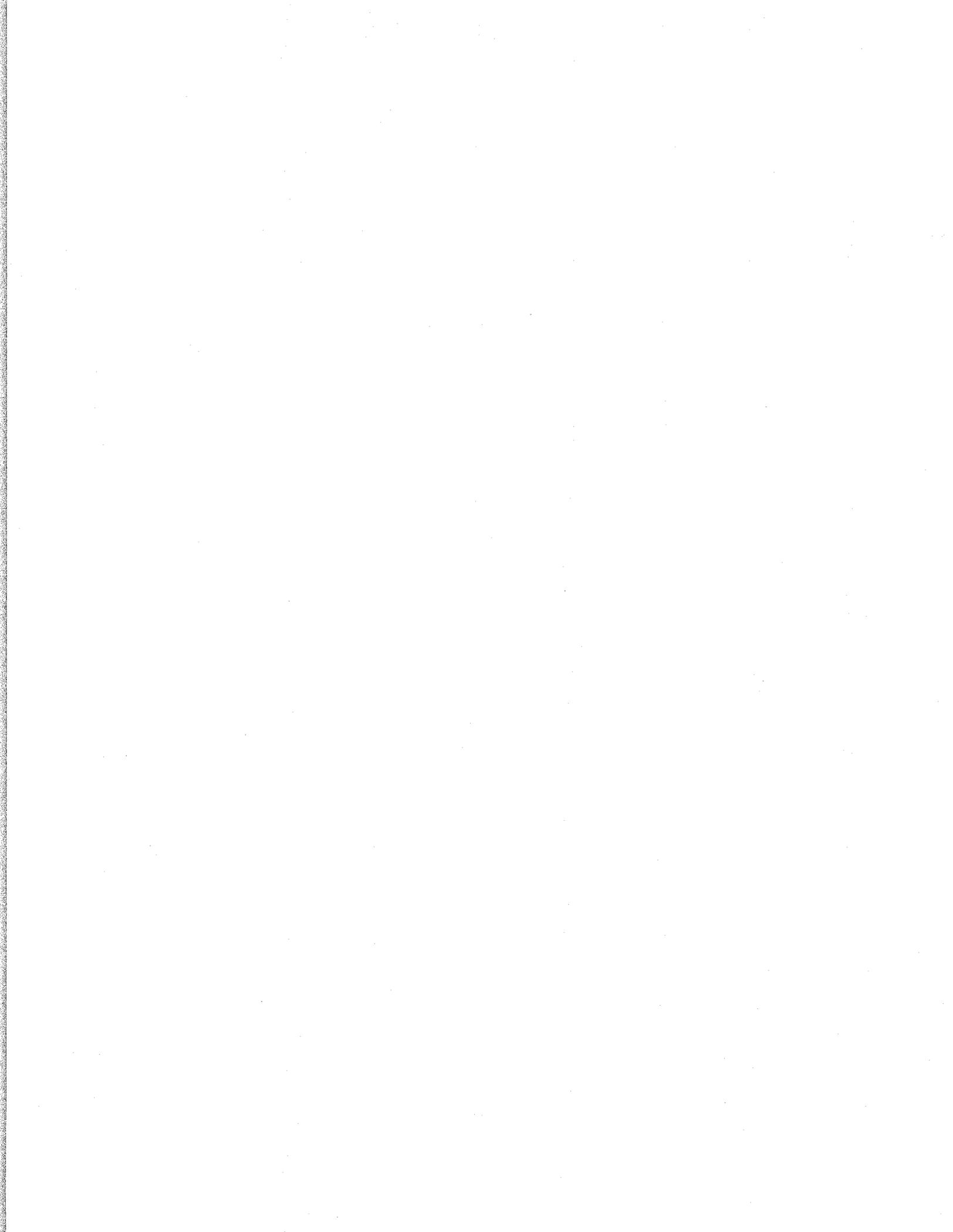
1. A local distribution company, a direct industrial customer, or an interested person, may petition the commission for a temporary exemption from the prohibitions set forth in sections 69-09-06-03 and 69-09-06-04.
2. A temporary exemption shall be granted on the basis of the time needed to permit the installation of substitute lighting where no adequate outdoor lighting, other than that using natural gas, exists, if such natural gas was being supplied on November 9, 1978.
3. The criteria for a temporary exemption on the basis of time to install substitute lighting shall be satisfied upon a finding by the commission that:
 - a. No adequate outdoor lighting, other than that using natural gas is available at the time and the applicable prohibition became effective; and
 - b. The time required for installation of the substitute lighting will not extend beyond one year from the date the applicable prohibition became effective, unless facts and circumstances warrant a longer period.
4. Neither a distribution utility nor a customer shall be considered to be in violation of section 69-09-06-03 until thirty days after an application for exemption is denied.

History: Effective January 1, 1980.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02





TITLE 75

Social Service Board

STAFF COMMENT: The changes to sections 75-02-01-07 and 75-02-02-07 are described in the synopses contained in other committee material.

75-02-01-07. RESIDENCE.

1. There is no durational state residence required for eligibility for an aid to families with dependent children grant.
2. No person who is otherwise eligible may be denied assistance under the aid to families with dependent children program if the person resides in the state within the meaning of the following definition: "~~A resident of the state is one who is living in the state voluntarily and not for a temporary purpose; that is, with no intention of presently removing therefrom. A child is residing in the state if the child is making the child's home in the state.~~"
 - a. Is living in the state voluntarily with the intention of making his or her home there and not for a temporary purpose. A child is a resident of the state in which he or she is living other than for a temporary basis. Residence may not depend upon the reason for which the individual entered the state, except insofar as it may bear upon whether he or she is there voluntarily or for a temporary purpose; or
 - b. At the time of application, is living in the state, is not receiving assistance from another state, and entered the state with a job commitment or seeking employment in the state, whether or not currently employed. Under this definition, a child is also a resident of the state in which the caretaker is a resident.

Residence is retained until abandoned. Temporary absence from the state, with subsequent returns or intent to return when the purposes of the absence have been accomplished, shall not interrupt continuity of residence."

3. Residence as defined herein for eligibility purposes for an aid to families with dependent children grant does not depend upon the reason

for which the individual entered the state except insofar as it may bear upon whether the individual is here for a "temporary purpose".

History: Amended effective January 1, 1980.

General Authority
NDCC 50-09-02

Law Implemented
NDCC 50-09-02,
45 CFR 233.40

75-02-02-07. CONDITIONS OF ELIGIBILITY.

