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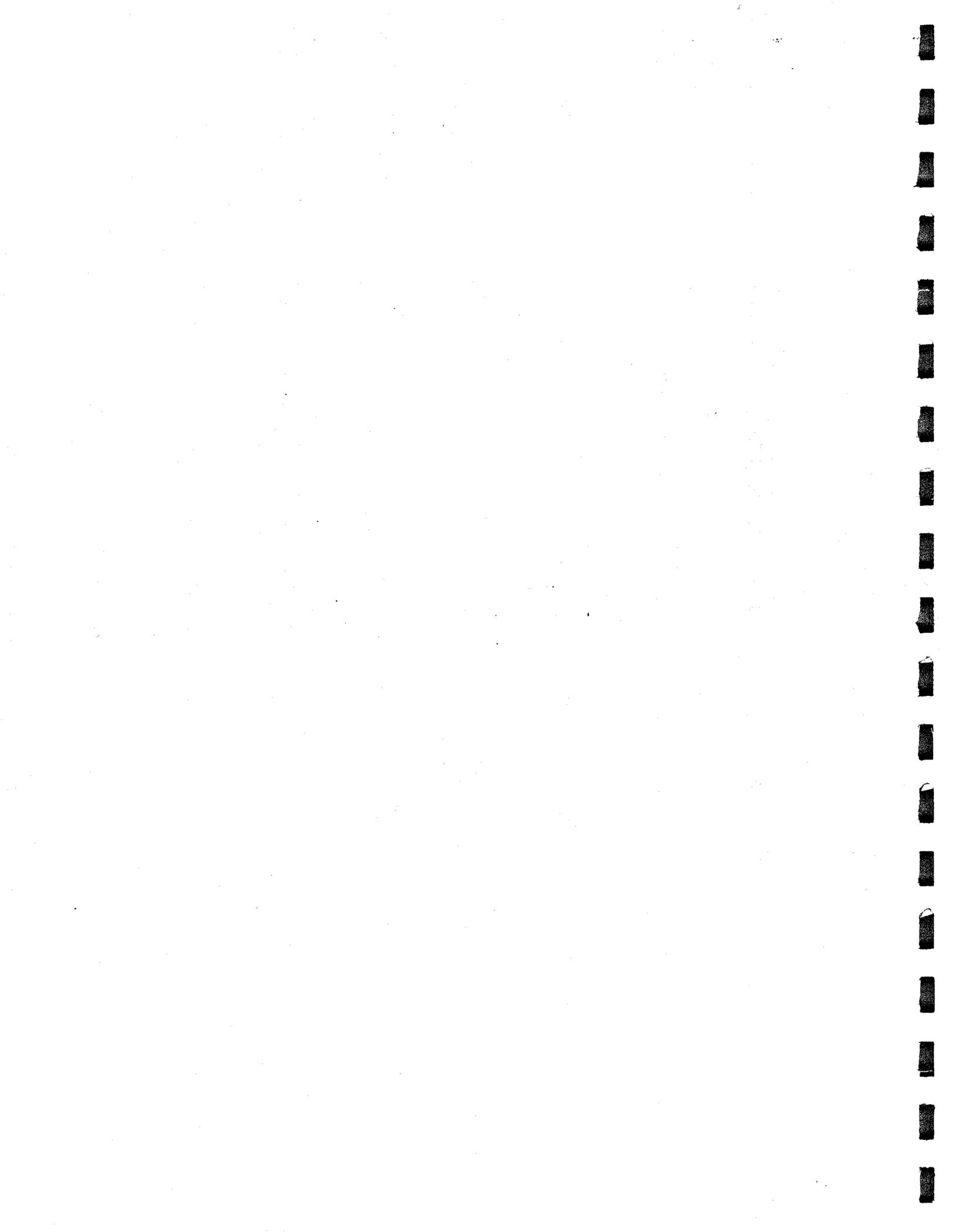
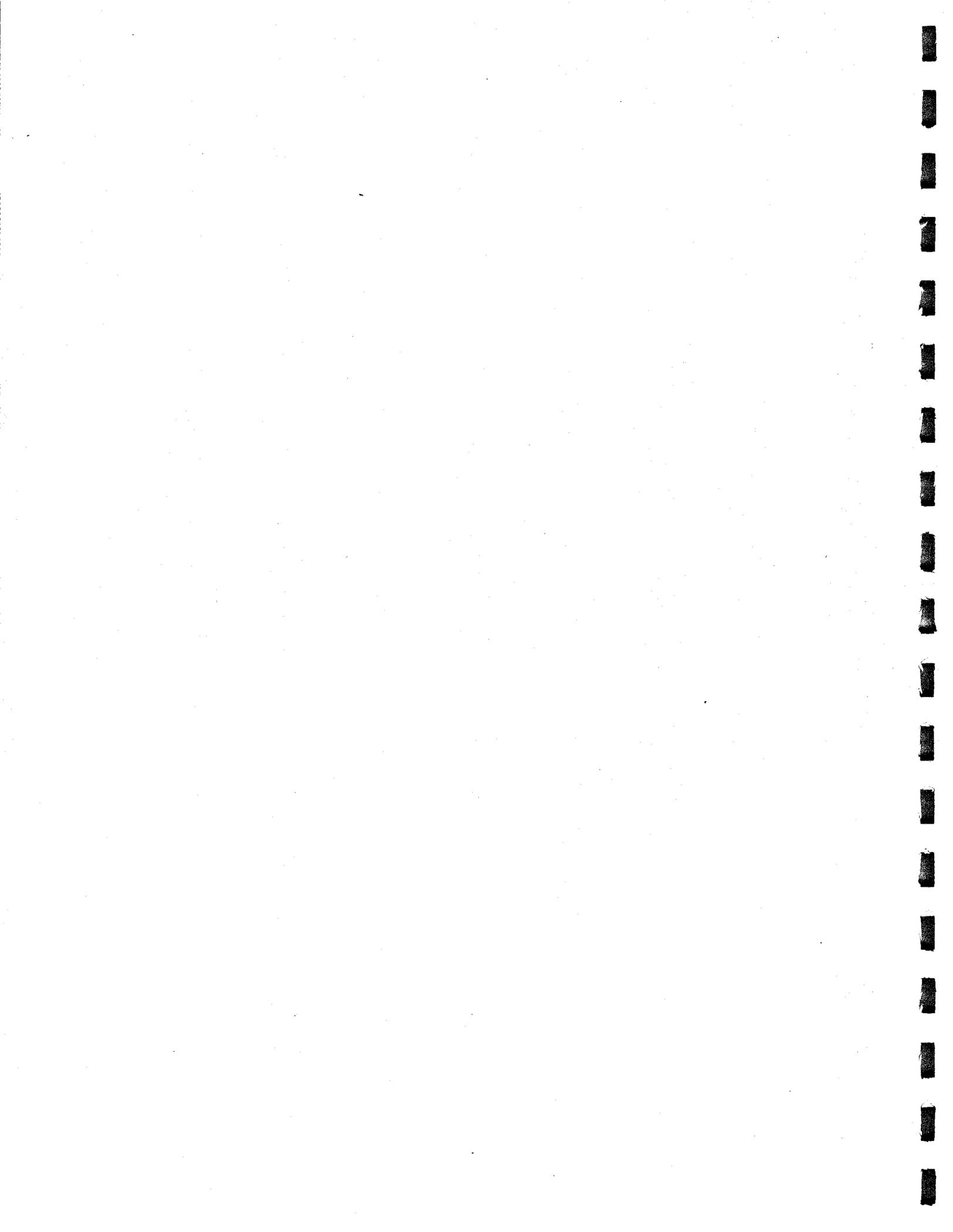


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TITLE 8
Architecture, Board of

FEBRUARY 1983

8-04-02-01. Application for examination. Candidates for examination shall apply to the national council of architectural registration boards, requesting the council's North Dakota Application Form No. 308 and instructions for preparation of a council record. A fee of ten dollars, The appropriate fees, including the statutory fee for examination and registration, together with additional fees charged by the council payable to the council national council of architectural registration boards, and a fee of fifty dollars, payable to the board, shall accompany this initial request application. The council national council of architectural registration boards will notify the applicant of the applicant's eligibility to be admitted to the examinations, after evaluating the applicant's record. The applicant shall remit to the council national council of architectural registration boards an additional fee of sixty-five dollars, for preparation of the record, if applicable.

History: Amended effective February 1, 1983.

General Authority: NDCC 43-03-08

Law Implemented: NDCC 43-03-08

8-04-02-02. Application for registration by NCARB certificate holders. Applicants must hold the national council of architectural registration boards certification as a prerequisite for registration. An applicant for registration shall apply to the council national council of architectural registration boards, requesting transmittal of the applicant's council record to the board. A fee of one hundred dollars, The appropriate fees, including the statutory fee for examination and registration, together with additional fees charged by the council payable to the council, shall accompany the request, and a fee of fifty dollars, payable to the board, shall be sent to the secretary of the board national council of architectural registration boards shall accompany the application. An applicant shall pay any additional fees required by the council

national council of architectural registration boards for such purposes as updating of records, or reinstatement of lapsed certification, if applicable.

History: Amended effective February 1, 1983.

General Authority: NDCC 43-03-08

Law Implemented: NDCC 43-03-08

8-05-02-02. Applicants holding accredited degrees. Applicants for registration who hold a degree from an architectural school accredited by the national architectural accrediting board (NAAB) shall be required to pass the design competency test (part II of the qualifying test) and the professional examination.

General Authority: NDCC 43-03-08

Law Implemented: NDCC 43-03-08, 43-03-13

Repealed effective February 1, 1983.

8-05-02-03. Applicants without accredited degrees. Applicants for registration who do not hold a degree from an architectural school accredited by the national architectural accrediting board shall be required to-

- 1- Meet the additional educational and training requirements stipulated in the national council of architectural registration boards Circular of Information No. 1-
- 2- Pass the qualifying test, parts I and II-
- 3- Pass the professional examination-

General Authority: NDCC 43-03-08

Law Implemented: NDCC 43-03-08, 43-03-13

Repealed effective February 1, 1983.

8-05-03-02. Types of NCARB examinations.

- 1- Qualifying test. Formerly known as the "Equivalency Examination", this is a two-day, two-part examination given annually in June. Part I is a nine-hour multiple-choice test covering technical and academic subjects, required of an applicant who does not hold an accredited degree as a prerequisite for admission to the professional

examination. Part II is a twelve-hour design problem consisting of a two-hour multiple-choice test and a ten-hour graphic exercise, required of all applicants as a prerequisite for admission to the professional examination. Multiple-choice portions of the qualifying test are machine graded, with credit for passed portions of Part I retained by the candidate when retakes are required. The design problem, Part II, must be retaken in its entirety if failed, and is graded by member boards under uniform criteria established by the national council of architectural registration boards.

2. Professional examination. This is a two-day, sixteen-hour, multiple-choice examination given annually in December to all applicants for registration who have passed the required part, or parts, of the qualifying test, as stipulated in sections 8-05-02-02 and 8-05-02-03. The examination is based upon an actual architectural project and comprises four parts corresponding to services performed by an architect. The candidate must pass the entire examination and must also attain the required score in each part in order to qualify for registration. The examination is machine graded, and applicants who fail any of the four parts must retake the entire examination.

General Authority: NBCC 43-03-08
Law Implemented: NBCC 43-03-14

Repealed effective February 1, 1983.

TITLE 10
Attorney General

JANUARY 1983

STAFF COMMENT: Article 10-06 contains all new material but is not underscored so as to improve readability.

ARTICLE 10-06

NORTH DAKOTA PEACE OFFICER STANDARDS

Chapter	
10-06-01	Minimum Standards of Training Prior to Carrying a Sidearm
10-06-02	Peace Officer Standards
10-06-03	Instructor and Course Certification

CHAPTER 10-06-01

MINIMUM STANDARDS OF TRAINING PRIOR TO CARRYING A SIDEARM

Section	
10-06-01-01	Definitions
10-06-01-02	Sidearm Authorization and Certification
10-06-01-03	Sidearm Safety and Proficiency Test
10-06-01-04	Waiver
10-06-01-05	Recertification Required Annually
10-06-01-06	Employers' Responsibility
10-06-01-07	Certified Weapons Instructor
10-06-01-08	Requirements of Weapons Instructors' Certification
10-06-01-09	Weapons Instructors Must Be Recertified Biennially
10-06-01-10	Certified Shooting Course
10-06-01-11	Criteria for a Certified Shooting Course
10-06-01-12	Issuance, Denial, Revocation, or Certification

10-06-01-13
10-06-01-14

Notice of Denial or Revocation - Hearing
Appeals

10-06-01-01. Definitions. The terms used throughout this article have the same meaning as in the North Dakota Century Code title 12 except:

1. "Board" refers to those individuals who have been appointed by the attorney general to the peace officer standards and training board.
2. "Division" means the criminal justice training and statistics division of the office of the attorney general.
3. "Duty weapon" is the pistol or revolver normally carried by an officer in the performance of his duties.
4. "Duty equipment" is the gun belt, holster, and shell holder or pouches or speed loaders normally carried by an officer in the performance of his duties.
5. "Peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
6. "Sidearm" is a pistol or revolver carried by a peace officer.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(6), 12-62-04

Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-02. Sidearm authorization and certification. No peace officer may be authorized to carry a sidearm in the course of employment or in the performance of official duties unless the officer has received certification from the division. Certification will be based upon satisfactory completion of a sidearms safety and proficiency test approved by the division.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(6)

Law Implemented: NDCC 12-62-02(6)

10-06-01-03. Sidearm safety and proficiency test. A sidearm safety and proficiency test shall be developed and administered by the division or its representatives. The test shall be comprised of two parts:

1. A written test including, but not limited to, gun safety, weapons handling, mechanical operations, shoot-don't shoot situations, and liability.
2. A combat shooting course using the duty weapon and duty equipment.

Satisfactory completion of the sidearm safety and proficiency test shall be a score of seventy percent on each of the two parts and the demonstration of reasonable competence in sidearm skills as determined by a certified instructor.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(6), 12-62-04

Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-04. Waiver. The division may waive the completion of any part required by this article upon presentation of documentary evidence by a department or by staff that an officer has satisfactorily completed equivalent training or experience including, but not limited to, one of the following:

1. Completion of a basic course recognized by the division.
2. Completion of any recognized course sponsored or conducted by a law enforcement agency.
3. Full-time employment in law enforcement prior to October 1, 1978, and with subsequent employment in law enforcement.

Waivers will be considered by the division on a case by case basis.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(6), 12-62-04

Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-05. Recertification required annually. Every peace officer must renew the officer's sidearm certification each year. Recertification will be based upon satisfactory completion of a certified combat shooting course at least once during each year, fired between May fifteenth and October first.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(6)

Law Implemented: NDCC 12-62-02(6)

10-06-01-06. Employers' responsibility. All employers of peace officers are responsible for providing or obtaining the necessary training to enable the individual officer to meet the standards required by this chapter.

History: Effective January 1, 1983.
General Authority: NDCC 12-62-02(6)
Law Implemented: NDCC 12-62-02(6)

10-06-01-07. Certified weapons instructors. The division shall be responsible for maintaining a list of certified weapons instructors and certified shooting courses.

History: Effective January 1, 1983.
General Authority: NDCC 12-62-02(6), 12-62-04
Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-08. Requirements for weapons instructors' certification. To become a certified weapons instructor, a peace officer must attend an approved weapons instructors' course; or have equivalent training plus have attended an approved methods of instruction course or equivalent.

History: Effective January 1, 1983.
General Authority: NDCC 12-62-02(6), 12-62-04
Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-09. Weapons instructors must be certified biennially. Weapons instructors must apply for instructor recertification every two years by the anniversary date of the instructor's original certification. Each instructor shall be required to conduct at least one certified combat shooting course annually.

History: Effective January 1, 1983.
General Authority: NDCC 12-62-02(6), 12-62-04
Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-10. Certified shooting course. All agencies that use their own combat shooting courses must apply to the division for certification of that course. Scores obtained on a nonapproved course will not count toward certification of that officer.

History: Effective January 1, 1983.
General Authority: NDCC 12-62-02(6), 12-62-04
Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-11. Criteria for a certified shooting course. To be certified, a shooting course must meet the following requirements:

1. The course must include a minimum of three firing positions, such as:
 - a. Prone.

- b. Sitting.
 - c. Standing.
 - d. Kneeling.
 - e. Point shoulder.
 - f. Crouch.
 - g. Walking.
 - h. Barricade position.
2. The course must induce stress by the use of time, physical activity, or night/low light conditions or a combination of all three. A time limit for course completion must be stated.
 3. The course must include firing from at least three different yardages:
 - a. These yardages to be not less than one yard [0.91 meter] nor more than twenty-five yards [22.86 meters].
 - b. The majority of firing to take place at seven yards [6.40 meters] or more.
 4. The course must include the firing of at least eighteen but not more than sixty rounds of ammunition from start to finish.
 5. The course must be fired completely double-action (revolvers) or semi-automatic mode (pistol) and include both strong and weak-hand shooting.
 6. The ammunition used when firing for annual certification will be the type ammunition (brand, weight, velocity, etc.) normally carried on duty. Ammunition used for practice can be determined by the agency conducting the training.
 7. The course must be fired using only the duty weapon and duty equipment.
 8. The target used must be a silhouette-type similar to the B-27 or a "duelatron" type, no bull's-eye target may be used.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(6), 12-62-04

Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-12. Issuance, denial, revocation, or certification. The division shall review all requests for certification and recertification. Applications may be denied on the basis of failure to

obtain the required score of seventy percent, upon a finding that the officer falsified any information required to obtain certification, or upon the written recommendation of a certified instructor.

History: Effective January 1, 1983.
General Authority: NDCC 12-62-02(6), 12-62-04
Law Implemented: NDCC 12-62-02(6), 12-62-04

10-06-01-13. Notice of denial or revocation - Hearing. The division shall notify in writing any individual and the department head when the division believes there is a reasonable basis for revoking or denying certification of the individual. The notice shall specify the basis of the revocation or denial. Every individual has the right to a hearing on the issue of denial or revocation. Hearings shall be conducted in accordance with and in the manner prescribed by North Dakota Century Code chapter 28-32.

History: Effective January 1, 1983.
General Authority: NDCC 12-62-02(6), 12-62-04, 12-62-10
Law Implemented: NDCC 12-62-02(6), 12-62-04, 12-62-10

10-06-01-14. Appeals. Appeals of the division's decisions will be heard by the board.

History: Effective January 1, 1983.
General Authority: NDCC 12-62-03
Law Implemented: NDCC 12-62-03

CHAPTER 10-06-02 PEACE OFFICER STANDARDS

Section	
10-06-02-01	Definitions
10-06-02-02	Certified Status
10-06-02-03	Compliance with Minimum Standards
10-06-02-04	Limitations of Duties
10-06-02-05	Waiver of Required Training
10-06-02-06	Lapse of Certification
10-06-02-07	Requirements to Remain Certified
10-06-02-08	Causes to Revoke Certification
10-06-02-09	Termination of a Peace Officer
10-06-02-10	Notice of Termination
10-06-02-11	Notice of Denial or Revocation - Hearing
10-06-02-12	Appeals
10-06-02-13	Waiver

10-06-02-01. Definitions. The terms used throughout this article have the same meaning as in the North Dakota Century Code except:

1. "Board" refers to those individuals who have been appointed by the attorney general to the peace officer standards and training board.
2. "Certification" refers to an officer or course of training that has complied with the requirements of the division and has been approved by the division.
3. "College credits" are credits earned for studies satisfactorily completed at an accredited institution of higher learning in a program leading to an academic degree.
4. "Department" is a law enforcement agency which is part of or administered by the state or any political subdivision thereof and which is responsible for the prevention and detection of crime and the enforcement of penal, traffic, or highway laws of North Dakota.
5. "Division" is the criminal justice training and statistics division of the office of the attorney general.
6. "Education credits" are continuing education units awarded by various agencies, usually on the basis of ten training contact hours per unit awarded.
7. "In-service" training refers to a certified training program conducted by and for the members of a department or agency and of one hour or more in duration, the training time is cumulative, i.e., six sessions of ten minutes each.
8. "Instructor" means an instructor certified by the division to instruct general law enforcement subjects.
9. "Moral turpitude" means conduct contrary to justice, honesty, modesty, or good morals.
10. "Peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law or to conduct or engage in investigations or prosecutions for violations of law.
11. "School" is any school, college, university, academy, or local training program which offers law enforcement training and includes within its meaning the combination of course curriculum, instructors, and facilities.
12. "Supervision" means under the direction of, either in person or by communications, a senior officer who is certified and who will be responsible to guide the actions of the supervised person.
13. "Training course" means any certified training program.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(4), 12-62-04

Law Implemented: NDCC 12-62-02(4), 12-62-04

10-06-02-02. **Certified status.** All peace officers as defined by the division shall satisfy the minimum qualifications on training requirements established by the division. Peace officers who meet all of the standards concerning qualifications, training requirements, have successfully completed one year of in-state law enforcement employment, and have successfully completed the probationary period of their current employer, shall be certified by the division and may be issued a certificate by the division. The following shall constitute the qualification and training standards of the division for certification:

1. Minimum qualifications. A peace officer applicant in North Dakota must satisfy the following requirements before the officer may be certified:
 - a. The applicant must be a citizen of the United States.
 - b. The applicant must possess a high school diploma or general educational development equivalency certificate.
 - c. The applicant must have undergone a complete background investigation which attests to the applicant's good moral character, conducted by either the parent agency, the sheriff's department in the county, or the division.
 - d. The applicant must not have been convicted of a felony or any offense that would be a felony if committed in this state, or convicted of an offense involving moral turpitude, absent extenuating circumstances, i.e., ten years or more good behavior, thirteen years old at time of commission, etc.
 - e. The applicant must provide a fingerprint card to be placed on file with the criminal identification section of the bureau of criminal investigation.
2. Law enforcement agency participation. When a person is employed or appointed as a peace officer the agency must submit acknowledgement that such officer meets the requirements of the division and must also forward a record of that individual's previous training and law enforcement experience, if any.
3. Minimum training. A peace officer in North Dakota must successfully complete the following training before the officer can be certified:
 - a. For the purpose of the training required pursuant to this section peace officers shall fall into four categories.

- (1) Regular officer. Any commissioned member of a municipal police department, county sheriff's office, state law enforcement agency, or political subdivision thereof who is paid on a full-time or part-time basis and has authority, except where excluded by statute, to enforce the criminal laws of this state and who possesses the powers of arrest.
 - (2) Reserve officer. Any individual utilized by a municipal, county, or state law enforcement agency to provide service to that jurisdiction on a nonsalaried basis and who is granted full arrest authority.
 - (3) Limited reserve officer. Any individual utilized by a municipal, county, or state law enforcement agency to provide service to that jurisdiction on a nonsalaried basis who must be in the company and under direct control of a regular peace officer and whose duties are restricted to:
 - (a) Patrol operations performed for the purpose of detection, prevention, and suppression of crime or enforcement of the traffic or criminal laws of this state;
 - (b) Traffic direction or crowd control assistance with or without immediate supervision;
 - (c) Maintaining public order in the event of a riot, insurrection, or natural disaster; or
 - (d) Any other duties where general arrest powers are not required, such as clerical support, communications, desk duty, etc.
 - (4) Auxiliary personnel. Members of organized groups such as posse, search and rescue, security at dances, etc., which operate as an adjunct to a police or sheriff's department, and do not have arrest powers or peace officer authority delegated to them by the department.
- b. Nothing in this section precludes pecuniary remuneration to reserve officers or limited reserve officers for order maintenance and security functions such as traffic and crowd control at sporting events, parades, and other similar events. However, payment on a full-time or part-time basis for the performance of typical law enforcement duties involving the detection and apprehension of law violators and the investigation of crimes including routine criminal and traffic patrol operations would require that such officer comply with the training for regular officers as provided in this article.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(4), 12-62-04, 12-62-08

Law Implemented: NDCC 12-62-02(4), 12-62-04, 12-62-08

10-06-02-03. Compliance with minimum standards.

1. Regular officers must satisfactorily complete the basic course prescribed by the division within twelve months from the date of appointment.
2. Reserve officers must satisfactorily complete an equivalent basic course within three years from the date of appointment. The training will be conducted locally by the parent agency or other local agency.
3. Limited reserve officers shall complete eighty hours of division approved training within the first year from the date of appointment.
4. Training for auxiliary personnel shall not be specified by the division and shall be left up to the discretion of the individual agency.
5. Extensions of the time required for completion of required courses may be granted at the discretion of the division after written request by the head of the requesting agency in cases of extreme hardship.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(4), 12-62-04, 12-62-08

Law Implemented: NDCC 12-62-02(4), 12-62-04, 12-62-08

10-06-02-04. Limitations of duties.

1. Limitation on duties of regular officers prior to completion of training. Provided the peace officer has been sidearm certified, a peace officer who has not yet completed or complied with the required basic training may perform peace officer duties but only if the peace officer is under the supervision of a regular officer having certified status and only prior to the time within which training must be completed pursuant to this article.
2. Limitations on duties of reserve officers. All nonsalaried officers shall serve as limited reserve officers until such time as they have undertaken and successfully completed or otherwise complied with the training required of reserve peace officers and are designated as reserve officers by the law enforcement agency on whose behalf the officer is providing services. However, where there exists a riot, an insurrection, or a natural disaster, or where a special event

has exhausted the manpower resources of a law enforcement agency, a limited reserve officer shall have the authority to perform peace officer duties as commanded by the officer's law enforcement agency subject to that amount of supervisory control which is reasonable and available under the circumstances.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(4), 12-62-04

Law Implemented: NDCC 12-62-02(4), 12-62-04

10-06-02-05. Waiver of required training.

1. All peace officers with experience or training outside of or prior to the establishment of the division may qualify for a waiver of any training requirement. Such an application should be submitted through the head of the applying officer's department on the form provided by the division. The division shall review all such applications and shall have authority to grant a complete or partial waiver. A test or tests regarding material for which a waiver of training has been requested may be required by the division.
 - a. Training received in states with laws governing or regulating police training must, if subject to such review, have been approved or certified in the state in which the training was received.
 - b. The division may elect to prescribe as a condition of certification supplementary or remedial training necessary to equate previous training with current standards.
 - c. The division is authorized to enter into standing reciprocity compacts or agreements with those states which by law regulate and supervise the quality of peace officer training and which require a number of training hours comparable to the current requirements for basic training in North Dakota.
 - d. Military police basic training may result in a partial waiver of the required basic course.
2. Any individual who is a graduate of a certified college or university criminal justice program and possesses, at minimum, an associate degree from that institution may be granted a partial waiver.
3. Any full-time regular officers who have completed the basic requirements or have been certified in North Dakota prior to September 30, 1982, will be granted certified status.

4. All part-time regular officers who have completed a minimum of five hundred hours of documented work experience prior to July 1, 1982, may be eligible for a waiver of the required basic course.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(4), 12-62-04, 12-62-08

Law Implemented: NDCC 12-62-02(4), 12-62-04, 12-62-08

10-06-02-06. Lapse of certification. The certification of any peace officer who does not perform duties as a peace officer or is no longer employed by a department for a period of time that exceeds six months shall be placed in an inactive status.

1. Any individual whose certification has been placed in an inactive status may apply to the division for recertification. The application shall contain information concerning the individual's employment or activities during the inactive period. Information concerning training or education should also be included as well as any other information the applicant feels is relevant.
2. The division will review each application for recertification and may approve, deny, or request further information relating to the application. The division may elect to prescribe relevant conditions of recertification including but not limited to supplementary or remedial training to equate previous training with current standards.
3. The division shall give the individual written notice of its findings. The notice must include the reasons for the division's action where the division denies recertification or prescribes any conditions of recertification.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-04

Law Implemented: NDCC 12-62-04

10-06-02-07. Requirements to remain certified. In order for a peace officer to remain certified the officer must continue to meet all the minimum requirements and must further receive a minimum of forty-eight hours of certified training every three years.

1. The training may consist of but is not limited to:
 - a. Forty-eight hours of certified in-service training;
 - b. Three semester hours of college credit in a criminal justice related topic;

- c. Five quarter hours of college credit in a criminal justice related topic;
 - d. Forty-eight hours of certified law enforcement training conducted by any agency;
 - e. Five continuing education units in a criminal justice related topic; or
 - f. Forty-eight hours of approved/certified criminal justice related seminar.
2. The training may be attended in any hour grouping, as long as it totals a minimum of forty-eight hours within a three-year period, i.e., two eight-hour blocks of instruction every year, one forty-eight-hour block of instruction within the three-year period, etc.
 3. No surplus in training hours may be carried forth into the next three-year period.
 4. All officers shall meet the certification requirements by the following dates:
 - a. If the surname begins with the letters A through G, they are due for renewal on July 1, 1984, with at least sixteen hours of certified training, and meeting the full requirements every third year thereafter.
 - b. If the surname begins with the letters H through M, they are due for renewal on July 1, 1985, with at least thirty-two hours of certified training, and meeting the full requirements every third year thereafter.
 - c. If the surname begins with the letters N through Z, they are due for renewal on July 1, 1986, meeting the full requirements then and every third year thereafter.
 - d. If an officer is newly hired during the three-year cycle the officer will meet the prorated share of the requirements needed until the officer's renewal date arrives.
 5. It shall be the duty of the employer agency or the officer to forward a record of the training attended to the division prior to the officer's recertification date.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(4), 12-62-04

Law Implemented: NDCC 12-62-02(4), 12-62-04

10-06-02-08. Causes to revoke certification. Each of the following constitutes cause for the division to revoke, refuse, or suspend certified status:

1. Willful falsification of any information to obtain certified status.
2. Physical or mental disability affecting the employee's ability to perform the employee's duties.
3. Abuse of or the unlawful use of narcotics or drugs, including alcohol.
4. Conviction of a felony or any crime involving moral turpitude.
5. Failure to meet the continuing education requirements.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(4), 12-62-04, 12-62-10

Law Implemented: NDCC 12-62-02(4), 12-62-04, 12-62-10

10-06-02-09. Termination of a peace officer. Termination of a peace officer, whether voluntary or involuntary, shall not preclude revocation or subsequent denial of peace officer certification status by the division if such termination was for any of the reasons enumerated in section 10-06-02-08. Employment by another agency or reinstatement of a peace officer by the officer's parent agency after termination, whether such termination was voluntary or involuntary, shall not preclude revocation or subsequent denial of peace officer certification status by the division, if such termination was for any of the reasons enumerated in section 10-06-02-08.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(4), 12-62-04, 12-62-10

Law Implemented: NDCC 12-62-02(4), 12-62-04, 12-62-10

10-06-02-10. Notice of termination. Upon termination of a peace officer for any of the reasons enumerated under section 10-06-02-08, the agency head shall within five days of the termination notify the division in writing, such notification to include the following information:

1. A statement of the nature and cause of the termination.
2. The effective date of the termination.
3. A written statement from the agency head indicating whether or not the agency head is recommending revocation of peace officer status to the division.