1. No age, residence, citizenship, or other requirements will be imposed that is prohibited by title XIX of the Social Security Act.
2. Financial eligibility.
 - a. Persons receiving aid to families with dependent children or technically eligible to receive aid to families with dependent children on the basis of categorical relatedness shall be subject to the income levels set out below and to the resource eligibility standards set out under North Dakota Century Code chapter 50-09 and the resource rules and policies of the social service board pertaining to aid to families with dependent children eligibility except that those resource rules set out below which are more liberal in any particular case than the aid to families with dependent children rules and policies shall be applicable in the case of aid to families with dependent children recipients and those categorically related to the aid to families with dependent children program.
 - b. Persons receiving supplemental security income or technically eligible therefor on the basis of age, disability, or blindness shall be subject to the income levels set out below as well as the resource standards set out below.
 - c. The following levels of income and resources for maintenance, in total dollar amounts, will be used as a basis for establishing financial eligibility for medical assistance, and are in accordance with 45 C.F.R. 248.21:
 - (1) The income levels applicable to families of various sizes in determining eligibility for medical assistance will be according to income levels established by the social service board of North Dakota.
 - (2) Only twenty-five percent of the net income of the spouse of an aged, blind, or disabled individual who enters a long term care facility will be deemed as available to the aged, blind, or disabled individual in determining the eligibility of the aged, blind, or disabled individual for medical assistance while in such long term care facility. For the purposes of this

paragraph, the term "net income" means the income (whether earned or unearned) of the spouse remaining after deduction therefrom of the following:

- (a) Payments made for noncovered necessary medical care.
 - (b) Payments made for necessary health insurance coverage.
 - (c) Set aside of income for the spouse and other dependents not in long term care based upon the protected income levels set out above.
- (3) Only twenty-five percent of the net income of the parent or parents of a blind or disabled individual under twenty-one years of age will be deemed as available when the individual resides away from the home of the individual's parents on more than a temporary basis, e.g., the child is in a long term care facility. For the purposes of this paragraph, the term "net income" means the income (whether earned or unearned) of the parent or parents remaining after deduction therefrom of the following:
- (a) Payment made for noncovered necessary medical care.
 - (b) Payments made for necessary health insurance coverage.
 - (c) Reasonable work-related expenses for producing any earned income.
 - (d) Set aside of income for the parent or parents and their valid dependents based upon the protected income levels set out above.
- (4) All spousal resources or parental resources will be deemed as available to those aged, blind, or disabled individuals as set out in subsections b and c.
- d. Resources. The following property provisions will be applied in determining eligibility for medical assistance:
- (1) The home. The home of the individual or family will be exempt in determining eligibility for medical assistance. The home is defined as including the land on which it is located, providing the acreage does not exceed one hundred sixty contiguous acres [64.75 hectares] if rural or two acres [.81 hectares] if located in town. Acreage in excess of these amounts would be declared "real property other than home". The home will be considered occupied and exempt if the individual or family is temporarily absent but actually intends and is able to return within a reasonable length of time.
 - (2) Real property other than the home. Real property other than the home may not exceed an equity of two thousand five hundred dollars except that real property which is essential to earning

a livelihood shall be exempt from the limitation, if the liquidation of such assets would cause undue hardship. The criteria of undue hardship is met when transfer of an income-producing asset would result in reduction of the periodic net income of the transferor and the transferor's valid dependents below the appropriate income level set out in paragraph 1 of subdivision c of subsection 2 of section 75-02-02-07. If undue hardship is not a consideration, equity in excess of the two thousand five hundred dollars would be considered available for meeting medical costs, providing the property is saleable. The person would have the option of liquidating the excess property or borrowing funds on it. It is intended that the provision for exemption of income producing real or personal property above the two thousand five hundred dollar amount be applied only when the property owners are actively engaged in utilizing the property to earn income and derive the total benefit of such income for their maintenance needs. Thus, for example:

- (a) An individual who is merely receiving rent income from property would not be eligible for the additional exemption.
- (b) Similarly, an individual receiving income from stocks, bonds, savings accounts, etc., would not be eligible for the additional exemption.
- (c) However, an individual would be actively engaged in utilizing such property if the individual contributed significant current personal labor in utilizing such property for income-producing purposes. The payment of social security taxes on the income from such current personal labor is an indicator of the active utilization of such property.

(3) Personal property resources.

- (a) Personal property is defined as including cash, savings, and redeemable stocks and bonds, vehicles, machinery, livestock, etc., but does not include personal effects, wearing apparel, household goods, furniture, or trailer homes being used for living quarters. Cash surrender value of life insurance policies will be considered personal property but not cash.
- (b) Term insurance is exempt personal property. Burial insurance, the terms of which specifically provide that the proceeds can be used only to pay the burial expenses of the insured is also exempt. Other "prepaid" burial arrangements are considered as liquid assets.
- (c) One motor vehicle owned by the applicant or recipient is exempt regardless of its value. Any other motor vehicle must be considered as personal property and is subject to the limitations on personal property set out below.

- (d) Personal property may not exceed an equity of two thousand five hundred dollars except that such property which is essential to the earning of a livelihood shall be exempt from the limitation if the liquidation of such excess assets would cause undue hardship. Liquidation of income producing personal property which would result in reducing annual income below the established income levels would be considered undue hardship. If undue hardship is not found to be a consideration, equity in excess of the two thousand five hundred dollars would be considered available for meeting medical costs providing the property is saleable. The person would have the option of liquidating the excess property or borrowing funds on it. It is intended that the provision for exemption of income producing personal property above the two thousand five hundred dollar amount be applied only when the property owners are actively engaged in utilizing the property to earn income and derive the total benefit of such income for their maintenance needs. The descriptive definitions of the phrases "undue hardship" and "actively engaged in utilizing the property" as set out in paragraph 2 of subdivision d of subsection 2 of section 75-02-02-07 are fully applicable also in instances involving personal property.
- (e) In all instances, real and personal property must be realistically evaluated in accord with current market value, and in considering net equity, any possible costs which may be associated with liquidation of the excess property must be taken into account.

With respect to cash, savings, redeemable stocks and bonds, and other liquid assets, the following levels will be applicable to families of various sizes; one person, one thousand five hundred dollars; two persons, two thousand two hundred fifty dollars; and for each additional person, an amount of twenty-five dollars shall be added. These amounts will not be considered as being available for medical expenses.

e. Disqualifying transfers.

- (1) Every person who before or after making application for medical assistance gives an assignment or makes a transfer of the person's property (whether real or personal or both) for the purpose of rendering oneself eligible for medical assistance is thereby rendered ineligible.
- (2) The intent of the person making such a transfer is the basis for determining eligibility for medical assistance.
- (3) There are legitimate instances when property transfers may be valid when related to a particular set of circumstances. The applicant or recipient should be given full opportunity to

state the reasons for having made the transfer of property and this evidence should in turn be considered in relation to the following questions:

- (a) Was adequate consideration received?
 - (b) How recent was the transfer? Caution on this point is advised since very recent transfers may in some instances be entirely acceptable insofar as eligibility for medical assistance is concerned.
 - (c) Is the applicant's or recipient's stated purpose reasonable in view of the circumstances prevailing at the time of transfer?
 - (d) Would it have been reasonable to anticipate that the transfer of property at the time it occurred would result in an earlier need for assistance?
 - (e) Were benefits available to the applicant or recipient from the transferee that were contingent upon the transfer of the property?
 - (f) Did the transferee have a legal or otherwise equitable interest in the property transferred to the transferee?
- (4) A transfer of property for less than adequate consideration, made either within two years prior to the application for medical assistance or after a previous application has been made and denied because of excess property resources, shall be presumed to have been made for the purpose of rendering the applicant eligible for medical assistance. This presumption may be rebutted by substantial evidence of an intent which is inconsistent with the presumed intent.
- f. There shall be a flexible measurement of available income which will be applied in the following order or priority:
- (1) First, for maintenance, so that any income in an amount at or below the established level will be protected for maintenance.
 - (2) Next, payments made for noncovered necessary medical care will be deducted.
 - (3) Reasonable work-related expenses for producing any earned income will be deducted.
 - (4) Finally, payments made for necessary health insurance coverage will be deducted.
 - (5) All of the remaining excess income will be applied to costs of medical assistance included in the state plan.

- g. All income and resources will be considered in establishing eligibility and in the flexible application of income to medical costs not in the state plan, and payment toward the medical assistance costs.
 - (1) The state agency or local agency under supervision of the state agency will take reasonable measures to ascertain any legal liability of third parties arising after March 31, 1968, for the medical care and services included under the plan, the need for which arises out of injury, disease, or disability of applicants for or recipients of medical assistance.
 - (2) The state or local agency, in determining whether medical assistance is payable, will treat any third party liability as a current resource when such liability is found to exist and payment by the third party has been made or will be made within a reasonable time.
 - (3) The state or local agency will not withhold reimbursement from a third party for assistance provided when the party's liability is established after assistance is granted and in any other case in which the liability of a third party existed but was not treated as a current resource. In such cases, the state and local agency shall require the applicant or recipient to execute all necessary documents to protect rights to subsequent reimbursements. Failure of any applicant or recipient to execute any such documents shall be considered adequate grounds for ineligibility for medical assistance.
 - (4) The state or local agency will seek reimbursement from a third party for assistance provided when the party's liability is established after assistance is granted and in any other case in which the liability of a third party existed, but was not treated as a current resource.
- h. Only such income and resources as are actually available will be considered; income and resources will be reasonably evaluated.
- i. The financial responsibility of any individual for any applicant or recipient of medical assistance will be limited to the responsibility of spouse for spouse, and parents for children under age twenty-one, or blind, or permanently and totally disabled. Such responsibility is imposed on applicants and recipients of medical assistance as a condition of eligibility under the state plan.

3. Blindness and disability.

- a. The federal definition of the terms "blind" and "disabled" as used by the social security administration in the supplemental security income program shall be used in all applicable eligibility determinations.
- b. The following is the state's definition of blindness in terms of ophthalmic measurement:

An individual is considered blind if the individual has central vision acuity of 20/200 or less in the better eye with correcting glasses or a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance of no greater than twenty degrees.

- c. In any instance in which a determination is to be made whether an individual is blind according to the state's definition, there will be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select.
- d. Each eye examination report form will be reviewed by a state supervising ophthalmologist who is responsible for the agency's decision that the applicant does or does not meet the state's definition of blindness.
- e. The following is the state's definition of permanent and total disability, showing that: (a) "permanently" is related to the duration of the impairment or combination of impairments; and (b) "totally" is related to the degree of disability; (c) "permanently and totally disabled" means that the individual has some permanent physical or mental impairment, disease, or loss, or combination thereof, that substantially precludes the individual from engaging in useful occupations within the individual's competence, such as holding a job.

Under this definition: "Permanently" refers to a condition which is not likely to improve or which will continue throughout the lifetime of the individual; it may be a condition which is not likely to respond to any known therapeutic procedures, or a condition which is likely to remain static or to become worse unless certain therapeutic measures are carried out, where treatment is unavailable, inadvisable, or is refused by the individual on a reasonable basis; "permanently" does not rule out the possibility of vocational rehabilitation or even possible recovery in light of future medical advances or changed prognosis; in this sense the term refers to a condition which continues indefinitely, as distinct from one which is temporary or transient. "Totally" involves considerations in addition to those verified through the medical findings, such as age, training, skills, and work experience, and the probable functioning of the individual in the individual's particular situation in light of the individual's impairment; an individual's disability would usually be tested in relation to ability to engage in remunerative employment; the ability to keep house or to care for others would be the appropriate test for (and only for) individuals, such as housewives, who were engaged in this occupation prior to the disability and do not have a history of gainful employment; eligibility may continue, even after a period of rehabilitation and readjustment, if the individual's work capacity is still very considerably limited (in comparison with that of a normal person) in terms of such factors as the speed with which the individual can work, the amount the individual can produce in a

given period of time, and the number of hours the individual is able to work.

- f. Each medical report form and social history will be reviewed by technically competent persons, not less than a physician and a social worker qualified by professional training and pertinent experience, acting cooperatively, who are responsible for the agency's decision that the applicant does or does not meet the appropriate definition of blindness or disability. The agency shall decline to determine blindness or disability when such determination can be made pursuant to the processing of a supplemental security income benefit's application by the social security administration or its contractee for that purpose.

History: Amended effective January 1, 1980.

General Authority
NDCC 50-24.1-04

Law Implemented
NDCC 50-24.1-02,
45 CFR 248.3,
45 CFR 248.10,
45 CFR 248.70,
45 CFR 248.80

ARTICLE 75-03

COMMUNITY SERVICES

Chapter	
75-03-01	Supplemental Parental Child Care and Family Day Care
75-03-02	Day Care Centers
75-03-03	Foster Care Group Homes
75-03-04	Residential Child Care Facilities
75-03-05	Family Boarding Homes for Special Education Students
<u>75-03-06</u>	<u>Family Subsidy Program</u>

CHAPTER 75-03-06
FAMILY SUBSIDY PROGRAM

The Social Service Board is not an administrative agency as defined by North Dakota Century Code section 28-32-01 with respect to the administration of section 4 of chapter 10 of the 1979 Session Laws. Therefore, the board is not subject to the Administrative Agencies Practice Act (North Dakota Century Code chapter 28-32) with respect to its family subsidy program rules. However, the board has placed its family subsidy program rules in the style and format required for the North Dakota Administrative Code and the rules are published as chapter 75-03-06.

Section	
75-03-06-01	Authority
75-03-06-02	Objective
75-03-06-03	Definitions
75-03-06-04	Application Process and Priority for Assistance
75-03-06-05	Eligibility for Family Subsidy Program
75-03-06-06	Certification Process
75-03-06-07	Appeal from Denial or Discontinuance
75-03-06-08	Subsidy Payments to Eligible Parents
75-03-06-09	Program Implementation
75-03-06-10	Responsibilities of the Habilitation Team
75-03-06-11	Responsibilities of Parents Participating in Services Subsidy
75-03-06-12	Evaluation
75-03-06-13	Discontinuance of Subsidy
75-03-06-14	Program Duration

75-03-06-01. AUTHORITY. Under the authority vested in the social service board of North Dakota pursuant to section 4, chapter 10, 1979 Session Laws, the social service board of North Dakota is empowered to prescribe, promulgate, and adopt rules and regulations as are necessary for the purpose of establishing a pilot program for home care and deinstitutionalization aid for the care, custody, and control of developmentally disabled persons who are retained in the home or are deinstitutionalized, by providing financial assistance to parents, guardians, or legal custodians who apply for aid under the law and qualify under the rules and regulations established by the board.

With funding made available by the 1979 legislative assembly, it is estimated that only twenty-five children can be served by this program.

History: Effective January 1, 1980.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

75-03-06-02. OBJECTIVE. The objective of the family subsidy program is to enable developmentally disabled children to remain in or return to their family homes, thus avoiding or reducing the necessity of placement in a more restrictive institutional setting. The program recognizes that families who maintain a developmentally disabled child in their home often incur extraordinary financial obligations. The program provides financial resources directly to the family to assist them in meeting their child's special needs.