History: Effective January 1, 1983.
General Authority: NDCC 12-62-02(4), 12-62-04, 12-62-10
Law Implemented: NDCC 12-62-02(4), 12-62-04, 12-62-10

10-06-02-11. Notice of denial or revocation - Hearing. The division shall notify in writing any individual and the department head when the division believes there is a reasonable basis for revoking or denying certification of the individual. The notice shall specify the basis of the revocation or denial. Every individual has the right to a hearing on the issue of denial or revocation. Hearings shall be conducted in accordance with and in the manner prescribed by North Dakota Century Code chapter 28-32.

History: Effective January 1, 1983.
General Authority: NDCC 12-62-02(4), 12-62-04, 12-62-10
Law Implemented: NDCC 12-62-02(4), 12-62-04, 12-62-10

10-06-02-12. Appeals. Appeals of the division's decisions will be heard by the board.

History: Effective January 1, 1983.
General Authority: NDCC 12-62-03
Law Implemented: NDCC 12-62-03

10-06-02-13. Waiver. The division may waive the completion of any part required by this article upon presentation of documentary evidence by a department or by staff that an officer has satisfactorily completed equivalent training or experience.

History: Effective January 1, 1983.
General Authority: NDCC 12-62-02(6), 12-62-04
Law Implemented: NDCC 12-62-02(6), 12-62-04

CHAPTER 10-06-03 INSTRUCTOR AND COURSE CERTIFICATION

Section	
10-06-03-01	Certification of Instructors
10-06-03-02	Requirements for Certification of Law Enforcement Instructors
10-06-03-03	Certification Duration
10-06-03-04	Application for Instructor Certification
10-06-03-05	Certification of Courses
10-06-03-06	Application for Course Certification
10-06-03-07	Notice of Revocation or Denial - Hearings
10-06-03-08	Appeals

10-06-03-01. Certification of instructors. The division shall certify instructors deemed qualified to teach in one or more subjects. The names of certified instructors and their area of expertise shall be published and distributed periodically by the division.

1. Instructors will be certified on the basis of minimum qualifications in the areas of education, training, and experience as described in the following sections. Such certification can never be expected to ensure quality instruction, and it should therefore be the continuing responsibility of department heads or training officers to see that instructors are supervised on a regular basis to ensure that instructional excellence is maintained.
2. Instructor certification may be revoked by the division whenever it is determined that for purposes of seeking certification or renewal of certification, false information was knowingly submitted to the division. Review of instructor certification may be initiated upon the request of a department head, training officer, or other reliable source. Such review may also be initiated by the division in the absence of external requests or complaints.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(3), 12-62-02(4)

Law Implemented: NDCC 12-62-02(3), 12-62-02(4)

10-06-03-02. Requirements for certification of law enforcement instructors.

1. The division will certify instructors considered qualified to teach in one or more subjects on the basis of the standards provided in this section.
2. Instructors are eligible for certification if they meet the following minimum qualifications in the areas of education, training, and experience:
 - a. A person applying for certification to teach peace officer subjects, including patrol, investigation, or the use of firearms must have:
 - (1) A high school diploma or its equivalent;
 - (2) Two years experience as a certified peace officer or equivalent;
 - (3) Forty hours of verified training or documented experience in each subject to be taught;
 - (4) A course of instructor development training or its equivalent approved by the division, including

training in the areas of communication, psychology of learning, techniques of instruction, use of instructional aids, preparation and use of lesson plans, preparing and administering tests, teaching resources, and motivation; and

- (5) A recommendation by the applicant's department head or training officer.
- b. A person applying for certification to teach general subjects, including management, human relations, or administration, must have:
- (1) At least a baccalaureate degree; and
 - (2) Three years experience or college credits or both in the subject to be taught.
3. The division may in its discretion, waive any part of the requirements of subsection 2 if it finds that a person, although not meeting all of the eligibility requirements, is otherwise qualified to be an instructor.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(3), 12-62-02(4)

Law Implemented: NDCC 12-62-02(3), 12-62-02(4)

10-06-03-03. Certification duration. Instructional certification, both peace officer and general, will be issued for periods of twenty-four months. At the end of a twenty-four-month period, certificates may be renewed provided that:

1. The instructor has instructed in the instructor's certified topic at least once during the life of the certificate;
2. The instructor is recommended by the department head or training officer under whose supervision the instructor last instructed; and
3. The instructor has refreshed the instructor's knowledge of the topic; e.g., has attended further training or has read the latest materials available on the topic area.

Instructors who have not utilized their certificate during its normal life will apply for original certification.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(3), 12-62-02(4)

Law Implemented: NDCC 12-62-02(3), 12-62-02(4)

10-06-03-04. Application for instructor certification. The following procedures will be applicable for all persons wishing to be certified as instructors:

1. Applications for instructional certification, both general and professional, will be made on a division-approved form.
2. Each application must be accompanied by a resume of the applicant and a copy of documentation of training and academic achievement.
3. The division will review all applications for instructional certification. The division has the option of certifying, denying certification, or certifying with stipulated conditions.
4. An instructor's certificate will be forwarded to the applicant upon approval of an application by the division.
5. Denial of certification will result when it is determined that the individual fails to meet the requirements set forth in this section or that for the purpose of seeking certification, false information was knowingly submitted to the division.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(3), 12-62-02(4)

Law Implemented: NDCC 12-62-02(3), 12-62-02(4)

10-06-03-05. Certification of courses. The division shall certify those schools deemed adequate to effectively teach one or more law enforcement related subjects. The identity of each course so certified shall be published and distributed periodically by the division. Two types of course certification shall be issued:

1. Temporary certification shall be made for schools offering training courses on a one-time or infrequent basis. Temporary certification shall be for a specific course and shall be issued for a definite period of time not to exceed one year. In-service training conducted within an agency on an unscheduled or infrequent basis for less than an hour per session or by an uncertified instructor will not be eligible for certification.
2. Continuing certification shall be granted for schools offering police training on a regular basis and will continue in effect until surrendered or revoked, but not to exceed a four-year period.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(3), 12-62-02(4)

Law Implemented: NDCC 12-62-02(3), 12-62-02(4)

10-06-03-06. Application for course certification. The following procedures will be applicable to all training courses applying for certification:

1. The individual responsible for planning and coordinating a training program must prepare a letter of application for program certification. This letter should be sent to the division thirty days or as soon as possible in advance of the date the training program is to commence.
2. The application must state or be accompanied by:
 - a. A course outline showing the date and location of the course, the hours of instruction, group to be taught (size, experience, etc.), method of evaluation, lesson plan (if available); and
 - b. Resumes of the instructors' education and experience if the instructors have not been certified by the division.
3. Within seven days after the completion of a training program, the coordinator of the program shall forward to the division a completed student roster, showing each student's name and agency, hours attended, course name, and training location and date.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(3), 12-62-02(4)

Law Implemented: NDCC 12-62-02(3), 12-62-02(4)

10-06-03-07. Notice of revocation or denial - Hearings. The division shall notify in writing any individual or school when the division believes there is a reasonable basis for revoking or denying certification of the individual or school. The notice shall specify the basis of the revocation or denial. Every individual and school has the right to a hearing on the issue or denial or revocation. Hearings shall be conducted in accordance with and in the manner prescribed by North Dakota Century Code chapter 28-32.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-02(3), 12-62-02(4), 12-62-10

Law Implemented: NDCC 12-62-02(3), 12-62-02(4), 12-62-10

10-06-03-08. Appeals. Appeals of the division's decisions will be heard by the board.

History: Effective January 1, 1983.

General Authority: NDCC 12-62-03

Law Implemented: NDCC 12-62-03

TITLE 13

Banking and Financial Institutions, Department of

JUNE 1983

13-03-02-06. Exemption from restrictive provisions. The limitations set out in sections 13-03-02-01 ~~through~~, 13-03-02-02, 13-03-02-03, and 13-03-02-05 shall not apply to any federally guaranteed loan, however, such loans must conform to all federal requirements for the making of the guaranteed loan.

History: Effective June 1, 1979; amended effective June 1, 1983.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

STAFF COMMENT: Chapter 13-03-10 contains all new material but is not underscored so as to improve readability.

CHAPTER 13-03-10
ACTING AS TRUSTEE AND CUSTODIAN OF PENSION PLANS

Section

13-03-10-01

Acting as Trustee and Custodian

13-03-10-02

Appointment of Successor Trustee or Custodian

13-03-10-01. Acting as trustee and custodian. A credit union is authorized to act as trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement forming part of a pension plan which qualifies or qualified for specific tax treatment under section 401(d) or 408 of the Internal Revenue Code, for its members or groups or organizations of its members, provided the funds of such plans are invested in share accounts or share certificate accounts of the credit union.

All funds held in a trustee or custodial capacity must be maintained in accordance with applicable laws and rules and regulations.

The credit union shall maintain individual records for each participant which show in detail all transactions relating to the funds of each participant or beneficiary.

History: Effective June 1, 1983.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-10-02. Appointment of successor trustee or custodian. The plan shall provide for the appointment of a successor trustee or custodian by a person, committee, corporation, or organization other than the credit union or any person acting in one's capacity as a director, employee, or agent of the credit union, upon notice from the credit union or the board that the credit union is unwilling or unable to continue to act as trustee or custodian.

History: Effective June 1, 1983.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

TITLE 30
Game and Fish Department

DECEMBER 1982

30-02-02-01. **Definitions.** The terms used throughout this article have the same meaning as in North Dakota Century Code title 20.1 except:

1. "Quarry" means unprotected species and any others included in the governor's proclamation.
2. "Raptor" means a live migratory bird of the family Accipitridae, other than the bald and golden eagle, or any member of the family Falconidae. (Only the great horned owl (bubo virginianus) of the family strigidae is considered a raptor according to the federal falconry permit regulations.)
3. "Take" or "obtain" means to trap, capture, propagate in captivity, or acquire by means of transfer or attempt to trap, capture, or propagate in captivity, or acquire by means of transfer a raptor for the purposes of falconry.

History: Amended effective December 1, 1982.

General Authority: NDCC 20.1-14-03

Law Implemented: NDCC 20.1-14-03

30-02-03-01. **Size and ownership.** Any person owning, holding, or controlling, by lease or otherwise, any contiguous tract of land of not more than one thousand two hundred eighty acres (512 hectares), who desires to establish a shooting preserve, may make application to the game and fish commissioner for a shooting preserve operating permit. Lease required. If the applicant is not the owner of the land, a copy of any lease of lands contained in the shooting preserve area must be filed with the application.

History: Amended effective December 1, 1982.

General Authority: NDCC 20.1-12-08
Law Implemented: NDCC 20.1-12-02

30-02-03-04. Prerequisites. Before issuing or renewing any permit for the operation of a shooting preserve, the commissioner shall have found all of the following:

- 1- The applicant is financially able to provide the necessary facilities and services.
- 2- The applicant proposes to comply with all provisions of North Dakota Century Code chapter 20.1-12.
- 3- The operation of the preserve will not work a fraud upon persons who are permitted to hunt thereon.
- 4- The operation of the preserve is not designed to circumvent game laws or regulations.
- 5- The issuance of the permit will be in the public interest.

Before any permit shall be issued to the applicant, the applicant must have filed a bond to North Dakota in the sum of two thousand dollars executed by a surety company authorized to do business in the state of North Dakota and conditioned that the applicant will observe and comply with the provisions of North Dakota Century Code chapter 20.1-12 and rules promulgated thereunder, and will pay any fine and costs upon conviction of the permittee for violation of said provisions and all reasonable costs arising from any hearing for revocation or suspension of the permit.

General Authority: NDCC 20.1-12-08
Law Implemented: NDCC 20.1-12-03

Repealed effective December 1, 1982.

30-02-03-05. Types of game birds allowed-- bird identification. Game birds that may be stocked on a shooting preserve and hunted shall be artificially propagated game birds as may be allowed by the commissioner. A minimum of one hundred birds of each species to be hunted on the shooting preserve shall be released during the shooting preserve season. A lesser number of birds may be released upon written permission of the commissioner. All game birds to be released shall be banded or marked by a designated representative of the game and fish commissioner prior to the time of release. The operator shall contact the commissioner's representative at least five days prior

to the time the operator wishes the birds banded or marked. All game birds shall be marked prior to release by the shooting preserve operator in a manner predetermined and agreed upon in writing by the commissioner's representative and the shooting preserve operator. Such agreement shall be made at least five days prior to the first release, and the method of marking shall remain consistent with the agreement throughout the entire shooting preserve season. All mallard ducks released on a shooting preserve shall have the right hind toenails clipped before the birds attain the age of four weeks.

History: Amended effective December 1, 1982.

General Authority: NDCC 20.1-12-08

Law Implemented: NDCC 20.1-12-04

30-02-03-07. Operation of shooting preserve. The shooting preserve operator may establish the operator's own restrictions on the age, sex, and number of each game bird of a species listed on the operator's permit, which may be taken by each guest within the defined limits of the shooting preserve, provided that such guest possesses a valid general game license issued by North Dakota. The preserve operator may establish the fee to be paid by each guest. The exterior boundaries of each shooting preserve shall be clearly defined and posted with inward-facing signs erected around the extremity at intervals of one hundred fifty feet (45.72 meters) or less. Each shooting preserve operator and the operator's guest shall comply with and be subject to the provisions of North Dakota Century Code chapter 20-1-01 in all respects. The shooting preserve operator may restrict the hours during which game birds may be hunted, within the period between one-half hour before sunrise and sunset of any day.

General Authority: NDCC 20-1-12-08

Law Implemented: NDCC 20-1-12-05

Repealed effective December 1, 1982.

30-02-03-10. Season length. The season length for shooting preserves shall be the period beginning September first and ending March first of the following year. All permits for operation of shooting preserves shall be issued upon the express condition that the permittee agrees that any law enforcement officer or any representative of the commissioner may enter and search the premises or any part thereof at any reasonable time to ensure compliance with the laws of the state and this chapter.

General Authority: NDCC 20-1-12-08

Law Implemented: NDCC 20-1-12-05

Repealed effective December 1, 1982.

30-02-03-12. Harvested game birds to be tagged Cost of game bird tags. The operator of a shooting preserve shall tag all released game birds that are harvested by guests before the birds are consumed or removed from the shooting preserve premises. The tags shall clearly identify the birds as game birds that have been released by the shooting preserve operator. The tags provided by the commissioner shall be purchased at a cost of five cents each from the game and fish commissioner, for use under the operator's shooting preserve permit. Once affixed, tags shall remain attached until the game birds are actually prepared for consumption and shall, together with the guest's general game license, provide the guest with permission to transport the game to its final destination or place of storage.

History: Amended effective December 1, 1982.

General Authority: NDCC 20.1-12-08

Law Implemented: NDCC 20.1-12-06

30-02-03-13. Guest register and records to be maintained. Each shooting preserve operator shall maintain a daily guest register in which shall be listed the guest's name, the guest's address, the number of the guest's North Dakota general game license, the date on which the guest hunted, the number of game birds and species taken and their harvest tag numbers. A record shall also be maintained by each shooting preserve operator of the source of game released on the operator's preserve, the date of release, and the number and kind of game bird or species released. The records required to be kept by this section shall be open for inspection by the commissioner, the commissioner's representative, or any law enforcement office at any reasonable time. Report required. The shooting preserve operator shall submit a report of the operator's operations thirty days after each shooting preserve season. The report shall be made on forms furnished by the game and fish commissioner.

History: Amended effective December 1, 1982.

General Authority: NDCC 20.1-12-08

Law Implemented: NDCC 20.1-12-07

30-02-03-15. Revocation of permit. The commissioner may, after due notice to the shooting preserve operator, and a hearing thereon, revoke or suspend the permit of any operator for any violation of this chapter or North Dakota Century Code section 20-1-09-05.

General Authority: NDCC 20.1-12-08

Law Implemented: NDCC 20.1-12-09

Repealed effective December 1, 1982.

30-03-02-01. Private fish hatchery. "Private fish hatchery" means a body of water, whether natural or artificial, and any other facilities used, maintained, or operated by any private person, firm, or corporation for the propagation and production of fish for sale or planting in other waters. No waters stocked by or under fishery management of any state or federal governmental agency shall be considered a private fish hatchery.

General Authority: NDEC 20-1-06-12
Law Implemented: NDEC 20-1-06-12

Repealed effective December 1, 1982.

30-03-02-03. License required. It shall be unlawful to operate a private fish hatchery without first obtaining a private fish hatchery license in the amount of twenty-five dollars from the game and fish commissioner for the operation of such hatchery during a calendar year or portion thereof.

General Authority: NDEC 20-1-06-12
Law Implemented: NDEC 20-1-03-12

Repealed effective December 1, 1982.

30-03-02-08. State fishing license not required. A state fishing license is not required for fishing in the waters of a private fish hatchery used as a fish pond.

General Authority: NDEC 20-1-06-12
Law Implemented: NDEC 20-1-06-12

Repealed effective December 1, 1982.

30-03-03-01. License procurement. It shall be unlawful to use any house, structure, enclosure, or shelter on the ice, to protect one while engaged in fishing through the ice, without first obtaining a license for each such unit. This license shall be separate and apart from the regular angler's license and shall be procured from the game and fish department.

General Authority: NDEC 20-1-06-07
Law Implemented: NDEC 20-1-06-07

Repealed effective December 1, 1982.

30-03-03-02. Use. Such license shall be one dollar and shall be issued for the structure. It will authorize the use of the structure by anyone whom the licensee may permit to use it.

General Authority: NDCC 20-1-06-07
Law Implemented: NDCC 20-1-06-02(26), 20-1-06-07

Repealed effective December 1, 1982.

30-03-04-01. Use limited. No person shall willfully take, catch, or kill any frog, except for angling purposes or biological classroom study in North Dakota, unless the person first obtains a commercial frog license from the game and fish commissioner and complies with this chapter.

General Authority: NDCC 20-1-06-17
Law Implemented: NDCC 20-1-06-17

Repealed effective December 1, 1982.

30-04-01-01. Rare and endangered animals. The species of wolverines, otters, martens, fishers, black-footed ferrets and kit or swift foxes are recognized as "rare and endangered animals" and shall be afforded full protection. Unless specifically authorized by gubernatorial proclamation or by written permit of the game and fish commissioner, no person shall at any time hunt, harass, chase, pursue, take, attempt to take, possess, transport, ship, convey by common or private carrier, sell, barter, or exchange any of these species of animals.

General Authority: NDCC 20-1-02-05(16)
Law Implemented: NDCC 20-1-01-02(29)

Repealed effective December 1, 1982.

30-04-03-02. Fee and residence. Upon application as provided by the game and fish commissioner and payment of the appropriate fee in the amount of one hundred dollars, any person having maintained a residence in North Dakota and having resided in North Dakota for the six-month period immediately preceding the date of the application may be licensed to act as a guide or outfitter and charge fees for such service in North Dakota.

History: Amended effective December 1, 1982.
General Authority: NDCC 20.1-01-02, 20.1-01-05
Law Implemented: NDCC 20.1-03-12

30-05-01-02. **Boat safety equipment.** The following equipment is required as indicated, and must be usable and in serviceable condition.

1. **PERSONAL FLOTATION DEVICES.** All motorboats less than sixteen feet [4.8 meters] in length and all nonpowered boats must have one coast guard approved type I, II, III, or IV device aboard for each person. All motorboats sixteen feet [4.8 meters] or greater in length must have one coast guard approved type I, II, or III device aboard for each person, and, in addition, one coast guard approved throwable type IV device.

All persons manipulating any water skis, surfboard, or similar device must wear a coast guard approved type I, II, or III device. The only exception is that of a performer engaged in a professional exhibition or a person or persons engaged in an activity authorized under North Dakota Century Code section 20.1-13-11.

2. **FIRE EXTINGUISHERS.** Motorboats of less than twenty-six feet [7.8 meters] in length need no fire extinguishing equipment, unless the boat has a double bottom not sealed to the hull or not completely filled with flotation material; or unless it has closed stowage compartments in which combustible or flammable materials are stored; or unless it has closed compartments under thwarts and seats wherein portable fuel tanks may be stored; or unless it has closed living spaces; or unless it has permanently installed fuel tanks. If in any of these categories, it must have either a fixed fire extinguishing system in the machinery spaces, or at least one coast guard approved B-I type portable extinguisher. Motorboats twenty-six [7.8 meters] to forty feet [12 meters] in length must have either two coast guard approved B-I type portable extinguishers or one coast guard approved B-II type portable extinguisher, or a fixed fire extinguishing system in the machinery spaces and one coast guard approved B-I type portable extinguisher. Motorboats forty feet [12 meters] or over in length must have either three coast guard B-I type portable extinguishers, or one coast guard approved B-II type portable extinguisher and one B-I type portable extinguisher, or a fixed fire extinguishing system in the machinery spaces along with one coast guard approved B-II type or two B-I type portable extinguishers, or a fixed fire extinguishing system in the machinery spaces along with one coast guard approved B-II type or two B-I type portable extinguishers.
3. **BACKFIRE FLAME ARRESTER.** One coast guard approved device is required on each carburetor of all gasoline powered engines, except outboard motors.
4. **BELLS AND WHISTLES.** Boats sixteen feet [4.8 meters] to less than twenty-six feet [7.8 meters] in length require one hand, mouth, or power operated whistle audible at least one-half mile [.8 of a kilometer]. Boats twenty-six feet [7.8 meters]

to less than forty feet [12 meters] in length require a hand or power operated whistle audible at least one mile [1.6 kilometers], and a bell which produces a clear, bell-like tone when struck. Boats over forty feet [12 meters] in length require a power operated whistle audible at least one mile [1.6 kilometers] and a bell which produces a clear, bell-like tone when struck.

5. VENTILATION. All motorboats with enclosed engine or fuel compartments, and using gasoline as a fuel, must have at least two ventilator ducts, fitted with cowls, or the equivalent, leading to each such compartment, to properly and efficiently ventilate the compartment.
6. LIGHTING. When operating during hours of darkness between sunset and sunrise, all motorboats under twenty-six feet [6.8 meters] in length shall exhibit a twenty-point [225 degree] combination red and green bowlight visible for one mile [1.6 kilometers], ten points [112.5 degrees] to the left of the centerline of the boat being red, the ten points [112.5 degrees] to the right of the centerline being green, and a thirty-two-point [360 degree] white stern light, visible for two miles [3.2 kilometers], placed higher than the bowlight and unobstructed by occupants or portions of the vessel.

When operating during periods of darkness between sunset and sunrise, all motorboats twenty-six feet [6.8 meters] in length or over shall exhibit a twenty-point [225 degree] white bowlight visible for two miles [3.2 kilometers], a ten-point [112.5 degree] red side light, visible for one mile [1.6 kilometers], on the left side of the vessel, a ten-point [112.5 degree] green side light, visible for one mile [1.6 kilometers] on the right side (the side lights shall be visible through an arc beginning parallel to the centerline of the vessel and extending ten points [112.5 degrees] toward the stern), and a thirty-two-point [360 degree] white stern light visible for two miles [3.6 kilometers], placed higher than the bowlight and unobstructed by occupants or portions of the vessel.

All nonpowered boats operating during hours of darkness between sunset and sunrise shall have readily accessible a white light source which shall be temporarily exhibited in sufficient time to prevent a collision.

All vessels at anchor during hours of darkness between sunset and sunrise must display a white light visible to a boat approaching from any direction.

History: Amended effective December 1, 1982.

General Authority: NDCC 20.1-13-12

Law Implemented: NDCC 20.1-13-05

30-05-01-05. **Accident reports.** If a collision, accident, or other casualty involving a vessel results in death or injury to a person or damage to property in excess of ~~one~~ two hundred dollars, or a person disappears from such vessel under circumstances that indicate death or injury, the operator thereof shall complete and submit a complete boating accident report, CG-3865, form, or revision thereof, in duplicate to the game and fish department, within forty-eight hours in cases involving death or injury, within five days in all other cases.

History: Amended effective December 1, 1982.

General Authority: NDCC 20.1-13-12

Law Implemented: NDCC 20.1-13-08

MARCH 1983

STAFF COMMENT: Chapter 30-04-05 contains all new material but is not underscored so as to improve readability.

CHAPTER 30-04-05
GENERAL LICENSE REQUIREMENTS

Section	
30-04-05-01	Fishing, Hunting, and Fur-bearer Certificate
30-04-05-02	License Design
30-04-05-03	Combined Licenses
30-04-05-04	Moose, Elk, and Bighorn Sheep Licenses
30-04-05-05	Issuance of Stamps

30-04-05-01. Fishing, hunting, and fur-bearer certificate. For licensing purposes, fishing, hunting, and fur-bearer stamps shall be attached to a certificate provided by the North Dakota game and fish department. The certificate shall be provided for listing information required by state law for licensing of fishermen, hunters, and trappers. The following additional information is required on the certificate: the applicant's county of residence, telephone number, birth date, age, and signature. The applicant's drivers license number is also required if available. Persons born after December 31, 1961, must list their hunter education certificate number and issuing state if they are purchasing hunting licenses for which this training is required.

History: Effective March 1, 1983.
General Authority: NDCC 20.1-02-04
Law Implemented: NDCC 20.1-02-04

30-04-05-02. License design. The following hunting, fishing, and fur-bearer stamps will be issued and are to be attached to the

appropriate nonresident or resident fishing, hunting, and fur-bearer certificate: resident small game (age nineteen and over), resident small game (under the age of nineteen), nonresident small game, resident big game (deer and antelope), nonresident big game (deer and antelope), resident fur-bearer, resident fishing, fishing license for residents sixty-five years or over, fishing license for a resident totally or permanently disabled, nonresident fishing, nonresident short-term fishing, resident husband and wife fishing, nonresident nongame hunting, resident and nonresident permits to hunt deer in certain restricted areas, wild turkey, resident and nonresident general game, and nonresident waterfowl hunting. A license for these categories shall consist of the appropriate signed stamp, the completed fishing, hunting, and fur-bearer certificate, and tags if required. For a license to be valid, required stamps for licenses must be attached in the designated

positions on the certificate and the licensee's signature must be made in ink across the face of each stamp.

History: Effective March 1, 1983.

General Authority: NDCC 20.1-02-04

Law Implemented: NDCC 20.1-03-02, 20.1-03-03, 20.1-03-07.1, 20.1-03-11, 20.1-03-12

30-04-05-03. Combined licenses. The following licenses or permits are combined into one stamp each: resident big game (deer gun only) and permit to hunt deer in certain restricted areas; nonresident big game (deer gun only) and permit to hunt deer in certain restricted areas; resident small game and habitat restoration stamp; and nonresident small game and habitat restoration stamp.

History: Effective March 1, 1983.

General Authority: NDCC 20.1-02-04

Law Implemented: NDCC 20.1-03-12, 20.1-03-12.1

30-04-05-04. Moose, elk, and bighorn sheep licenses. In addition to a locking seal, the license for moose, elk, and bighorn sheep shall consist of a certificate that contains the hunter's identification information. This information shall be the same as that required on the fishing, hunting, and fur-bearer certificate as described in section 30-04-05-01.

History: Effective March 1, 1983.

General Authority: NDCC 20.1-02-04

Law Implemented: NDCC 20.1-03-03

30-04-05-05. Issuance of stamps. Persons issuing hunting, fishing, and fur-bearer stamps shall record the purchaser's fishing, hunting, and fur-bearer certificate number on the pages provided in the stamp book.

History: Effective March 1, 1983.
General Authority: NDCC 20.1-02-04
Law Implemented: NDCC 20.1-02-04, 20.1-03-19

TITLE 33
Health, Department of

DECEMBER 1982

33-17-01-02. **Definitions.** For the purpose of this chapter the following definitions shall apply:

1. "Community water system" means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.
2. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
3. "Cross connection" means any connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas, or chemical whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two systems.
4. "Department" means the North Dakota state department of health.
5. "Disinfectant" means any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.
- 4- 6. "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.
7. "Halogen" means one of the chemical elements chlorine, bromine, or iodine.

- 5- 8. "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user except those resulting from corrosion of piping and plumbing caused by water quality are excluded from this definition.
9. "Maximum total trihalomethane potential" means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven days at a temperature of twenty-five degrees Celsius or above.
- 6- 10. "Noncommunity water system" means a public water system that is not a community system and primarily provides service to transients.
- 7- 11. "Person" means an individual, corporation, company, association, partnership, ~~or~~ municipality, or any other entity.
12. "Potable water" means water free from impurities in amounts sufficient to cause disease or harmful physiological effects, with the physical, chemical, biological, or radiological quality conforming to applicable maximum permissible contaminant levels.
- 8- 13. "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. A public water system is either a "community" water system or a "noncommunity" water system.
- 9- 14. "Sampling schedule" means the frequency required for submitting drinking water samples to a certified laboratory for examination.
- ±0- 15. "Sanitary survey" means an onsite review of the water source, facilities, equipment, operation, and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation, and maintenance for producing and distributing safe drinking water.
- ±±- 16. "Supplier of water" means any person who owns or operates a public water system.
17. "Total trihalomethanes" means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane [chloroform], dibromochloromethane,

bromodichloromethane and tribromomethane [bromoform]), rounded to two significant figures.

18. "Trihalomethane" means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

~~12-~~ 19. "Water system" means all sources of water and their surroundings and shall include all structures, conducts, and appurtenances by means of which the water is collected, treated, stored, or delivered.

History: Amended effective December 1, 1982.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-02

33-17-01-05. **Approved laboratories and analytical procedures.**
All samples shall be examined by the division of public health laboratories of the department or by any other laboratory certified by the department for such purposes, except that measurements for temperature, pH, turbidity and free chlorine may be performed by any person acceptable to the department.

All methods of sample preservation and analyses shall be as prescribed by the department.

History: Amended effective December 1, 1982.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-07

33-17-01-06. Maximum contaminant levels.

1. Inorganic chemicals.

a. The maximum contaminant level for nitrate is applicable to both community and noncommunity water supply systems. At the discretion of the department, nitrate levels not to exceed twenty milligrams per liter may be allowed in a noncommunity water system if the supplier of water demonstrates to the satisfaction of the department that:

(1) Such water will not be available to children under six months of age;

(2) There will be continuous posting of the fact that nitrate levels exceed ten milligrams per liter and the potential health effect of exposure;

(3) Local and state public health authorities will be notified annually of nitrate levels that exceed ten milligrams per liter; and

(4) No adverse health effects shall result.

The levels for other inorganic chemicals apply only to community water supply systems.

b. Fluoride at optimum levels in drinking water has been shown to have beneficial effects in reducing the occurrence of tooth decay. While optimum levels of fluoride have beneficial effects, the maximum contaminant level was established to protect against above optimum levels of fluoride which may cause dental fluorosis.