History: Effective January 1, 1980.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

75-03-06-03. DEFINITIONS. As used in this chapter unless the context requires otherwise:

1. "Agency" means the social service board of North Dakota.
2. "Cerebral palsy" means a disorder dating from birth or early infancy, nonprogressive in nature, which is characterized by aberrations of motor function (paralysis, weakness, incoordination) and often other manifestations of organic brain damage such as sensory disorders, seizures, mental retardation, learning difficulty, and behavioral disorders.
3. "Deinstitutionalization" means the provision of appropriate alternative living arrangements to developmentally disabled individuals currently served in institutions, or who may qualify for admission to institutions.
4. "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, or other neurological condition of an individual which is so closely related to mental retardation as to require similar treatment and which:
 - a. Originates in childhood and is likely to continue throughout life;
 - b. Results in an intelligence quotient of fifty-nine or less, or an intelligence quotient of sixty-nine or less if the individual has other physical or mental impairments which impose additional and significant restrictions in functioning or developmental progression;
 - c. Constitutes a substantial handicap as evidenced by demonstrated defects in adaptive behavior; and
 - d. Can be predicted to require a program of lifelong services.

5. "Epilepsy" means a chronic symptom of cerebral dysfunction, characterized by recurrent seizures involving changes in the state of consciousness, sudden in onset and brief in duration.
6. "Habilitation plan" means a written document describing the skills and abilities of a developmentally disabled child and specifying the program of services or treatment required to effect positive change in specific areas of disability.
7. "Institution" means any public or private residential facility housing twenty or more residents, that provides treatment and care to the developmentally disabled on a twenty-four hour a day basis.
8. "Mental retardation" means significantly subaverage general functioning which originates during the developmental period and is associated with impairment in adaptive behavior.
9. "Parent" means the natural or adoptive parent, guardian, person who stands in loco parentis to the child, or a person to whom legal custody of the child has been given by order of a court.

History: Effective January 1, 1980.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

75-03-06-04. APPLICATION PROCESS AND PRIORITY FOR ASSISTANCE.

1. Any parent who desires to apply for a subsidy to maintain a developmentally disabled child in the home, or return a developmentally disabled child home from an institution, shall make application to do so. Applications shall be available at county social service board offices no earlier than December 1, 1979, and shall be submitted to the administrator of the area social service center or human service center in the region of the state in which the applicant lives no earlier than January 2, 1980, for consideration.
2. During January 1980, priority will be given to applicants with children who are currently institutionalized. Applications will be date-stamped and processed on a first received basis, with the establishment of a waiting list should more children be certified eligible for the program than the agency has funds to serve.

History: Effective January 1, 1980.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

75-03-06-05. ELIGIBILITY FOR FAMILY SUBSIDY PROGRAM.

1. Parents applying for financial assistance under this program must:
 - a. Reside within the state of North Dakota;
 - b. Desire to maintain within their home, or return to their home from an institutional setting, their developmentally disabled child; and
 - c. Provide the agency with the necessary medical, psychological, or educational evaluations relating to their child for agency determination of eligibility.
2. Individuals on whose behalf a subsidy will be provided must:
 - a. Be developmentally disabled; and
 - b. Be twenty-one years of age or under.

History: Effective January 1, 1980.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

75-03-06-06. CERTIFICATION PROCESS. Following a determination that the child and family are eligible under section 75-03-06-05, the social service board shall forward the application and related materials to the superintendent of the Grafton state school or superintendent of the Jamestown state hospital, as appropriate, for certification that the child is appropriate for deinstitutionalization or continued noninstitutionalization.

History: Effective January 1, 1980.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

75-03-06-07. APPEAL FROM DENIAL OR DISCONTINUANCE. Parents denied acceptance into the program or discontinued from the program shall be informed in writing of the reasons for the denial or discontinuance and, if appeal is made

within ten days of the receipt of such notice, shall be afforded the right to an administrative hearing in the manner prescribed by chapter 75-01-03.

History: Effective January 1, 1980.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

75-03-06-08. SUBSIDY PAYMENTS TO ELIGIBLE PARENTS. Two types of financial assistance are available through the family subsidy program:

1. Fifteen dollars per week will be paid to the parents for the basic care of their developmentally disabled child.
 - a. Payments will be issued on a monthly basis.
 - b. Payments will begin the week in which the director of the appropriate institution certifies the child into the program.
 - c. The basic care subsidy will be available even if the family chooses not to participate in the services subsidy.
2. An amount not to exceed thirty-five dollars per week will be paid to the family for services or treatment which the child receives in accordance with the habilitation plan.
 - a. Service costs reimbursed monthly through the services subsidy include, but are not limited to, the following:
 - (1) Purchase of special equipment.
 - (2) Specialized therapy, e.g., speech, occupational or physical therapy.
 - (3) Special diets.
 - (4) Medical or dental care not covered under the family's health insurance or a federally funded program such as medical assistance or crippled children's services.
 - (5) Home health care.
 - (6) Counseling for the child or family, including behavior management.
 - (7) Respite care/babysitting.
 - (8) Special clothing.

- (9) Educational programs not provided without charge by the public schools.
- (10) Day care.
- (11) Recreational services.
- (12) Related transportation.
- (13) Housing rehabilitation.

b. Payment will begin following the signing of a habilitation contract between the parents and the agency and upon the agency's receipt of a written statement from the parent itemizing the expenditures or obligations in carrying out the habilitation plan incurred following execution of the contract.

History: Effective January 1, 1980.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

75-03-06-09. PROGRAM IMPLEMENTATION. Each child certified into the family subsidy program will be assigned a case manager by the agency who shall:

1. Ascertain whether the parent wishes to participate in the basic care subsidy program, the services subsidy program, or both.
2. If the services subsidy program is requested, coordinate the establishment of a habilitation team for the development of a habilitation plan on the child's behalf, the team to consist of:
 - a. The case manager;
 - b. The parents; and
 - c. Other community professionals, such as those from the fields of medicine, education, rehabilitation, or mental health, who the parents and case manager believe may contribute to planning a program of community-based services for the benefit of the disabled child.
3. Following the development of a habilitation plan, identify the amount of services subsidy needed by the family, not to exceed thirty-five dollars per week, to obtain the services or treatment identified in the plan.
4. Enter into a renegotiable contract with the parents for the services subsidy.

5. Assist the family with the required recordkeeping for purposes of project evaluation.

History: Effective January 1, 1980.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

75-03-06-10. RESPONSIBILITIES OF THE HABILITATION TEAM. The duties of the habilitation team include:

1. Identifying medical, educational, or behavioral needs of the child.
2. Developing a written plan of services or treatment for the child directed at ameliorating the child's disabilities.
3. Identifying community resources that can be made available to the child and the child's family in order to implement the written habilitation plan.
4. Review the implementation of the habilitation plan on a quarterly basis and make modifications as necessary.
5. Participate in the evaluation component of the program.

History: Effective January 1, 1980.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

75-03-06-11. RESPONSIBILITIES OF PARENTS PARTICIPATING IN SERVICES SUBSIDY. The responsibilities of a parent who desires to participate in the services subsidy program include:

1. Participation with the agency in the development of a habilitation plan for the child.
2. Signing the habilitation contract agreeing to the plan of services.
3. Obtaining the agreed-upon services for the child.
4. Maintaining an accounting of the funds expended for the agreed-upon services.

5. Participating in a behavioral assessment of the child at the beginning of the program and on a semiannual basis thereafter.
6. Participating in an evaluation of the family subsidy program in December 1980 and July 1981.

History: Effective January 1, 1980.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

75-03-06-12. EVALUATION. An evaluation of the family subsidy program shall occur during the months of December 1980 and June 1981, based in part on the following:

1. An assessment of the developmental growth of the children served by the family subsidy program.
2. An accounting of the services made available to the children and their families as a result of the family subsidy program.
3. An accounting of the children certified eligible for the program, but placed on waiting lists due to the inavailability of funding.
4. Written evaluations of the program's implementation and effectiveness provided by parents and community professionals.

Information provided by the parents or relating to children served under the program shall be held in confidence by the agency and used only in an aggregate form for statistical reporting purposes.

History: Effective January 1, 1980.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

75-03-06-13. DISCONTINUANCE OF SUBSIDY.

1. Participation in the basic care subsidy program will be terminated under any of the following conditions:
 - a. The family requests termination.
 - b. Death of the child.

- c. Voluntary or court-ordered out-of-home placement of the child.
 - d. The child reaches age twenty-two.
 - e. The family moves out of state.
 - f. The child no longer is developmentally disabled.
 - g. Termination of the program.
2. In addition to the conditions for termination enumerated above, participation in the services subsidy program will be terminated under any of the following conditions:
- a. The family does not cooperate in the semiannual assessment of the child's functioning.
 - b. The family does not implement the care and treatment program agreed upon in the habilitation contract.

History: Effective January 1, 1980.

General Authority
S.L. 1979,
Ch. 10, § 4.
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4

75-03-06-14. PROGRAM DURATION. The family subsidy program will begin on January 2, 1980, and will terminate on June 30, 1981, unless sooner discontinued due to exhaustion of appropriated funds therefor.

History: Effective January 1, 1980.

General Authority
S.L. 1979,
Ch. 10, § 4,
NDCC 50-06-05.1

Law Implemented
S.L. 1979,
Ch. 10, § 4





TITLE 81

TAX COMMISSIONER

CHAPTER 81-03-02

INCOME TAX ON INDIVIDUALS, ESTATES, TRUSTS, AND FIDUCIARIES

Section

81-03-02-01	Resident Trusts
81-03-02-02	Credit Against Tax for Taxes Paid to Another State
81-03-02-03	Reporting of Income by Husband and Wife
81-03-02-04	Deduction of Interest Income Received From Contract for Deed Sales of Agricultural Land to Beginning Farmer
81-03-02-05	Deduction for Income Received From Sale or Lease of Land to Beginning Farmer
<u>81-03-02-06</u>	<u>Nonrecognition of Gain on Property Involuntarily Converted through Condemnation</u>
<u>81-03-02-07</u>	<u>Deduction for Pay Received from Armed Forces</u>
<u>81-02-03-08</u>	<u>Solar or Wind Energy Device - Income Tax Credit</u>
<u>81-03-02-09</u>	<u>Deduction for Federal Income Tax - Shareholder in Subchapter S Corporation</u>

81-03-02-06. NONRECOGNITION OF GAIN ON PROPERTY INVOLUNTARILY CONVERTED THROUGH CONDEMNATION. No gain shall be recognized for income tax purposes on property involuntarily converted into property of either like or unlike kind if the property was involuntarily converted by the exercise of the right of eminent domain or because of the threat or imminence thereof. Threat or imminence of condemnation by right of eminent domain shall have the same meaning as for federal income tax purposes.

History: Effective January 1, 1980.

General Authority
NDCC 57-38-56

Law Implemented
NDCC 57-38-01.14

81-03-02-07. DEDUCTION FOR PAY RECEIVED FROM ARMED FORCES.

1. Deduction for pay from active duty in armed forces and from national guard and reserve drill and instruction. A person who is a resident of North Dakota may take as a deduction in the North Dakota income tax return the amount, up to a maximum of one thousand dollars, received in a taxable year as payment for services performed while on active duty in the armed forces of the United States or as payment for attending periodic training meetings for drill and instruction as a member of the national guard or of a reserve unit of the armed forces of the United States, provided that the amount received for such services was not excluded or deducted from income for federal income tax purposes.
2. Deduction for pay from armed forces service outside United States. Any payment received by a resident of North Dakota serving in the armed forces of the United States which was not taken as a deduction as provided in subsection 1, may be deducted on that person's North Dakota income tax return for the taxable year in which it is received, subject to the following conditions and limitations:
 - a. During the time that the active duty services were performed for which the deduction is taken, the person taking the deduction must have held a rank in the armed forces that was below the rank of major in the United States army, air force, or marines; or below the rank of lieutenant commander in the United States navy or coast guard; or below the rank of surgeon in the United States public health service.
 - b. The person taking the deduction must have been serving on active duty in the armed services of the United States and must have been stationed outside of any state of the United States or the District of Columbia for not less than thirty consecutive days in the taxable year in which the deduction is taken.
 - c. The deduction is limited to the actual payment received for active duty services performed in any calendar month, but in no case shall the deduction exceed three hundred dollars for a single month.

d. Any income received by a person for such services that was deducted pursuant to subsection 1, up to the maximum of one thousand dollars, or that was excluded or deducted from income for federal income tax purposes, is not deductible under the provisions of this subsection.

History: Effective January 1, 1980.

General Authority
NDCC 57-38-56

Law Implemented
NDCC 57-38-01.2(1)(k)

81-03-02-08. SOLAR OR WIND ENERGY DEVICE - INCOME TAX CREDIT. The income tax credit for installation of a solar or wind energy device is a credit that is subtracted from the income tax liability of any taxpayer who completes the installation of such a device during a taxable year of the taxpayer that ends after June 30, 1977.

The solar or wind energy device must be installed in a building or on the premises of a building that is located in North Dakota and owned by the taxpayer claiming the income tax credit for the device installed.

This income tax credit is limited to five percent per year for two years of the actual cost of acquisition and installation of the solar or wind energy device. The two years in which the tax credit may be subtracted from the taxpayer's income tax liability are the taxpayer's taxable year in which installation of the device is completed and the taxable year immediately following that year. If the amount of the credit for either year exceeds the taxpayer's income tax liability for that year, the amount by which it exceeds the income tax liability for that year cannot be carried back or forward to reduce the income tax liability of any other year nor will it be paid by the state to the taxpayer.

If a solar or wind energy device is a part of a system which uses other means of energy, only that portion of the total cost of the system that is directly attributable to the acquisition and installation of the solar or wind energy device shall be included in determining the amount of the credit. The costs of installation shall not include costs of redesigning, remodeling, or otherwise altering the structure of a building in which a solar or wind energy device is installed.

"Solar or wind energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by a method which converts the natural energy of the sun or wind.

History: Effective January 1, 1980.

General Authority
NDCC 57-38-56

Law Implemented
NDCC 57-38-01.8

81-03-02-09. DEDUCTION FOR FEDERAL INCOME TAX - SHAREHOLDER IN SUBCHAPTER S CORPORATION. For taxable years beginning on or after January 1, 1979, an individual or estate who is a shareholder in a corporation which files as a subchapter S corporation (1120-S) for federal income tax purposes and which files as a regular (Form 40) corporation rather than as a subchapter S corporation for North Dakota income tax purposes must compute the deduction for federal income tax allowed under subdivision c of subsection 1 of North Dakota Century Code section 57-38-01.2 in accordance with the following:

1. The amount of federal income tax liability of a shareholder on any undistributed taxable income of a subchapter S corporation may be deducted on the shareholder's North Dakota income tax return only in the year or years in which the shareholder receives the undistributed income as a dividend.
2. No deduction may be taken under subsection 1 by the shareholder for the amount of federal income tax that is attributable to a domestic dividend deduction; "domestic dividend deduction" as used herein means the amount of dividend income that is deducted by the shareholder pursuant to subdivision i of subsection 1 of North Dakota Century Code section 57-38-01.2. The provisions of this subsection also apply in any case in which a domestic dividend deduction is taken for a dividend that was paid to a shareholder in the same year in which the earnings of the corporation out of which the dividend was paid were earned by the corporation.