The maximum contaminant levels for inorganic chemical contaminants are as follows:

<u>Contaminant</u>	<u>Level Milligram Per Liter</u>
Arsenic	0.05
Barium	1
Cadmium	0.010
Chromium	0.05
Lead	0.05
Mercury	0.002
Nitrate (as N)	10
Selenium	0.01
Silver	0.05
Fluoride	2.4

2. Organic chemicals. The maximum contaminant levels for organic chemical contaminants, applicable only to community water supply systems, are as follows:

<u>Contaminant</u>	<u>Level Milligram Per Liter</u>
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Chlorinated Hydrocarbons:

Endrin (1,2,3,4,10 10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octa-hydro-1,4-endo,endo-5,8-di-methano naphthalene).	0.0002
Lindane (1,2,3,4,5,6-hexachloro-cyclohexane, gamma isomer).	0.004
Methoxychlor (1, 1, 1-Trichloro-2,2-bis [p-methoxyphenyl] ethane).	0.1

Toxaphene (C₁₀H₁₀Cl₈ -Technical chlorinated camphene, 67-69% chlorine). 0.005

Chlorophenoxys:

2,4-D (2,4-Dichlorophenoxyacetic acid). 0.1

2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid). 0.01

Total trihalomethanes. The sum of the concentrations of:

Bromodichloromethane,
Dibromochloromethane,
Tribromomethane (bromoform) and
Trichloromethane (chloroform). 0.10

3. Turbidity. The maximum contaminant levels for turbidity are applicable to both community water systems and noncommunity water systems using surface water sources in whole or in part. The maximum contaminant levels for turbidity in drinking water, measured at a representative entry point to the distribution system, are as follows:

a. One turbidity unit as determined by a monthly average except that five or fewer turbidity units may be allowed if the supplier of water can demonstrate to the department that the higher turbidity does not do any of the following:

- (1) Interfere with disinfection.
- (2) Prevent maintenance of an effective disinfectant agent throughout the distribution system.
- (3) Interfere with microbiological determinations.

b. Five turbidity units based on an average for two consecutive days.

4. Radionuclides. The maximum contaminant levels for radionuclides, applicable only to community water supply systems, are as follows:

<u>Contaminant</u>	<u>Level</u> <u>Picocuries Per Liter</u>
Combined radium-226 and radium-228.	5

Gross alpha particle activity,
including radium-226, but
excluding radon and uranium.

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5. Microbiological. The maximum contaminant levels for coliform bacteria, applicable to both community and noncommunity water supply systems, are as follows:
- a. Membrane filter method. When the membrane filter method is used, the number of coliform ~~bacteria~~ bacterial colonies shall not exceed:
 - (1) One per one hundred milliliters as the arithmetic mean of all routine samples examined per month.
 - (2) (a) ~~in~~ Four per one hundred milliliters in more than one sample when less than twenty are examined per month; or
 - ~~(3)~~ (b) Four per one hundred milliliters in more than five percent of the samples when twenty or more are examined per month.
 - b. Fermentation tube method. When the fermentation tube method and ten milliliter standard portions are used, coliform bacteria shall not be present in:
 - (1) More than ten percent of the portions from routine samples examined in any month.
 - (2) (a) Three or more portions in more than one sample when less than twenty samples are examined during the sampling period; or
 - ~~(3)~~ (b) Three or more portions in more than five percent of the samples when twenty or more samples are examined per month.
 - c. For community or noncommunity systems that are required to sample at a rate of less than four per month, compliance of this section shall be based upon sampling during a three-month period except that, at the discretion of the department, compliance may be based upon sampling during a one-month period.
 - d. At the discretion of the department, systems required to take ten or fewer samples per month may be authorized to exclude one positive routine sample per month from the monthly calculation if:
 - (1) On a case-by-case basis the department determines and indicates in writing to the public water supply

system that no unreasonable risk to health existed. The determination should be based on a number of factors not limited to the following:

- (a) The system had provided and maintained an active disinfectant residual in the distribution system.
 - (b) The potential for contamination as indicated by a sanitary survey.
 - (c) The history of the water quality at the public water system.
- (2) The supplier submits, within twenty-four hours after notification, a check sample collected on each of two consecutive days from the same sampling point and each of these check samples shall be negative.
- (3) The original positive routine sample be reported and recorded by the supplier.

The supplier shall report to the department compliance with conditions specified in this section and summarize the corrective action taken to resolve the problem. If a positive routine sample is not used for the monthly calculation, another routine sample must be analyzed for compliance purpose. This provision may be used only once during two consecutive compliance periods.

- e. If an average maximum contaminant level violation is caused by a single sample maximum contaminant level violation, the case shall be treated as one violation with respect to public notification requirements.

History: Amended effective December 1, 1982.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-02, 61-28.1-03, 61-28.1-05, 61-28.1-06, 61-28.1-07

33-17-01-08. Organic chemical sampling and monitoring requirements.

1. Organic chemicals other than trihalomethanes.

a. Sampling frequency for community water systems.

- a- (1) Surface water supplies.** The suppliers of water for community water systems utilizing surface water sources shall sample for organic chemical contamination within six months after October 1, 1977. These analyses shall be repeated at intervals

specified by the department but in no event, less frequently than at three-year intervals. Samples analyzed shall be collected during the period of the year designated by the department as the period when contamination by pesticides is most likely to occur.

b- (2) Ground water systems. Analysis of samples for organic contamination for community water systems utilizing ground water sources shall be completed by those systems when specified by the department.

2- b. Sampling frequency for check samples. If the result of an analysis indicates that the level of any contaminant exceeds the maximum contaminant level, the supplier of water shall report to the department within seven days and initiate three additional analyses within one month. When the average of four analyses exceeds the maximum contaminant level, the supplier of water shall report to the department and give notice to the public. Monitoring after public notification shall be at a frequency designated by the department and shall continue until the maximum contaminant level has not been exceeded in two successive samples or until a monitoring schedule as a condition to a variance, exemption, or enforcement action shall become effective.

2. Trihalomethanes.

a. Coverage. The suppliers of water for all community water systems which serve a population of ten thousand or more individuals and which add a disinfectant (oxidant) to the water in any part of the drinking water treatment process shall collect samples for the purpose of analysis for total trihalomethanes.

b. Effective dates.

(1) Sampling and analyses. Sampling and analyses shall begin not later than November 29, 1982.

(2) Regulations. Compliance with the regulations for total trihalomethanes shall take effect November 29, 1983.

c. Sampling frequency for community water systems. The minimum number of samples required to be taken by the system shall be based on the number of treatment plants used by the system. Multiple wells drawing raw water from a single aquifer may, with the department's approval, be considered one treatment plant.

All samples taken within an established frequency shall be collected within a twenty-four-hour period.

(1) Routine sampling. Analyses for total trihalomethanes shall be performed at quarterly intervals on at least four water samples for each treatment plant used by the system. At least twenty-five percent of the samples shall be taken at locations within the distribution system reflecting the maximum residence time of the water in the system. The remaining seventy-five percent shall be taken at representative locations in the distribution system, taking into account number of persons served, different sources of water and different treatment methods employed.

(2) Reduced sampling frequency.

(a) Systems utilizing surface water or ground water, or both. The sampling frequency may be reduced to a minimum of one sample analyzed per quarter taken at a point in the distribution system reflecting the maximum residence time of the water in the system.

The system's monitoring frequency may only be reduced upon written request of the water system and upon written determination by the department that data from at least one year of sampling at a frequency of four samples collected per calendar quarter per water treatment plant used by the system and that local conditions demonstrate that total trihalomethane concentrations will be consistently below the maximum contaminant level.

If at any time during which the reduced sampling frequency is in effect, the result from any analysis exceeds the maximum contaminant level and such results are confirmed by at least one check sample taken promptly after such results are received, or if the system makes any significant change to its source of water or treatment program, the system shall immediately resume sampling on a routine basis of four samples per quarter per treatment plant used by the system. Such increased sampling shall continue for at least one year before the frequency may be reduced again.

(b) Systems utilizing only ground water. The sampling frequency for systems utilizing only ground water sources may be reduced to a minimum of one sample analyzed per year per water treatment plant taken at a point in the distribution system reflecting the maximum residence time of the water in the system.

The system's sampling frequency may only be reduced upon written request of the water system and upon a written determination by the department that, based upon the data submitted by the system, the system has a maximum total trihalomethane potential of less than one-tenth milligram per liter and that local conditions demonstrate that the system is not likely to approach or exceed the maximum contaminant level.

If at any time during which the reduced sampling frequency is in effect, the result from any analysis taken by the system for maximum total trihalomethane potential is equal to or exceeds the maximum contaminant level and such results are confirmed by at least one check sample taken promptly after such results are received, the system shall immediately begin sampling on a routine basis of four samples per quarter per treatment plant used by the system. Such increased sampling shall continue for at least one year before the frequency may be reduced again.

In the event of any significant change to the system's source of water or treatment program, the system shall immediately analyze an additional sample for maximum total trihalomethane potential taken at a point in the distribution system reflecting maximum residence time of the water in the system for the purpose of determining whether the system must begin sampling on a routine basis of four samples per quarter per treatment plant used by the system.

(3) Increased sampling frequency. At the option of the department, sampling frequencies may be increased above the minimum in those cases where it is necessary to detect variations of total trihalomethane levels within the distribution system.

d. Compliance. Compliance with the maximum contaminant level shall be determined based on a running annual average of quarterly samples.

If the average of samples covering any twelve-month period exceeds the maximum contaminant level, sampling shall be at a frequency designated by the department and shall continue until a sampling schedule as a condition to a variance, exemption or enforcement action becomes effective.

Unless the analytical results are invalidated for technical reasons, all samples collected shall be used in the computation of the quarterly average running annual average of quarterly samples, and in the determination of whether a system is eligible for a reduced sampling frequency.

e. Reporting. The results of all analyses shall be reported to the department within thirty days of the system's receipt of such results.

f. Modification of treatment methods for reduction of trihalomethane. Before a community water system makes any significant modifications to its existing treatment process for the purposes of achieving compliance with the trihalomethane regulations, the system must submit and obtain departmental approval of a detailed plan setting forth its proposed modification and those safeguards that it will implement to ensure that the water will not be adversely affected by such modification. Each system shall comply with the provisions set forth in the department approved plan. At a minimum, the department approved plan shall require the system modifying its disinfection practice to:

- (1) Evaluate the water system for sanitary defects and evaluate the source water for biological quality;
- (2) Evaluate its existing treatment practices and consider improvements that will minimize disinfectant demand and optimize finished water quality throughout the distribution system;
- (3) Provide baseline water quality survey data of the distribution system as the department may require;
- (4) Conduct additional monitoring to assure continued maintenance of optimal biological quality in finished water; and
- (5) Demonstrate an active disinfectant residual throughout the distribution system at all times during and after the modification.

History: Amended effective December 1, 1982.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-02, 61-28.1-03, 61-28.1-05, 61-28.1-06, 61-28.1-07

33-17-01-09. Turbidity sampling and analytical requirements.

1. Sampling frequency for surface water systems. The suppliers of water for both community water systems and noncommunity water systems shall sample at a representative entry point to the water distribution system, at least once a day, for the purpose of making turbidity measurements. The measurements shall be made by a nephelometric method approved by the department.

If the department determines that a reduced sampling frequency in a noncommunity system will not pose a risk to health, it can reduce the sampling frequency. The option of reducing the turbidity sampling frequency shall be permitted only when the noncommunity water systems practice disinfection and maintain an active residual disinfectant in the distribution system, and when the department has indicated in writing that no unreasonable risk to health exists.

2. Sampling frequency for check samples. If the result of a turbidity analysis indicates that the maximum allowable limit has been exceeded, the sampling and measurement shall be confirmed by resampling as soon as practicable and preferably within one hour. If the repeat sample confirms that the maximum allowable limit has been exceeded, the supplier of water shall report to the department within forty-eight hours.

The repeat sample shall be the sample used for the purpose of calculating the monthly average. If the monthly average of the daily samples exceeds the maximum allowable limit, or if the average of two samples taken on consecutive days exceeds five turbidity units, the supplier of water shall report to the department and notify the public.

History: Amended effective December 1, 1982.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-02, 61-28.1-03, 61-28.1-05, 61-28.1-06, 61-28.1-07

33-17-01-11. Microbiological contaminant sampling and analytical requirements.

1. Sampling frequency for community water systems. Suppliers of water for community water systems shall collect samples of water from representative points on the water distribution system and analyze for coliform bacteria at a frequency established by the department. The number of samples required shall be determined by the population served by the system and in no event shall the frequency be less than as set forth below:

Population Served:

Minimum Number of
Samples Per Month

25 to	1,000	1
1,001 to	2,500	2
2,501 to	3,300	3
3,301 to	4,100	4
4,101 to	4,900	5
4,901 to	5,800	6
5,801 to	6,700	7
6,701 to	7,600	8
7,601 to	8,500	9
8,501 to	9,400	10
9,401 to	10,300	11
10,301 to	11,100	12
11,101 to	12,000	13
12,001 to	12,900	14
12,901 to	13,700	15
13,701 to	14,600	16
14,601 to	15,500	17
15,501 to	16,300	18
16,301 to	17,200	19
17,201 to	18,100	20
18,101 to	18,900	21
18,901 to	19,800	22
19,801 to	20,700	23
20,701 to	21,500	24
21,501 to	22,300	25
22,301 to	23,200	26
23,201 to	24,000	27
24,001 to	24,900	28
24,901 to	25,000	29
25,001 to	28,000	30
28,001 to	33,000	35
33,001 to	37,000	40
37,001 to	41,000	45
41,001 to	46,000	50
46,001 to	50,000	55
50,001 to	54,000	60
54,001 to	59,000	65
59,001 to	64,000	70
64,001 to	70,000	75
70,001 to	76,000	80
76,001 to	83,000	85
83,001 to	90,000	90
90,001 to	96,000	95
96,001 to	111,000	100

Community water systems with ground water supplies serving twenty-five to one thousand persons may, with written permission from the department, reduce this sampling frequency to one sample per calendar quarter provided that:

- a. A sanitary survey by the department shows the ground water supply to be adequately protected.

- b. The water supply has a history of no coliform contamination.
2. Sampling frequency for noncommunity water systems. The supplier of water for a noncommunity water system shall sample for coliform bacteria in each calendar quarter during which the system provides water to the public. If the department, on the basis of a sanitary survey, the existence of additional safeguards such as a protective and enforced well code, or accumulated analytical data, determines that some other frequency is more appropriate, that frequency shall be the frequency required under this chapter. Such frequency shall be confirmed or changed on the basis of subsequent surveys or data. The frequency shall not be reduced until the noncommunity water system has performed at least one coliform analysis of its drinking water and found to be in compliance with maximum microbiological contaminant levels.
3. Sampling frequency for check samples. When the coliform bacteria colonies in a single sample, as determined by the membrane filter procedure, exceeds four per one hundred milliliters, at least two consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily or at a frequency established by the department until the results obtained from at least two consecutive check samples show less than one coliform bacteria colony per one hundred milliliters.

When coliform bacteria, as determined by the fermentation tube method, occur in three or more ten milliliter portions of a single sample at least two consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily or at a frequency established by the department until the results obtained from at least two consecutive check samples show no positive tubes.

The location at which the check samples were taken shall not be eliminated from future sampling without approval of the department. The results from all coliform bacterial analyses performed except those obtained from check samples and special purpose samples shall be used to determine compliance with the maximum contaminant level for coliform bacteria. Check samples shall not be included in calculating the total number of samples taken each month to determine compliance.

When the presence of coliform bacteria in water taken from a particular sampling point has been confirmed by any check samples, the supplier of water shall report to the department within forty-eight hours.

When a maximum contaminant level is exceeded, the supplier of water shall report to the department and notify the public.

Special purpose samples, such as those taken to determine whether disinfection practices following pipe placement, replacement, or repair have been sufficient, shall not be used to determine compliance.

4. Substitution of chlorine residuals. A supplier of water of a public water system may, with the approval of the department and based upon a sanitary survey, substitute the use of chlorine residual monitoring for not more than seventy-five percent of the required microbiological samples; provided, that the supplier of water takes chlorine residual samples at points which are representative of the conditions within the distribution system. Four samples for chlorine analysis shall be substituted for each microbiological sample.

There shall be at least daily determinations of chlorine residual. The supplier of water shall maintain no less than two-tenths milligrams per liter free chlorine at the extremities of the public water distribution system. When a particular sampling point has been shown to have a free chlorine residual less than two-tenths milligrams per liter, the water at the location shall be retested as soon as practicable and in any event, within one hour.

If the original analysis is confirmed, this fact shall be reported to the department within forty-eight hours. Also, if the analysis is confirmed, a sample for coliform bacterial analysis must be collected from that sampling point as soon as practicable and preferably within one hour, and the results of such analysis reported to the department within forty-eight hours after the results are known to the supplier of water.

Compliance with the maximum contaminant levels for coliform bacteria shall be determined on the monthly mean or quarterly mean basis, including those samples taken as a result of failure to maintain the required chlorine residual level. The department may withdraw its approval of the use of chlorine residual substitution at any time.

If the department determines that some higher residual chlorine level is more appropriate, that level shall be the level required under these regulations. 44

The measurements for chlorine shall be made by a method approved by the department.

5. Sampling frequency for the replacement samples. When the coliform bacterial colonies in a single sample, as determined by the membrane filter procedure, cannot be determined, the department at its discretion may require one or more replacement samples to be collected from the same sampling point for analysis. The sample or samples which were replaced shall not be used to determine compliance.

History: Amended effective December 1, 1982.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-02, 61-28.1-03, 61-28.1-05, 61-28.1-06, 61-28.1-07

33-17-01-13. Reporting and public notification.

1. Reporting requirements. Except where a shorter reporting period is specified, the supplier of water shall report to the department the result of any test, measurement, or analysis required within forty the first ten days following a test, measurement, or analysis the results of such test, measurement, or analysis the month in which the results are received or the first ten days following the end of the required monitoring period as stipulated by the department, whichever of these is shorter.

The supplier of water shall report to the department within forty-eight hours the failure to comply with any primary drinking water regulations including failure to comply with monitoring requirements.

The supplier of water is not required to report analytical results to the department in cases where a department laboratory performed the analysis and reports the results to the department office which would normally receive such notification from the supplier.

The water supply system shall, within ten days of completion of each public notification required, submit to the department a representative copy of each type of notice distributed, published, posted or made available to the persons served by the system or to the media.

The water supply system shall submit to the department within the time stated in the request copies of any records of any records required to be maintained by the department or copies of any documents then in existence which the department is entitled to inspect under the provisions of state law.

2. Public notification.

- a. Community water systems. The supplier of water shall notify persons served by the system if it:

- (1) Fails to comply with an applicable maximum contaminant level.
- (2) Is granted a variance or an exemption from an applicable maximum contaminant level.

(3) Fails to comply with the requirements of any schedule prescribed by the department.

(4) Fails to perform any monitoring required.

Notification shall be made by inclusion of a notice in the first set of water bills of the system issued after the failure or grant, and in any event by written notice within three months. Such notice shall be repeated at least once every three months so long as the system's failure continues or the variance or exemption remains in effect. If the system issues water bills less frequently than quarterly, or does not issue water bills, the notice shall be made by or supplemented by another form of direct mail.

In addition, if a community water system has failed to comply with an applicable maximum contaminant level, the supplier of water shall notify the public of such failure as follows:

(1) By publication on not less than three consecutive days in a newspaper or newspapers of general circulation in the area served by the system. Such notice shall be completed within fourteen days after the supplier of water learns of the failure.

(2) By furnishing a copy of the notice to radio and television stations serving the area served by the system. Such notice shall be furnished within seven days after the supplier of water learns of the failure.

(3) The requirements for public notification by newspaper, radio, and television may be waived by the department if it determines that the violation has been corrected promptly after discovery, the cause of the violation has been eliminated, and there is no longer a risk to public health.

If the area served by a community water system is not served by a daily newspaper of general circulation, notification by newspaper shall be given by publication on three consecutive weeks in a weekly newspaper of general circulation serving the area. If no weekly or daily newspaper of general circulation serves the area, notice shall be given by posting the notice in post offices within the area served by the system. The form and manner of such notification shall be prescribed by the department and shall ensure that the public using the system is adequately informed of the failure or grant.

b. Noncommunity water systems. The supplier of water shall notify persons served by the system if it:

- (1) Fails to comply with an applicable maximum contaminant level.
- (2) Is granted a variance or an exemption from an applicable maximum contaminant level.
- (3) Fails to comply with the requirements of any schedule prescribed by the department.
- (4) Fails to perform any monitoring required.

The supplier of water shall give notices by continuous posting of such failure or granting of a variance or exemption to the persons served by the system as long as the failure or granting of a variance or exemption continues.

The form and manner of such notification shall be prescribed by the department and shall ensure that the public using the system is adequately informed of the failure or grant.

c. Form of public notification. Notices shall be written in a manner reasonably designed to fully inform the users of the system. The notice shall be conspicuous and shall not use unduly technical language, unduly small print or other methods which would frustrate the purpose of the notice. The notice shall disclose all material facts regarding the subject including the nature of the problem and when appropriate, a clear statement that a primary drinking water regulation has been violated and any preventative measures that should be taken by the public. Notices may include a balanced explanation of the significance or seriousness to the public health of the subject of the notice, a fair explanation of steps taken by the system to correct any problem and the results of any additional sampling.

In any instance in which notification by mail is required, but notification by newspaper or to radio or television stations is not required, the department may order the supplier of water to provide notification by newspaper and to radio and television stations when circumstances make more immediate or broader notice appropriate to protect the public health.

d. Notification by the department. Notice to the public required by this section may be given by the department on behalf of the supplier of water.

History: Amended effective December 1, 1982.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-02, 61-28.1-03, 61-28.1-05, 61-28.1-06, 61-28.1-07

33-17-01-15. Variance and exemption.

1. Variance. The department may authorize a variance from any maximum contaminant level listed in section 33-17-01-04 when:
 - a. The raw water sources which are available to this specific system cannot meet the maximum contaminant levels specified in the above-mentioned regulations despite application of the best technology, treatment techniques, or other means which the department finds are generally and reasonably available, taking cost into consideration.
 - b. The concentration of the contaminant or contaminants, for which the maximum contaminant level is exceeded by granting such variance, will not result in unreasonable risk to health.
 - c. Within one year of the date of variance authorization, a schedule for compliance is issued and the owner of the supply agrees to implement such compliance schedule.
2. Exemption. The department may exempt any public water supply system from any maximum contaminant level or treatment technique requirement, or from both, upon finding that:
 - a. Due to compelling factors, including economic, the public water system is unable to comply with such contaminant level or treatment technique.
 - b. The public water system was in operation on the effective date of such contaminant level or treatment technique regulation.
 - c. The granting of the exemption will not result in an unreasonable risk to health.
 - d. Within one year of the date of exemption authorization, a schedule for compliance be issued and the owner of the supply agree to implement such schedule.
 - e. No exemption granted under this section shall extend beyond January 1, ~~1981~~ 1984, unless:
 - (1) The exemption precedes a compliance schedule whereby a public water system has entered into an enforceable agreement to become part of a regional public water system.

(2) If the conditions of paragraph 1 are met, the exemption may not extend beyond January 1, ~~1983~~ 1986.

3. Procedure.

- a. Action to consider a variance or exemption may be initiated by the department or by the owner of the supply through a formal request submitted to the department.
- b. Prior to authorization of a variance, ~~exemption~~, or a compliance schedule for a variance, the department shall provide notice and opportunity for a public hearing on that proposed variance, ~~exemption~~, or compliance schedule for a variance.
- c. Prior to authorization of a compliance schedule for an exemption, the department shall provide notice and opportunity for a public hearing on the proposed compliance schedule for an exemption.

History: Amended effective December 1, 1982.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-02, 61-28.1-03, 61-28.1-05, 61-28.1-06, 61-28.1-07

33-17-01-16. Siting. All new, altered, or expanded public water supply systems including wells, treatment, and storage facilities necessary for the continuous operation of the water system shall be located so as to:

1. Minimize potential breakdown as a result of floods, fires, or other disasters.
2. Except for intake structures, not be within the floodplain of a one hundred year flood.
3. Prevent contamination of the water supply by existing sources of pollution.
- 3- 4. Provide sufficient property for water supply facilities to allow proper operation, maintenance, replacement, and storage of system components.

History: Amended effective December 1, 1982.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-02, 61-28.1-03, 61-28.1-05, 61-28.1-06, 61-28.1-07

33-17-01-17. Plans and specifications.

1. Submission of plans. Plans and specifications shall be prepared for all new public water supply systems and for alterations or extensions to existing systems. Such plans and specifications, together with other pertinent information, shall be submitted to the department for review and approval prior to awarding of contracts. Such plans and specifications shall:
 - a. Be submitted in triplicate and in sufficient time to permit at least a two-week period for review and comment and with additional time to incorporate changes if required.
 - b. Be presented in legible form and of sufficient scale to facilitate review.
 - c. Include supplemental information pertaining to basis of design, description of existing facilities, appraisal of future needs and such other information normally included in an engineers report, as may be requested by the department.
 - d. Be replaced by "as built" plans when change orders result in major changes in the facilities.
2. Submission of revised plans, change orders, and addendums. Any deviations from the approved plans and specifications, or use of alternate equipment, which would affect capacity, hydraulic conditions, operating units, the functioning of the water treatment process or distribution system or the quality of water to be delivered, will require departmental approval prior to contract for alternate equipment or any construction which is affected by such changes. Revised plans and specifications, properly executed change orders, or addendums, along with pertinent supplemental information, is to be submitted to the department for review and approval.
3. Approval of plans. Plans and specifications reviewed by the department will be approved only when such plans and specifications fully meet and comply with existing statutes and such standards and guidelines as have been or may be established by the department.
4. Compliance with plan approval. All public water systems shall be constructed in accordance with the plans, specifications, and applicable change orders approved by the department. The department reserves the right to remove from service all or any part of a public water supply system found not to be constructed in accordance with approved plans, specifications, or change orders, or for which plans, specifications, or change orders were not approved.

5. Operation and maintenance manual. An operation and maintenance manual shall be prepared and supplied by the appropriate party to any operator of new or modified water supply facilities or systems. A copy of this manual shall be submitted to the department for review prior to initial operation of the new or modified facility or system.

History: Amended effective December 1, 1982.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-02, 61-28.1-03, 61-28.1-05, 61-28.1-06, 61-28.1-07

33-17-01-19. Protection of public water supply systems.

1. Cross connection control.

- a. Cross connections are prohibited except when and where, as approved by the authority having jurisdiction, suitable protective devices are installed, tested, and maintained to ensure proper operation on a continuing basis.
- b. A public water supply system shall be designed, installed, and maintained in such a manner as to prevent nonpotable liquids, solids, or gases from being introduced into the public water supply through cross connections or any other piping connections to the system.

2. Interconnections of public water systems.

- a. Interconnection between two or more public water systems shall be permitted only with the written approval of the department.
- b. Interconnection between an individual water supply and a public water system shall not be permitted unless specifically approved in writing by the department.

3. Return of used water prohibited. Water used for cooling, heating, or other purposes shall not be returned to the public water system. Such water may be discharged into an approved drainage system through an airgap or may be used for nonpotable purposes.

4. Introduction of chemicals and other substances. No chemicals or other substances that could produce either toxic conditions, taste, odor, or discoloration in a public water system shall be introduced into or used in such systems.

5. Painting of water tanks. The interior surface of a potable water tank, piping or equipment shall be lined, painted, or repaired with only approved materials which will not affect either the taste, odor, color, or potability of the water

supply when the tank, piping, or equipment is placed in or returned to service.

6. Used materials. Containers, piping, or materials which have been used for any other purpose than conveying potable water shall not be used for conveying potable water in a public water system.

History: Effective December 1, 1982.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-02, 61-28.1-03, 61-28.1-05, 61-28.1-06, 61-28.1-07

FEBRUARY 1983

33-03-11-09. Curriculum substitution. In lieu of the course requirements listed in section 33-03-11-08, operators of depilatron and removatron-type hair removal machines shall be required to complete forty hours of course work in an acceptable program designed specifically for the machines which they will be operating. Such course work shall be submitted to the department and approved on a case-by-case basis prior to operator certification. In addition to these requirements, an operator of a depilatron or removatron-type hair removal machine shall be a licensed cosmetologist in accordance with North Dakota Century Code chapter 43-11.

History: Effective February 1, 1983.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

JUNE 1983

STAFF COMMENT: Chapter 33-25-01 contains all new material but is not underscored so as to improve readability.

ARTICLE 33-25

UNDERGROUND INJECTION CONTROL

Chapter
33-25-01 Underground Injection Control Program

CHAPTER 33-25-01
UNDERGROUND INJECTION CONTROL PROGRAM

Section	
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33-25-01-18	Class IV Wells

33-25-01-01. Definitions.

1. "Abandoned well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.
2. "Area of review" means the area of review surrounding an injection well described according to the criteria in 40 CFR 146.06.
3. "Catastrophic collapse" means the sudden and utter failure of overlying strata caused by removal of underlying materials.
4. "CFR" means Code of Federal Regulations as of July 1, 1982.
5. "Director" means the director of the division of water supply and pollution control of the state department of health.
6. "Formation" means a body of rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.
7. "Hazardous waste" means a hazardous waste as defined in 40 CFR 261.3.
8. "Plugging" means the act or process of stopping the flow of water, oil, or gas into and out of a formation through a borehole or well penetrating that formation.
9. "Radioactive waste" means any waste which contains hazardous material in concentrations which exceed those listed in 10 CFR part 20, appendix B, table II, column 2, or exceed the criteria for identifying and applying characteristics for hazardous waste and for listing hazardous waste in 40 CFR, part 261, whichever is applicable.
10. "Well" means a bored, drilled or driver shaft, or a dug hole, whose depth is greater than the largest surface dimension.

History: Effective June 1, 1983.

General Authority: NDCC 61-28-04
Law Implemented: NDCC 61-28-04

33-25-01-02. Classification of injection wells. Injection wells are classified as follows:

1. Class I. Wells used to inject hazardous waste and other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one quarter mile [402.34 meters] of the well bore, an underground source of drinking water.
2. Class II. Wells which inject fluids:
 - a. Which are brought to the surface in connection with conventional oil or natural gas production;
 - b. For enhanced recovery of oil or natural gas; and
 - c. For storage of hydrocarbons which are liquid at standard temperature and pressure.
3. Class III. Wells which inject for extraction of minerals or energy.
4. Class IV. Wells used to dispose of hazardous wastes or radioactive wastes into or above a formation which, within one quarter mile [402.34 meters] of the well, contains an underground source of drinking water and wells used to dispose of hazardous wastes which cannot be classified under Class I wells, e.g., wells used to dispose of hazardous wastes into or above a formation which contains an exempted aquifer.
5. Class V. Injection wells not included in Class I, II, III, or IV.