EXAMPLE: An individual who is a shareholder in a federal subchapter S corporation has federal adjusted gross income of \$50,000.00 in 1979, including \$20,000.00 of undistributed taxable income of the subchapter S corporation. The individual's 1979 federal income tax liability on that income is assumed to be \$10,000.00.

Step 1: The deduction on the individual's 1979 North Dakota income tax return is \$6,000.00, computed as follows:

$$\frac{\$30,000.00}{\$50,000.00} \times \$10,000.00 = \$6,000.00$$

The remaining \$4,000.00 of federal income tax liability is available for deduction in the year the shareholder receives the undistributed taxable income as a dividend.

Step 2. The individual receives the \$20,000.00 of 1979 undistributed taxable income as a dividend in 1980 and deducts \$15,000.00 of it as a domestic dividend. Of the \$4,000.00 of federal income tax attributed in Step 1 to the \$20,000.00 received in 1980 as a dividend, the amount that can be deducted on the shareholder's 1980 North Dakota income tax return is \$1,000.00, computed as follows:

$$\frac{\$5,000.00}{\$20,000.00} \times \$4,000.00 = \$1,000.00$$

The remaining \$3,000.00 of federal income tax that is attributed to the \$15,000.00 domestic dividend deduction is not allowable as a federal income tax deduction.

History: Effective January 1, 1980.

General Authority
NDCC 57-38-56

Law Implemented
NDCC 57-38-01.2(1)(c),
57-38-01.2(1)(i),
57-38-01.4(2)

CHAPTER 81-07-02
ESTATE TAX

Section	
81-07-02-01	Definitions
81-07-02-02	Tax on Transfer of Estates
81-07-02-03	Determination of North Dakota Taxable Estate <u>[Repealed]</u>
81-07-02-04	Computation of Tax
81-07-02-05	Property Previously Taxed
81-07-02-06	Estate Tax Return Required - Tax Commissioner to Assess Tax
81-07-02-07	Taxes Payable as of Date of Death - Interest Rate
81-07-02-08	Collection and Distribution of Tax - Refunds
81-07-02-09	Lien for Taxes - Beneficiaries to Share Burden of Tax
81-07-02-10	Personal Representative to Furnish Necessary Documents to the Tax Commissioner
81-07-02-11	Valuations, Reports, Inventories, Estate Tax Applications, and Supplements
81-07-02-12	Duties of Depositories - Denial of Access to Safe- Deposit Box Without Order of County Court
81-07-02-13	Depositories - Notice of Transfer of Decedent's Assets
81-07-02-14	Penalties
81-07-02-15	Liability of Representatives
81-07-02-16	Penalty for False Statements or Reports
81-07-02-17	Supervision by Tax Commissioner
81-07-02-18	Preliminary Appraisal Where No Estate Tax Return Filed
81-07-02-19	Assessment or Determination of Additional Tax Liability by Tax Commissioner - Hearing
81-07-02-20	Actions to Quiet Title to Property
81-07-02-21	When Returns Required - Tax Commissioner's Release
81-07-02-22	Secrecy as to Returns

81-07-02-01. DEFINITIONS.

1. ~~For terms or phrases with reference to federal estate tax provisions; the meaning will be the same as that set out in the United States Internal Revenue Code of 1954, as amended, through December 31, 1976; unless a different meaning is clearly indicated:~~ Unless the context or subject matter otherwise requires, any term or phrase used in North Dakota Century Code chapter 57-37.1 and in this chapter shall have the same meaning for the following estates of decedents as is given to the similar term or phrase in the federal estate tax law.
 - a. For estates of decedents who died on or after July 1, 1975, and before January 1, 1977, the term or phrase shall have the same meaning as given to the similar term or phrase in the United States Internal Revenue Code of 1954 as amended to and including December 31, 1974.
 - b. For estates of decedents who died on or after January 1, 1977, and before March 16, 1979, the term or phrase shall have the same meaning as given to the similar term or phrase in the United States Internal Revenue Code of 1954 as amended to and including December 31, 1976.
 - c. For estates of decedents who died on or after March 16, 1979, the term or phrase shall have the same meaning as given to the similar term or phrase in the United States Internal Revenue Code of 1954 as amended to and including December 31, 1978.

"Federal gross estate" will be that valuation, when computed correctly, found on the United States estate tax return on page three under "recapitulation" and on page one, line one, under "computation of tax". "Federal taxable estate" will be that valuation, when computed correctly, found on the United States estate tax return on page one, line five, under "computation of tax".

2. "Personal representative" will include an executor, an administrator, a successor personal representative, a special administrator, or any person who performs substantially the same function under the law governing the person's status. "General personal representative" excludes special administrator. "Special administrator" means a personal representative as described by North Dakota Century Code sections 30.1-17-14 through 30.1-17-18. "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

The term "person in actual or constructive possession of any property of the decedent" includes, among others, the decedent's agents and representatives; safe-deposit companies, warehouse companies, and other custodians of property in this state; brokers holding, as collateral, securities belonging to the decedent; and debtors of the decedent in this country.

3. The rule for determining residency for a person in North Dakota is set out in North Dakota Century Code section 54-01-26. This section states that every person has a legal residence. It further sets out the legal elements of this residence as follows:
 - a. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which one returns in seasons of repose.
 - b. There can be only one residence.
 - c. A residence cannot be lost until another is gained.
 - d. The residence of the father during his life, and after his death, the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children.
 - e. The residence of the husband is presumptively the residence of the wife except in the case of establishing residence for voting purposes.
 - f. The residence of an unmarried minor who has a parent living cannot be changed by either the minor's own act or that of the minor's guardian.
 - g. The residence can be changed only by union of act and intent.

If the decedent is not found to be a "resident decedent" under these criteria, the decedent will be considered a "nonresident decedent".

4. "Situs of property" for the purposes of determining whether property will be included in the North Dakota estate or in another state's estate will be determined as follows:
 - a. Real property. The situs of real property generally is in the state or country in which it is situated. This includes interests in real property which are related to the real property as mineral interests and leases, equitable interests in real estate as in a vendee's interest in a contract for deed, real property subject to quiet title actions, remaindermen's interests, and life estates. This, however, will not include standing crops growing on real property as such is considered tangible personal property.
 - b. Tangible personal property. The situs of tangible personal property is in the state or country in which it was normally kept or located; if the property was in a noncustomary location at the time of the decedent's death because it has been moved sometime near the decedent's death, the usual location will be the situs.

An example of this is where a farmer normally keeps a tractor in an equipment shed, but at the time of the farmer's death the tractor had been left temporarily in a field in another state. The situs of the tractor as tangible personal property would be in the state where the equipment shed is located. For the purposes of this

provision, cash is tangible personal property whether it be located in a safe-deposit box, on the person or otherwise.

c. Intangible personal property. The situs of intangible personal property is in the state or country in which the decedent was a resident at the date of the decedent's death as determined by the criteria set out in subsection three. As to intangible personal property, a resident may specify in the resident's will that the situs of all or any part of the intangible personal property, which is included for estate tax purposes, shall be at any location within a county or counties in this state where the resident resided for at least fifteen years after attaining eighteen years of age. Intangible personal property includes stocks, bonds, notes, good will, accounts receivable, claims, partnership interests, patents, choses in action, life insurance, a vendor's interest in a contract for deed, bank accounts, and any other contractual obligations.

5. For North Dakota estate tax purposes the United States Internal Revenue Code includes amendments through December 31, 1976.

6. Reference to the singular includes the plural.

History: Amended effective January 1, 1980.

General Authority
NDCC 57-37.1-17

Law Implemented
NDCC 11-21-05,
30.1-17-14,
30.1-17-15,
30.1-17-16,
30.1-17-17,
30.1-17-18,
54-01-26,
57-37.1-01

81-07-02-03. DETERMINATION OF NORTH DAKOTA TAXABLE ESTATE. Repealed effective January 1, 1980. ~~If all of the property included in the federal gross estate of a decedent has situs in North Dakota, the North Dakota taxable estate shall be computed as follows on form 54-77:~~

Federal taxable estate (line 3, page 1; form 706)-----	\$280,000.00-
less: federal tax paid (line 19, page 1; form 706)-----	47,880.00

	\$232,120.00
less: statutory exemption-----	\$200,000.00

North Dakota taxable estate-----	\$-32,120.00

See--section-81-07-02-04-for-minimum-tax-based-upon-federal-credit-for-state death-taxes-paid:

If-only-a-portion-of-the-federal-gross-estate-has-situs-in-North-Dakota;-the North-Dakota-taxable-estate-shall--be--the--amount--obtained--by--subtracting--the federal--estate--tax--paid--from--the--federal-taxable-estate-and-multiplying-that difference-by-the-percentage-that-the-North--Dakota--estate--bears--to--the--total estate:---This--percentage-shall-also-be-used-in-determining-the-proportion-of-the two-hundred-thousand-dollar-statutory-exemption-provided-in-North--Dakota--Century Code-section-57-37.1-03-and-also-used-if-minimum-tax-based-upon-federal-credit-for state--death--taxes--paid--becomes--the--North--Dakota--estate--tax:---The--above computations--can--only--be--made--on--form--54-77-A--(For-sample-computation;-see appendix-A-to-this-chapter:)

General Authority
NDCC-57-37.1-17

Law Implemented
NDCC-57-37.1-03;
Case-v-Diise;
219-N.W.2d-195

81-07-02-04. COMPUTATION OF TAX. The amount of estate tax is computed by applying-to-the-North-Dakota-taxable-estate-the--rates--prescribed--in--the--table presented--in--appendix-B-to-this-chapter;-provided-that-the-amount-of-tax-imposed on-the-transfer-of-any-estate-shall-not-be-less-than equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to that part of the decedent's estate which has a taxable situs in this state.

Note: These--rates--are This computation is effective only for estates of decedents dying on or after January 1, 1977 March 16, 1979.

History: Amended effective January 1, 1980.

General Authority
NDCC 57-37.1-17

Law Implemented
NDCC 57-37.1-04

81-07-02-12. DUTIES OF DEPOSITORIES - DENIAL OF ACCESS TO SAFE-DEPOSIT BOX WITHOUT ORDER OF COUNTY COURT. North Dakota Century Code section 57-37.1-12 requires any safe-deposit company or other institution or person engaged in the business of renting safe-deposit boxes or similar receptacles to procure from each person given access thereto an agreement in writing to the effect that upon the death of any person having the right of access to such box or receptacle, notice of such death will be given to such company or person before seeking access to such box or receptacle. Before-access-to-the-safe-deposit-box-or--receptacle--can be--obtained--in--the--above-situation;-an-order-from-the-judge-of-the-county-court permitting-such-access-must-be-procured:---This-section-requires-the-presence-of--a representative--of--the--court--and--a-representative-of-the-person-or-institution having-control-of-the-safe-deposit-box-upon-access-to-the-safe-deposit--box--by--a person--acting--as--principal;-deputy;-agent;-or-cotenant-of-a-decedent:---However;

any person holding an interest jointly in a safe deposit box may, upon the death of the other person, open the box in the presence of an officer or agent of the lessor of the box and inspect and inventory the contents without first securing an order from the court. Before the contents of such box or receptacle may be released to a person having the right of access to such box or receptacle, a complete inventory of the contents must be prepared by such person in the presence of an officer or other agent of the lessor of the box. The inventory so prepared shall be filed with the tax commissioner by the lessor of the box within thirty days from the date of its preparation. After complying with the provisions of North Dakota Century Code section 57-37.1-12 the lessor shall be released of all liability to persons entitled to access to such box or receptacle and to the state of North Dakota for anything taken from the box.

Any person or corporation violating any provision of North Dakota Century Code section 57-37.1-12 shall be guilty of a class A misdemeanor, and in addition thereto, shall be liable for the amount of the tax and interest due under North Dakota Century Code chapter 57-37.1 on the securities, deposits, or other assets contained in such box or receptacle at the time of any unauthorized access thereto. The above penalties may be enforced by either the state's attorney or the tax commissioner. See North Dakota Century Code section 57-37.1-14.

History: Amended effective January 1, 1980.

General Authority
NDCC 57-37.1-17

Law Implemented
NDCC 57-37.1-12,
57-37.1-14

81-07-02-13. DEPOSITORIES - NOTICE OF TRANSFER OF DECEDENT'S ASSETS.

1. North Dakota Century Code section 57-37.1-13 provides, in effect, that any individual, corporation, or other person having possession or control of any asset standing in the name of a resident or nonresident decedent, or belonging to or standing in the joint name of such decedent and one or more other persons can transfer or pay the asset to whomever is entitled to it without first giving any prior notice to, or obtaining permission of, any county court or the tax commissioner and that such individual, corporation, or other person will incur no liability for estate tax, provided that notice of the transfer or payment is given to the tax commissioner of any amount paid that had a value in excess of one thousand dollars within thirty days after the transfer or payment is made. The notice is to be given on a form prescribed by the tax commissioner.

The words "paid" and "payment" as used in subsection 1 of North Dakota Century Code section 57-37.1-13 with respect to a safe-deposit box mean the release of the contents of the box by the bank or other company to the person who has a right of access to it, pursuant to the order required by North Dakota Century Code section 57-37.1-12. The notice requirement of subsection 1 of North Dakota Century Code section 57-37.1-13 provides that the bank or other person having control over the box furnish the tax commissioner with a copy of the inventory of the

contents of the box that is made when access to it is given pursuant to the county court's order. Once this is done, no further notice is required even though some or all of the contents of the box are redeposited in the box.

The requirements for the notice prescribed by subsection 1 of North Dakota Century Code section 57-37.1-13 apply irrespective of whether or not the amount of estate tax due has been determined and paid. If no notice is given by the transferor, as prescribed herein, the transferor shall be liable for any estate tax which is unpaid on the asset which was transferred. In addition, the transferor would subject oneself to the criminal liability of North Dakota Century Code section 57-37.1-14 which imposes the penalty of a class A misdemeanor for violations of North Dakota Century Code section 57-37.1-13. North Dakota Century Code section 57-37.1-14 also subjects the transferor to liability for the amount of taxes, interest, and penalties due under the provisions of the estate tax law on the securities, deposits, or other assets contained in the safe-deposit box or other similar receptacle.