History: Effective June 1, 1983.
General Authority: NDCC 61-28-04
Law Implemented: NDCC 61-28-04

33-25-01-03. Prohibition of unauthorized injection. Any underground injection (except Class II and III) is prohibited except as authorized by permit or rule issued under this section. Also the construction of any well required to have a permit under this section is prohibited until the permit has been issued.

History: Effective June 1, 1983.
General Authority: NDCC 61-28-04, 61-28-06
Law Implemented: NDCC 61-28-04, 61-28-06

33-25-01-04. Prohibition of movement of fluid into underground sources of drinking water. No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other underground injection activity in a manner which causes or allows movement of fluid containing any contaminant into an underground source of drinking water or which may adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this section are met.

History: Effective June 1, 1983.
General Authority: NDCC 61-28-04, 61-28.1-03
Law Implemented: NDCC 61-28-04, 61-28.1-03

33-25-01-05. Identification of underground sources of drinking water and exempted aquifers.

1. The director may identify and shall protect as an underground source of drinking water all aquifers or parts of aquifers which are not exempted aquifers and which:
 - a. Supply any public water system; or
 - b. Contain a sufficient quantity of ground water to supply a public water system and:
 - (1) Currently supply drinking water for human consumption; or
 - (2) Contain fewer than ten thousand milligrams per liter total dissolved solids.
2. After notice and opportunity for a public hearing the director may designate, identify, and describe in geographic or geometric terms, or both, which are clear and definite exempted aquifers or parts thereof using the following criteria:
 - a. It does not currently serve as a source of drinking water; and
 - b. (1) It cannot now and will not in the future serve as a source of drinking water because:
 - (a) It is mineral, hydrocarbon, or geothermal energy producing;
 - (b) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical;

- (c) It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or
 - (d) It is located over a Class III well mining area subject to subsidence or catastrophic collapse; or
- (2) The total dissolved solids content of the ground water is more than three thousand and less than ten thousand milligrams per liter and it is not reasonably expected to supply a public water system.

History: Effective June 1, 1983.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-25-01-06. Permitting.

1. Application for a permit.
 - a. Any person who is required to have a permit shall complete, sign, and submit an application to the director.
 - b. When the owner and operator are different, it is the operator's duty to obtain a permit.
 - c. The application must be complete before the permit is issued.
 - d. All applicants of Class I wells shall provide information specified in 40 CFR 122.4 and 146.14(a) using the application form specified by the director.
 - e. Applicants shall keep records of all data used to complete permit applications and supplemental information for at least three years from the date the application is signed.
 - f. Existing Class I wells shall be authorized to inject for a period of one year after approval of the state program.
 - g. Operators of existing Class I injection wells shall submit an application within six months and obtain a permit within one year after approval of the state program.
 - h. Operators of new injection wells, unless covered by an existing area permit, shall submit an application within a reasonable time before construction is expected to begin.
2. Signatories to permit applications.

- a. All permits shall be signed as follows:
 - (1) For a corporation: by a principal executive officer of at least the level of vice president.
 - (2) For a partnership or sole proprietor: by a general partner or proprietor.
 - (3) For a municipality, state, federal, or other public agency: by either a principal officer or authorized representative.
- b. A person is a duly authorized representative if the authorization:
 - (1) Is made in writing by the legal signatory;
 - (2) Specifies an individual or position having responsibility for the overall operation; and
 - (3) Is submitted to the director either prior to or along with documents signed by the authorized representative.

Changes in authorization must be in writing and submitted to the director.

3. Duration of permits. Underground injection control permits for Class I and V wells shall be effective for a fixed term of not more than ten years.
4. Transfer of permits.
 - a. Any Class V permit may be automatically transferred to a new permittee if:
 - (1) The current permittee notifies the director at least thirty days prior to the proposed transfer date; and
 - (2) The notice includes a written agreement between the existing and new permittee containing:
 - (a) A specific date for transfer of permit responsibility, coverage and liability; and
 - (b) A demonstration that the new permittee meets the financial responsibility requirements.
 - b. Permits for Class I wells may be transferred only if the permit has been modified or revoked and reissued.
5. Modification, revocation and reissuance, or termination of permits.

- a. Permits may be modified, revoked and reissued, or terminated at the request of any affected person or at the director's initiative if cause exists as specified in 40 CFR 122.15(a) and (b). All requests shall be in writing and shall contain facts or reasons supporting the request.
- b. If the director tentatively decides to modify or revoke and reissue a permit, the director shall prepare a draft permit incorporating the proposed changes. The director may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the director shall require the submission of a new application.
- c. The following are causes for terminating a permit during its term or for denying a permit renewal application:
 - (1) Noncompliance by the permittee with any permit condition;
 - (2) Failure by the permittee to fully disclose all relevant facts or misrepresentation of relevant facts; or
 - (3) A determination that the permitted activity endangers human health or the environment.
- d. If the director tentatively decides to terminate a permit, the director shall issue notice of intent to terminate.

History: Effective June 1, 1983.

General Authority: NDCC 61-28-04, 61-28-06

Law Implemented: NDCC 61-28-04, 61-28-06

33-25-01-07. Area permits.

1. The director may issue a permit on an area basis, rather than for each well individually; provided, that the permit is for injection wells:
 - a. Described and identified by location in permit applications, if they are existing wells;
 - b. Within the same well field, facility site, reservoir, project, or similar unit in the same state;
 - c. Of similar construction;
 - d. Of the same class;
 - e. Operated by a single owner or operator; and

- f. Used to inject other than hazardous waste.
- 2. Area permits shall specify:
 - a. The area within which underground injections are authorized; and
 - b. The requirements for construction, monitoring, reporting, operation, and abandonment for all wells authorized by the permit.
- 3. The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area, provided:
 - a. The permittee notifies the director at such time as the permit requires;
 - b. The additional well meets the area permit criteria; and
 - c. The cumulative effects of drilling and operation of additional injection wells are acceptable to the director.
- 4. If the director determines that any additional well does not meet the area permit requirements, the director may modify or terminate the permit or take enforcement action.
- 5. If the director determines the cumulative effects are unacceptable, the permit may be modified.

History: Effective June 1, 1983.

General Authority: NDCC 61-28-04, 61-28-06

Law Implemented: NDCC 61-28-04, 61-28-06

33-25-01-08. Draft permits and fact sheets.

- 1. Draft permits.
 - a. When the application is complete, the director shall tentatively decide either to prepare a draft permit or deny the application.
 - b. If the director decides to prepare the draft permit, it shall contain the following information:
 - (1) All required permit conditions;
 - (2) All compliance schedule requirements;
 - (3) All monitoring requirements; and

- (4) All specific requirements for construction, corrective action, operation, hazardous waste management, reporting, plugging and abandonment, financial responsibility, mechanical integrity, and any other conditions the director may impose.

2. Fact sheets.

a. A fact sheet shall be prepared for:

- (1) Every draft permit for a major facility or activity.
- (2) Every draft permit which the director finds is the subject of widespread public interest or raises major issues.

b. If a fact sheet is required, it:

- (1) Shall be sent to the applicant and, on request, to any other person.

- (2) Shall include:

- (a) A brief description of the type of facility or activity.

- (b) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being injected.

- (c) A brief summary of the basis for the draft permit conditions.

- (d) The reasons why any requested variances or alternatives to required standards do or do not appear justified.

- (e) A description of the procedures for reaching a final decision, including:

- [1] Beginning and ending dates of comment period;

- [2] Address where comments will be received;

- [3] Procedures for requesting a hearing and the nature of the hearing; and

- [4] Any other procedures by which the public may participate.

- (f) The name and telephone number of a person to contact for additional information.

History: Effective June 1, 1983.
General Authority: NDCC 61-28-04
Law Implemented: NDCC 61-28-04

33-25-01-09. Public notice and comment - Requests for hearings
- Public hearings - Response to comments.

1. Public notice.

- a. The director shall give public notice that the following actions have occurred.
 - (1) A draft permit has been prepared.
 - (2) A hearing has been scheduled.
 - (3) Intent to deny a permit application.
- b. Public notice shall be given to allow thirty days for public comment on the draft permit.
- c. Public notice of a public hearing shall be given at least thirty days before the hearing.
- d. Public notice shall be given by the methods specified in 40 CFR 124.10(c).
- e. Public notices and public notices for hearings shall at a minimum contain the information specified in 40 CFR 124.10(d).

2. Public comment.

- a. During the public comment period, any interested person may submit written or oral comments and, if no public hearing is scheduled, request a public hearing in writing, stating the nature of the issues.
- b. All comments shall be considered in making the final decision and shall be answered when the final permit decision is made.

3. Public hearing. The director shall hold a public hearing whenever there is a significant degree of public interest in a draft permit. The director also may hold a public hearing at the director's discretion.

4. Response to comments.

- a. The director shall issue a response to comments when a final permit decision is made. The response shall:

- (1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
- (2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

b. The response to comments shall be available to the public.

History: Effective June 1, 1983.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-25-01-10. Conditions applicable to all permits.

1. The general conditions contained in 40 CFR 122.7 apply to Class I and V underground injection control permits. All conditions shall be incorporated into the permits, either expressly or by reference.
2. A permittee may not commence injection into a new injection well until:
 - a. Construction is complete;
 - b. The permittee has submitted notice to the director that construction is complete; and
 - c. The director has inspected or reviewed the new injection well and finds it in compliance with the permit, or the permittee has not received notice from the director of intent to inspect within thirteen days of the permittee's completion notice.
3. The director shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into underground sources of drinking water.
4. The permit shall require the permittee to maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the director. The permittee must show evidence of financial responsibility to the director by the submission of surety bond, or other adequate assurance, such as financial statements or other materials acceptable to the director.
5. The permittee shall retain all records concerning the nature and composition of injected fluids until three years after completion of plugging and abandonment of the well.

6. The following information shall be reported within twenty-four hours:
 - a. Any monitoring or other information which indicates that any contaminant may cause an endangerment to an underground source of drinking water.
 - b. Any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between underground sources of drinking water.

History: Effective June 1, 1983.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-25-01-11. Technical requirements.

1. Construction requirements.

- a. (1) Existing wells shall achieve compliance with construction requirements prior to permitting or according to a compliance schedule established as a permit condition.
- (2) New injection wells shall submit plans for testing, drilling, and construction as part of the permit application.
- (3) New injection wells shall be in compliance with construction requirements prior to commencing injection operations.
- (4) Changes in construction plans require approval of the director.
- b. Class I construction shall conform to the requirements contained in 40 CFR 146.12.

2. Corrective action.

- a. Applicants for Class I injection well permits shall identify all known wells which penetrate the injection zone within the area of review.
- b. For wells in the area of review which are improperly sealed, completed, or abandoned, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into an underground source of drinking water.
- c. The director's review of the plan for corrective action shall consider all of the following criteria and factors:

- (1) Toxicity and volume of the injected fluid.
 - (2) Toxicity of native fluids or byproducts of injection.
 - (3) Potentially affected population.
 - (4) Geology.
 - (5) Hydrology.
 - (6) History of the injection operation.
 - (7) Completion and plugging records.
 - (8) Abandonment procedures in effect at the time the well was abandoned.
 - (9) Hydraulic connections with an underground source of drinking water.
- d. Where the corrective action plan is adequate, the director shall incorporate the plan into the permit as a condition.
 - e. Where the corrective action plan is inadequate, the director shall:
 - (1) Require the applicant to revise the plan;
 - (2) Prescribe a corrective action plan as a permit condition; or
 - (3) Deny the permit.
 - f. Permits for existing injection wells that require corrective action shall include a compliance schedule requiring corrective action as soon as possible.
 - g. New injection wells may not be permitted until all required corrective action has been taken.
 - h. The director may require as a permit condition that injection pressure be so limited that pressure in the injection zone does not exceed hydrostatic pressure at the site of an improperly completed or abandoned well within the area of review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be part of a compliance schedule and last until all other required corrective action has been taken.
3. Operating, monitoring and reporting requirements for Class I wells shall at a minimum include the items contained in 40 CFR 146.13.

4. In authorizing a new Class I well, the director shall require the submission of all the information specified in 40 CFR 146.14. For an existing or converted Class I well, the director may rely on the existing permit file for those items of information that are current and accurate.
5. Prior to granting approval for the operation of a well, the director shall consider the information listed in 40 CFR 146.14(b).

History: Effective June 1, 1983.
General Authority: NDCC 61-28-04
Law Implemented: NDCC 61-28-04

33-25-01-12. Plugging and abandonment.

1. Any Class I permit shall include, and any Class V permit may include, a plan for plugging and abandonment which shall be incorporated into the permit as a condition to ensure that movement of fluids either into an underground source of drinking water or between underground sources of drinking water is not allowed.
2. Temporary intermittent cessation of injection operations is not abandonment.
3. The permittee shall notify the director at such times as the permit requires before conversion or abandonment of the well or in the case of area permits before closure of the project.
4. Prior to granting approval for plugging and abandonment, the director shall consider the information listed in 40 CFR 146.14(c).

History: Effective June 1, 1983.
General Authority: NDCC 61-28-04
Law Implemented: NDCC 61-28-04

33-25-01-13. Mechanical integrity. A permit for any Class I well or injection project which lacks mechanical integrity shall include, and for any Class V well may include, a condition prohibiting injection operations until the permittee shows to the satisfaction of the director under 40 CFR 146.08 that the well has mechanical integrity.

History: Effective June 1, 1983.
General Authority: NDCC 61-28-04
Law Implemented: NDCC 61-28-04

33-25-01-14. Area of review. The area of review for each injection well or each field, project, or area of the state shall be determined according to 40 CFR 146.06.

History: Effective June 1, 1983.
General Authority: NDCC 61-28-04
Law Implemented: NDCC 61-28-04

33-25-01-15. Schedules of compliance.

1. The compliance schedule must require compliance as soon as possible, and not later than three years after the effective date of the permit.
2. If the schedule of compliance is for more than one year, then interim requirements and completion dates (not to exceed one year) must be incorporated into the compliance schedule and permit.
3. No later than thirty days following each interim and final date, the permittee shall submit progress reports to the director.

History: Effective June 1, 1983.
General Authority: NDCC 61-28.1-03
Law Implemented: NDCC 61-28.1-03

33-25-01-16. Authorization of Class V underground injection wells.

1. Authorization of injection into a Class V well is authorized indefinitely, subject to the requirements of subsections 4, 5, and 6 of section 33-25-01-10 and subsection 3 of section 33-25-01-12.
2. The owner or operator of any existing Class V well shall, within one year of the effective date of an underground injection control program, notify the director of the existence of any well meeting the definitions of Class V under the owner's or operator's control, and submit the following inventory information:
 - a. Name of owner or operator of the well and legal contact;
 - b. Number of wells and location by township, range and section;
 - c. Nature and volume of injected fluids;
 - d. Construction features of the well, including well depth, screened interval, and casing size and type; and

- e. Any other information which the director requests.
3. All new Class V wells shall be in compliance with article 43-35 and submit to the director a log of formations penetrated and the inventory information requested in subsection 2.
4. a. The director may require the operator of a Class V well authorized by rule to apply for and obtain an individual or area permit. Cases where permits may be required include:
- (1) The injection well is not in compliance with the applicable rule.
 - (2) The injection well is not or no longer is within the category of wells and types of well operations authorized by rule.
 - (3) Protection of an underground source of drinking water requires the injection operation be regulated by requirements not contained in the rules.
- b. Any owner/operator authorized by rule may request and be granted a permit and hence be excluded from coverage by rule.
- c. All injection wells regulated by rule shall submit inventory information to the director.
- d. Upon program approval, the director shall notify owner/operators of injection wells of their duty to submit inventory information.
- e. Failure to submit required inventory information for Class V well within one year of program approval will result in authorization removal for that well.

History: Effective June 1, 1983.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-25-01-17. Requirements for hazardous waste injection wells.

The owner or operator of all wells injecting hazardous waste shall comply with the requirements for hazardous waste management facilities as specified in 40 CFR 122.45.

History: Effective June 1, 1983.

General Authority: NDCC 23-20.3-04, 23-20.3-05, 61-28-04

Law Implemented: NDCC 23-20.3-04, 23-20.3-05, 61-28-04

33-25-01-18. Class IV wells. All Class IV wells are prohibited.

History: Effective June 1, 1983.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

TITLE 43
Industrial Commission

JANUARY 1983

43-02-03-01. **Definitions.** The terms used throughout this chapter have the same meaning as in the North Dakota Century Code chapter 38-08 except:

1. "Adjusted allowable" means the allowable production a proration unit receives after all adjustments are applied.
2. "Allocated pool" is one in which the total oil or natural gas production is restricted and allocated to various proration units and fractional proration units therein in accordance with proration schedules.
3. "Allowable production" means that number of barrels of oil or cubic feet [meters] of natural gas authorized to be produced from the respective proration units and fractional proration units in an allocated pool.
4. "Back allowable" shall mean means the authorized accumulative underage or shortage for a given proration unit or fractional proration unit.
5. "Barrel" means forty-two United States gallons [158.99 liters] measured at sixty degrees Fahrenheit [14.44 degrees Celsius] and atmospheric pressure at sea level.
6. "Barrel of oil" means forty-two United States gallons [158.99 liters] of oil after deductions for the full amount of basic sediment, water, and other impurities present, ascertained by centrifugal or other recognized and customary test.
7. "Bottom hole or subsurface pressure" means the pressure in pounds [kilograms] per square inch [square centimeters] gauge under conditions existing at or near the producing horizon.

8. "Bradenhead gas well" means any well capable of producing gas through wellhead connections from a gas reservoir which has been successfully cased off from an underlying oil or gas reservoir.
9. "Casinghead gas" means any gas or vapor, or both gas and vapor, indigenous to and produced from a pool classified as an oil pool by the commission.
10. "Common purchaser for natural gas" means any person now or hereafter engaged in purchasing, from one or more producers, gas produced from gas wells within each common source of supply from which it purchases, for processing or resale.
11. "Common purchaser for oil" means every person now engaged or hereafter engaging in the business of purchasing oil in this state.
12. "Common source of supply" is synonymous with pool and is a common accumulation of oil or gas, or both, as defined by commission orders.
13. "Completion" means an oil well shall be considered completed when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run. A gas well shall be considered complete when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after casing has been run. A dry hole shall be considered complete when all provisions of plugging are complied with as set out in this chapter.
14. "Condensate" means the liquid hydrocarbons recovered at the surface that result from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.
15. "Cubic foot of gas" means that volume of gas contained in one cubic foot [28.32 liters] of space and computed at a pressure of fourteen and seventy-three hundredths pounds per square inch [1,034.19 grams per square centimeter] absolute at a base temperature of sixty degrees Fahrenheit [14.44 degrees Celsius].
16. "Deep pool" means a common source of supply situated more than five thousand feet {1,524 meters} below the surface.
17. "Direct offsets" means wells drilled on forty-acre {16.19-hectare} tracts directly north and south, or east and west of each other. "Enforcement officer" means the enforcement officer of the industrial commission,

the deputy enforcement officer of the industrial commission, and their designated representatives.

- ±8- 17. "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool, which artificial means or application includes pressuring, cycling, pressure maintenance or injection to the pool of a substance or form of energy but does not include the injection in a well of a substance or form of energy for the sole purpose of (a) aiding in the lifting of fluids in the well, or (b) stimulation of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.
18. "Exception well location" means a location which does not conform to the general spacing requirements established by the rules and regulations or orders of the commission but which has been specifically approved by the commission or by the enforcement officer.
19. "Fractional proration unit for oil" means a tract of land containing more or less than forty acres [16.19 hectares] predominantly situated within the confines of a pool.
20. "Gas lift" means any method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.
21. "Gas-oil ratio" means the ratio of the gas produced in cubic feet [meters] to the number of barrels a barrel of oil concurrently produced during any stated period.
22. "Gas-oil ratio adjustment" ~~shall mean~~ means the reduction in allowable of a high gas-oil ratio proration unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.
23. "Gas transportation facility" means a pipeline in operation serving one or more gas wells for the transportation of natural gas, or some other device or equipment in like operation whereby natural gas produced from gas wells connected therewith can be transported.
24. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the commission.
25. "High gas-oil ratio proration unit" means a proration unit with a producing oil well with a gas-oil ratio in excess of the limiting gas-oil ratio for the pool.
26. "Injection or input well" means any well used for the injection of air, gas, water, or other fluids into any underground stratum.

27. "Limiting gas-oil ratio" means the gas-oil ratio assigned by the commission to a particular oil pool to limit the volumes of casinghead gas which may be produced from the various oil producing units within that particular pool.
28. "Log or well log" means a systematic, detailed, and correct record of formations encountered in the drilling of a well, including commercial electric logs and similar records, radioactive logs, dip meter logs, and other related logs.
29. "Marginal unit" means a proration unit or fractional proration unit that cannot produce at a rate equal to the top unit allowable for the proration period for the pool.
30. "Minimum allowable" means the minimum amount of production from an oil or gas well which will encourage the continued operation of such well and below which the well might be threatened with premature abandonment and resulting waste.
31. "Multiple completion" means the completion of any well so as to permit the production from more than one common source of supply.
32. "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not herein defined as oil.
33. "Nonmarginal unit" means a proration unit or a fractional proration unit that can produce at a rate equal to the top unit allowable for the proration period for the pool.
34. "Normal unit allowable" means the amount of allowable production allocated to proration units which are producing from a depth of five thousand feet [1,524 meters] or above.
35. "Official gas-oil ratio test" means the periodic gas-oil ratio test made by order of the commission and by such method and means and in such manner as prescribed by the commission.
36. "Offset" means a well drilled on a forty-acre [16.19-hectare] tract cornering or contiguous to a forty-acre [16.19-hectare] tract having an existing oil well, or a well drilled on a one hundred sixty-acre [64.75-hectare] tract cornering or contiguous to a one hundred sixty-acre [64.75-hectare] tract having an existing gas well; provided, however, that for wells subject to a fieldwide spacing order, "offset" means any wells located on spacing units cornering or contiguous to the spacing unit or well which is the subject of an inquiry or a hearing.
- 36- 37. "Oil well" means any well capable of producing oil and which is not a gas well as defined herein or oil and casinghead gas from a common source of supply as determined by the commission.

- ~~37-~~ 38. "Operator" means any person or persons who, duly authorized, is in charge of the development of a lease or the operation of a producing property.
- ~~38-~~ 39. "Overage or overproduction" means the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration schedule.
- ~~39-~~ 40. "Potential" means the properly determined capacity of a well to produce oil, or gas, or both, under conditions prescribed by the commission.
- ~~40-~~ 41. "Pressure maintenance" means the injection of gas or other fluid into a reservoir, either to increase or maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.
- ~~41-~~ 42. "Proration day" consists of twenty-four consecutive hours which shall begin at seven a.m. and end at seven a.m. on the following day.
- ~~42-~~ 43. "Proration month" means the calendar month which shall begin at seven a.m. on the first day of such month and end at seven a.m. on the first day of the next succeeding month.
- ~~43-~~ 44. "Proration, period" means for oil the proration month and for gas six consecutive calendar months which shall begin at seven a.m. on the first day of a calendar month and end at seven a.m. on the first day of the seventh succeeding month.
- ~~44-~~ 45. "Proration schedule" means the periodic order of the commission authorizing the production, purchase, and transportation of oil or of natural gas from the various units of oil or of natural gas proration in allocated pools.
- ~~45-~~ 46. "Proration unit for gas" consists of such geographical area as may be prescribed by special pool rules issued by the commission.
- ~~46-~~ 47. "Proration unit for oil" consists of a tract of land containing forty acres [16.19 hectares] predominantly situated within the confines of a pool.
- ~~47-~~ 48. "Recomplete" means the subsequent completion of a well in a different pool from the pool in which it was originally completed.
- ~~48-~~ 49. "Reservoir" means pool or common source of supply.
- ~~49-~~ 50. "Saltwater handling facility" means and includes any container such as a pit, tank, or pool, whether covered or uncovered, used for the handling, storage, disposal of deleterious

substances obtained, or used, in connection with the drilling or operation of wells.

- 50- "Secondary recovery" means a method of recovering quantities of oil or gas from a reservoir which quantities would not be recoverable by ordinary primary depletion methods.
- 51- "Shallow pool" means a pool which has a depth range from zero to five thousand feet {0 to 1,524 meters}.
- 52- 51. "Shut-in pressure" means the pressure noted at the wellhead when the well is completely shut in. Not to be confused with bottom hole pressure.
- 53- 52. "Spacing unit" is the minimum area in each pool within which a well may be drilled. "Spacing unit" is the area in each pool which is assigned to a well for drilling, producing, and proration purposes in accordance with the commission's rules or orders.
- 54- 53. "Stratigraphic test well" means any well or hole, except a seismograph shot hole, drilled for the purpose of gathering information in connection with the oil and gas industry, which hole shall not exceed five inches {12.7 centimeters} in diameter under surface casing.
- 55- 54. "Tank bottoms" means that accumulation of hydrocarbon material and other substances which settle naturally below crude oil in tanks and receptacles that are used in handling and storing of crude oil, and which accumulation contains in excess of two percent of basic sediment and water in an amount rendering it unsaleable to an ordinary crude oil purchaser; provided, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet thereto.
- 56- 55. "Top unit allowable for gas" means the maximum number of cubic feet [meters] of natural gas, for the proration period, allocated to a proration unit for gas in an allocated gas pool.
- 57- 56. "Top unit allowable for oil" means the maximum number of barrels of oil daily for each calendar month allocated to a proration unit for oil in a pool to nonmarginal units.
- 58- 57. "Treating plant" means any plant constructed or used for the purpose of wholly or partially or being used wholly or partially for reclaiming, treating, processing, or in any manner making tank bottoms or any other waste oils marketable.

59- 58. "Underage" means the amount of oil or the amount of natural gas during a proration period by which a given proration unit failed to produce in an amount equal to that authorized on the proration schedule.

60- "Unorthodox well location" means a location which does not conform to the spacing requirements established by the rules and regulations or orders of the commission.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-03. Promulgation of rules, regulations, or orders. No rule, regulation, or order, including change, renewal, or exception thereof, shall, in the absence of an emergency, be made by the commission, except after a public hearing on at least ten days notice given in the manner and form as may be prescribed by law. The public hearing shall be held at the time and place, and in the manner as may be prescribed by the commission, and any person having any interest in the subject matter of the hearing shall be entitled to be heard.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

Repealed effective January 1, 1983.

43-02-03-04. Emergency rule, regulation, or order. In the event an emergency is found to exist by the commission which in its judgment requires the making, revoking, changing, amending, modifying, altering, enlarging, renewal, or extension of a rule, regulation, or order without first having a hearing, the emergency rule, regulation, or order shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency rule, regulation, or order permitted by this section shall remain in force no longer than fifteen days from its effective date, and in any event, it shall expire when the rule, regulation, or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation, or order becomes effective.

General Authority: NDCC 38-08-11

Law Implemented: NDCC 38-08-11

Repealed effective January 1, 1983.

43-02-03-06. Waste prohibited. The production or handling of crude petroleum oil or natural gas of any type or in any form, or handling of products thereof, in such manner or under such conditions or in such amount as to constitute or result in waste is hereby prohibited.

All operators, contractors, drillers, carriers, gas distributors, service companies, pipe pulling and salvaging contractors, or other persons shall at all times conduct their operations in the drilling, equipping, operating, producing, plugging, and abandonment of oil and gas wells in a manner that will prevent waste of oil and gas, and shall not allow either oil or gas to leak or escape from a natural reservoir, or from wells, tanks, containers, pipe or other storage, conduit or operating equipment.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-03

Law Implemented: NDCC 38-08-03

43-02-03-07. United States government leases. The commission recognizes that all persons drilling on United States government land shall comply with the United States government regulations. Such persons shall also comply with all applicable state rules and regulations which are not in conflict therewith, except that no fee shall be required for a permit to drill. Copies of the sundry notices and reports on wells and the well log of the wells on United States government land shall be furnished to the commission and the state geologist at no expense to the commission or the state geologist.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-08. Classifying and defining pools. The commission will determine after notice and hearing whether a particular well or pool is a gas or oil well, or a gas or oil pool, as the case may be, and from time to time classify and reclassify wells, and will determine the limits of any pool or pools producing crude petroleum oil or natural gas and from time to time redetermine such limits.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

Repealed effective January 1, 1983.

43-02-03-11. Organization reports. Every person acting as principal or agent for another or independently engaged in the drilling of oil or gas wells, or in the production, storage, transportation,

refining, reclaiming, treating, marketing, or processing of crude oil or natural gas in North Dakota shall immediately file with the ~~commission and the state geologist~~ enforcement officer the name under which such business is being conducted or operated; and name and post-office address of such person, the business or businesses in which the person is engaged; the plan of organization, and in case of a corporation, the law under which it is chartered; and the names and post-office addresses of any person acting as trustee, together with the names and post-office addresses of any officials thereof. In each case where such business is conducted under an assumed name, such report shall show the names and post-office addresses of all owners in addition to the other information required. A new report shall be filed when and if there is a change in any of the information contained in the original report.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-12. Reservoir surveys. By special order of the commission, periodic surveys may be made of the reservoirs in this state containing oil and gas. These surveys will be thorough and complete and shall be made under the supervision of the ~~commission acting by and through the chief~~ enforcement officer. The condition of the reservoirs containing oil and gas and the practices and methods employed by the operators shall be investigated. The produced volume and source of crude oil and natural gas, the reservoir pressure of the reservoir as an average, the areas of regional or differential pressure, stabilized gas-oil ratios, and the producing characteristics of the field as a whole and the individual wells within the field shall be specifically included.

All operators of oil wells are required to permit and assist the agents of the commission in making any and all special tests that may be required by the commission on any or all wells.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-13. Record of wells. The ~~commission acting by and through the chief~~ enforcement officer shall maintain a record of official well names, to be known as the well-name register, in which shall be entered: (1) the name and location of each well; (2) the well ~~file~~ permit number; (3) the name of the operator, or the operator's agent; and (4) any subsequent name or names assigned to the well and approved by the ~~commission acting by and through the chief~~ enforcement officer.

The last name assigned to a well in the well-name register shall be the official name of the well, and the one by which it shall be known and referred to.

The commission acting by and through the chief enforcement officer may, at its the officer's discretion, grant or refuse an application to change the official name. The application shall be accompanied by a fee of twenty-five dollars, which fee is established to cover the expense of recording the change. If the application is refused, the fee shall be refunded.

In any event the number assigned to the well, and shown in the well-name register, shall not be changed, and this number shall be shown on all records, forms, reports, notices, and correspondence regarding the well.

History: Amended effective April 30, 1981; January 1, 1983.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-14. Access to records. The commission acting by and through the chief, enforcement officer, and its authorized agents their representatives shall have access to all well records wherever located. All owners, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, producing, or servicing wells shall permit the commission acting by and through the chief, enforcement officer, or authorized agents, and their representatives to come upon any lease, property, well, or drilling rig operated or controlled by them, complying with all safety rules, and to inspect the records and operation of such wells, and to have access at all times to any and all records of wells, provided that information so obtained shall be kept confidential, when requested by the operator, and shall be reported to and only to the commission or its authorized agents.

History: Amended effective April 30, 1981; January 1, 1983.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-15. Bond. Any person who is drilling or proposes to drill for oil or gas shall submit to the commission and obtain its approval of a bond, in a form approved by the commission, conditioned as provided by law. The bond shall be in the amount of five thousand dollars when applicable to one well only. Each such bond shall be executed by a responsible surety company, authorized to transact business in North Dakota. In cases where the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, such principal may submit a blanket bond conditioned as above provided, covering all wells which such person may at any time before such bond is released, drill or operate within this state but coverage shall be limited to ten dry holes that have not been properly plugged and the sites restored. The amount of any such blanket bond shall be twenty-five thousand dollars.

Prior to commencing drilling operations, any person who proposes to drill for oil or gas shall submit to the commission, and obtain its approval, a bond in a form approved by the commission, conditioned as provided by law. Each bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The bond shall be in the amount of fifteen thousand dollars when applicable to one well only. Wells drilled to a total depth of less than two thousand feet [609.6 meters] may be bonded in a lesser amount if approval is obtained by the enforcement officer. When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a blanket bond conditioned as provided above. A blanket bond covering ten wells or less shall be in the amount of fifty thousand dollars. A blanket bond covering all wells which a person may at any time drill or operate within the state before the bond is released, shall be in the amount of one hundred thousand dollars, provided the bond shall be limited to ten dry holes that have not been properly plugged and the sites restored.

For the purposes of the commission the bond required is
The bond herein required shall be conditioned upon full compliance with North Dakota Century Code chapter 38-08, and shall be a plugging bond, as well as a drilling bond, and is to endure up to and including approved plugging when the well is dry or abandoned, even though the well may have been a producer. Approved plugging shall also include practical restoration of the well site, and appurtenances thereto. Transfer of property does not release the bond. In case of transfer of property or other interest in the well and the principal desires to be released from the bond covering a well or wells, such as producers, not ready for plugging, the principal should proceed as follows:

The holder of the approved permit to drill, the principal on the bond, shall notify the commission in writing on a form to be provided by the commission reciting that a certain well, if it be only one well, or all wells, if there are several wells, describing each well by its location within the section; township, and range, has or have been transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. Such transfer must be dated and signed by a party duly authorized so to sign.

Beneath said transfer the transferee should recite that the transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such well under this one-well bond tendered with corporate surety or such wells as the case may be, under the transferee's blanket bond being tendered to or on file with the commission. Such acceptance must likewise be signed by a party authorized so to sign.

When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond the transferor is immediately released of the plugging responsibility of the well or wells as the case may be, and if such well or wells include all the wells

within the responsibility of the transferor's bond, such bond will be released upon written notice by the commission to that effect.

The transferee of any oil or gas well or the operation of any such well shall be responsible for the plugging of any such well and for that purpose shall submit a new bond or produce the written consent of the surety of the original or prior plugging bond that the latter's responsibility shall continue. ~~Noncompliance with the provisions hereof shall be grounds for closing down any such well and stopping production therefrom.~~ This section shall apply to transfers of any such wells made prior to the effective date of this section as well as thereafter. The original or prior bond shall not be released as to the plugging responsibility of any such transferor until the transferee shall submit to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging of such well or wells is completed and approved.

The commission ~~will~~ shall, in writing, advise the principal and sureties on any bond as to whether the plugging is approved, in order that, if the plugging is approved, liability under such bond may be formally terminated.

The ~~chief~~ enforcement officer is vested with the power to act for the commission as to all matters within this section.

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-16. Application ~~for~~ permit to drill. Before any person shall begin any well-site preparation for the drilling of any well for oil and gas other than surveying and staking, such person shall file an application for permit to drill (form 1) with the ~~commission and the state geologist and pay~~ enforcement officer together with a permit fee of one hundred dollars ~~for a permit~~. Verbal approval may be given for site preparation by the enforcement officer in extenuating circumstances. No drilling activity shall commence until such application is approved and a permit to drill is issued by the ~~commission acting by and through the chief~~ enforcement officer.

The application for permit to drill shall be accompanied by an accurate plat showing the location of the proposed well with reference to the nearest lines of a governmental section. Information to be included in such application shall be the proposed depth to which the well will be drilled, estimated depth to the top of important markers, estimated depth to the top of objective horizons, the proposed casing program, including size and weight thereof, the depth at which each casing string is to be set, and the proposed amount of cement to be used. The ~~commission acting by and through the chief~~ enforcement officer may request additional information, if deemed necessary.

Prior to the commencement of recompletion operations, an application for permit shall likewise be filed with the commission and the state geologist enforcement officer. Included in such application shall be the notice of intention to reenter an abandoned well, or to develop by deepening or plugging back to any source of supply other than the producing horizon in an existing well. Such notice to recomplete any well shall include the name and permit file number and exact location of the well, the approximate date operations will begin, the estimated completed total depth, the casing program to be followed, and the original total depth and the total depth at which the well is to be recompleted.

The commission acting by and through the chief enforcement officer shall deny an application for permit to drill if a well drilled in the location applied for would cause, or tend to cause, waste or violate correlative rights. The chief enforcement officer shall state in writing to the applicant the reason for the denial of the permit. The applicant may appeal the decision of the chief enforcement officer to the commission.

Unless a well is drilling, or has been drilled, below surface casing on the first anniversary of the date of issuance of the permit for the well, the permit shall in all things terminate and be of no further force and effect.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-05

Law Implemented: NDCC 38-08-05

43-02-03-17. Sign on well. Every drilling and producible well shall be identified by a sign, posted on the derrick or not more than twenty feet [6.10 meters] from the well; ~~the~~. The sign shall be of durable construction and the lettering thereon shall be kept in a legible condition and shall be large enough to be legible under normal conditions at a distance of fifty feet [15.24 meters]. The wells on each lease or property shall be numbered in nonrepetitive sequence, unless some other system of numbering was adopted by the owner prior to the adoption of this chapter. Each sign will show the number of the well, the name of the lease (which shall be different or distinctive for each lease), the name of the lessee, owner, or operator, permit number, and the location by quarter-quarter, section, township, and range.

Existing well identification signs that are otherwise in accord with this section except that well locations are shown by quarter section rather than quarter-quarter section shall be allowed to remain.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-18. Well spacing. In the absence of an order by the commission setting spacing units for a pool:

1- No well drilled for oil shall be drilled upon any tract of land other than a governmental quarter-quarter section or governmental lot corresponding thereto nor shall it be located closer than five hundred feet [152.4 meters] to any boundary line of a governmental quarter-quarter section or governmental lot corresponding thereto, nor closer than one thousand feet [304.8 meters] to the nearest well drilling to or capable of producing from the same pool. No more than one well shall be drilled to the same pool on any such quarter-quarter section or governmental lot corresponding thereto, except by order of the commission, nor shall any well be drilled on any such quarter-quarter section or governmental lot corresponding thereto containing less than thirty-six acres [14.57 hectares] except by such order.

1. a. Oil wells drilled and projected to ten thousand feet [3,048 meters] or less shall be drilled upon a governmental quarter-quarter section or equivalent lot, located not less than five hundred feet [152.4 meters] to the boundary of such governmental quarter-quarter section or equivalent lot, nor closer than one thousand feet [304.8 meters] to the nearest well permitted to or capable of producing from the same pool. No more than one well shall be drilled to the same pool on any such governmental quarter-quarter section or equivalent lot, except by order of the commission, nor shall any well be drilled on any such governmental quarter-quarter section or equivalent lot containing less than thirty-six acres [14.57 hectares] except by such order.

b. Oil wells drilled and projected to more than ten thousand feet [3,048 meters] shall be drilled on a governmental quarter section or equivalent lots, located not less than six hundred sixty feet [201.17 meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well shall be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or equivalent lots containing less than one hundred forty-five acres [58.68 hectares].

2. No well shall be drilled for gas on a tract of land consisting of less than one hundred sixty surface contiguous acres [64.75 hectares] and which is not substantially in the form of a square, in accordance with legal subdivisions of the United States public land surveys or on a governmental quarter

section containing less than one hundred forty-five acres [58.68 hectares] and no well shall be drilled closer than one thousand feet [304.8 meters] to any boundary line of the tract or closer than ~~fifteen~~ one thousand five hundred feet [457.2 meters] to the nearest well drilling to or capable of producing from the same pool. Provided, that in presently producing gas pools accessible to established gas transportation facilities and not controlled by orders heretofore or hereafter made, no well shall be drilled for gas on a tract consisting of less than one hundred sixty surface contiguous acres [64.75 hectares] and which is not substantially in the form of a square, in accordance with the legal subdivisions of the United States public land surveys or a square equivalent to a tract of one hundred sixty acres [64.75 hectares] and no well shall be drilled closer than one thousand feet [304.8 meters] to any boundary line of the tract or closer than one thousand five hundred feet [457.2 meters] to a well drilling to or capable of producing from the same pool.

3. Within thirty days after the discovery of oil or gas in a pool not then covered by an order of the commission, a spacing hearing shall be held and the docketed. Following such hearing the commission shall issue an order prescribing a temporary spacing pattern for the development of the pool. This order shall continue in force for a period of not more than eighteen months at the expiration of which time a hearing shall be held at which the commission may require the presentation of such evidence as will enable the commission to determine the proper spacing for the pool.

During the interim period between the discovery and the issuance of the temporary order no permits shall be issued for the drilling of direct offsets an offset well to the discovery well, unless approved by the enforcement officer. Approval shall be consistent with anticipated spacing for the orderly development of the pool.

The commission acting by and through the chief enforcement officer shall have the discretion to determine the pattern location of wells adjacent to an area spaced by the commission, or under consideration for spacing, where there is sufficient evidence to indicate that the pool or reservoir spaced or about to be spaced may extend beyond the boundary of the spaced area or the area anticipated to be spaced, and the uniformity of spacing patterns is necessary to ensure orderly development of the pool or reservoir. Any well drilled within one mile [1.61 kilometers] of an established field shall conform to the spacing requirements in that field except when it is apparent that the well will not produce from the same common source of supply. In order to assure uniform

and orderly development, any well drilled within one mile [1.61 kilometers] of an established field boundary shall conform to the spacing and special field rules for the field, and for the purposes of spacing and pooling, the field boundary shall be extended to include the spacing unit for such well and any intervening lands. The foregoing shall not be applicable if it is apparent that the well will not produce from the same common source of supply as wells within the field.

- 4- If upon application, the commission acting by and through the chief enforcement officer shall find that a well drilled at the location prescribed by any applicable rule of the commission would not produce in paying quantities or that surface conditions would substantially add to the burden or hazard of such well, the commission acting by and through the chief enforcement officer may enter an order permitting the well to be drilled at a location other than that prescribed and shall include in such order suitable provisions to prevent the production from that well of more than its just and equitable share of the oil and gas in the pool. Application for an exception shall set forth the names of the lessees of adjoining properties and shall be accompanied by a plat or sketch drawn to the scale of not smaller than two inches {5.08 centimeters} equalling one mile {1.61 kilometers}, accurately showing to scale the property for which the exception is sought and accurately showing to scale all other completed and drilling wells on this property and accurately showing to scale all adjoining surrounding properties and wells. The application shall be verified by some person acquainted with the facts, swearing under oath that all facts therein are within the knowledge of the affiant true and that the accompanying plat is accurately drawn to scale and correctly reflects pertinent and required data. The applicant shall state in the affidavit that a copy of the application has been sent by certified or registered mail to all owners or lessees of properties adjoining the tract on which the exception is sought. The commission acting by and through the chief enforcement officer shall issue no order on such application for at least fifteen days after its filing. If the affidavit shows that the applicant owns all leases adjoining the tract on which the exception is sought, the commission acting by and through the chief enforcement officer may issue an order immediately approving the application.

5- 4. In filing an application for permit, the surface distance must be shown between the proposed location and other wells within a radius of one thousand nine hundred eighty feet [603.50 meters] for oil tests, and two thousand six hundred forty feet [804.67 meters] for gas tests.

6- 5. If the ~~chief~~ enforcement officer denies an application for permit, the officer shall advise the applicant immediately of the reasons for denial. The decision of the officer may be appealed to the commission.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04, 38-08-07

Law Implemented: NDCC 38-08-04, 38-08-07

43-02-03-18.1. Exception location. If upon application for an exception location, the commission finds that a well drilled at the location prescribed by any applicable rule or order of the commission would not produce in paying quantities or that surface conditions would substantially add to the burden or hazard of such well, the commission may enter an order, after notice and hearing, permitting the well to be drilled at a location other than that prescribed and shall include in such order suitable provisions to prevent the production from that well of more than its just and equitable share of the oil and gas in the pool. The application for an exception well location shall set forth the names of the lessees of adjoining properties and shall be accompanied by a plat or sketch drawn to the scale of not smaller than two inches [5.08 centimeters] equaling one mile [1.61 kilometers], accurately showing to scale the property for which the exception well location is sought and accurately showing to scale all other completed and drilling wells on this property and accurately showing to scale all adjoining surrounding properties and wells. The application shall be verified by some person acquainted with the facts, swearing under oath that all facts therein are within the knowledge of the affiant true and that the accompanying plat is accurately drawn to scale and correctly reflects pertinent and required data. The applicant shall state in the affidavit that a copy of the application has been sent by certified or registered mail to all owners or lessees of properties adjoining the tract which would be affected by the exception location.

History: Effective January 1, 1983.

General Authority: NDCC 38-08-04, 38-08-07

Law Implemented: NDCC 38-08-04, 38-08-07

43-02-03-19. Pit for drilling mud and drill cuttings - Restoration of surface. In order to assure a supply of proper material or mud-laden fluid to confine oil, gas, or water to its native strata during the drilling of any well, each operator shall provide, before drilling is commenced, a container or pit of sufficient size to contain said material or fluid, and the accumulation of drill cuttings. The pit

shall be leveled and the surface restored within a reasonable time after the well has been completed.

Pits shall not be located in, or hazardously near, stream courses, nor shall they block natural drainages. Pits shall be constructed in such manner so as to prevent contamination of surface or subsurface waters by seepage or flowage therefrom. Under no circumstances shall pits be used for disposal, dumping or storage of fluids, wastes, and other debris not used in drilling operation.

In the construction of a drill site or production facility, the topsoil shall be removed, stockpiled, and stabilized for later redistribution on the surface of the location when it is reclaimed. "Topsoil" means the suitable plant growth material on the surface; however, in no event shall this be deemed to be more than the top eight inches [20.32 centimeters] of soil.

Within a reasonable time, normally no more but not more than one year, after the completion of a well, pits shall be pushed in and leveled, or in the case of abandonment, the site shall be restored. Prior to the commencement of such operations, the operator or the operator's agent shall file a notice of intention (form 4) to level pits or restore the site with the commission acting by and through the chief enforcement officer and obtain approval from the commission acting by and through the chief enforcement officer or other representative to commence leveling and restoration operations. Verbal approval to commence operations may be given, in which case the operator shall file a subsequent notice with the commission acting by and through the chief enforcement officer reporting the work performed. Any operator who obtains verbal approval may be required by the commission acting by and through the chief enforcement officer to perform additional work if the commission acting by and through the chief enforcement officer determines that the work performed does not constitute proper restoration, or does not comport with the subsequent notice of intention submitted. The notice shall state the name and location of the well, the name of the operator, and the method of restoration, and shall include a statement of proposed work. Such work shall include, but not be limited to:

1. The location or unused portion shall be restored as close as possible to original condition. This work will be done within a reasonable time after plugging or setting production casing.
2. The Gravel or scoria shall be removed from the well site and access road; the stockpiled topsoil will shall be evenly distributed over the location; and revegetation will be the location shall be reseeded with native species or according to the reasonable specifications of the appropriate government representative and the landowner land manager or surface owner.

3. If required by the ~~commission~~ acting by and through the chief enforcement officer, the reserve pit ~~will~~ have ~~fencing~~ shall be fenced on three sides during drilling operations, and prior to rig release the fourth side ~~will~~ shall be fenced. The pit fence ~~will~~ shall be maintained until the pit is dry.
4. If there is any oil on the pits when drilling is completed, it will be removed immediately or the pits will be flagged overhead.
5. The enforcement officer, with the consent of the appropriate government land manager or surface owner, may waive the requirement of restoration of the access road and drilling pad.

History: Amended effective March 1, 1982; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-21. **Casing and tubing requirements.** All wells drilled for oil and natural gas shall be completed with strings of casing which shall be properly cemented at sufficient depths adequately to protect the water, oil, or natural gas-bearing strata ~~to be produced.~~

Sufficient cement shall be used on surface casing to fill the annular space back of the casing to the bottom of the cellar, if any, or to the surface of the ground. All strings of surface casing shall stand cemented under pressure for at least twelve hours before drilling the plug or initiating tests. The term "under pressure" as used herein ~~will~~ shall be complied with if one float valve is used or if pressure is otherwise held. Cementing shall be by the pump and plug method, or other ~~method~~ methods approved by the ~~commission~~ enforcement officer.

All flowing wells shall be tubed, the tubing shall be set as near the bottom as practicable, in all cases shall be above the perforated interval but tubing perforations shall not be above the top of pay, unless authorized by the commission acting by and through the chief enforcement officer.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-22. **Defective casing or cementing.** In any well that appears to have defective casing, ~~faultily cemented or corroded casing which will permit or may create underground waste, or cementing,~~ the operator shall report the defect to the enforcement officer and shall proceed with diligence to use the appropriate method and means to eliminate the hazard of underground waste correct the defect. If the ~~hazard of waste defect~~ cannot be

eliminated, the well shall be properly plugged and abandoned unless otherwise approved by the enforcement officer.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-23. **Blowout prevention.** In all drilling operations proper and necessary precautions shall be taken for keeping the well under control, including the use of a blowout preventer and high pressure fittings attached to properly cemented casing strings adequate to withstand anticipated pressures. During the course of drilling, the pipe rams shall be functionally operated at least once every twenty-four-hour period. The blind rams shall be functionally operated each trip out of the wellbore. The blowout preventer shall be pressure tested at installation on the wellhead and each fourteen consecutive day period of drilling, thereafter. All tests shall be noted in the driller's record.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-24. **Pulling outside string of casing.** In pulling outside strings of casing from any oil or gas well, the space outside the casing left in the hole shall be kept and left full of mud-laden fluid with adequate gel strength and specific gravity, or cement, or combination thereof, of adequate specific gravity to seal off all freshwater and saltwater strata and any strata bearing oil or gas not producing. No casing shall be removed without the prior approval of the commission acting by and through the chief enforcement officer or other agent.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-25. **Deviation tests and directional surveys.** When any well is drilled or deepened, tests to determine the deviation from the vertical shall be taken at least every one thousand feet [304.8 meters]. When the deviation from the vertical averages more than four exceeds five degrees at any point the commission acting by and through the chief enforcement officer may require that the hole be straightened. Directional surveys may be required by the commission acting by and through the chief enforcement officer, whenever, in the chief enforcement officer's judgment, the location of the bottom of the well is in doubt.

A deviation and directional survey shall be made and filed with the commission and the state geologist enforcement officer

on any well utilizing a whipstock or any method of deviating the well bore in a predetermined direction except to sidetrack junk in the hole, straighten a crooked hole, or to control a blowout. Special permits may be obtained to drill directionally in a predetermined direction as provided above, from the commission acting by and through the chief enforcement officer.

If the chief enforcement officer denies a request for a permit to directionally drill, the enforcement officer shall advise the applicant immediately of the reasons for denial. The decision of the enforcement officer may be appealed to the commission.

Each person, company, partnership, or organization furnishing well deviation equipment or service in North Dakota shall report to the commission and the state geologist, on the first day of each calendar quarter, the location, name of operator, and date for each well for which deviation equipment or services were supplied during the previous period.

History: Amended effective April 1, 1980; April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-26. Multiple zone completions. Multiple zone completions in any pool may be permitted only by order of the commission upon hearing by the enforcement officer.

The An application for such hearing a multiple zone completion shall be accompanied by an exhibit showing the location of all wells on applicant's lease and all offset wells on offset leases, and shall set forth all material facts on the common sources of supply involved, and the manner and method of completion proposed.

Multiply completed wells shall at all times be operated, produced, and maintained in a manner to ensure the complete segregation of the various common sources of supply. The enforcement officer may require such tests as ~~it~~ the officer deems necessary to determine the effectiveness of the segregation of the different sources of supply.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-27. Sheeting and chemical treatment of wells Perforating, fracturing, and chemically treating wells. If injury damage results to the casing or the casing seat from sheeting or treating perforating, fracturing, or chemically treating a well, the operator shall proceed with diligence to use the appropriate method and means for rectifying such damage. If sheeting perforating, fracturing

or chemical treating results in irreparable injury to the well damage which threatens the mechanical integrity of the well, the commission may require the operator to plug and abandon the well properly.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-28. Safety regulation. During drilling operations all oil wells shall be cleaned into a pit or tank, not less than forty feet [12.19 meters] from the derrick floor and one hundred fifty feet [45.72 meters] from any fire hazard.

All flowing oil wells must be produced through an approved oil and gas separator or emulsion treater of ample capacity and in good working order. No boiler or portable electric lighting generator shall be placed or remain nearer than one hundred fifty feet [45.72 meters] to any producing well or oil tank. Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred fifty feet [45.72 meters] from the vicinity of wells and tanks. All waste shall be burned or disposed of in such manner as to avoid creating a fire hazard.

No well shall be drilled nor production equipment installed less than one hundred fifty feet [45.72 meters] from a building or residence unless agreed to in writing by the surface owner.

Subsurface pressure will be controlled during all drilling operations with appropriate drilling fluid ~~or~~ and pressure control equipment. ~~During the course of drilling, blowout preventers shall be tested at least once each twenty-four-hour period, and the test noted in the driller's record.~~

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-29. Well and lease equipment. ~~Christmas tree fittings or wellhead connections~~ Wellhead equipment with a working pressure at least equivalent to the calculated or known pressure to which the equipment ~~will~~ may be subjected shall be installed and maintained. Equipment on producing wells shall be installed to facilitate gas-oil ratio tests, and static bottom hole or other pressure tests. Valves shall be installed and maintained in good working order to permit pressure readings to be obtained on both casing and tubing.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-30. Notification of fires, breaks, leaks, or blowouts.

All persons controlling or operating any oil or gas well or pipeline, or receiving tank, storage tank, or receiving and storage receptacle into which crude oil is produced, received, or stored, or through which oil is piped or transported, shall immediately notify the ~~commission acting by and through the chief~~ enforcement officer by letter giving full details concerning all fires which occur at such oil or gas well, or tank, or receptacle on their property, and all such persons shall immediately report all tanks or receptacles struck by lightning and any other fire which destroys oil or gas, and shall immediately report any leaks or breaks in or from tanks or receptacles and pipelines from which oil or gas is escaping or has escaped. In all such reports of fires, breaks, leaks, or escapes, or other accidents of this nature, the location of the well, tank, receptacle, or line break shall be given by section, township, range, and property, so that the exact location thereof can be readily located on the ground. The report shall likewise specify what steps have been taken or are in progress to remedy the situation reported, and shall detail the quantity of oil or gas lost, destroyed, or permitted to escape. In case any tank or receptacle is permitted to run over, the amount running over shall be reported as in the case of a leak. ~~The report hereby required as to oil leaks shall be necessary only in case such oil loss exceeds one hundred barrels in the aggregate, or when such gas loss exceeds three million cubic feet {84,950-74 cubic meters} in the aggregate.~~

~~If any other state or federal agency requires the reporting of oil spills or other types of oilfield fluids of less than one hundred barrels, copies of such reports shall also be sent to the commission and the state geologist.~~

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-31. Well log, completion, and workover reports. Within thirty days after the plugging ~~or completion~~ of a well drilled for oil or gas, ~~or the recompletion of a well into a different source of supply,~~ a plugging record (form 7) ~~or a completion report (form 6)~~ shall be filed with the ~~commission and the state geologist,~~ enforcement officer. Within thirty days after the completion of a well, or recompletion of a well in a different pool, a completion report (form 6) shall be filed with the enforcement officer, except a completion report shall be filed immediately after the completion or recompletion of a well in a pool or reservoir not then covered by an order of the commission. In no case shall oil or gas be transported from the lease prior to the filing of a completion report unless approved by the enforcement officer. The operator shall cause to be run an electrical, radioactivity, or other similar log, or combination of logs, of the operator's choice, from which formation tops and porosity zones can be determined. The obligation to log may be waived by the ~~commission acting by and through the chief~~

enforcement officer or other representative if hole conditions preclude the feasibility of such logging operation or if the well is a replacement well. Such logs shall be available to the commission acting by and through the chief enforcement officer or other representative at the well site prior to proceeding with plugging or completion operations. Three copies of all logs run shall be submitted to the commission and state geologist enforcement officer free of cost to the commission or geologist charge. In addition, operators shall file three copies of drill stem test reports and charts, formation water analyses, porosity, permeability or fluid saturations, core analyses, and noninterpretive lithologic logs or sample descriptions if compiled by the operator. The commission shall furnish one copy of all logs to the geological survey.

All information furnished to the commission and the state geologist enforcement officer shall be kept confidential for not more than six months after the date such information is required by these rules to be filed, if requested by the operator in writing.

Approval must be obtained from the enforcement officer prior to perforating or recompleting a well in a reservoir other than the reservoir in which the well was originally completed.

Upon the completion ~~or~~, recompletion of a well, ~~or~~ the completion of any remedial work, or attempted remedial work such as plugging back or drilling deeper, acidizing, shooting, formation fracturing, squeezing operations, setting liner, ~~gun~~ perforating, reperforating, or other similar operations not specifically covered herein, a report on the operation shall be filed on form 4 with the commission and the state geologist enforcement officer. The report shall present a detailed account of the all work done; the daily production of oil, gas, and water both prior to and after the operation, the size and depth of perforations; the quantity of sand, crude, chemical, or other materials employed in the operation; and any other pertinent information or operations which affect the original status of the well and are not specifically covered herein.

Upon the initial installation of pumping equipment, or change in type of pumping equipment designed to increase productivity in a well, the operator shall submit a report (form 4) of such installation. The notice shall include all pertinent information on the pump and the operation thereof; the daily production of the well prior to and after the pump has been installed, shall also be included.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-32. Stratigraphic test or core hole and core holes. Stratigraphic test and core holes shall be permitted the same as oil and gas wells. Before any person shall begin the drilling of a stratigraphic test or core hole, such person shall file an

application for permit to drill with the commission and with the state geologist and pay a fee of one hundred dollars for a permit. A permit shall be required for each hole. The application shall be accompanied by an accurate plat showing the location of the proposed test hole with reference to the nearest lines of a governmental section.

A stratigraphic test or core hole shall not exceed five inches {12.7 centimeters} in diameter, nor shall drill stem, flow, or production testing be permitted.

A drilling bond must be filed with the commission in a form approved by the commission conditioned on compliance with this chapter. Each bond shall be executed by a responsible surety company authorized to do business in North Dakota. Compliance with the blanket bond requirement of section 43-02-03-15 shall satisfy the bond requirement herein.

All stratigraphic test wells must take lithologic samples in accordance with the provisions of section 43-02-03-38, and all such holes shall be plugged in accordance with section 43-02-03-34.

The operator shall cause to be run on each stratigraphic test hole drilled, an electrical, radioactivity, or other similar log, or combination of logs, of the operator's choice, from which formation tops and porosity zones can be determined. The obligation to log may be waived by the commission acting by and through the chief enforcement officer or other representative if hole conditions preclude the feasibility of such logging operation. All cores and three copies of all logs run shall be submitted to the state geologist without cost to the geologist within six months after the completion of each test hole. If requested, records and samples shall also be submitted to the state geologist without cost to the geologist within that time period. If the operator so requests in writing, all data submitted shall be kept confidential for a period of six months after the date such data is required to be submitted.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-33. Notice of intention to abandon well. The operator or the operator's agent shall file a notice of intention (form 4) to plug with the commission and the state geologist enforcement officer, and obtain the approval of the commission acting by and through the chief enforcement officer, prior to the commencement of plugging operations. The notice shall state the name and location of

the well, the name of the operator, and the method of abandonment, which must include a detailed statement of proposed work. In the case of a recently completed test well that has not had production casing in the hole, the operator may commence plugging by giving reasonable notice to, and securing ~~oral~~ verbal approval of, the ~~commission acting by and through the chief~~ enforcement officer ~~or other agent~~ as to the method of plugging, and the time plugging operations are to begin. Within thirty days after the plugging of any well has been accomplished, the owner or operator thereof shall file a plugging record (form 7), and, if requested, a copy of the cementer's trip ticket or job receipt, with the commission and the state geologist enforcement officer setting forth in detail the method used in plugging the well.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-34. **Method of plugging.** Before any well is abandoned, it shall be plugged in a manner which will confine permanently all oil, gas, and water in the separate strata originally containing them. This operation shall be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in combination as may be approved by the commission. Casing shall be cut off ~~below piew depth.~~ Seismic, core, or other exploratory at least three feet [91.44 centimeters] below the surface and a cap shall be welded thereon. Core or stratigraphic test holes drilled to or below sands containing freshwater shall be plugged and abandoned in accordance with the applicable provisions recited above.

~~If a A well is to~~ may be abandoned temporarily and no casing pulled, then upon approval of the enforcement officer. In such event, a plug shall be placed at the top of the casing, in such manner as to prevent the intrusion of any foreign matter into the well.

When drilling operations have been suspended for six months, wells shall be plugged and abandoned in accordance with regulations of the commission ~~or unless~~ a permit for temporary abandonment ~~shall be~~ has been obtained from the ~~commission acting by and through the chief~~ enforcement officer.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-35. **Wells to be used for freshwater.** When the well to be plugged may safely be used as a freshwater well and such utilization is desired by the ~~landowner~~ surface owner, the well need not be filled above a sealing plug set below the freshwater formation; provided, that if ~~written~~ authority and assumption of liability for such use and plugging shall be secured from the ~~landowner~~ surface owner in affidavit form and filed with the ~~commission and the state~~

~~geologist~~ enforcement officer, the operator shall be relieved of the operator's responsibility under this chapter.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-36. Liability. The owner of any well drilled for oil or gas, or any seismic, core, or other exploratory holes, core hole, or stratigraphic test hole, whether cased or uncased, shall be liable and responsible for the plugging thereof in accordance with the rules and regulations of the commission.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-37. Slush pits. All unnecessary pits at oil, gas, or abandoned wells must be filled within a reasonable time after the completion of the well.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

Repealed effective January 1, 1983.