2. In the case of an insurer paying proceeds of a life insurance contract on the life of a decedent, the insurer may pay the proceeds of the life insurance contract to the stated beneficiary in the contract immediately. However, the insurer shall give the tax commissioner notice of the amount paid pursuant to the contract and any other information required by the tax commissioner. Such notice shall be filed with the tax commissioner within thirty days from the date of payment.
3. The provisions of subsection 1 of North Dakota Century Code section 57-37.1-13 shall not apply when a request for the transfer of securities has been made by any trust company acting as a personal representative of an estate, provided that the trust company is qualified to do business under the laws of the state of North Dakota.

History: Amended effective January 1, 1980.

General Authority
NDCC 57-37.1-17

Law Implemented
NDCC 57-37.1-13,
57-37.1-14

CHAPTER 81-07-02. ESTATE TAX. Appendix A and Appendix B repealed effective January 1, 1980.

APPENDIX A

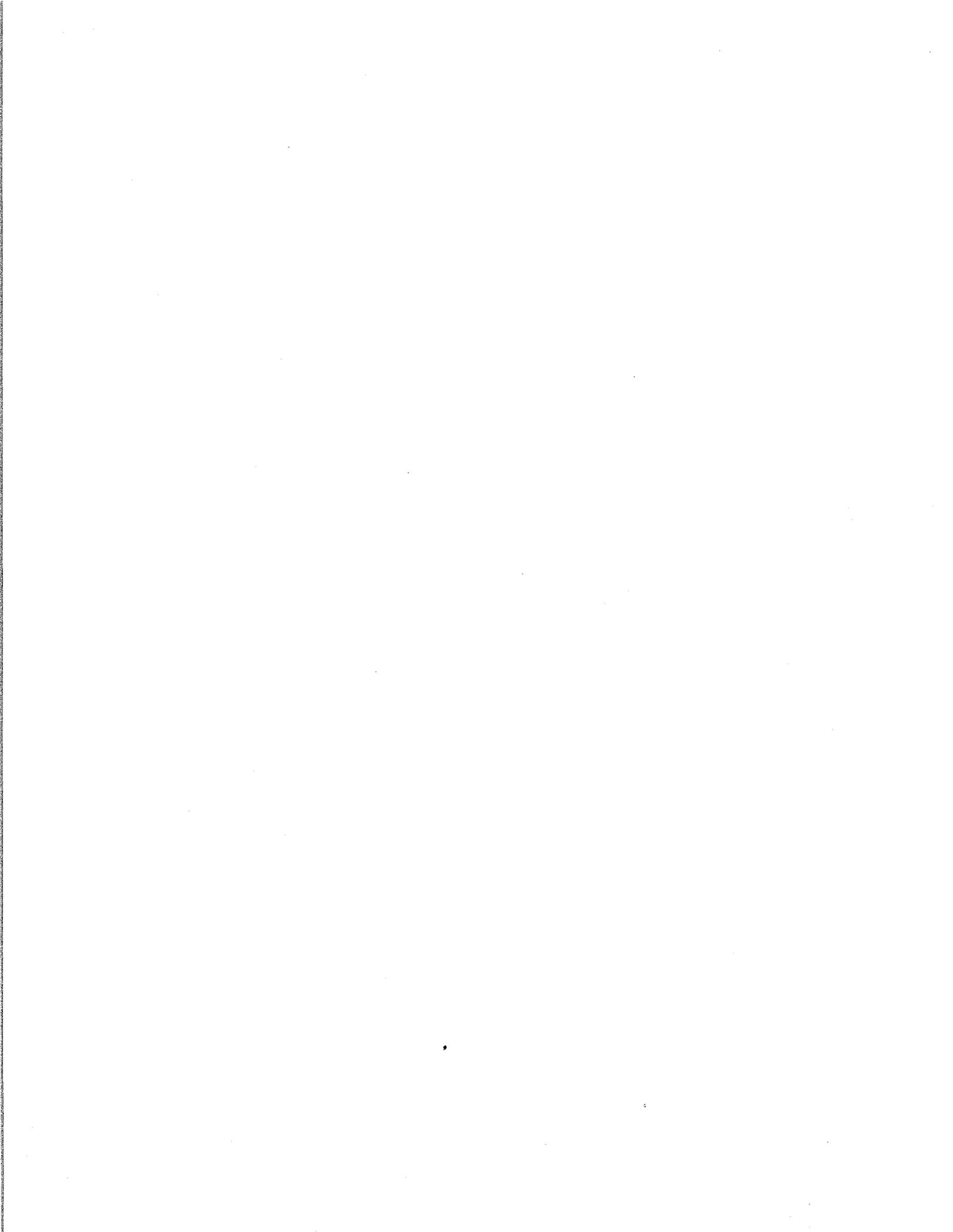
An example of the computation of estate tax due when only a portion of the federal gross estate has situs in North Dakota.

COMPUTATION OF TAX	
1. Federal gross estate (Line 1, page 1, Federal Form 706)	\$ 750,000
2. Portion of Federal gross estate having situs in North Dakota	\$ 375,000
3. Federal taxable estate (Line 3, page 1, Federal Form 706)	\$ 500,000
4. Less Federal estate tax (Line 19, page 1, Federal Form 706)	\$ 170,000
5. Subtract line 4 from line 3	\$ 330,000
6. North Dakota taxable estate = Line 5 x 50% (Line 2 ÷ Line 1)	\$ 165,000
7. North Dakota exemption = \$200,000 x 50% (Line 2 ÷ Line 1)	\$ 100,000
8. North Dakota taxable estate (Line 6 less Line 7)	\$ 65,000
9. Tentative amount of North Dakota estate tax (See rates in Section 57-37.1-04, NDCC)	\$ 6,200
10. Amount of credit for state taxes on Federal return (Line 13, Federal Form 706 page 1)	\$ 10,000
11. If line 10 is larger than line 9, multiply line 10 x 50% (Line 2 ÷ Line 1) and use larger of line 9 or line 11	\$ 6,200
12. Deduct credit for estate taxes paid on previously taxed property (Section 57-37.1-05, NDCC)	\$ -0-
13. Net amount of North Dakota estate tax liability	\$ 6,200
14. Interest due, if any, to date of payment (Section 57-37.1-07, NDCC)	\$ -0-
15. Total Estate Tax and Interest, if any (Line 13 plus Line 14)	\$ 6,200
Last date Estate Tax is due without interest	

APPENDIX B

A chart which presents the rates which must be used to compute North Dakota estate tax.

NORTH DAKOTA TAXABLE ESTATE		RATES OF TAX		
FROM	TO	TAX	%	OF EXCESS OVER
\$ 0	\$10,000	\$ 0	4	\$ 0
10,000	20,000	400	6	10,000
20,000	30,000	1,000	8	20,000
30,000	40,000	1,800	10	30,000
40,000	50,000	2,800	12	40,000
50,000	60,000	4,000	14	50,000
60,000	80,000	5,400	16	60,000
80,000		8,600	18	80,000



TITLE 89-02

Water Conservation Commission

STAFF COMMENT: The January Supplement reinserted Appendix A which was accidentally deleted by the December Supplement.