43-02-03-38. Preservation of cores and samples. Sample cuttings of formations, taken at regular intervals in all wells drilled for oil or gas or geological information in North Dakota, shall be washed and packaged, and shall be carefully identified as to operator, well name, location, depth of sample, and shall be shipped free of cost to the state geologist as requested.

The operator of any well drilled for oil or gas in North Dakota shall, during the drilling of, or immediately following the completion of, any given well advise the state geologist or the geologist's representative of all intervals that are to be cored, or have been cored, and such cores as are taken shall be preserved and forwarded to the state geologist, free of cost, unless specifically exempted by the geologist. In the event the state geologist does not desire the core, the operator shall advise the geologist of the final disposition of the core.

This section shall not be construed as prohibiting the operator from taking such samples of the core as the operator may desire for identification and testing. The

operator shall furnish the state geologist with the results of identification and testing procedures-

General Authority: NDEC 38-08-04

Law Implemented: NDEC 38-08-04

Repealed effective January 1, 1983.

43-02-03-39. **Limiting gas-oil ratio.** In the event the commission has not set a limiting gas-oil ratio for a particular oil pool, the operator of any well in such pool whose gas-oil ratio exceeds two thousand, shall demonstrate to the ~~commission acting by and through the chief~~ enforcement officer that production from such well should not be restricted pending a hearing before the commission to establish a limiting gas-oil ratio. The ~~chief~~ enforcement officer may restrict production of any well with a gas-oil ratio exceeding two thousand, until the commission can determine, ~~after notice and hearing,~~ that restrictions are necessary to conserve reservoir energy.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-40. **Gas-oil ratio test.** Each operator shall take a gas-oil ratio test within thirty days following the completion or recompletion of an oil well. Each test shall be conducted under the method and conditions as prescribed by the ~~commission acting by and through the chief~~ enforcement officer. After the discovery of a new pool, each operator shall make additional gas-oil ratio tests as directed by the ~~commission acting by and through the chief~~ enforcement officer or provided for in field rules. During tests, each well shall be produced at a rate equal to or not exceeding its allowable by more than twenty-five percent. No well shall be given an allowable greater than the amount of oil produced on official test during a twenty-four-hour period. The ~~commission will~~ enforcement officer shall drop from the proration schedule any proration unit for failure to make such test as herein above described until such time as a satisfactory test has been made, or satisfactory explanation given. In the absence of proration, each well shall be produced at a maximum efficient rate during tests. The ~~state geologist will~~ enforcement officer shall shut in any well for failure to make such test until such time as a satisfactory test can be made, or satisfactory explanation given. The results of all gas-oil ratio tests shall be submitted to the ~~state geologist~~ enforcement officer on form 9, which shall be accompanied by a statement, made under oath, from the person actually performing such tests, that the data on the form 9 is true and correct.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-41. **Subsurface pressure tests.** The operator shall make a subsurface pressure test on the discovery well of any new pool hereafter discovered, and shall report the results thereof to the commission and the state geologist enforcement officer within thirty days after the completion of such discovery well. The reports shall include a copy of the pressure chart of the test. Drill stem test pressures are not normally acceptable but may be used if permission is obtained from the enforcement officer. In the absence of field rules, after the discovery of a new pool, each operator shall make additional reservoir pressure tests as directed by the commission acting by and through the chief enforcement officer. All tests shall be made by a person qualified by both training and experience to make such tests, and with an approved subsurface pressure instrument which shall have been calibrated both prior and subsequent to each pressure survey against an approved deadweight tester. Provided the prior and subsequent calibrations agree within one percent, the accuracy of the instrument shall be considered acceptable. All wells shall remain completely shut in for at least twenty-four hours prior to the test. The subsurface determination shall be obtained as close as possible to the midpoint of the productive interval of the reservoir. The report of the subsurface pressure test shall state the name of the pool, the name of the operator and lease, the well number name, the permit well file number, the subsea depth in feet [meters] of the reservoir datum plane, and wellhead elevation above sea level, the depth in feet [meters] to the top of the producing formation or top of perforations, whichever is the lower, the date of the tests, the total number of hours the well was shut in prior to the test, the subsurface temperature in degrees Fahrenheit [Celsius] at the test depth, the depth in feet [meters] at which the subsurface pressure test was made, the observed pressure in pounds [kilograms] per square inch [square centimeters] gauge at the test depth, and the corrected pressure computed from applying to the observed pressure the appropriate corrections for calibration, temperature, and difference in depth between test depth and reservoir datum plane.

The commission acting by and through the chief enforcement officer may shut in any well for failure to make such test as herein above described until such time as a satisfactory test has been made, or satisfactory explanation given.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-42. **Commingling of oil from pools.** Except as directed by the commission after hearing, each pool shall be produced as a single common reservoir without commingling in the well bore of fluids from different pools. After fluids from different pools have been brought to surface, such fluids may be commingled provided that the amount of production from each pool is determined by a method approved by the commission acting by and through the chief enforcement officer.

History: Amended effective April 30, 1981; January 1, 1983.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-43. Control of multiply completed wells. Multiply completed wells which have been authorized by the commission acting by and through the chief enforcement officer shall at all times be operated, produced, and maintained in a manner to ensure the complete segregation of the various common sources of supply. The commission acting by and through the chief enforcement officer may require such tests as it deems necessary to determine the effectiveness of the segregation of the different sources of supply.

History: Amended effective April 30, 1981.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

Repealed effective January 1, 1983.

43-02-03-44. Metered casinghead gas. The owner of a well shall not be required to measure the exact amount of casinghead gas produced and used by the owner for fuel purposes in the development and normal operation of the well; however, an estimate of the volume used if any and the amount of any gas flared shall be reported monthly to the commission and the state geologist at the same time oil production reports are filed enforcement officer. All casinghead gas produced and sold or transported away from a lease shall be metered and reported monthly to the commission and the state geologist enforcement officer in cubic feet [meters] computed at a pressure of fourteen and seventy-three hundredths pounds per square inch [1,034.19 grams per square centimeter] absolute at a base temperature of sixty degrees Fahrenheit [14.44 degrees Celsius]. The amount of casinghead gas sold in small quantities for use in the field may be calculated upon a basis generally acceptable in the industry, or upon a basis approved by the commission acting by and through the chief enforcement officer in lieu of meter measurements. On or before the fifth day of the second month succeeding that in which production occurs the operator shall file a production report (form 5a) to the enforcement officer showing the amount of gas produced from each well during the reporting period, and the disposition of the gas.

History: Amended effective April 30, 1981; January 1, 1983.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-45. Vented casinghead gas. Pending arrangements for disposition for some useful purpose, all vented casinghead gas shall be

burned. Each flare shall be equipped with an automatic ignitor or a continuous burning pilot, unless waived by the ~~commission acting by and through the chief~~ enforcement officer for good reason. The estimated volume of gas used and flared shall be reported to the ~~commission and the state geologist~~ monthly at the same time oil production reports are filed ~~enforcement officer on or before the fifth day of the second month succeeding that in which dry gas is received from processing plants.~~

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-46. Use of vacuum pumps. Vacuum pumps or other devices shall not be used for the purpose of creating a partial vacuum in any stratum containing oil or gas.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

Repealed effective January 1, 1983.

43-02-03-47. Produced water. Operators shall report monthly to the enforcement officer the amount of water produced by each well.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-48. Central tank batteries. Oil shall not be transported from a tank battery or a central collection point until its volume has been determined in barrels of oil through use of properly calibrated meter measurements or tank measurements. Central collection may be used, provided the production from each well can be accurately determined at reasonable intervals.

Upon the installation of metering equipment, the operator shall transmit to the commission and the state geologist a schematic drawing of the facilities for measuring, testing, sampling, routing, and transferring production. The required information shall include the name of the manufacturer, size, and type of equipment installed. After metering equipment has been installed, the meters shall be checked against actual tank measurements or against a master meter that has been calibrated against actual volume measurements at three-month intervals and the results of the tests reported to the commission and the state geologist on form 4.

If the commission acting by and through the chief enforcement officer shall determine that the volumes reported by the meter are not within industry acceptance of accuracy, the commission acting by and through the chief enforcement officer shall require the operator to repair and recalibrate said meter and repair it to record within accepted limits before further use.

Central tank battery or central production facility. Production shall not be transported from a lease, tank battery, or central production facility until its volume has been determined through use of properly calibrated meter measurements or tank measurements. Commingling of production from two or more wells in a storage facility shall not be allowed without permission from the enforcement officer.

The enforcement officer shall have authority to approve requests to consolidate production equipment at a central location for the express purpose of separating, metering, holding, and marketing of production from two or more productive units, provided all wells producing into the centralized facility have common ownership (working interests, royalty interests, and overriding royalty), and the production from each well can be accurately determined at reasonable intervals. The commingling of production in a central facility from wells having diverse ownership (working interests, royalty interests, and overriding royalty) may be approved by the enforcement officer provided such production is accurately measured prior to commingling.

The application for permission to commingle oil in a central tank battery shall include the following:

1. Plats of the leases showing thereon the wells on the leases and the formations in which they are completed.
2. Schematic drawings of the facilities for measuring, testing, sampling, routing, and transferring production. The name of the manufacturer, size, and type of equipment installed shall also be included. The meters shall be checked against actual tank measurements or against a master meter that has been calibrated against actual volume measurements at three-month intervals and the results of the tests reported to the enforcement officer on form 4.
3. Consent in writing from all persons owning an interest in the production to be commingled when wells are not metered individually.
4. Title opinions showing ownership of all interests to be commingled when wells are not individually metered.

The use of automatic custody transfer equipment shall also be permitted after receiving approval from the enforcement officer.

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-49. Oil tanks and firewalls. Oil shall not be stored or retained in earthen reservoirs or in open receptacles. Dikes or firewalls of sufficient dimension to contain the maximum volume stored must be erected and kept around all oil tanks or battery of tanks when deemed necessary by the commission acting by and through the chief enforcement officer. Metal identification seals shall be properly utilized on all delivery tank valves.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-50. Tank cleaning permit. No tank bottom shall be removed from any tank used for the storage of crude ~~petroleum~~ oil unless and until application for tank cleaning permit is approved by the ~~commission acting by and through the chief~~ enforcement officer. To obtain approval, owner shall submit a report showing an accurate gauge of the contents of the tank and the amount of merchantable oil determinable from a representative sample of the tank bottom by the standard centrifugal test as prescribed by the American petroleum institute's code, number 25, section 5, for measuring, sampling, and testing crude oil. The amount of merchantable oil shall be shown as a separate item on the report, and shall be charged against the allowable of the unit or units producing into such tank or pit where such merchantable oil accumulated. Nothing contained in this section shall apply to the use of tank bottoms on the originating lease where owner retains custody and control of the tank bottom or to the treating of tank bottoms by operator where the merchantable oil recovered is disposed of through a duly authorized transporter and is reported to the ~~commission and the state geologist~~ enforcement officer. Nothing contained in this section shall apply to reclaiming of pipeline, break oil or the treating of tank bottoms at a pipeline station, crude oil storage terminal, or refinery or to the treating by a gasoline plant operator of oil and other catchings collected in traps and drips in the gas gathering lines connected to gasoline plants and in scrubbers at such plants.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-51. Treating plant. ~~No treating plant shall operate except in conformity with the following provisions-~~

Before construction of a treating plant and upon written application for a treating plant permit stating in detail the location, type, and capacity of the plant contemplated and method of processing proposed, the commission ~~in not less than twenty days will~~ shall set such application for hearing to determine whether the proposed plant and method of processing will actually and efficiently process, treat, and reclaim tank bottom emulsion and other waste oils, and whether there is need for such a plant at the proposed location thereof. No treating plant shall operate except by order of the commission. Before actual treating operations are begun, the permittee shall file with the commission a surety bond of performance satisfactory to the commission and conditioned upon compliance with all laws, rules and regulations, and orders of the commission. The bond shall be payable in the amount of twenty-five thousand dollars to the industrial commission of North Dakota.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-52. Report of production. The producer and operator of each and every well in all pools shall, on or before the ~~fifth~~ first day of the second month succeeding the month in which production occurs, file with the ~~commission and the state geologist enforcement officer~~ a sworn statement showing the amount of production made by each such well upon forms furnished therefor, or approved computer sheets no larger than eight and one-half by fourteen inches [21.59 by 35.56 centimeters]. Wells for which reports of production are not received by the close of business on said ~~fifth~~ first day of the month shall be shut in for a period not to exceed thirty days. The ~~commission acting by and through the chief~~ enforcement officer shall notify, by certified mail, the operator and authorized transporter of the shut-in period for such wells. Any oil produced during such shut-in period shall be deemed illegal oil and subject to the provisions of North Dakota Century Code section 38-08-15.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-53. Saltwater handling facilities. All saltwater liquids or brines produced with oil and natural gas shall be disposed of without pollution of freshwater supplies. At no time shall saltwater liquids or brines be allowed to flow over the surface of the land or into streams.

Underground disposal of saltwater liquids and brines shall be in accordance with an order of the commission, after notice and hearing.

On October 1, 1978, only those saltwater handling facilities meeting the specifications stated herein and inspected and approved by the commission acting by and through the chief enforcement officer shall be allowed. All surface pits or containers which do not meet these specifications shall be emptied and leveled or removed, regardless of proposed use.

Upon receipt of form 14 (application for approval of saltwater handling facility), a representative of the commission will inspect the facility and if the facility is approved, will issue a permit number which must be prominently displayed on a weatherproof sign, together with the name of the operator, name of the lease, and location of the well or wells, the facility will serve. The sign shall be located not farther than ten feet (3.05 meters) from the facility on the side from which the facility is most easily approached.

Only those facilities meeting the following specifications will be issued a permit number.

1. A saltwater handling facility shall not be located within a natural surface drainage channel.
2. If a surface pit is to be used, it must be lined with an impermeable material. The material and method of application must be approved by the commission acting by and through the chief enforcement officer before installation.
3. The sides of the facility shall, at all times, extend at least one foot (30.48 centimeters) above the surface of the fluid contained therein.
4. The facility must be surrounded by a continuous embankment at least two feet (60.96 centimeters) high and the embankment shall have no siphons or openings that would permit the passage of fluids.
5. If a tank is to be used, it must be constructed of materials resistant to the effects of produced saltwater liquids, brines, or chemicals that may be disposed of into it. This may be waived by the commission acting by and through the chief enforcement officer for tanks presently in service and in good condition.
6. Provisions must be made to prevent sheep, cattle, or horses from gaining access to the stored substances.

7. The facility shall be large enough to contain not less than three times the average daily influx of fluids into the facility.
8. A monitoring system, approved by the commission acting by and through the chief enforcement officer, to ascertain the integrity of the impermeability of the sides and bottom of the facility must be provided.
9. All lines discharging into open saltwater handling facilities shall be constructed in such a manner as to allow observation of fluids being discharged at all times.

Subsequent to the initial approval, if an inspection indicates that the facility no longer meets the requirements of this section, the permit for the facility shall be revoked and use of the facility shall cease. The operators of the facility may, after repairing or replacing the facility, apply for a new permit.

This section shall not apply to: (1) mud pits or reserve pits used in drilling, deepening, testing, reworking, or plugging of a well, (2) pits used solely for the purpose of burning vented casinghead gas as provided in section 43-02-03-45.

No permit shall be required for facilities constructed in accordance with an order of the commission as provided for in section 43-02-03-73. Temporary earthen pits constructed for the purpose of handling an emergency are allowed. Construction and use of temporary earthen pits and the nature of the emergency involved shall be reported immediately to the commission and the state geologist and shall be emptied and leveled at the expiration of the emergency.

Exceptions to this section may only be authorized by the commission after notice and hearing.

1. All saltwater liquids or brines produced with oil and natural gas shall be disposed of without pollution of freshwater supplies. At no time shall saltwater liquids or brines be allowed to flow over the surface of the land or into streams.
2. No surface pits shall be used to store saltwater.
3. Underground disposal of saltwater liquids and brines shall be in accordance with chapter 43-02-05.
4. Surface tanks are an acceptable facility provided that:

- a. They are constructed of materials resistant to the effects of produced saltwater liquids, brines, or chemical that may be contained therein.
 - b. Dikes shall be constructed around all tanks if deemed necessary.
 - c. The above conditions may be waived by the enforcement officer for tanks presently in service and in good conditions.
5. Surface pits are not an acceptable facility. Lined pits previously approved may be utilized provided that:
- a. A monitoring system be maintained to ascertain the integrity of the impermeability of the sides and bottom of the facility.
 - b. Provisions be made to prevent livestock from gaining access to the stored substances.
6. This section shall not apply to:
- a. Mud pits or reserve pits currently used in drilling, deepening, testing, reworking, or plugging of a well;
 - b. Pits used solely for the purpose of burning vented casinghead gas as provided in section 43-02-03-45.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-54. Investigative powers. Upon receipt of a written complaint from any landowner surface owner or lessee, royalty owner, mineral owner, local, state, or federal official, in the official's official capacity, or any member of the state legislative assembly, in the legislator's official representative capacity, or any other interested party, alleging oil well drilling or production operations which are in a violation of the oil and gas conservation statutes or any rule, regulation, or order of the commission, the chief enforcement officer shall immediately cause an investigation of such complaint to be made. The enforcement officer may also conduct such investigations on the enforcement officer's own initiative or at the direction of the commission. If, after such investigation, the enforcement officer affirms that cause for complaint exists, the enforcement officer shall cause written notice of report the results of the investigation to be mailed to the person who submitted the complaint, if any, to the person who was the subject of the complaint and to the commission operator of the oil well drilling or production operation and shall forthwith notify the commission, in writing, of the investigation. The

commission shall institute such legal proceedings as, in its discretion, it believes are necessary to enjoin further activities resulting in the violation complained of violations.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04. 38-08-12

Law Implemented: NDCC 38-08-04. 38-08-12

43-02-03-55. Desertion of wells. The removal of production equipment or the failure to produce oil or gas (other than a gas well shut in for lack of a market) for a period of one year is prima facie evidence of desertion of a well after a lapse of one year and such. Such well shall be plugged in accordance with the rules and regulations of the commission, and the site restored. The commission acting by and through the chief enforcement officer may grant exceptions to this section if it can be shown to its satisfaction that the well is to be utilized for saltwater disposal or enhanced recovery operations.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-57. Method of determining natural Determination of gas well potential. After the completion or recompletion of a gas well the operator shall conduct tests to determine the daily open flow potential of the well. The test results together with an analyses of the gas shall be reported to the enforcement officer within thirty days after completion of the well.

~~All operators~~ Operators shall make conduct tests annually to determine the daily open flow potential volumes of all natural gas wells from which gas is being used or marketed in accordance with an order of the commission or at the request of the enforcement officer. Test procedures shall be those commonly used in the industry unless otherwise approved by the enforcement officer. Such tests shall be reported on forms furnished by the commission. To establish comparable open flow capacity, wells shall be tested by the back pressure method, using four back pressure flows taken in sequence from low to high flow. In the event the commission approves an alternate method of testing, all wells producing from a common source of supply shall be tested in a uniform and comparable manner. In a like manner all natural gas wells hereafter completed shall be tested and the potential test reported. Where it has been determined that a natural gas well in any pool has a potential of four hundred thousand cubic feet (11,326.74 cubic meters) per day or less, further potential tests shall not be required provided the operator periodically reports the shut-in pressure of the well.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-58. Method and time of shut-in pressure tests. Shut-in pressure shall be taken by the operator on all natural gas wells during the months of April and October of each year, unless the taking of such pressures is covered by special pool order.

Shut-in pressures shall be taken with a calibrated gauge after a minimum shut-in period of twenty-four hours. When the shut-in period exceeds twenty-four hours, such shut-in period shall be reported to the commission. All shut-in pressures shall be reported to the commission.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

Repealed effective January 1, 1983.

43-02-03-59. Natural gas Production from gas wells to be measured. All natural gas produced shall be accounted for by metering, or other methods approved by the commission and enforcement officer. All gas produced shall be reported to the commission and the state geologist enforcement officer by the common purchaser of the gas. Gas produced from a gas well and delivered to a gas transportation facility, shall be reported by the owner or operator of the gas transportation facility. Gas produced from a gas well, and required to be reported under this section, which is not delivered to and reported by a gas transportation facility, shall be reported by the operator of the well. Gas production reports shall be filed in accordance with section 43-02-03-52.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-60. Natural gas utilization. After the completion of a natural gas well, no gas from such well shall be (1) permitted to escape to the air except as necessary for cleaning or testing, (2) used expansively in engines or pumps and then vented, (3) used to gas lift oil wells unless all gas produced is processed in a gasoline plant, or beneficially used thereafter without waste, or (4) used for the manufacture of carbon black.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

Repealed effective January 1, 1983.

43-02-03-61. **Storage gas.** With the exception of the requirement to meter and report monthly the amount of gas injected and the amount of gas withdrawn from storage, in the absence of waste, this chapter shall not apply to gas being injected into or removed from storage.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-62. **Carbon dioxide.** Insofar as is applicable, the provisions of this chapter relating to gas, ~~natural gas~~, gas wells, and gas reservoirs shall also apply to carbon dioxide, carbon dioxide wells, and carbon dioxide reservoirs.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-63. **Regulation of pools.** To prevent waste and to protect correlative rights, the commission shall prorate or distribute the allowable production among the proration units and fractional proration units in a pool upon a reasonable basis and recognizing correlative rights.

After notice and hearing, the commission, in order to prevent waste and protect correlative rights, may promulgate rules, regulations, or orders pertaining to any pool.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04, 38-08-06

Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-64. **Rate of producing wells.** In allocated oil and gas pools the owner or operator of any producing unit shall not produce from any proration unit during any proration period more oil or gas than the allowable production from such units as shown by the proration schedule, provided that such owners or operators shall be permitted to maintain a uniform rate of production for each unit during the proration period. In order to maintain a uniform rate of production from the pool during any proration period, any operator may produce a total volume of oil and gas equal to that shown on the applicable proration schedule plus or minus five days top unit allowable, and any such overproduction shall be deducted from the total allowable for the well in the second month following; and any such underproduction shall be added to the total allowable on the well for the second month following; provided, that if the underproduction shall exceed five days top unit allowable for the

unit, none of the underproduction shall be added to the allowable for the second month following, except as provided in section 43-02-03-65.

A fractional proration unit shall be allowed to produce only in the proportion that the acreage content thereof bears to forty acres [16.19 hectares].

Where the commission has adopted special rules in any pool, wells drilled in accordance with those special rules shall be allowed to produce an a daily amount of oil ~~daily~~ and gas equal to the top unit allowable as set by the commission multiplied by a factor, the numerator of which shall be the number of acres [hectares] assigned to a spacing unit in the pool and the denominator of which shall be forty.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04, 38-08-06

Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-65. Authorization for production, purchase, and transportation. The commission or its representatives shall meet between the fifteenth and twenty-fifth of each month for the purpose of holding When necessary the commission shall hold a hearing to set the normal unit allowable for the state for the following calendar month.

On or before, the tenth of January each year the commission shall establish a tentative schedule for such hearings for the current year and shall direct the chief enforcement officer to publicize such schedule. The tentative dates may be changed by motion of the commission prior to publication of notice of hearing.

The commission ~~will~~ shall consider all evidence of market demand for oil and gas, including sworn statements of individual demand as submitted by each purchaser or buyer of crude petroleum oil in the state, and determine the amount of oil to be produced from all oil pools during the following month. The amount so determined will be allocated among the various pools in accordance with existing regulations and in each pool in accordance with regulations governing each pool. In allocated pools, effective the first day of each proration period, the commission will issue a proration schedule which will authorize the production of oil and gas from the various units in strict accordance with the schedule, and the purchase and transportation of the oil so produced such production. Allowable for wells completed after the first day of the proration period will become effective from the date of well completion. A supplementary order will be issued by the commission to the operator of a newly completed or recompleted well, and to the purchaser or transporter of the oil or of the natural gas production from a newly completed or recompleted well, establishing the effective date of completion, the amount of production permitted during the remainder of the proration period, and

the authority to purchase and transport same from said proration units and fractional proration units.

When it appears that a single normal unit allowable will not supply the amounts of oil or gas required by the markets available, the commission may designate separate marketing districts within the state and prescribe separate normal unit allowables for each district.

A marginal unit shall be permitted to produce any amount of oil which it is capable of producing up to and including the top unit allowable for that particular pool for the particular proration period; provided the operator of such unit shall file with the commission for a supplemental order covering the difference between the amount shown on the proration schedule and the top unit allowable for the pool. The commission shall issue such supplemental order setting forth the daily amount of ~~oil~~ production which such unit shall be permitted to produce for the particular proration period and shall furnish such supplemental order to the operator of the unit and a copy thereof to the transporter authorized to transport ~~oil~~ the production from the unit.

Underages may be made up or unavoidable and lawful overages compensated for during the ~~second~~ third proration period next following the proration period in which such underages or overages occurred.

All back ~~allowable~~ allowables authorized for purchase will be published in ~~the monthly~~ a proration schedule. No back allowable, except as provided in section 43-02-03-64, ~~will~~ shall be placed on the proration schedule unless requested by the producer. In requesting back ~~allowable~~ allowables, the producer shall indicate the reason for the underage and the ~~commission acting by and through the chief enforcement officer~~ may, at ~~its~~ his discretion, approve any portion of the request ~~which the commission acting by and through the chief enforcement officer may consider justified~~. The usual grounds for back allowable which may be considered are (1) failure of purchaser to transport assigned allowable, (2) mechanical failure or repairs to well equipment during the proration period, and (3) testing or gathering engineering data.

In order to preclude premature abandonment, a common purchaser within its purchasing area is authorized and directed to make one hundred percent purchases from units of settled production producing ten barrels or less daily of oil, or sixty thousand cubic feet or less daily of gas, in lieu of ratable purchases or takings. Provided such purchaser's takings are curtailed below ten barrels per unit of oil daily, or below sixty thousand cubic feet per unit of gas daily, then such purchaser is authorized and directed to purchase equally from all such units within its purchasing area regardless of their producing ability insofar as they are capable of producing.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04, 38-08-06

Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-66. Application for allowable on new oil wells. No well shall be placed on the proration schedule until notice of completion has been executed and filed with the commission and the state geologist enforcement officer.

The first four wells in any field or pool hereafter discovered shall be allowed to produce any amount of oil it is capable of producing but in no case to exceed a maximum of two hundred barrels of oil per day if the same can be done without waste and provided further, that a market can be obtained for such oil produced.

The allowable production provided for above shall continue in effect for a period of not more than eighteen months from the date of completion of the first well in the field or pool, or until the completion of the fifth well in the pool, whichever shall occur first, and shall produce thereafter, only pursuant to the general rules and regulations of the state industrial commission.

The producer or operator of any well claiming a discovery allowable under this section shall report to the state geologist enforcement officer, not later than the tenth of each month, the results of a potential test, made on or about the first day of the month, in accordance with the provisions of section 43-02-03-40.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04, 38-08-06

Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-67. **Oil proration.** The allocation between pools shall be in accordance with the top of the producing depth of the pool and the corresponding proportional factor set out below. The depth to the casing shoe or the top perforation in the casing, whichever is the higher in the first well completed in a pool determines the depth classification for the pool. Top unit allowables shall be calculated for each of the several ranges of depth in the following proportions:

<u>Pool Depth Range</u>		<u>Proportional Factor</u>
from	0 to 5,000 feet	1.00
below	5,000 to 6,000 feet	1.33
	6,000 to 7,000 feet	1.77
	7,000 to 8,000 feet	2.33
	8,000 to 9,000 feet	3.00
	9,000 to 10,000 feet	3.77
	10,000 to 11,000 feet	4.67
	11,000 to 12,000 feet	5.67
	12,000 to 13,000 feet	6.75

The normal unit allowable shall be set by the commission and shall be uniform for all proration units within all pools producing from five thousand feet [1,524 meters] or above.

Top unit allowables for each range of depth shall then be determined by multiplying the normal unit allowable by the proportional factor for each depth range as set out in the table hereinabove; any fraction of a barrel shall be regarded as a full barrel for both normal and top unit allowables.

At the beginning of each calendar month, the distribution or proration to the respective units in each pool shall be changed in order to take into account all new wells which have been completed and were not in the proration schedule during the previous calendar month. Where any well is completed between the first and last day of the calendar month, its proration unit shall be assigned an allowable in accordance with whether such unit is marginal or nonmarginal, beginning at seven a.m., on the date of completion and for the remainder of that calendar month.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04, 38-08-06

Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-68. Gas-oil ratio limitation. In allocated pools containing a well or wells producing from a reservoir which contains both oil and gas each proration unit shall be permitted to produce only that volume of gas equivalent to the applicable limiting gas-oil ratio multiplied by the top unit oil allowable for the depth of the pool and currently assigned to the pool. In the event the commission has not set a gas-oil ratio limit for a particular oil pool the limiting gas-oil ratio shall be two thousand cubic feet [56.63 cubic meters] of gas for each barrel of oil produced.

A gas-oil limit shall be placed on all allocated oil pools, and all proration units or fractional proration units having a gas-oil ratio exceeding the limit for the pool shall be adjusted unless previously exempted by the commission after hearing, in accordance with the following formula:

1. Any proration unit which, on the basis of the latest official gas-oil ratio test has a gas-oil ratio in excess of the limiting gas-oil ratio for the pool in which it is located shall be permitted to produce daily that number of barrels of oil which shall be determined by multiplying the current top unit allowable by the fraction, the numerator of which shall be the limiting gas-oil ratio for the pool and the denominator of which shall be the official gas-oil ratio test of the well.
2. Any unit containing a well or wells producing from a reservoir which contains both oil and gas shall be permitted to produce only that volume of gas equivalent to the applicable limiting gas-oil ratio multiplied by the top unit allowable currently assigned to the pool.

3. A marginal unit shall be permitted to produce the same total volume of gas which it would be permitted to produce if it were a nonmarginal unit.
4. All gas produced with the current oil allowable determined in accordance with this rule shall be deemed to have been lawfully produced.

All proration units to which gas-oil ratio adjustments are applied shall be so indicated in the proration schedule with adjusted allowables stated. The adjustment shall be made effective on the first day of the month following that in which the gas-oil ratio tests were reported for the pool, as set forth in the special field rules applicable to the pool.

In cases of new pools the limiting gas-oil ratio shall be two thousand cubic feet [56.63 cubic meters] per barrel until such time as changed by the commission after a hearing. ~~Upon petition, notice, and according to law~~ After notice and hearing, the commission ~~will~~ shall determine or redetermine, the specific gas-oil ratio limit which is applicable to a particular allocated oil pool.

History: Amended effective January 1, 1983.
General Authority: NDCC 38-08-04, 38-08-06
Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-69. Allocation of gas production. When the commission determines that allocation of gas production in a designated gas pool is necessary to prevent waste, and to protect correlative rights, the commission after notice and hearing shall consider the nominations of purchasers from that gas pool and other relevant data, and shall fix the allowable production of that pool, and shall allocate production among the proration units and fractional proration units in the pool delivering to a gas transportation facility upon a reasonable basis ~~and recognizing correlative rights~~. The commission shall include in the proration schedule of such pool any proration unit or fractional proration unit which it finds is being unreasonably discriminated against through denial of access to a gas transportation facility which is reasonably capable of handling the type of gas producible from such proration unit or fractional proration unit.

History: Amended effective January 1, 1983.
General Authority: NDCC 38-08-04, 38-08-06
Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-70. Proration Gas proration period. The gas proration period shall be six months and the pool allowable and allocations thereof shall be made at least thirty days prior to each proration period set by order of the commission.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04, 38-08-06
Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-71. Adjustment of gas allowables. When the actual market demand from any allocated gas pool during a proration period is more than or less than the allowable set by the commission for the pool for the period, the commission shall adjust the gas proration unit allowables for the pool for the next proration period so that each gas proration unit shall have a reasonable opportunity to produce its fair share of the gas production from the pool and so that in a manner that shall protect correlative rights shall be protected.

History: Amended effective January 1, 1983.
General Authority: NDCC 38-08-04, 38-08-06
Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-77. Application for unitized management under commission order. Any plan of unitized management or any injection into a reservoir for the purpose of maintaining reservoir pressure or for enhanced recovery operations shall be permitted only by order of the commission after notice and hearing. The application for an order shall include a complete statement of all matters required by North Dakota Century Code section 38-08-09.3 and North Dakota Administrative Code chapter 43-02-05.

The application shall be submitted to the commission's staff commission, in duplicate, at least forty-five days prior to the date requested for such hearings and shall be accompanied by all engineering, geological, and other technical exhibits which will be introduced at the hearing.

History: Amended effective November 1, 1982; January 1, 1983.
General Authority: NDCC 38-08-09
Law Implemented: NDCC 38-08-09

43-02-03-78. Illegal sale prohibited. The sale or purchase or acquisition, or the transporting, refining, processing, or handling in any other way, of crude petroleum oil or of any product of crude petroleum produced in excess of the amount allowed by any statute of this state, or by any rule, regulation, or order of the commission made thereunder, is prohibited.

General Authority: NDCC 38-08-15
Law Implemented: NDCC 38-08-15

Repealed effective January 1, 1983.

43-02-03-79. Purchase of liquids from gas wells. Provided that a supplemental order is issued authorizing such production on the monthly proration schedule, any common purchaser is authorized to purchase one hundred percent of the amount of associated crude oil or condensate produced and recovered from a natural gas proration unit.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-06

Law Implemented: NDCC 38-08-06

43-02-03-80. Reports of purchasers or and transporters of crude oil. On, or before, the fifth first day of the second month succeeding that in which takings occur oil is removed, purchasers or and transporters, including truckers, shall file with the commission and the state geologist enforcement officer a report (form 10A) showing the amount of all crude oil taken removed by them from each lease during the reported month and the disposition (form 10B) of such crude oil.

Prior to removing any oil from a lease, purchasers or and transporters shall obtain an approved copy of a producers certificate of compliance and authorization to transport oil from lease (form 8) from either the producer or the commission and the state geologist enforcement officer.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-81. Authorization to transport oil from lease. Before any crude oil is transported from a lease the operator of the lease shall file with the commission and the state geologist enforcement officer, and obtain the chief enforcement officer's approval, a producers certificate of compliance and authorization to transport oil from lease (form 8).

Oil transported from a lease before the authorization is obtained or if such authorization has been revoked, shall be considered illegal oil.

The commission acting by and through the chief enforcement officer shall revoke the producers certificate of compliance and authorization to transport oil from lease for failure to comply with any rule, regulation, or order of the commission.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-81.1. Reports of purchasers and transporters of gas. On or before the fifth day of the second month succeeding that in which dry gas is received purchasers and transporters including pipeliners shall file a report (form 8a) with the enforcement officer showing the amount of gas taken from each plant or well during reporting period.

All gas produced and sold or transported away from a lease shall be metered and reported monthly to the enforcement officer in cubic feet [meters] computed at a pressure of fourteen and seventy-three hundredths pounds per square inch [1,034.19 grams per square centimeter] absolute at a base temperature of sixty degrees Fahrenheit [14.44 degrees Celsius].

Prior to removing any gas from a plant or well, purchasers and transporters shall obtain an approved copy of a certificate of compliance and authorization to transport gas from lease or gas plant (form 8a) from either the operator or the enforcement officer.

History: Effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-82. Refinery reports. Each refiner of oil within North Dakota shall furnish for each calendar month a report containing information and data respecting crude oil and products involved in such refiner's operations during each month. The report for each month shall be prepared and filed, on, or before, the fifteenth of the next succeeding month with the ~~commission and the state geologist~~ enforcement officer.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-83. Gasoline Gas processing plant reports. Each operator of a ~~gasoline gas processing plant, cycling plant, or any other plant at which gas processing, gasoline, butane, propane, condensate, kerosene, oil, or other products are extracted from natural gas within North Dakota,~~ shall furnish to the ~~commission and the state geologist~~ enforcement officer a report ~~containing information respecting crude oil and products involved in such operations~~ containing the amount of gas received from each lease or well on form 12a.

Crude oil recovered shall be reported to the ~~commission and the state geologist~~ enforcement officer, on form 5, on, or before, the close of business on the ~~fifteenth~~ first day of each the second month succeeding that in which oil is removed. Other operations shall be reported to the ~~commission and the state geologist~~ enforcement officer, on form 12 and 12a, on, or before, the ~~close of business on~~

~~the twenty-fifth~~ fifth day of each the second month following that in which gas is processed.

The information contained on form 12 shall be treated as confidential except as said information may be required in public hearings before the commission, or in judicial proceedings.

In releasing reports of production, only the totals for the state shall be shown.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-84. Additional information may be required. This chapter shall not be taken or construed to limit or restrict the authority of the ~~industrial~~ commission to require the furnishing of such additional reports, data, or other information relative to production, transportation, storing, refining, processing, or handling of crude ~~petroleum~~ oil, ~~natural~~ gas, or products in North Dakota as may appear to be necessary or desirable, either generally or specifically, for the prevention of waste, protection of correlative rights, and the conservation of natural resources ~~of North Dakota.~~

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-85. Books and records to be kept to substantiate reports. All producers, transporters, storers, refiners, gasoline or extraction plant operators, and initial purchasers ~~of natural~~ gas within North Dakota shall make and keep appropriate books and records for a period not less than five years, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-86. Public hearing required. Except as provided for herein and in section 43-02-03-18 before any rule, regulation, or order, including revocation, change, renewal, or extension thereof, a public hearing shall be held at such time, place, and manner as may be prescribed by the commission.

General Authority: NDCC 38-08-11

Law Implemented: NDCC 38-08-11

Repealed effective January 1, 1983.

43-02-03-87. Institute proceedings. The commission, upon its own motion and the attorney general, on behalf of the state, and any operator, producer, taker, or other person interested in any common source of supply of oil and gas, may institute proceedings. The commission shall have jurisdiction to make any and all orders, rules, and regulations authorized by laws of this state.

General Authority: NDCC 38-08-11
Law Implemented: NDCC 38-08-11

Repealed effective January 1, 1983.

43-02-03-88. Application for hearing. In any proceeding instituted upon motion of the commission, the application shall be signed by at least two members of the commission, one of which shall be the governor, and any other application, the application shall be signed by the person filing same applicant or by the person's applicant's attorney. An application shall state (1) the name and general description of the common source or sources of supply affected by the order, rule, or regulation sought if any, unless same is intended to apply to and affect the entire state, in which event the application shall so state, and such statement shall constitute sufficient description; and (2) briefly the general nature of the order, rule, or regulation sought in the proceedings.

History: Amended effective January 1, 1983.
General Authority: NDCC 38-08-11
Law Implemented: NDCC 38-08-11

43-02-03-89. Upon application hearing is set. When an application is filed, the same shall be set for hearing before the commission at such time as will permit ten days' notice thereof to be given, as hereinafter provided.

General Authority: NDCC 38-08-11
Law Implemented: NDCC 38-08-11

Repealed effective January 1, 1983.

43-02-03-90. Notice of hearing. Upon the institution of a proceedings by application or by motion of the commission, the commission shall give at least ten days (except in emergency) notice (except in emergency) of the time and place of hearing thereon by one publication of such notice in newspapers of general circulation

published at Bismarck, North Dakota, and in the county where the land affected or some part thereof is situated, unless in some particular proceeding a longer period of time or a different method of publication is required by law, in which event such period of time and method of publication shall prevail. The notice shall issue in the name of the state and shall be signed by the chairman or secretary of the commission, and shall conform to the other requirements provided by law. In case an emergency is found to exist by the commission which in its judgment requires the making of a rule, regulation, or order without first having a hearing, the emergency rule, regulation, or order shall have the same validity as if a hearing with respect to the same had been held after notice. The emergency rule, regulation, or order permitted by this section shall remain in force no longer than ~~forty-five~~ forty days from its effective date, and in any event, it shall expire when the rule, regulation, or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation, or order becomes effective.

History: Amended effective March 1, 1982; January 1, 1983.

General Authority: NDCC 38-08-11

Law Implemented: NDCC 38-08-11

43-02-03-91. Rehearing. Within thirty days after the entry of any order or decision of the commission or the chief enforcement officer, any person affected thereby may file with the commission an application for rehearing in respect of any matter determined by such order or decision, setting forth the respect in which such order or decision is believed to be erroneous. The commission shall grant or refuse any such application in whole or in part within fifteen days after the same is filed. In the event the rehearing is granted, the commission may enter such new order or decision after rehearing as may be required under the circumstances.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-13

Law Implemented: NDCC 38-08-13

43-02-03-92. Burden of proof. In any proceeding instituted before the commission which requires a hearing, the burden of proof shall be upon the one having the affirmative in such proceeding.

General Authority: NDCC 38-08-11

Law Implemented: NDCC 38-08-11

Repealed effective January 1, 1983.

43-02-03-93. Designation of examiners. The commission shall by motion designate and appoint not more than four

individuals to be examiners. Each examiner so appointed shall be a member of the staff of the industrial commission. The commission may, by motion, designate and appoint a successor to any person whose status as an examiner is terminated for any reason. Each individual designated and appointed as an examiner must be a geologist, petroleum engineer, or licensed lawyer, with at least two years of such experience and a college degree in geology, engineering, or law, provided that nothing therein contained shall prevent any member of the commission from being designated as, or serving as, an examiner. The commission may by motion designate and appoint qualified individuals to serve as examiners. The commission may refer any matter or proceeding to any legally designated and appointed examiner or examiners.

History: Amended effective April 30, 1981; January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-94. Matters to be heard by examiner. The commission may refer any matter or proceeding to any legally designated and appointed examiner and alternate examiner for hearing in accordance with this chapter. The examiner and alternate examiner appointed to hear any specific case shall be designated by name.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

Repealed effective January 1, 1983.

43-02-03-95. Powers and duties of examiner. The commission may by motion limit the powers and duties of ~~the~~ any examiner in any particular case to such issues or to the performance of such acts as the commission deems expedient; however, subject only to such limitation as may be ordered by the commission, the examiner or examiners to whom any matter or proceeding is referred under this chapter shall have full authority to hold hearings on such matter or proceeding in accordance with and pursuant to this chapter. The examiner shall have the power to regulate all proceedings before the examiner and to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearing, including the swearing of witnesses, receiving of testimony and exhibits offered in evidence, subject to such objections as may be imposed, and shall cause a complete record of the proceeding to be made and retained.

History: Amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-96. Matters heard by commission. Notwithstanding any other provision of this chapter, the hearing on any matter or proceeding shall be held before the commission (1) if the commission in its discretion desires to hear the matter, or (2) if the application or motion so requests, or (3) if the matter is initiated on a motion of the commission for the enforcement of any rule, regulation, order, or statutory provision, or (4) if any party who may be affected by the matter or proceeding files with the commission more than three days prior to the date set for the hearing on the matter or proceeding a written objection to such matter or proceeding being heard before an examiner, or (5) if the matter or proceeding is for the purpose of amending, removing, or adding a statewide rule.

General Authority: NDEC 38-08-04
Law Implemented: NDEC 38-08-04

Repealed effective January 1, 1983.

43-02-03-97. Examiner disinterested umpire. An examiner conducting a hearing under these rules shall conduct oneself as a disinterested umpire.

General Authority: NDEC 38-08-04
Law Implemented: NDEC 38-08-04

Repealed effective January 1, 1983.

43-02-03-98. Report of examiner. Upon the conclusion of any hearing before an examiner, the examiner shall promptly consider the proceedings in such hearing, and based upon the record of such hearing, the examiner shall prepare the examiner's written a report and recommendations for the disposition of the matter or proceeding by the commission. Such report and recommendations shall either be accompanied by a proposed order or shall be in the form of a proposed order, and shall be submitted to the commission.

History: Amended effective January 1, 1983.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-100. Hearing de novo before commission. When any order has been entered by the commission pursuant to any hearing held by an examiner, any party adversely affected by the order shall have the right to have the matter or proceeding heard de novo before the commission, provided that within thirty days from the date the order is rendered

the party files with the commission a written application for the hearing before the commission. If the application is filed, the matter or proceeding shall be set for hearing before the commission at the next regular hearing date following the expiration of fifteen days from the date the application is filed with the commission. Any person affected by the order or decision rendered by the commission after hearing before the commission may apply for rehearing pursuant to and in accordance with the provisions of section 43-02-03-91, and that section, together with the law applicable to rehearings and appeals in matters and proceedings before the commission, shall thereafter apply to the matter or proceeding.

General Authority: NDEC 38-08-04
Law Implemented: NDEC 38-08-04

Repealed effective January 1, 1983.

43-02-04-03. Applications - Contents and approval. An application for a natural gas well status determination under the Natural Gas Policy Act of 1978 shall be made upon forms furnished by the industrial commission and shall be executed by the operator of the well for which the status determination is requested. The original and three copies one copy of the application, together with an application fee of one hundred dollars, shall be filed with:

State Geologist
University Station
Grand Forks, North Dakota 58202
Enforcement Officer
Oil and Gas Division
900 East Boulevard
Bismarck, North Dakota 58505

Only those applications that fully conform with the rules of the industrial commission and the federal energy regulatory commission shall be deemed to be filed for purposes of retroactive collections in accordance with the provisions of the Natural Gas Policy Act of 1978. Each application shall contain, in addition to all other requirements, an affidavit executed by the operator stating:

1. That a copy of the application has been served on the purchaser of the gas.
2. That the public notice required in section 43-02-04-04 has been properly given.
3. The dates of such publications.

History: Effective February 1, 1979; amended effective January 1, 1983.

General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-01, 38-08-03

43-02-04-04. Notice. An applicant shall give notice of intention to file an application for a natural gas well status determination by publishing a single notice of the application in the Bismarck Tribune and also the official county newspaper where the well is located. The notice shall be published not more than ten days prior to filing the application with the state geologist enforcement officer. The notice shall contain the following information:

1. The name of the applicant.
2. The location of the well.
3. The well status determination being requested.
4. That any person may intervene by filing a notice of intervention with:

State Geologist
University Station
Grand Forks, North Dakota 58202
Enforcement Officer
Oil and Gas Division
900 East Boulevard
Bismarck, North Dakota 58505

5. That the notice of intervention must state that the intervenor supports or opposes the requested well status determination.
6. That the intervention must be filed with the state geologist enforcement officer within ten days after the date of publication.

History: Effective February 1, 1979; amended effective January 1, 1983.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-01, 38-08-03

43-02-04-05. Determination by the state geologist enforcement officer. If notice of intervention by an opponent is not filed, or not filed within the prescribed time, the state geologist enforcement officer may make a determination and issue an order in the same manner as a permit to drill is issued or denied pursuant to section 43-02-03-16, or the state geologist enforcement officer may defer the determination to the industrial commission. An applicant may appeal an adverse well status determination made by the state geologist enforcement officer to the industrial commission.

History: Effective February 1, 1979; amended effective January 1, 1983.
General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-01, 38-08-03

43-02-04-06. **Hearing.** The industrial commission shall hold a hearing and make a well status determination in the following situations:

1. When an opponent to a requested well status determination files a notice of intervention within the prescribed time.
2. When an applicant appeals an adverse well status determination made by the state geologist enforcement officer.
3. When the state geologist enforcement officer has deferred a determination to the industrial commission.

The notice of hearing shall be published, the hearings shall be conducted, and the order shall be issued in the same manner as other hearings before the industrial commission.

History: Effective February 1, 1979; amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-01, 38-08-03

43-02-04-07. **Final determination.** A well status determination shall be final:

1. Thirty days following the determination by the state geologist enforcement officer, unless an appeal is made to the industrial commission within that time;
2. Thirty days following the determination by the industrial commission, unless a request for a rehearing is made within that time; or
3. The date a request for a rehearing is denied.

History: Effective February 1, 1979; amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-01, 38-08-03

43-02-04-08. **Notice of determination.** When a well status determination becomes final, the state geologist enforcement officer shall give written notice of the determination to the federal energy regulatory commission.

History: Effective February 1, 1979; amended effective January 1, 1983.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-01, 38-08-03

TITLE 45
Commissioner of Insurance

FEBRUARY 1983

STAFF COMMENT: Chapter 45-06-02 contains all new material but is not underscored so as to improve readability.

**CHAPTER 45-06-02
INTERCARRIER HEALTH INSURANCE POOL**

Section

45-06-02-01

Definitions

45-06-02-02

Assessment of Insurers for Losses and Expenses of the Comprehensive Health Association and Comprehensive Health Insurance Plan

45-06-02-03

Penalty

45-06-02-01. Definitions. Unless otherwise defined, or made inappropriate by context, all words used in this chapter shall have the meanings given them under North Dakota Century Code chapter 26-16.1.

History: Effective February 1, 1983.

General Authority: NDCC 26-16.1-07

Law Implemented: NDCC 26-16.1-01, 26-16.1-02, 26-16.1-03, 26-16.1-04, 26-16.1-05, 26-16.1-06, 26-16.1-07, 26-16.1-08, 26-16.1-09, 26-16.1-10, 26-16.1-11, 26-16.1-12

45-06-02-02. Assessment of insurers for losses and expenses of the comprehensive health association and comprehensive health insurance plan.

1. Insurers which are members of the association will be assessed annually for their proportionate share of administrative

expenses of the association and the amount by which operating, administrative, and claims expenses of the association plan exceed the association plan premium in each fiscal year of the association.

2. The association shall notify each insurer member of the association of the insurer's total annual premium volume for accident and sickness insurance policies received from or on behalf of state residents for the calendar year immediately preceding the assessment, as shown on page 46, line 25, column 3 of that insurer's annual statement if an accident and health insurance company, or the figures shown on page 14, column 3, lines 13, 15.1, 15.2, 15.3, 15.4, 15.5, and 15.6 if a property and casualty company, for the appropriate year required to be filed with the commissioner. That figure will be used in determining an insurer's proportionate share of association expenses and association plan losses under subsection 4 of North Dakota Century Code section 26-16.1-08, unless within thirty days after receiving notification the insurer objects in writing to the association and the commissioner. The objection shall set forth the following information:
 - a. The reasons why the figure shown on page 46, line 25, column 3 of its annual statement if an accident and health insurance company, or the figures shown on page 14, column 3, lines 13, 15.1, 15.2, 15.3, 15.4, 15.5, and 15.6 of its annual statement if a property and casualty company, should not be used in determining that insurer's proportionate share of association losses; and
 - b. A certification by that insurer's chief actuarial officer of the correct total annual premium volume for accident and sickness policies received from or on behalf of state residents.
3. The commissioner, within thirty days of receipt of the reason for the objection, shall notify the insurer of the acceptance or rejection of the objection to the figure used to determine the insurer members' assessment.
4. If the objection is accepted by the commissioner, an insurer members' assessment will be determined on that basis. If the objection is not accepted, an insurer members' assessment will be set on the basis established by the commissioner.

History: Effective February 1, 1983.

General Authority: NDCC 26-16.1-07

Law Implemented: NDCC 26-16.1-01, 26-16.1-02, 26-16.1-03, 26-16.1-04, 26-16.1-05, 26-16.1-06, 26-16.1-07, 26-16.1-08, 26-16.1-09, 26-16.1-10, 26-16.1-11, 26-16.1-12

45-06-02-03. **Penalty.** If an insurer fails to pay an assessment, in the time prescribed, subject to the hearing requirements of North Dakota Century Code chapter 28-32, its membership in the association will cease, and it shall not be permitted to write accident and sickness insurance policies as defined in North Dakota Century Code chapter 26-16.1 in this state.

History: Effective February 1, 1983.

General Authority: NDCC 26-16.1-07

Law Implemented: NDCC 26-16.1-07(4)

ARTICLE 45-09

APPENDIX III

Categories of Acceptable Surplus Lines Coverage

The following categories of surplus lines coverage are not the only lines which may be written in North Dakota. Other lines of coverage not on this list may be acceptable because of special underwriting considerations. Any exceptions must be fully explained on the surplus lines affidavit and approved by the commissioner of insurance.

There is a presumption that the insured is unable, after diligent search, to procure the insurance, indemnity contract, or surety bond desired from a company authorized to do business in this state if the coverage written is in an approved category.

These categories may be changed from time to time at the discretion of the Commissioner of Insurance subject to provisions of North Dakota Century Code chapter 28-32, the Administrative Agencies Practice Act.

1. Fiduciary liability.
2. Professional liability (E & O) except for hospitals.
3. Directors and officers.
4. Ocean marine cargo, liability and hull.
- ~~5. Spectator liability.~~
- ~~6. Aircraft liability and hull (following classes):~~

Airmeet liability	Crop-Dusting
Flight-Training	Experimental
Gliders	Helicopters
Parachute-Clubs-and-Skydiving	Racing
Skyjack-Insurance	Hot-Air-Balloons
Slung-Cargo	
- ~~7. 5. Hazardous cargo and short-term trip transit.~~
- ~~8. Amusement-parks-and-devices.~~
- ~~9. Drag-strip liability~~
- ~~10. 6. Bridges (large).~~
- ~~11. 7. Heavy woodworking property (unprotected, high value sawmills.)~~
- ~~12. Carnivals-and-community-events.~~
- ~~13. Outfitters-and-guides-liability.~~

- 14- 8. Product liability (hazardous).
- 15-~~-----Reck-concerts-~~
- 16- 9. Ski lifts and tows' liability.
- 17-~~-----Standing-timber-~~
- 18- 10. Fireworks, ammunition, fuse, cartridges, power, nitroglycerine, explosive gases.
- 19-~~-----Atomic-power-and-radioactive-material-~~
- 20-~~-----Underwater-construction-~~
- 21-~~-----Diving-and-caisson-work-~~
- 22-~~-----Mining-~~
- 23-~~-----Celluloid-and-pyroxilin-risks-~~
- 24-~~-----Tunneling-~~
- 25- 11. Environmental impairment - pollution.
- 26- 12. Kidnap ransom.
- 27-~~-----Loggers-broad-form-property-damage-~~
- 28- 13. Oil and gas liability and marine ~~liability-(hazardous)-~~
- 29- 14. Livestock mortality (high values and unusual).
- 30- 15. Short tail (hole-in-one, 300 bowling score, etc.).
- 31- 16. Large utilities (generation, transmission).
- 32- 17. Building demolition and moving.
- 33- 18. Mono line liquor legal liability.
- 34- 19. Surcharged fire and allied lines excluding uncontrolled marine.
- 35- 20. High value substandard private passenger auto.
- 36- 21. Commercial auto physical damage coverage in excess of Insurance-Service rating organizations' filed rates.
- 37- 22. Any excess liability coverages.

History: Amended effective February 1, 1983

TITLE 48
Livestock Sanitary Board

JUNE 1983

48-02-01-03. Cattle. Tests for brucellosis shall be conducted by a state or federal laboratory or by a veterinarian approved in the state of origin.

1. TUBERCULOSIS. No test is required on cattle identified as originating directly from tuberculosis-free accredited herds or states. All other cattle over twelve months of age must be negative to the tuberculosis test within thirty days prior to entry.
2. BRUCELLOSIS. "Brucellosis test" means the blood agglutination test conducted at the state-federal laboratory in Bismarck. Vaccination is required. No female cattle over ~~ten~~ twelve months (three hundred sixty-five days) of age may be imported unless officially calfhood vaccinated against brucellosis and properly identified. ~~Excepted~~ Exempted from this requirement are cattle entering licensed quarantined feedlots. ~~Tests are required on vaccinees two years of age or older.~~
3. PERMITS. Permits shall be required on all female cattle over ~~ten~~ twelve months (three hundred sixty-five days) of age. Permits shall be required on all cattle originating from any state where scabies may be introduced in shipments originating from such state as determined by the judgment of the board.
4. DIPPING. Dipping in a solution approved by the board shall be required on all cattle originating from states where scabies permits are required. Two dippings, ten to fourteen days apart, may be required on cattle originating from states determined by the board to have a large number of infested herds.

History: Amended effective April 1, 1980; June 1, 1983.

General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

48-02-01-06. **Swine - Breeding and feeder purposes.** A permit is required for swine. Breeding swine over six months of age require a negative brucellosis test within thirty days prior to entry unless from validated herd or state. A negative test for pseudorabies is required within thirty days prior to shipment, unless from a qualified herd. A retest is required not less than thirty nor more than sixty days after importation.

History: Amended effective June 1, 1983.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

48-02-01-09. **Horses.** All equine species require negative tests for equine infectious anemia within twelve months prior to date of importation, unless originating from states exempted from test requirements by the state veterinarian. Exceptions to this requirement are suckling foals accompanying negative dams, trail rides and shows, rodeo, circus, and animal acts, and horses consigned to licensed auction markets. Reactor horses must be positively and individually identified by permanent brand.

History: Amended effective June 1, 1983.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

48-04-01-01. **Designation and identification of premises.** The board may require identification and designation of premises where exposed or rejected infected animals are or have been located. Premises shall be designated by suitable placard to be determined by board. Placard shall not be removed except by permission of the state veterinarian.

History: Amended effective June 1, 1983.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-12

48-04-01-05. **Removal or damaging of official identification tags or brands.** Official identification or reactor tags or brands which have been applied by board agents shall not be removed or tampered with without written consent of the board.

History: Amended effective June 1, 1983.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

48-04-01-11. Garbage feeding to swine. No permit is to be issued under North Dakota Century Code section 36-01-22 unless the cooking equipment meets the requirements of the board used is equipped with a recording thermometer and agitator which meets the requirements set by the board.

History: Amended effective June 1, 1983.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-22

48-04-01-12. Use Sale or use of virulent products. Vaccines containing virulent products may not be used on domestic animals except with approval of the executive officer. Permits are granted for use of certain products. All persons, firms, or corporations are prohibited from distributing, selling, or using any products containng any live germs, cultures, or viruses for the treatment or vaccination of any domestic animals without the approval of the state veterinarian. This section does not apply to licensed veterinarians practicing in North Dakota.

History: Amended effective June 1, 1983.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-06-01-01. Uniform methods and rules - Brucellosis eradication. In accordance with North Dakota Century Code section 36-01-08, the uniform methods and rules as they appear in publication APHIS-91-1 of the animal and plant health inspection service of the United States department of agriculture, dated March 1975, and amended September 10, 1976 June 1983, are hereby adopted and constitute a rule of the board. Any An animal shall be declared infected with brucellosis when the reaction to the blood agglutination test is positive, or when declared adjudged diseased by the North Dakota livestock sanitary board state veterinarian.

History: Amended effective June 1, 1983.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-06-01-02. Immediate slaughter of brucellosis ~~reactors~~-infected animals. All animals must be slaughtered within thirty days following condemnation.

History: Amended effective June 1, 1983.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-12

48-06-01-03. Brucellosis vaccination of calves. Licensed veterinarians are permitted to contract with owners to vaccinate female

calves. Female bovine animals may be vaccinated while from ~~two months (sixty days) to ten months (two hundred ninety-nine days)~~ four through twelve months (one hundred twenty through three hundred sixty-five days) of age with a vaccine approved by the state veterinarian. Vaccinated animals shall be tattooed and tagged in the right ear. The veterinarian must submit reports of vaccination on form 18V to the board within thirty days.

History: Amended effective July 1, 1982; June 1, 1983.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-15-21

48-07-01-02. Uniform methods and rules. In accordance with North Dakota Century Code section 36-01-08, the uniform methods and rules as they appear in the animal health division, United States department of agriculture publication dated ~~December 5, 1969~~ January 4, 1982, are hereby adopted and constitute a regulation rule of the board.

History: Amended effective June 1, 1983.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-07-01-03. Branding of condemned cattle.

1. All cattle that give a positive reaction to the tuberculin test and are adjudged affected with tuberculosis shall be marked by firebranding the letter T on the left jaw, and by having a reactor tag inserted in the left ear.
2. All cattle that give a positive reaction to the agglutination blood test for brucellosis and are adjudged affected with this disease brucellosis shall be marked by firebranding the letter B on the left jaw, and by having a reactor tag inserted in the left ear.
3. All branding and tagging referred to above shall be completed within twenty-one days following the date the blood sample was collected.

History: Amended effective June 1, 1983.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-09-01-01. Feedlot registration. For the purpose of complying with North Dakota Century Code section 36-01-30 regulating brand inspection of registered feedlots:

1. if certain requirements are met the North Dakota stockmen's association may issue a registration number valid for ten years. Any person who operates a dry lot cattle-feeding operation within the confines of permanently fenced lots may make application to the chief brand inspector of the North Dakota stockmen's association for a registered feedlot number. After the association has received application and a fee, an agent of the association shall, within thirty days, make investigation to determine that the following requirements are satisfied:

a. Operator's lots must be of permanently fenced dry lot status.

b. Operator must commonly practice feeding cattle to finish for slaughter.

c. Commercial feedlots, which custom feed cattle for other persons, and do not have ownership of the cattle, are not eligible for registration.

If satisfactory the association may issue such registration number valid for ten years unless rescinded for cause.

2. All cattle placed in a registered feedlot shall be accompanied by a brand inspection certificate. Such certificate may be a market clearance, a local brand inspection certificate, or a recognized brand inspection certificate from another state. Cattle purchased or acquired by a registered feedlot operator from a North Dakota producer shall be inspected before being mixed with other cattle and the producer shall pay inspection costs. Cattle raised by a registered feedlot operator and placed in the operator's own feedlot shall be inspected at the time they are placed in the feedlot and the regular inspection fee shall be paid by the operator. Cattle to be placed in a registered feedlot which come from outside North Dakota but which are not accompanied by a brand inspection certificate, shall be inspected without charge before being mixed with other cattle.

3. Registered feedlot operators are required to keep cattle inventory records. The operator of a registered feedlot shall be required to keep certain cattle inventory records. A form for this purpose shall be prescribed by the chief brand inspector, such form to show number of cattle in the lot, number sold, date and place where cattle were sold, number of cattle remaining in lot, number of replacement cattle placed in lot, and such other information as may be necessary, including death losses. Cattle shipped from a registered feedlot directly to market shall not be subject to brand inspection or payment of inspection fees at the market but must be shipped on a permit form as prescribed by the chief brand inspector. This form shall be made in triplicate;

one copy shall be delivered to the brand inspector at the market along with shipment; one copy shall be sent to the chief brand inspector not later than December thirty-first for those cattle shipped during the last calendar year; and one copy shall be retained by the operator. In the event the above permit form fails to accompany shipment of cattle to market, cattle shall be subject to inspection and regular fees shall be charged for the service. The operator of a registered feedlot shall pay an annual assessment of twenty dollars plus three cents per head on each head shipped on the above permit form. Operators will be billed by the chief brand inspector on or about December thirty-first of each year, on cattle shipped during the preceding calendar year.

4. Cattle not sold for slaughter must be inspected. Cattle sold from a registered feedlot, but which are not sold for slaughter, must be inspected and the seller shall bear the cost of inspection at the regular fee.
5. Registered feedlots are subject to inspection at any time. Registered feedlots shall be subject to inspection at any reasonable time at the discretion of the chief brand inspector, and the operator shall show cattle inventory records and inspection certificates to cover all cattle in the operator's feedlot.
6. The chief brand inspector is authorized to revoke or suspend registration.

History: Amended effective June 1, 1983.

General Authority: NDCC 36-01-30

Law Implemented: NDCC 36-01-30

48-09-01-02. Brand inspection. For the purpose of complying with North Dakota Century Code ~~chapter~~ 36-22 chapters 36-05, 36-09, and 36-22:

1. The owner is required to pay a fee on all cattle, horses, and mules subject to brand inspection. When cattle, horses, or mules are offered for sale at any brand inspection point, proof of ownership must be established by the shipper of the cattle, horses, or mules, either by a recorded brand, bill of sale, livestock market clearance, local inspection certificate, or an affidavit of ownership.
2. Recorded brands determine ownership. If any animal inspected bears the recorded brand of the shipper or seller and also bears a recorded brand or brands other than the recorded brand of the shipper or seller, then the said shipper or seller may be required, at the discretion of the brand inspector, to establish ownership of such animal by bills of

sale, market clearance, local inspection certificate, or any other satisfactory evidence of ownership.

3. Proof of ownership must be established, or proceeds will be held. No claim for feed, pasture, or gathering shall be allowed at market. All such claims must be referred to and approved for payment from proceeds of sale by the North Dakota stockmen's association, unless payment is authorized in writing by the owner of the brand carried by such livestock.
4. If any animal inspected bears the recorded brand of the shipper or seller and also bears a recorded brand or brands other than the recorded brand of the shipper or seller, then the shipper or seller may be required, at the discretion of the brand inspector, to establish ownership of the animal by bills of sale, market clearance, local inspection certificate or any other satisfactory evidence of ownership. Sales agency, packing plant, and buying stations where inspection is maintained must furnish necessary help without charge to assist the brand inspectors in handling cattle, horses, or mules to be inspected for brands.
5. No claims for feed or pasture are allowed at markets. All cattle, horses, or mules entering an inspection point shall be placed in pens assigned to individual sellers, and shall be kept separate from all other cattle, horses, or mules until inspected by the brand inspector and released for sale or shipment.
6. Selling establishments must furnish assistance to brand inspectors. No cattle, horses, or mules shall be inspected after dark or by artificial light or inspected when loaded in trucks; provided, however, that under emergency circumstances deemed by the brand inspector to warrant inspection by artificial light, such inspection may be made at places designated by the chief brand inspector as having lighting which meets the specifications required by the chief brand inspector for inspection by artificial light. The chief brand inspector shall have authority to give approval to premises which meet such specifications, and to extend or remove such approval.
7. Livestock consigned for sale must be kept separate from other livestock until inspected. It shall be the responsibility of the North Dakota stockmen's association to provide a sufficient and competent force of brand inspectors at inspection points to carry on the brand inspection in an efficient and timely manner.
8. No inspections shall be conducted after dark, except by appropriate lighting. Brand inspectors may

not inspect their own livestock or trade at a market where they conduct inspections.

9. The North Dakota stockmen's association is responsible for providing inspection service. A buying station is a point where cattle, horses, or mules are gathered for sale.
10. Brand inspectors may not inspect their own cattle or trade at a market where they conduct inspections. A bill of lading is required by railroads or motor carriers when livestock is going to out-of-state markets where inspection is maintained for North Dakota livestock.
11. A buying station is a point where cattle, horses, or mules are gathered for sale or other purposes. The North Dakota stockmen's association shall, when determined advisable by the chief brand inspector, make an inspection of any butcher shop, buying station, locker plant, or custom meat cutting and processing establishment where cattle are slaughtered or processed for the owner for a fee. Authorized inspectors of the association, when directed to do so by the chief brand inspector, shall be authorized to go upon the premises of any such butcher shop, buying station, locker plant, or custom meat cutting establishment, for the purpose of making physical inspection on the premises as to the ownership or identity of animals or their carcasses that may be found therein.
12. A bill of lading is required by railroads or motor carriers when livestock is going to out-of-state markets where inspection is maintained. A fee of fifty cents per head on all cattle, horses, or mules subject to brand inspection at points where such inspection is maintained shall be paid by the owner of the cattle, horses, or mules, and when sold by a commission firm, sales agency, or when purchased by a buying station operator or packing plant, it shall be the obligation of the commission firm, sales agency, buying station operator, or packing plant company to collect and withhold from the proceeds of such sale the inspection fee and to pay over to the association upon demand the amounts so collected without any deductions whatsoever. Whenever a brand inspector is required to travel to points other than the inspector's official stations to perform local brand inspection, the inspector shall be paid by the shipper, owner, or consignor, mileage at the same rate per mile [1.61 kilometers] paid state officials in addition to the regular brand inspection fee.
13. Butcher shops, buying stations, or custom meat plants may be examined when deemed necessary by chief brand inspector. The following terminal markets and auction markets outside the state of North Dakota are

designated official brand inspection markets for North Dakota cattle, horses, and mules by the North Dakota stockmen's association: Sioux City Stockyards, Sioux City, Iowa; Mobridge Livestock Auction, Mobridge, South Dakota; McLaughlin Sales, Inc., McLaughlin, South Dakota; Lemmon Livestock Market, Inc., Lemmon, South Dakota; Sisseton Livestock Sale Co., Sisseton, South Dakota; Britton Livestock Sale Co., Britton, South Dakota; Hub City Livestock Sale Co., Aberdeen, South Dakota; Aberdeen Livestock Sales, Aberdeen, South Dakota; Leola Livestock Sale Co., Leola, South Dakota; Herreid Livestock Sale Co., Herreid, South Dakota; Bowdle Livestock Sales, Co., Bowdle, South Dakota; Baker Livestock Auction, Inc., Baker, Montana; Glendive Livestock Auction, Glendive, Montana; Sidney Livestock Market Center, Sidney, Montana.

14. A fee of fifty cents per head on all cattle, horses, or mules subject to brand inspection at points where such inspection is maintained shall be paid by the owner of the cattle, horses, or mules, and when sold by a commission firm, sales agency, or when purchased by a buying station operator or packing plant, it shall be the obligation of the commission firm, sales agency, buying station operator, or packing plant company to collect and withhold from the proceeds of such sale the inspection fee and to pay over to the association upon demand the amounts so collected without any deductions whatsoever. Whenever a brand inspector is required to travel to points other than the inspector's official stations to perform local brand inspection, the inspector shall be paid by the shipper, owner, or consignor mileage at the same rate per mile {1.61 kilometers} paid state officials in addition to the regular brand inspection fee.
15. The following terminal markets and auction markets outside the state of North Dakota are designated official brand inspection markets for North Dakota cattle, horses, and mules by the North Dakota Stockmen's association: Sioux City Stockyards, Sioux City, Iowa, Mobridge Livestock Auction, Mobridge, South Dakota, McLaughlin Sales, Inc., McLaughlin, South Dakota, Lemmon Livestock Market, Inc., Lemmon, South Dakota, Sisseton Livestock Sale Co., Sisseton, South Dakota, Britton Livestock Sale Co., Britton, South Dakota, Hub City Livestock Sale Co., Aberdeen, South Dakota, Leola Livestock Sale Co., Leola, South Dakota, Herreid Livestock Sale Co., Herreid, South Dakota, Baker Livestock Auction, Inc., Baker, Montana, Glendive Livestock Auction, Glendive, Montana, Sidney Livestock Market Center, Sidney, Montana.

History: Amended effective April 1, 1980; July 1, 1982; June 1, 1983.

General Authority: NDCC 36-22-03

Law Implemented: NDCC 36-05-10, 36-09-15, 36-09-23, 36-22-02,
36-22-03

TITLE 52
Motor Vehicle Department

DECEMBER 1982

52-02-01-01. Definitions. The terms used throughout this article have the same meaning as in North Dakota Century Code title 39, except-

- 1- "Car" means any motor vehicle held by the dealer for sale or demonstration, whether such vehicle be designed for the transportation of property or passengers. The term, however, does not include a motor vehicle which is used by the dealer in the operation of those functions of the business which are not directly the functions of buying, selling, or exchanging of motor vehicles.
- 2- "Dealer's license" means the authority by which a person, partnership, or corporation may be a dealer in motor vehicles.
- 3- "Dealer's plates" means those number plates issued to a dealer which bear the distinctive number of the dealer's license.
- 4- "New new motor vehicle" means a motor vehicle which has never been registered or to which a certificate of title has never been issued pursuant to the motor vehicle registration laws, title registration laws, or motor vehicle excise tax laws of this state or the similar laws of another state. The issuing of certificates of title or registration number plates to new motor vehicles being held for sale pursuant to the motor vehicle registration laws, title registration laws, or motor vehicle excise tax laws of this state or the similar laws of another state does not constitute registration or title registration for the purposes of this definition. Provided further, that a new motor vehicle as

defined above which may have accumulated mileage equal to or in excess of one-half that mileage covered by the manufacturer's basic warranty, or which may have sustained body or mechanical damage equal to or in excess of one-fourth the manufacturer's suggested retail price, or which may be three or more months older than the current model year, may be considered to be a used motor vehicle taxed and titled.

History: Amended effective December 1, 1979; December 1, 1982.

General Authority: NDCC 39-22-10(2)

Law Implemented: NDCC 39-05-01, 39-22-02, 39-22-04, 39-22-05

52-02-01-02. Dealer information required. Every applicant when applying for a dealer's license shall supply any information the registrar reasonably requires to determine that a license may or may not be issued. Such information shall be furnished by the applicant by completing form MVD-310-77.

General Authority: NDCC 39-22-08

Law Implemented: NDCC 39-22-08

Repealed effective December 1, 1982.

52-02-01-03. Additional information. The applicant shall provide such additional information as the registrar shall request when the findings of an inspection of the proposed central place of business are in conflict with the information furnished on form MVD-310-77.

General Authority: NDCC 39-22-08

Law Implemented: NDCC 39-22-08

Repealed effective December 1, 1982.

52-02-01-04. Copy of contract or franchise. When applying for a new motor vehicle dealer's license, the applicant may be required to furnish a copy of the contract or franchise in effect with the manufacturer or distributor of the new motor vehicle or motor vehicles in which the applicant proposes to deal.

General Authority: NDCC 39-22-08

Law Implemented: NDCC 39-22-08

Repealed effective December 1, 1982.

52-02-01-05. Bond required. Every applicant for a dealer's license shall furnish a surety bond in the amount required using form MVD-319-73.

General Authority: NDEC 39-22-05
Law Implemented: NDEC 39-22-05

Repealed effective December 1, 1982.

52-02-02-01. Failure to maintain surety bond. Any motor vehicle dealer's license may be suspended, canceled, or revoked if the dealer fails to maintain the required surety bond.

General Authority: NDEC 39-22-10(2)
Law Implemented: NDEC 39-22-05

Repealed effective December 1, 1982.

52-02-02-02. Failure to deliver certificate of title. Any motor vehicle dealer's license may be suspended, canceled, or revoked if the dealer upon the sale and delivery of any motor vehicle fails after ten days of such sale to deliver to the vendee a certificate of title covering the motor vehicle endorsed according to law.

General Authority: NDEC 39-22-10(2)
Law Implemented: NDEC 39-04-29

Repealed effective December 1, 1982.

52-02-02-03. Selling without contract or franchise. A new motor vehicle dealer's license may be suspended, canceled, or revoked if the dealer buys, sells, or exchanges new motor vehicles for which the dealer does not have a bona fide contract or franchise in effect with a manufacturer or distributor, or advertises or holds oneself out to the public as engaging in the business of buying, selling, or exchanging of such new motor vehicles, or engages in the business of buying such new motor vehicles for resale.

General Authority: NDEC 39-22-10(2)
Law Implemented: NDEC 39-22-02

Repealed effective December 1, 1982.

52-02-02-05. Notary public certificate of application. Any motor vehicle dealer's license may be suspended for any violation regarding the issuing of a notary public's certificate as

prima facie evidence of compliance with motor vehicle registration requirements. No suspension shall be ordered upon a first violation.

General Authority: NDEC 39-22-10 (2)
Law Implemented: NDEC 39-04-17

Repealed effective December 1, 1982.

TITLE 55

Nursing Home Administrators, Board of Examiners for

JUNE 1983

55-02-01-11. **Grading examinations.** Every candidate for a nursing home administrator's license shall be required to pass the examination for the license with a grade of at least **seventy seventy-five** percent. The board shall determine a method of grading each section of the examination separately, and shall apply such method uniformly to all candidates taking that examination. If an oral examination is used, totally or as part of the examination process, the board, or the examiners designated for such purpose, shall use as a basis for the oral examination a written prepared outline of subject matter. The board shall designate weighted values to the subject matter for the oral examination.

History: Amended effective July 1, 1981; June 1, 1983.

General Authority: NDCC 43-34-09

Law Implemented: NDCC 43-34-09

TITLE 75
Human Services, Department of

JUNE 1983

CHAPTER 75-02-03

HOMES FOR AGED AND INFIRM

[Superseded by Chapter 75-02-08]

STAFF COMMENT: Chapter 75-02-08 contains all new material but is not underscored so as to improve readability.

AGENCY SYNOPSIS: HOMES FOR THE AGED AND INFIRM. New chapter 75-02-08, Homes for the Aged and Infirm, supersedes the existing Chapter 75-02-03, Homes for Aged and Infirm. For the most part, the changes reflect an effort to make the rules on this subject more readable and understandable, and to allow a facility to more easily determine specific requirements. To this end, lengthy sections of the previous chapter were reorganized, and more specific language was used throughout.

The previous rules allowed the Department only two options in reviewing an application for a license. The license could be either issued or denied. The new rules add two options. Pursuant to Section 75-02-08-05, the Department could issue a provisional license to a facility which is out of compliance if the facility plans corrective action, and if the problems do not pose a clear and present danger to the residents. The second option is found at Section 75-02-08-19, where the Department might grant a variance of the provisions of the chapter, provided that no danger to the health or safety of the residents of the home results.

CHAPTER 75-02-08

HOMES FOR THE AGED AND INFIRM

Section	
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75-02-08-03	Inspection and Issuance of License
75-02-08-04	Unrestricted License
75-02-08-05	Provisional License
75-02-08-06	Denial or Revocation of License
75-02-08-07	Corrective Action Plans
75-02-08-08	Operating Policies and Procedures
75-02-08-09	Administrator
75-02-08-10	Staffing
75-02-08-11	Employee Records
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75-02-08-16	Ratesetting
75-02-08-17	Appeals
75-02-08-18	Complaints
75-02-08-19	Variance

75-02-08-01. Definitions.

1. "Activity staff" means any employee who is responsible for providing an activity program.
2. "Administrator" means the person responsible for the administration of a home for the aged and infirm.
3. "Aged" means any person who is sixty-five years of age or older.
4. "Department" means the North Dakota department of human services.
5. "Dietary staff" means any employee who is responsible for the preparation and cooking of meals for residents.
6. "Governing body" means the person or entity legally responsible for the operations of a home for the aged and infirm.
7. "Home" means home for the aged and infirm.
8. "Housekeeping staff" means any employee who is responsible for cleaning and doing laundry.
9. "Infirm" means of poor or deteriorated vitality and not firm or sound physically or mentally regardless of age.

10. "Licensee" means the person, institution, or organization to whom the license is issued.
11. "Personal care aide" means any employee who is responsible for direct provision of resident care.
12. "Remedial services" means those services, provided in a licensed home for the aged and infirm, which produce the maximum reduction of physical or mental disability and restoration of a resident to the resident's best possible functional level.
13. "Resident" means any individual cared for in a home for the aged and infirm.
14. "Resident care" means care which is required because of an individual's age or infirmity including, but not limited to, assistance in bathing, dressing, walking, toilet usage, supervision, and motivation services.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-02

75-02-08-02. Application for license. An application for a license to operate a home shall be made to the department. Application must be made prior to the opening of any new facility, prior to making alterations which increase the resident capacity of a licensed facility, and prior to a change in ownership of a facility.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-03

75-02-08-03. Inspection and issuance of license. Promptly upon receipt of an application for license, an inspection of the facility shall be made by the department. If a facility has not been previously licensed, or if the department otherwise determines appropriate, the department shall request the assistance of the department of health and the state fire marshal department in the inspection. Upon completion of the inspection and consideration of the facts disclosed, the department may issue an unrestricted license, issue a provisional license, or deny the application, as the facts and circumstances warrant.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-02, 50-18-03

75-02-08-04. Unrestricted license. An unrestricted license shall be valid for one year from the date of issuance and shall state the maximum number of persons who may reside in the facility.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-04

75-02-08-05. Provisional license.

1. A provisional license may be issued to a facility which does not comply with this chapter if practices in the facility do not pose a clear and present danger to the health and safety of the residents.
2. A provisional license shall:
 - a. Prominently state that the facility has failed to comply with all applicable rules of the department.
 - b. Expire at a set date, not in excess of one year from the date of issuance.
 - c. Be exchanged for an unrestricted license, which shall bear the same date as the provisional license, upon a satisfactory demonstration of compliance with all applicable rules of the department.
3. A provisional license shall, upon issuance, be accompanied by a written statement of the specific rule or statute violated and the factual basis of the alleged violation. The statement may also suggest corrective action which, if taken, would result in the issuance of an unrestricted license.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-03, 50-18-04

75-02-08-06. Denial or revocation of license. An application for a license may be denied, an unrestricted license may be revoked or have substituted therefor a provisional license, and a provisional license may be revoked, upon a determination that the facility does not comply with this chapter, or with an applicable law. A facility shall be provided with written notice of the revocation or denial. This notice shall be accompanied by a written statement of the specific rule or statute violated and the factual basis of the alleged violation. The

statement may also suggest corrective action which, if taken, would result in the issuance of a license.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-03

75-02-08-07. Corrective action plans. A facility must submit a corrective action plan within fourteen days of a notice issued pursuant to section 75-02-08-05 and may submit such a plan if issued a notice pursuant to section 75-02-08-06. The corrective action plan must address all violations identified in the notice and set forth a date upon which the corrective action will be completed. The department may accept, reject, or negotiate modifications to the corrective action plan. In appropriate circumstances the department may, upon acceptance of a corrective action plan, issue a provisional license to a facility which has had its application denied or license revoked. The department shall provide a facility with written notice of a decision on a corrective action plan within fourteen days of receipt of the plan.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-03

75-02-08-08. Operating policies and procedures. There shall be a written statement outlining the operating policies and procedures of the home, including but not limited to, personnel policies which specify duty hours, sick leave, vacations, holidays, salary, dress, conduct, and job description. These shall be prepared to meet the needs of the residents and updated as necessary. A typewritten or printed copy of any rules, routines, and regulations for the resident shall be provided at the time of application for admission and available upon request. Copies of all rules, routines, regulations, policies, or procedures affecting the operation of the home shall be available in the administrator's office. It is the responsibility of the governing body to see that these policies are carried out in the operation of the home.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-05, 50-18-06.2

75-02-08-09. Administrator.

1. The administrator shall be an individual of good mental and physical health, capable of mature judgment, and possessing knowledge and experience in management and interpersonal relationships.
2. Whenever the administrator leaves the premises, a responsible employee shall be designated, in writing, to act in the

administrator's absence. At no time shall the home be left without adequate supervision.

3. It is recommended that the administrator continue one's education by attendance, each year, of at least one workshop or short course providing instruction related to meeting the needs of aged and infirm persons.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-02

75-02-08-10. Staffing. The governing body or its designee shall employ sufficient staff to adequately meet the residents' needs.

1. Personal care staff shall perform their duties for a full shift or any portion of it as needed. With the exception of direct food preparation, personal care staff may also work in other areas of the home as long as they are available for personal care upon request. The minimum ratio of personal care staff to residents shall be one staff per twenty residents from 7:00 a.m. to 3:00 p.m.; one staff per forty residents from 3:00 p.m. to 11:00 p.m.; and one staff per fifty residents from 11:00 p.m. to 7:00 a.m.
2. Dietary staff shall work only in the dietary department. The scope of dietary duties may include, but are not limited to, cooking, cleaning tables, setting tables, washing dishes, and ordering supplies.
3. Activity staff shall be provided at the minimum rate of one hour per licensed bed per week.
4. Social service and housekeeping staff shall be provided as needed.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-02

75-02-08-11. Employee records. The home shall provide and maintain employee records including the following information:

1. An identification sheet containing:
 - a. An initial physical; and
 - b. An annual mantoux or chest x-ray.
2. Reports of additional examinations or x-rays as necessary.

3. Work assignment records which reflect the employee's designation as personal care, dietary, activity, social service, or housekeeping staff, and schedule any changes in responsibilities. If the employee is designated to set up medications, the work assignment records must reflect that designation.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-05

75-02-08-12. Resident records. The home must provide for secure maintenance and storage of all resident records. All staff having access to resident records must be provided instruction in the use of sensitive and private records. The home must establish guidelines which limit the release of information from resident records to persons or agencies who need to know the information, or who have received the resident's permission to receive the information. All resident records shall be made available for inspection by authorized representatives of the department. Resident records shall include:

1. An identification sheet containing:
 - a. Name.
 - b. Birthdate.
 - c. Sex.
 - d. Date of admission.
 - e. Last previous address.
 - f. Emergency contact person and number.
 - g. Date of leave from facility, reason, and date of return.
 - h. Documentation of death, including cause and disposition of the resident's personal effects and money or valuables deposited with the home.
 - i. Name of resident's physician and dentist.
 - j. Resident's choice of religion and contact clergyman.
2. A medical examination or transfer sheet. A medical examination or transfer sheet shall be present on admission. A record of all orders by the attending physician shall be kept in the resident's record.

3. A quarterly progress note for each resident setting forth the resident's current condition, level of functioning, activity involvement, social interactions, and problems, if any.
4. Transfer forms to be completed, signed, and sent with resident when going to a hospital or transferring to another care facility.
5. A medication sheet for each resident who takes medications, documenting medications currently being used or ordered, the time and how often the resident takes them, and the initials of the individual who assists the resident in taking medications.
6. A system providing for the marking or labeling of all clothing and personal possessions of the resident for identification purposes.
7. A written report of any funds kept at a resident's request which is available for inspection by the resident and the department's representative. Such record shall show deposits to and withdrawals from the fund.
8. All agreements or contracts entered into between the operator or home and the resident.
9. A social history, preferably compiled on or before admission, which identifies social service needs, social interactions, and family involvement of the resident.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-02, 50-18-05

75-02-08-13. Health measures. The home shall provide the following health measures for each resident:

1. Medication control must consist of a locked central location. The area shall be large enough to accommodate each resident's medication in separate, clearly identified cubicles or containers, and should be well lighted to enable the person in control to easily read labels. Only one person shall be designated to set up medication during each shift. A pharmacy consultant for maintaining policies and procedures related to safe supervision of medication is recommended.
2. Residents shall not be allowed to keep medications in their room except under doctor's orders.
3. Bedpans and urinals shall be available for residents who may become temporarily ill.

4. A first-aid kit containing, but not limited to, gauze, tape, adhesive, antiseptic, bandages, shall be provided for emergencies and kept in an accessible, well-identified place.
5. Physician services shall be provided as needed by the resident. Physician's name and phone number shall be posted for use in emergencies.
6. Clean bedding, bed linens, sheets, and pillowcases shall be available at all times and shall be changed whenever soiled or unsanitary, but at least once a week.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-02

75-02-08-14. Required services. The following remedial services must be provided to residents:

1. Physician services.
 - a. Physical examination, medical history, and diagnosis.
 - b. Physician's services and arrangements for emergency care as needed.
2. Social services. Social services shall be made available to the resident either by the facility or by an appropriate agency offering social services. Psycho-social needs shall be identified prior to or on admission.
3. Dietary services.
 - a. Meals shall be nutritious and well-balanced in accordance with the standards of the American dietetic association.
 - b. There shall be provision for special diets when required.
 - c. A record of menus shall be kept for at least thirty days.
 - d. No more than a fourteen-hour span shall exist between a substantial evening meal and breakfast. Snacks should be available between meals.
4. Activity services. There shall be a planned and meaningful activity program to meet the needs of the residents, which is coordinated by a designated staff member. Volunteers may assist, but not replace salaried activity employees.
5. Resident care services. Resident care including, but not limited to, assistance in bathing, dressing, walking, toilet

usage, supervision, and motivation, shall be provided by personal care aides.

6. Housekeeping services. Housekeeping services shall include cleaning and laundry.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-02, 50-18-05

75-02-08-15. General building requirements. The home shall be operated in conformance with all state and local laws, rules, and ordinances concerning fire safety and sanitation, including, but not limited to, the Food Service Sanitation Manual of the North Dakota state department of health, 1962 Edition, and the 1961 fire protection standards of the fire marshal department.

1. Lounge and activity area. Space shall be provided with a minimum of fifteen square feet [1.40 square meters] per licensed bed of the facility for recreation, visiting, and an activity program. The lounge and activity area may be used to accommodate religious services and activities.
2. Dining area. A minimum of twelve square feet [1.11 square meters] per licensed bed shall be provided for dining.
3. Resident bedrooms.
 - a. All bedrooms used for residents shall be rooms with an outside wall, dry, well ventilated, naturally lighted, and otherwise suitable for occupancy. Each room shall have direct access to a hall.
 - b. The glazed area of the window shall not be less than one-tenth of the floor area of the room. Windows shall be easily opened and shall be provided with screens.
 - c. Room size will vary depending on number of beds, but minimum floor dimension shall not be less than ten feet [3.05 meters]. In computing floor area, only usable floor space shall be included. Single rooms shall provide at least one hundred square feet [9.29 square meters] per bed. Double rooms shall provide at least eighty square feet [7.43 square meters] per bed. Rooms for three or more persons shall provide at least seventy square feet [6.50 square meters] per bed.
 - d. Each resident shall have a standard bed. The bed shall have at least a four and one-half-inch [11.43-centimeter] innerspring or a five-inch [12.75-centimeter] standard mattress.

- e. Each resident shall have a bedside table and a comfortable chair.
 - f. Each resident shall have separate drawer space and closet space for the resident's personal use in the bedroom.
4. Sanitation.
- a. An ample number of lavatories and toilets shall be provided according to the number of residents. At least one toilet for every eight residents, or fraction thereof, shall be provided. Toilets for public use shall be provided.
 - b. A bathtub or shower shall be provided in a ratio of one for each twenty residents.
5. Fire drills.
- a. Fire drills shall be held monthly with a minimum of twelve per year, alternating with the different work shifts.
 - b. Fire evacuation plans shall be posted in a conspicuous place in the facility.
 - c. Written records of fire drills shall be maintained.
 - d. Each resident shall receive an individual fire drill practice within five days of admission.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-02

75-02-08-16. Ratesetting.

- 1. The department shall establish reasonable rates for licensed homes for the care and maintenance of individuals dependent in whole or in part upon state or county supplementation of supplemental security income benefits.
- 2. The department shall annually, by audit, determine the allowable costs in the case of nonprofit homes and allowable costs, including eight and one-half percent of an amount arrived at by subtracting mortgages and loans from net fixed assets, in the case of proprietary homes. The allowable costs thereby established in the most recent audit shall, no later than May first of each year, be adjusted to reflect changes projected in operational and labor costs for the year beginning on the July first immediately following and ending on June thirtieth of the following year. The rate thereby established shall be called the audit rate, shall be published

on May first of each year, and shall be effective from July first of the year of publication through June thirtieth of the following year.

3. No later than May first of each year, the department shall publish a reasonable rate for licensed homes. The reasonable rate shall be effective from July first of the year of publication through June thirtieth of the following year. The reasonable rate shall be established by ranking all licensed homes by their respective audit rates and determining the position in the ranking below which lie seventy percent of the ranked homes. The reasonable rate shall be the audit rate which has been established for the home in the position thus determined.
4. A county social service board shall determine the payable rate for any resident whose care is, in whole or in part, paid for by that county social service board. The payable rate shall be the lesser of the reasonable rate and the audit rate. Reimbursement pursuant to North Dakota Century Code section 50-01-09.2 will not be made for expenses incurred by counties which establish a payable rate less than that required by this subsection.
5. The payable rate shall include a forty-five dollar per month clothing and personal needs allowance which must be reserved for each individual. Homes shall ensure that this monthly clothing and personal needs allowance is reserved for its intended purpose.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-06.1

75-02-08-17. Appeals. The applicants, owners, or operators of a home have the right to appeal a decision to deny or revoke a license, to issue a provisional rather than an unrestricted license, or to reject a corrective action plan. The appeal must be filed in writing with the appeals referee supervisor of the department within ten days of receipt of written notice of such a decision. Upon receipt of a timely appeal, an administrative hearing will be conducted in the manner prescribed by chapter 75-01-03.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-02

75-02-08-18. **Complaints.** Any person may file a complaint with the department regarding the operation, conditions, or administration of a home.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-02

75-02-08-19. **Variance.** Upon written application, and good cause shown to the satisfaction of the department, the department may grant a variance from the provisions of this chapter upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of the residents of a home.

History: Effective June 1, 1983.

General Authority: NDCC 50-18-02, 50-18-06, 50-18-06.2

Law Implemented: NDCC 50-18-02

